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UCCC MATERIAL
FOR YOUR INFORMATION

RE: Mortgage Broker Fees

Dear :

You asked about the treatment of mortgage broker fees under the Colorado Uniform Consumer Credit Code ("UCCC"), specifically whether such fees may be excluded from the finance charge and calculation of the annual percentage rate ("APR"). It is my opinion that these fees must be included in the finance charge and APR for both disclosure and rate calculation purposes.

The federal Truth in Lending Act ("TILA") was amended by Congress in 1995. The amendments contained a provision adding mortgage broker fees to the definition of what constitutes a "finance charge," whether the broker fees are paid in cash or financed and whether paid directly to the broker or to the lender for delivery to the broker. 15 U.S.C. § 1605(a)(6). The TILA amendment took effect September 30, 1996.

The Federal Reserve Board subsequently amended Regulation Z, which implements the TILA, to clarify that mortgage broker fees are included in the finance charge "even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge." 12 CFR § 226.4(a)(3) (61 F.R. 49,237, Sept. 19, 1996). The Regulation Z amendment took effect October 21, 1996. The result of these amendments is that all mortgage broker fees must be included in the finance charge and APR for federal disclosure purposes.¹

The general rule for other third party fees, including non-mortgage broker fees, is unchanged. These fees must be included in the finance charge if the creditor requires use of the third party as a condition of or incident to the extension of credit (even if the consumer can choose the third party), or if the

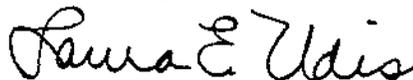
¹ Fees imposed equally on consumers, whether or not credit is extended, may be excluded from the finance charge as may bona fide and reasonable closing costs such as appraisal and credit report fees. Regulation Z, 12 CFR § 226.4(c)(7).

creditor retains any part of the fee. Regulation Z, 12 CFR § 226.4(a)(1).

The federal amendments regarding mortgage broker fees are binding for disclosure purposes under federal preemption analysis and because disclosure which complies with the federal TILA satisfies the UCCC.² In addition, the UCCC Administrator is statutorily directed to interpret the UCCC as a whole in a manner which is harmonious with the TILA.³ Consequently, for UCCC rate cap purposes, mortgage broker fees must also be included in the finance charge and APR. In fact, the UCCC's definitions of "loan finance charge" and "credit service charge" have always included fees "for commissions or brokerage for obtaining the credit." UCCC §§ 5-2-109(1) & 5-3-109(1), C.R.S. Mortgage broker fees are not permitted additional charges. UCCC §§ 5-2-202 & 5-3-202, C.R.S.

Creditors must ensure that as of September 30, 1996, mortgage broker fees are included in the APR and that the APR does not exceed the UCCC's maximum rate caps of 21% APR for supervised lenders and credit sellers, or 12% for non-supervised lenders. UCCC §§ 5-2-201(2)(b), 5-3-201(1), & 5-3-508(2)(b), C.R.S. Failure to do so may result in redisclosures, refunds for excess charges, and extended rescission periods. All prior opinion letters on broker fees are superseded by this opinion letter.

Sincerely,



LAURA E. UDIS
Administrator
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² See 15 U.S.C. § 1610(a)(1); 12 CFR § 226.28(a)(1); UCCC §§ 5-1-302, 5-2-301, and 5-3-301, C.R.S.

³ UCCC §§ 5-1-102(2)(f) & (g) and 5-6-104(2) & (3), C.R.S.