

June 3, 2024

Martha Fulford

The Administrator off the Uniform Consumer Credit Code

State of Colorado Office of the Attorney General

1300 Broadway, 6th Floor

Denver, CO 80203

**RE: Notice of Proposed Rulemaking - Administrator of the Colorado Uniform Consumer Credit Code Concerning the regulation of consumer legal funding transactions, GAP repeal, and UCCC recordkeeping requirements**

Dear Administrator Fulford,

I write on behalf of the American Financial Services Association (AFSA)<sup>1</sup> to express concerns raised by the proposed amendments to 4 CCR 902-1 Rule 8 and Rule 10, which are the subject of a public hearing on June 3, 2024. Our primary concerns focus on the threat to business continuity for companies posed by the amendments and confusion they will engender as to the status of contracts consummated after September 12, 2022, but before January 1, 2024.

Businesses currently operate under House Bill 1181, passed last year and signed into law by Governor Polis. This bill reflects the codification of a strong regulatory scheme for GAP waiver products suited for the market to the benefit of both consumers and the industry. While this legislation was being finalized, your office issued a memorandum dated September 12, 2022, which stated that no administrative, disciplinary, or enforcement action would take place in relation to specific provision of Rule 8, pending the outcome of the 2023 legislative session. At

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

the end of that session, the letter was withdrawn. The memorandum deemed the items identified “to be sound adjustments to remove unnecessary administrative burdens from Colorado companies while not compromising strong consumer protections.” With that in mind, we encourage you to consider incorporating the 2022 “adjustments” into the proposed rule revisions. To that end we propose the following revisions to Rule 8:

- (n) This rule shall remain in effect and apply to consumer credit sales and consumer loan transactions entered 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).

An additional concern relates to overly broad and burdensome recordkeeping requirements in Rule 10. The proposed amendments to Rule 10 add, among other examples, “correspondence with consumers related to GAP” and “correspondence with GAP administrators” without

limitation to the pre-existing record keeping requirements. It is unclear what the scope of communication contemplated by this rule should be. This is both overbroad in scope and unduly burdensome. Accordingly, we encourage you to consider amending to the proposed 4 CCR 902-1(b)(23) to mitigate the burden by managing the scope.

We very much appreciate the willingness to work with industry on these matters and thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads 'Elora Rayhan'. The signature is fluid and cursive, with the first name 'Elora' and last name 'Rayhan' clearly distinguishable.

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