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Revised Administrative Interpretation - House Bill 10-1351
Concerning the Maximum Authorized Interest Rate for a Payday Loan

This revised administrative interpretation replaces the one previously issued on June 18 2010. Several new issues are addressed in topic numbers 16-18 and revisions have been made to topic number 12.

Questions have been raised about House Bill 10-1351, a bill passed during the 2010 legislative session that amended the Colorado Deferred Deposit Loan Act (DDLA), the payday lending law.¹ The bill takes effect August 11, 2010 unless a referendum petition is filed. This administrative interpretation, in the form of questions and answers, addresses implementation of the new law and is issued pursuant to Colorado Uniform Consumer Credit Code (UCCC) §5-6-104(4). It protects lenders from liability under the UCCC for any act done in conformity with the interpretation.

1. Does HB 1351 allow a lender to contract for repayment in installments?

A consumer and lender may negotiate the repayment schedule and contract for multiple installments or a single payment installment. Whether the loan is structured to be repaid as a single installment loan or in multiple installments, consumers have the right to prepay in full or in part without a penalty.² We recommend that the loan agreement clearly disclose the consumer's right to prepay a payday loan and to do so without any penalty.³

Payday loans, until HB 1351, were single installment loans. There was no minimum loan term but the due date was required to be on or after the consumer's next payday or date benefits were received.⁴ HB 1351 repealed the payment due date language and added a six

¹ "Deferred deposit" and "payday" loan are used interchangeably in this interpretation and have the same meaning according to amended DDLA §5-3.1-102(3) in HB 1351.

² In addition to HB 1351 amended §5-3.1-103 on prepayment, UCCC § 5-2-210 permits a consumer to prepay a consumer credit transaction without a penalty.

³ Although Regulation Z, §226.18(k) requires a lender to disclose certain information about prepayment, this disclosure alone may not explicitly advise the consumer of both the right to prepay and the right to prepay without a penalty.

⁴ Current DDLA § 5-3.1-103.

month loan term. The legislature intended to provide consumers with maximum flexibility in repayment options. We recommend that lenders advise consumers of their repayment options.

2. Are there any limitations on multiple installments?

If the repayment schedule negotiated provides for payments in multiple installments, lenders must comply with UCCC § 5-2-308. That section requires that for supervised loans of \$3,000 or less, installments must be scheduled to be paid in substantially equal installments at equal periodic intervals.⁵

3. Do consumers have a right to cure a default if the loan is a multiple installment loan?

If the repayment schedule provides for payments in 5 or more installments⁶, upon default consisting of failure to make a required payment, a lender may not accelerate the balance or enforce a security interest (depositing the remaining checks or payment instruments), without first providing a notice of right to cure default that complies with UCCC §§5-5-110 & 5-5-111.

4. If a lender and consumer contract for multiple installments, may the lender hold more than one payment instrument?

Yes, subject to the answer to question #5 below, a lender may hold a payment instrument for each scheduled installment or a single instrument for the entire loan amount. If a consumer partially prepays a single installment payday loan or makes additional voluntary payments on a multiple installment loan, the lender should return the original instrument or payment authorization for one in the lower remaining amount due. This avoids the lender being over collateralized. If the lender cannot easily obtain a new payment instrument and deposits the original instrument, it should immediately refund any overpayment to the consumer.

5. What is the amount of the instrument that may be held?

The instrument or instruments held by the lender may be for a total of the amount financed (principal loan amount) and the finance charge permitted by DDLA §5-3.1-105. The “finance charge” consists of 20% for the first \$300 loaned plus 7.5% of the amount over \$300 up to the \$500 maximum loan amount. The 45% per annum interest rate and the monthly maintenance fees added by HB 1351 are not “finance charges” under that section and cannot be included in the instrument.⁷ The existing DDLA definition of “deferred deposit loan” allows a lender to hold an instrument in the amount of the amount financed and

⁵ A “supervised loan” is a consumer loan with an annual percentage rate greater than 12%. UCCC §5-1-301(47). Payday loans are supervised loans.

⁶ UCCC §5-5-111(5).

⁷ For other purposes, such as calculating and disclosing the APR, the interest rate and monthly maintenance fees are finance charges.

finance charges.⁸ In a multiple installment loan the lender may *contract* for monthly payment of the entire installment due, including the applicable portion of the interest and earned monthly maintenance fee, but it may not *hold* an instrument for those fees.

6. *Does HB 1351 permit monthly maintenance fees for each monthly installment on a 6 month payday loan?*

No. The monthly maintenance fee is permitted only for each month after the loan is outstanding after the first 30 days. On a 6 installment loan, 5 monthly maintenance fees may be charged.

7. *When is the monthly maintenance fee earned and when may it be collected?*

The fee is earned at the end of each month after the first 30 days of the loan. It may be collected when earned, at the end of each month after the first 30 days. It is not earned, and may not be collected, at the beginning of a month. Note, however, that the monthly maintenance fee may not be included in any instrument held by the lender.

8. *May a lender earn a monthly maintenance fee if a consumer prepays before the end of the month?*

No, the fee may only be earned at the end of each full month after the first 30 days.

9. *May a lender earn a monthly maintenance fee on amounts or increments of less than \$100?*

No, the monthly maintenance fee may be assessed only on each \$100 loaned, not on amounts less than \$100. For example, under HB 1351, the monthly maintenance fee on a \$350 loan would be \$22.50, consisting of \$7.50 on each of 3 increments of \$100, with no additional fee for the \$50 remaining in excess of \$300.

10. *If a consumer makes a partial prepayment, must the monthly maintenance fee for remaining payments be calculated on the declining balance?*

No, the monthly maintenance fee is based on the original amount loaned rather than the current balance, even if the balance has declined by payments or increased due to failure to make required payments.

11. *Is the interest rate of 45% per annum charged on the amount financed (principal loan amount) or the amount financed plus the finance charge, interest, and monthly maintenance fees?*

It may only be charged on the amount financed of \$500 or less.

⁸ Existing DDLA §5-3.1-102(3).

12. *If a consumer prepays a payday loan before the end of the loan term, what fees must be refunded?*

Upon prepayment in full by the consumer, the lender must refund any unearned portion of the 45% interest rate calculated on a pro-rata method. The refund may not be calculated on the actuarial method. The current DDLA's finance charge (20%/7.5%) need not be refunded. Any unearned monthly maintenance fees must be refunded upon prepayment.⁹ Refund examples are provided at the end of this interpretation.

Amended § 5-3.1-105 in HB 1351 provides that: "If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based upon the ratio of time left before maturity to the loan term." The bill also added a definition of "annual percentage rate" that includes "all finance charges" and retained the pre-HB 1351 language that the current finance charge (20%/7.5%) is "deemed fully earned as of the date of the transaction." This resulting conflict could reasonably be interpreted to mean that upon prepayment all fees, including the current finance charge, must be refunded or that only the 45% rate of interest must be refunded. The conflict was not rectified by the legislature in the remaining debate and voting on the bill. The Administrator initially determined that all fees were subject to refund on prepayment. However, the Administrator recently learned that those involved in crafting the language resulting in the Revised version of the bill likely believed that only the 45% rate of interest was subject to refund. Consequently, this revised interpretation is issued.

13. *Does HB 1351 require a 30 day waiting period between payday loans?*

No waiting period is required between the time a prior loan is repaid and a new loan is made. A 30-day waiting period is required between the dates on which the loans are made only if the same lender makes a subsequent loan to a consumer while a prior loan is outstanding or unpaid.¹⁰

14. *What fees may be charged if a lender renews a payday loan?*

A lender may only charge a 45% APR on the renewed loan. HB 1351 limits renewal fees to an "annual percentage rate of forty-five percent." Amended §5-3.1-108 repeals the existing

⁹ There should be no unearned monthly maintenance fees as the fee is earned at the end of each month after the initial 30 days.

¹⁰ HB 1351 amended § 5-3.1-106. When two loans are outstanding with a 30-day waiting period between the dates the two loans were made, the lender may charge monthly maintenance fees and the current DDLA finance charges (20%/7.5%) on both loans without aggregating the two loans and loan amounts. The Administrator may, however, investigate allegations or evidence of violations of UCCC §5-3-205 on multiple agreements (loan splitting) to determine if the purpose for multiple loans was to obtain a higher finance charge than would otherwise be permitted.

finance charge now permitted on renewal (20%/7.5%) and does not authorize any monthly maintenance fees on renewal.

15. *What loan amount may be renewed?*

The lender may renew up to \$500 of the remaining unpaid balance. If the unpaid balance on renewal is more than \$500, the consumer may be required to pay the remaining balance but the lender cannot finance any amount over \$500.¹¹

16. *What NSF charges may be assessed if a consumer's payment instrument is returned unpaid?*

If a consumer's payment instrument is returned unpaid, the lender may collect one NSF fee *per loan* in an amount not to exceed \$25 if that amount is contracted for in the loan agreement. Regardless of the number of times an instrument is returned unpaid, or in a multiple installment loan regardless of the number of instruments that are returned unpaid, only one NSF fee is allowed per loan pursuant to current DDLA §5-3.1-112:

...[T]he lender may contract for and collect one returned instrument charge for each deferred deposit loan, not to exceed twenty-five dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default.

This section was not amended by HB 1351. If one or more payment instruments are returned unpaid the lender, after sending any required right to cure notice, may initiate collection or legal action for the unpaid balance and a single returned instrument charge, and if awarded by a court may obtain court costs and attorneys fees equal to the loan amount.

17. *If a consumer defaults on a payday loan, may the lender continue to assess monthly maintenance fees after the end of the loan term until the loan is paid in full?*

No. The monthly maintenance fee may only be charged for months the loan is outstanding during the term of the loan. After the final scheduled due date of at least 6 months, the lender may not continue to assess monthly maintenance fees even if the loan remains unpaid. As noted above in issue number 16, only the default fees authorized by current DDLA §5-3.1-112 are permitted.¹²

18. *Should the loan be structured as a precomputed loan or interest bearing loan?*

¹¹ Current DDLA §5-3.1-106(1).

¹² During the debate in the Senate on second reading, the sponsor of the amendment that resulted in the current version of the bill stated "We also provided in order to allow the lender to return a reasonable amount on their investment, we also provided a maintenance fee so long as that loan was outstanding *during that six month period*" (emphasis added).

The lender may structure the loan either on a precomputed basis (total of payments) with the assumption that all payments will be made as scheduled¹³ or on an interest bearing basis in which the consumer contracts to pay the principal plus applicable interest (interest rate applied to the unpaid balance based on when payments are actually made). Payday lenders have traditionally utilized the simpler precomputed method and are encouraged to do so.¹⁴ Note that the loan agreement/contract documents must indicate which method of interest accrual will be used. Upon prepayment, however, the lender must calculate the unearned portion of the 45% interest and the resulting payoff amount using the pro-rata method, regardless of how interest is assessed. A precomputed example is provided at the end of this interpretation.

Conclusion

The Administrator recognizes the need for guidance on implementation of HB 10-1351. These questions and answers constitute an administrative interpretation and provide that guidance. This interpretation is based on the language of HB 1351 and a comparison of it to current applicable statutes.

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Uniform Consumer Credit Code

¹³ See UCCC §5-1-301(35).

¹⁴ The method is simpler because the lender contracts for repayment of the “Total of Payments” rather than one in which payments are applied to the various current finance charges, the 45% interest rate, and monthly maintenance fees.

Refund Examples Upon Prepayment in Full

Date of Payoff	30 days	60 days	90 days	120 days	150 days	180 days
Contracted Total of Payments	\$792.60	\$792.60	\$792.60	\$792.60	\$792.60	\$792.60
Payments Made to Date	\$ 0	\$132.10	\$264.20	\$396.30	\$528.40	\$660.50
Outstanding Balance at Payoff	\$792.60	\$660.50	\$528.40	\$396.30	\$264.20	\$132.10
Contracted Charges	\$292.60	\$292.60	\$292.60	\$292.60	\$292.60	\$292.60
Allowable Charges at Payoff*	\$ 86.25	\$127.50	\$168.75	\$210.00	\$251.25	\$292.60
Required Refund	\$206.35	\$165.10	\$123.85	\$ 82.60	\$ 41.35	\$ 0
Outstanding Balance at Payoff	\$792.60	\$660.50	\$528.40	\$396.30	\$264.20	\$132.10
Less Required Refund	\$206.35	\$165.10	\$123.85	\$ 82.60	\$ 41.35	\$ 0
Payoff Amount	\$586.25	\$495.40	\$404.55	\$313.70	\$222.85	\$132.10

* Allowable Charges

Origination Fee	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00
45% Interest	\$ 11.25	\$ 22.50	\$ 33.75	\$ 45.00	\$ 56.25	\$ 67.60
Monthly Maintenance Fee	\$ 0	\$ 30.00	\$ 60.00	\$ 90.00	\$120.00	\$150.00
Total Allowable Charges	\$ 86.25	\$127.50	\$168.75	\$210.00	\$251.25	\$292.60

Note: Some differences may exist due to rounding.

Precomputed Loan Examples

	Single Payment	Multiple Installment Payment
AMOUNT FINANCED	\$ 500.00	\$ 500.00
Term (months)	6	6
Finance Charge (20%/7.5% per \$100)	\$ 75.00	\$ 75.00
45% Interest Rate*	\$112.50	\$ 67.60
Monthly Maintenance Fee	\$150.00	\$150.00
Total of All Permitted Charges	\$337.50	\$292.60
Total of Payments	\$837.50	\$792.60
ANNUAL PERCENTAGE RATE	135.00%	179.94%
PAYMENT SCHEDULE	1 x \$837.50	6 x \$132.10

* See Table Below:

Amount Financed	\$500.00
Term (months)	6
Monthly Payment	\$94.60
Finance Charge	\$67.60
Total of Payments	\$567.60
APR	44.98%

Note: Calculations based on a 360/360 method.