

STATE OF COLORADO

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UNIFORM CONSUMER CREDIT CODE
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ADMINISTRATIVE INTERPRETATION NO. 3.104-9201

CHECK CASHING ENTITIES WHICH PROVIDE FUNDS IN RETURN FOR A POST-DATED CHECK OR SIMILAR DEFERRED PAYMENT ARRANGEMENT AND WHICH IMPOSE A CHECK CASHING CHARGE OR FEE MAY BE CONSUMER LENDERS SUBJECT TO THE COLORADO UNIFORM CONSUMER CREDIT CODE.

The Administrator has recently become aware that some businesses in Colorado are engaging in check cashing activities which constitute consumer lending. These businesses provide a service which some citizens of this state find unavailable or inconvenient to obtain from traditional financial institutions. However, these check cashing activities must be performed in compliance with the Colorado Uniform Consumer Credit Code ("UCCC"). This document is an official interpretation by the Administrator of the UCCC pursuant to § 5-6-104(4), C.R.S. (1991 Supp.).

The UCCC regulates consumer loans and other consumer credit transactions. Consequently, some but not all check cashing activities are regulated by the UCCC. Those check cashing activities subject to the UCCC will be referred to as "regulated check cashing transactions."

Regulated Check Cashing Transactions

As the UCCC only applies to credit transactions, a regulated check cashing transaction must involve an extension of credit. "Credit" is "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." Section 5-1-301(7), C.R.S. (1973). In the check-cashing context, an extension of credit occurs when a check casher (creditor) advances funds (by cash or by check) in exchange for the customer's (debtor) check pursuant to an agreement either express or implied to defer presentment of the check for deposit or

cashing until after the date of the transaction.**1

Examples of regulated check cashing activities include the following transactions in which the check cashing entity imposes a check cashing fee, discount, or service charge payable by withholding that amount from the funds it extends or by collecting an additional amount directly from the debtor:

(1) advancing funds in exchange for a post-dated check (including third-party checks);

(2) accepting payment of a check made payable the date of the transaction but representing that the check will not be cashed or deposited until a later date; and,

(3) cashing a check made payable the date of the transaction with knowledge that there are insufficient funds in the debtor's account to cover the check; depositing the check; and, when the check is returned, permitting the debtor to make periodic payments until the amount of the check is paid-in-full.**2

1** A traditional check cashing transaction does not involve an extension of credit. In those instances, money is provided in exchange for a check which is either made payable the date of the transaction or understood by the parties to represent funds available for presentment on the date of the transaction such as a payroll check. The party cashing the check is entitled to payment that same day, and there is no delay in payment unless the check is dishonored. These transactions are similar to cash transactions. As such, the transaction and the amount of any check cashing fee, discount, or service charge are not subject to the UCCC.

2** A regulated check cashing transaction also occurs in any of the above scenarios if the check cashing entity permits repayment in five (5) or more installments even if no check cashing fee, discount, or service charge is imposed. Sections 5-3-104(1)(c) and 5-1-301(12), C.R.S. (1973 and 1991 Supp.). However, in most instances, a fee or charge will be assessed.

In order to be subject to the UCCC, a regulated check cashing transaction must also be included within the definition of a "consumer loan." **3 The transactions listed above constitute consumer loans. Individuals who utilize these check cashing services typically need relatively small amounts of money (usually less than \$1,000). The checks presented for cashing are usually personal checks. As such, the proceeds of the check are presumed to be used for personal, family or household purposes.**4

3** A "consumer loan" for these purposes is a loan made or arranged by a person regularly engaged in the business of making loans in which:

1. The debtor is a person other than an organization;
2. The debt is incurred primarily for a personal, family or household purpose;
3. Either the debt is payable in installments or a loan finance charge is made; and,
4. The principal does not exceed \$25,000.

Section 5-3-104(1), C.R.S. (1973 & 1991 Supp.). A "loan" is the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor. Section 5-3-106, C.R.S. (1973). A person is regularly engaged in the business of making consumer loans if he or she makes more than twenty-five (25) non-real estate secured loans a year. Regulation Z, 12 C.F.R. § 226.2(a)(17)(i) at n.3. The Administrator has adopted this definition as well. See Administrative Interpretation No. 3.104 and 3.109-8101 at n. 2, dated September 25, 1981; Unofficial Opinion Letter dated November 14, 1984.

4** In order to overcome this presumption there must be clear evidence to establish that the proceeds were intended for a business, investment, commercial, or agricultural purpose. See section 5-3-104(2), C.R.S. (1991 Supp.). This is typically reflected by the intent of the individual utilizing the check cashing service.

In addition, the check cashing fee, discount or service charge assessed in regulated check cashing transactions constitutes a "loan finance charge" because it is imposed as a condition of the extension of credit. See § 5-3-109(1), C.R.S. (1973); Regulation Z, 12 C.F.R. § 226.4(b)(2).

Limitations on Regulated Check Cashing Charges

The UCCC limits the "loan finance charge" that may be charged in connection with consumer loans. Without a supervised lender's license, the maximum finance charge is 12% per year. Section 5-3-201(1), C.R.S. (1973). Alternatively, the UCCC permits an unlicensed consumer lender to contract for and receive a minimum loan finance charge of no more than \$25 per loan. Section 5-3-201(6), C.R.S. (1991 Supp.). However, the \$25 finance charge must be converted to an annual percentage rate and disclosed to the debtor. If the disclosed annual percentage rate exceeds 12% per year, the lender must be licensed as a supervised lender. See sections 5-3-501 & -502, C.R.S. (1973).

A licensed supervised lender may charge a maximum finance charge rate of 21% per year or the lender may collect interest as follows: (1) 36% per year on the portion of the unpaid principal which is \$630 or less; (2) 21% per year on the portion of the unpaid principal which is more than \$630 and less than \$2,100; and (3) 15% per year on the portion of the unpaid principal which is more than \$2,100. As with an unlicensed consumer lender, a licensed supervised lender may also contract for and receive a minimum loan finance charge of no more than \$25 per loan (even if when converted to an annual percentage rate it exceeds the limits outlined above). See Section 5-3-508, C.R.S. (1973 & 1991 Supp.). The licensure requirement depends on the annual percentage rate which results when the dollar amount of the loan finance charge is converted to a percentage rate. Note that both consumer lenders and supervised lenders must calculate and disclose the rate of the loan finance charge both as a total dollar amount and as an annualized percentage.**5

5** No disclosure is required if the loan finance charge does not exceed \$5 (when the principal is \$75 or less) or \$7.50 (when the principal exceeds \$75). Sections 5-3-306(2)(h) & -513, C.R.S. (1973).

Notification and Volume Fees

Persons who make consumer loans in Colorado must file notification with the Administrator within thirty (30) days after commencing business. Thereafter, notification must be filed annually, and a fee of \$20 must be paid. In addition, if the business lends more than \$100,000 per year, the lender must pay a volume fee of \$12 per each \$100,000 loaned. (No fees are required to be paid on the first \$100,000 loaned). See sections 5-6-202 & -203, C.R.S. (1973 & 1991 Supp.). If a check casher is a supervised lender, it is not required to pay notification and volume fees. However, it must obtain a supervised lender's license prior to making consumer loans in excess of a 12% annual percentage rate and must pay an annual license fee of \$400. Sections 5-3-503 and 5-6-203(1), C.R.S. (1973 & 1991 Supp.).

Multiple Agreements Prohibited

Section 5-3-409, C.R.S. (1991 Supp.) prohibits lenders from using multiple agreements to obtain a higher finance charge than is permitted by the UCCC or to avoid disclosure provisions. A violation is presumed to occur if a transaction is split between a husband and wife. There are also other ways in which this provision may be violated. Below are two examples of conduct which will be considered violations of the multiple agreements provision with regard to regulated check cashing:

1. Entering into more than one regulated check cashing transaction with a debtor within a short time period, unless there is clear evidence which indicates that the subsequent transaction(s) was not contemplated when the first regulated check cashing transaction was executed.

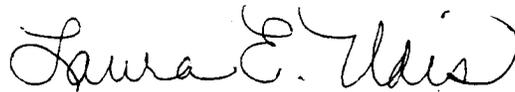
2. Encouraging a debtor to obtain an additional consumer loan from another business which has an interest in the regulated check casher or to whom the regulated check casher makes referrals.

Conclusions

Regulated check cashers must comply with all applicable UCCC provisions including those on disclosure, default and cure of default, advertising, and limitations on lender remedies as well as those regarding licensure and maximum fees described above. Failure to comply with the UCCC may result in the initiation of lawsuits to enjoin the business operations of

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regulated check cashers and to obtain consumer refunds. In addition, this office will monitor the activities of check cashing businesses and investigate complaints involving regulated check cashing transactions. Regulated check cashers are therefore urged to either file notification and fees or to apply for licensure as supervised lenders depending on the disclosed annual percentage rate charged for regulated check cashing activities. Copies of the UCCC, notification cards, and supervised lenders license applications are available by calling or writing this office.



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Colorado Uniform Consumer Credit Code

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