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June 27, 2000

UCCC MATERIAL  
FOR YOUR INFORMATION

RE: Colorado Deferred Deposit Loan Act - Renewals & Minimum Finance Charges

Dear :

You have asked for clarification of two questions concerning the Colorado Deferred Deposit Loan Act ("the Act"), adopted by Senate Bill 00-144, and the Uniform Consumer Credit Code ("UCCC"). First, if a supervised lender has made a deferred deposit loan and refinanced or renewed it one or more times prior to July 1, 2000, may the lender renew the loan again one more time after July 1, 2000? Next, if a deferred deposit lender chooses to refinance or renew a deferred deposit loan under the other provisions of the UCCC, may the lender collect a \$25 minimum finance charge? As explained below, in my opinion the answer to both questions is "no."

### Background

Since 1992, this office has considered transactions commonly referred to as payday loans, post-dated check loans, deferred deposit loans, and deferred presentment loans to be supervised loans subject to all of the provisions of the UCCC.<sup>1</sup> We have required licensing, compliance examinations, disclosure of the cost of credit including the disclosures required by the federal Truth in Lending Act, limitations on default, and limitations on finance charges. In 1999, the Colorado Attorney General directed the UCCC administrator to form a committee to make legislative recommendations to simplify, modernize, and clarify the UCCC.<sup>2</sup> Included in the committee's recommendations was a proposal that the General Assembly establish a separate article of the UCCC regulating deferred deposit loans.<sup>3</sup> The committee's report was provided to the sponsors of Senate Bill 00-144, the Deferred Deposit Loan Act. While that law was not initially drafted based on the committee's report, the final bill contained a number of the committee's recommendations.

<sup>1</sup> See UCCC Administrative Interpretation #3.104-9201 issued June 23, 1992.

<sup>2</sup> Attorney General Administrative Order #1999-4, issued April 27, 1999.

<sup>3</sup> See "Report of the Uniform Consumer Credit Code Revision Committee and Actions of the Colorado Commission on Consumer Credit," Nov. 30, 1999, p. 20-25.

## Renewals

The Deferred Deposit Loan Act permits only one renewal or refinance of a deferred deposit loan. Act § 5-3.1-108(1). The bill as introduced would have permitted three renewals but the number was reduced by the Senate Business Affairs and Labor Committee. There was substantial testimony on this issue. Deferred deposit lenders noted that some in their industry were making more than one renewal based in part on a UCCC enforcement policy advising that more than four renewals would be viewed as unconscionable.<sup>4</sup> Other participants expressed concern about continual debt and pyramiding of renewal charges and fees. Ultimately, the committee declined to permit more than one renewal. This decision may have been based on the fact that the bill allows a higher finance charge than in current law for loan amounts greater than \$125. In any event, the General Assembly was clear that after July 1, 2000, only one renewal of a deferred deposit loan is permitted. Consequently, it is my opinion that if a lender has renewed or refinanced a deferred deposit loan or similar transaction before July 1, 2000, it is *not* permitted to renew the loan again after July 1, 2000.

## Minimum Finance Charge

While the Act allows only one renewal, the legislature countered its impact on consumers who cannot repay the loan even after one renewal by an amendment clarifying that a lender could always refinance a loan under the other provisions of the UCCC. Act § 5-3.1-108(4). The maximum charge under the UCCC after July 1, 2000 is an annual percentage rate of 36% if the amount financed is \$1,000 or less.<sup>5</sup> These loans will typically, although are not required to, be for a longer loan term with repayment contracted for in more than one balloon payment. Prior to the adoption of Senate Bill 00-144, the maximum fee allowed on a deferred deposit loan was the \$25 minimum finance charge for supervised loans.<sup>6</sup> The UCCC revision committee criticized use of the UCCC's minimum finance charge of \$25 for deferred deposit loans. Due to concerns of loan splitting, the revision committee recommended that the finance charge permitted be a percentage amount based on the amount financed rather than the flat rate of \$25, or some other fixed dollar amount.

The question that arises is whether a lender renewing or refinancing a deferred deposit loan subject to the UCCC's other provisions for an annual percentage rate of 36% or less, may contract for and charge the UCCC's \$25 minimum finance charge. The minimum finance charge was originally intended to allow lenders to recover minimal administrative costs in making loans in the event consumers prepaid the loan before any finance charges had been earned.

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<sup>4</sup> Enforcement Policy on Unconscionability, issued June 10, 1999. The policy did not state that four renewals were permitted but that UCCC resources would be focused on transactions exceeding four renewals.

<sup>5</sup> Section 5-2-201(2)(a)(I). Prior to July 1, 2000, the 36% APR may be charged on loans of \$630 or less. Section 5-3-508(2)(a)(I), C.R.S. (1999).

<sup>6</sup> See § 5-3-508(7), C.R.S. (1999) to be codified at § 5-2-201(7) after July 1, 2000. This was based on the administrative interpretation cited above in footnote 1. UCCC Rule 7, 4 CCR 902-1 at 13-14 (3-93), reduced that amount to the lesser of \$25 or 25% of the amount financed for multiple loans.

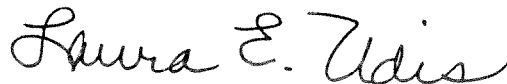
In my opinion, a lender that refinances a deferred deposit loan under the other provisions of the UCCC may not contract for and receive the \$25 minimum finance charge as this would conflict with the Deferred Deposit Loan Act. Use of the \$25 minimum finance charge would defeat the legislature's intention to allow only one renewal of a deferred deposit loan at the higher rates permitted on these loans. Therefore, if a deferred deposit lender chooses to refinance the loan more than once, the lender may contract for and disclose a finance charge equivalent to a 36% APR (or the appropriate lesser amount allowed if the amount financed exceeds \$1,000) rather than the \$25 minimum finance charge.

### Summary

Deferred deposit lenders that have renewed deferred deposit loans prior to July 1, 2000 should not renew the loans after the effective date of Senate Bill 00-144. Additionally, after July 1, 2000, deferred deposit lenders that refinance a loan under Act § 5-3.1-108(4) may not contract for, impose, or collect the UCCC's minimum finance charge in § 5-2-201(7) to the extent the loan's APR would exceed 36%.

Compliance with this opinion letter provides protection from liability pursuant to UCCC § 5-6-104(4).

Sincerely,



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