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ATTORNEY GENERAL OPINION NO. 88- 13

Judith K. Stringer
Consumer Credit Commissioner
Landon State Office Building
900 Jackson, Room 352
Topeka, Kansas 66612

Re: Consumer Credit Code--Insurance; Consumer Credit
Insurance--Amount of Insurance

Synopsis: If consumer credit insurance is provided in connection with an open end credit account (including revolving charge accounts offered by retailers and lines of credit under bank cards and the like), the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. The credit limit is not a consideration in such instances. If consumer credit insurance is provided in connection with a commitment to grant credit in the future (a credit commitment), the amounts payable as insurance benefits may be considered in light of the amount of the commitment as well as the outstanding (or initial in the case of debts or commitments for a primarily agricultural purpose) debt. Cited herein: K.S.A. 16a-1-301; 16a-4-107; 16a-4-202; 16a-4-203.

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Dear Commissioner Stringer:

As Consumer Credit Commissioner you request our interpretation of the language contained in K.S.A. 16a-4-202(2) of the

uniform consumer credit code (UCCC). Your specific questions are as follows:

"(1) Does 'commitment' as used in the above section mean the same as 'line of credit'?"

"(2) Does the above section state that the credit insurance may be in the amount of the balance of the credit transaction and the amount of commitment or line of credit? As an example, if the consumer has an unpaid balance on a credit card of \$5,000 and the credit card provides for a \$10,000 'line of credit', may the credit insurance be in the amount of \$15,000?"

K.S.A. 16a-4-202(2) provides:

"(2) If consumer credit insurance is provided in connection with an open end credit account, the amount payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. If the debt or the commitment is primarily for an agricultural purpose, and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment."

The Kansas Comment to this section states:

"Subsection .(2) provides necessarily more flexible limitations on the amounts of consumer credit insurance benefits in connection with revolving charge and loan accounts, credit commitments, and debt and credit commitments for an agricultural purpose." (This Kansas Comment is identical to the comment promulgated by the National Conference of Commissioners on Uniform State Laws, Uniform Consumer Credit Code §4-202(2) Final Draft 1968 and 1974).

In reading the statute and this comment together, we are convinced that the subsection in question provides three different rules for three different sets of circumstances.

The first sentence of subsection (2) regulates the insurance benefits payable when consumer credit insurance is provided in connection with an open end credit account. The code's definition of "open end credit" is found at K.S.A. 16a-1-301(25). The Kansas Comment to this provision states that "[t]he definition of 'open-end credit' is intended to cover both the revolving charge accounts offered by retailers and lines of credit under bank cards and the like." This definition coincides with the comment to K.S.A. 16a-4-202(2) which indicates that the first sentence of that subsection applies to "revolving charge and loan accounts."

In contrast, the second and third sentences of subsection (2) limit benefits payable when consumer credit insurance is provided in connection with "a commitment to grant credit in the future," characterized in the comment as a "credit commitment" as opposed to revolving credit. While the term "credit commitment" is not defined in the UCCC, we are confident that it was intended to mean something other than open end credit. If it were otherwise, there would be two different limitations placed on the same type of credit transaction. Two statutory construction rules are relevant: A statute should not be interpreted so as to render one part inoperative, superfluous or insignificant, Driscoll v. Hershberger, 172 Kan. 145 (1952); a construction which renders part of a legislative act surplusage is to be avoided if reasonably possible, American Fidelity Ins. Co. v. Employers Mut, Cas. Co., 3 Kan. App.2d (1979).

Since the definition of open end credit encompasses "lines of credit," it is our opinion that consumer credit insurance benefits payable in connection with such transactions must be "reasonably commensurate with the amount of debt as it exists from time to time," as provided in the first sentence of K.S.A. 16a-4-202(2). Fonseca, Handling Consumer Credit Cases, 494 (3d ed. 1986). The limit on the line of credit is not a consideration in such instances. K.S.A. 16a-4-107(2) provides the methods authorized for calculating charges to consumers for consumer credit insurance provided in connection with open end credit. As the limitations therein apply only to open end credit, they do not apply to commitments to grant credit in the future. See also K.S.A. 16a-4-203(2).

The term "credit commitment" appears to contemplate a more binding arrangement, a part of which is the lender's agreement to extend a specific amount of money in the future. "Commitment" is defined in Black's Law Dictionary 248 (5th

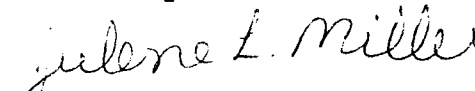
ed. 1979) as an "[a]greement or pledge to do something; e.g. a statement by a lender that a loan will be made under certain terms." See also Slaymaker v. Peterkin, 518 P.2d 763, 765 (Alaska 1965) (discussing the term "loan commitment). Consumer credit insurance benefits payable in connection with such transactions are limited to amounts "reasonably commensurate with the total from time to time of the amount of debt and the amount of commitment," or "equal [to] the total of the initial amount of debt and the amount of the commitment" if the debt or commitment is primarily for an agricultural purpose. Though arguably the limitation is either the amount of outstanding debt or the amount of commitment (for non-agricultural commitments), we believe the use of the conjunctive "and" serves to allow creditors the flexibility of providing consumer credit insurance on the combined amounts of the current debt and the commitment. (This will ensure against being underinsured in situations where the current debt is still outstanding at the time the commitment amount is advanced.) In order to ensure that consumers will not be overinsured in these situations, the legislature may wish to clarify these provisions.

In conclusion, if consumer credit insurance is provided in connection with an open end credit account (including revolving charge accounts offered by retailers and lines of credit under bank cards and the like), the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. The credit limit is not a consideration in such instances. If consumer credit insurance is provided in connection with a commitment to grant credit in the future (a credit commitment), the amounts payable as insurance benefits may be considered in light of the amount of the commitment as well as the outstanding (or initial, in the case of debts or commitments primarily for an agricultural purpose) debt.

Very truly yours,



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