

May 31, 2024

Administrator Fulford
Administrator of the Colorado UCCC
Colorado Attorney General's Office
1300 Broadway, Denver, CO 80203

Subject: Proposed Rulemaking on Colorado Uniform Consumer Credit Code

Dear Administrator Fulford,

Introduction

GoWest Credit Union Association represents 277 credit unions with \$224.4 billion in assets and 17.4 million members across six states, including Colorado. Our mission is to advocate for the interests of our member credit unions, providing them with support and resources to thrive in a competitive financial services landscape while ensuring they can serve their members fairly and effectively.

After reviewing the proposed regulatory changes to the Colorado Uniform Consumer Credit Code (UCCC), we have identified specific concerns regarding the expanded scope of records outlined in Section 10.(b)(11) and Section 10.(b)(23). While we fully support the UCCC's goals of promoting transparency and consumer protection, the extensive documentation requirements present several challenges for credit unions, particularly smaller institutions. We have also identified specific concerns regarding the rescission of Rule 8 and regulation of GAP products issued prior to January 1, 2024.

We would encourage the Administrator of the Colorado Consumer Credit Code to consider extending the public comment period for an additional 30 days given the complexity of the changes and lack of stakeholder engagement.

General Concerns

Administrative Burden and Costs: The extensive documentation requirements outlined in the proposed UCCC regulations create a substantial administrative and cost burden. For example, expanding the breadth of records to be retained will require novel core processing changes that come at a significant cost, in addition to ongoing storage costs. Smaller financial institutions may struggle to meet these demands due to limited staffing and financial capabilities.

Compliance: The expansion of collection activities to include collection letters, e-mails, right to cure notices, and texts, presents a compliance challenge that will require lenders to update policies and procedures, create new trainings, and implement those trainings. To

ensure that financial institutions can properly implement any required changes, the effective date of the rule should be set at least 6 months from the date of adoption.

Operational Complexity: While most of the changes are operationally feasible and reasonable, there are a couple of specific proposed changes that should be removed or at a minimum clarified. Specifically, the reference to “in office conversations” outlined in section 11 and the correspondence provisions outlined in Section 23.

Specific Recommendations:

Rule 8 -The update to rescind Rule 8 pertaining to Guaranteed Automobile Protection is prudent given the updated statutes surrounding GAP. In addition, GoWest on behalf of our member credit unions, would request including a reference to the adjustment areas as identified in the UCCC Gap Enforcement Priorities memo issued on September 12, 2022, that outlined how the Attorney General's Office would enforce Rule 8 in anticipation of legislation being filed. This reference adds additional clarity and transparency into how GAP contracts issued prior to January 1, 2024 will be regulated.

Rule 8. Guaranteed Automobile Protection

(n) This rule shall remain in effect and apply to consumer credit sales and consumer loan transactions entered into before January 1, 2024, **provided no administrative, disciplinary, or enforcement action will be taken concerning the following actions:**

(1) obtaining an affirmative written authorization for the purchase of GAP in digital form (as opposed to hard copy paper form), 4 CCR 902-1:8(b);

(2) providing consumers a separate written cancellation form, 4 CCR 902-1:8(c);

(3) taking deductions from the GAP benefit for salvage (i.e., the value of the totaled vehicle if the consumer chooses to retain it), 4 CCR 902-1:8(e);

(4) taking deductions from the GAP benefit if the consumer received or is entitled to receive a refund for cancellable products that were included in the auto loan for: credit insurance, prepaid taxes or fees, or service contracts, 4 CCR 902-1:8(e);

(5) taking deductions from the GAP benefit for prior damages if prior to taking the deduction is the GAP administrator or lender obtains and retains documentary proof that (1) the consumer submitted a prior insurance claim related to the prior damage, or (2) the consumer received prior payment for the subject prior damages, 4 CCR 902-1:8(e); and

(6) reimbursing a consumer for a deductible for property damage insurance in excess of \$500, 4 CCR 902-1:8(f).

Section 10.(b)11 - The requirement in Section 10.(b)11 to maintain a record log of “in office conversations” is both vague and overly inclusive. First, “in office conversations” could be interpreted to include internal conversations among CU employees in which the member does not participate. That is overly intrusive and would require substantial deviation from current practice. Second, it could be interpreted to apply to any number of communications between the member and non-collection personnel who do not ordinarily log conversations. For example, the member could be cashing a paycheck at the drive-up teller and the teller looks at the screen and as a service to the member says “In case you didn’t remember, you had a loan payment that was due 2 weeks ago. Just thought I’d let you know.” That could be interpreted as a collection attempt that requires logging but falls completely out of the scope of actual collection attempts and certainly out of the scope of anything that the CU would ordinarily document. Another example would be when the member calls the call center to inquire about a “skip pay” service and the call center employee tells the member that because of the past-due payment, the member is ineligible for the “skip pay” offer. Again, this is not an attempt to collect and therefore not something that is ordinarily logged as such. The regulation should not require the CU to document such interactions.

11. Collection attempts. These activities should be documented in a record log. The record log should list the activities in chronological order, and document the time, date, and **a summary of** substance of the activities. The creditor must document all collection activity in the record log, including, but is not limited to, collection letters, e-mails, ~~in-office conversations~~, phone calls, right to cure notices, and texts. If the creditor records calls, the call recordings must be retained.

Even if the contact is an in-person contact with a collector, the requirement to document the “time, date, and substance” of the activity is overly burdensome and counterproductive. A member is less likely to be forthcoming and cooperative in such a conversation if the credit union employee is trying to take copious notes of everything the member says in order to document the file. Further, the CU employee will be distracted from performing their primary duty to both the CU and the member: listening to the member to understand the member’s situation and attempting to work with the member to come up with a mutually beneficial solution.

Even if the rule sought to clarify “in office conversations” pertaining to record keeping on collections, the risk of non-compliance is not manageable as it relies on staff to perform functions outside the scope of their duties.

Section 10(b)(23) - The requirements in Section 10.(b)(23) to maintain and make available “correspondence with consumers related to GAP” and “correspondence with GAP administrators” are also overbroad, vague, and unduly burdensome. Credit unions engage in a variety of types of correspondence with consumers and GAP administrators that may or may not be related to specific member agreements, claims, refunds, etc. The credit union should not have to maintain correspondence that addresses services to the credit union, payment to the credit union for claims made by the credit union, or other issues unrelated to member/customer GAP agreements. GoWest, on behalf of member credit

unions, recommends tailoring the scope of correspondence by adding the following language in bold below.

23. For guaranteed asset protection agreements (“GAP”) under C.R.S. § 5-9.3-101, creditors must maintain and/or make reasonably available to the Administrator any GAP agreements with consumers; agreements with GAP administrators related to GAP; ~~correspondence with consumers related to GAP;~~ correspondence with GAP administrators **in writing instructing a GAP administrator to reimburse the creditor for its share of a refund provided to consumers;** and records of GAP fees received, refunds **provided** ~~paid~~, benefits **provided** ~~paid~~ and any deductions to the benefit.

Conclusion

We believe these proposed adjustments will help ensure that the requirements are both practical and enforceable while maintaining the intended protections for consumers. By specifying "in person contacts" and requiring "a summary of the substance of the activities," we can achieve a balance that supports compliance without imposing undue burdens on credit unions.

We appreciate your consideration of these proposed adjustments and are confident that they will facilitate a more efficient and effective implementation of the UCCC's objectives. Thank you for your attention to this important matter and for your efforts to create a regulatory environment that is both fair and functional for all stakeholders involved.

Sincerely,



John Trull

VP, Regulatory Affairs

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GoWest Credit Union Association champions credit unions in Arizona, Colorado, Idaho, Oregon, Washington, and Wyoming, and the 16.5 million consumers who have chosen them as their preferred financial services partners. Learn more about credit unions at yourmoneyfurther.com.