

**CONSUMER CREDIT COMMISSIONER ADMINISTRATIVE
INTERPRETATIONS**

Administrative Interpretation No. 1001

Call or Demand Notes

December 1, 1992

A request has been made to the Consumer Credit Commissioner for an Administrative Interpretation concerning the inclusion of a demand feature in a non-real estate consumer installment loan agreement.

A demand or call provision is an acceleration clause which allows a lender to call monies due under the instrument at the will of the creditor.

The Kansas Uniform Consumer Credit Code section 16a-5-109 permits creditors to accelerate an agreement if:

- (1) the consumer fails to make a payment as required by the agreement; or
- (2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

Notwithstanding subsection (1) a creditor may not accelerate an agreement only for failure to make a required payment unless the consumer has been given the notice of right to cure as provided by 16a-5-110 and 16a-5-111.

The calling or demanding of payment in full following 24 months of a 48 month contract, for example, would trigger the consumer's right to finance the balloon payment at the same rate and terms as the original installment note (16a-3-308).

Demand notes will be allowed only when the agreements are "interest only" in which the consumer is required only to pay interest and not pay principal. Demand provisions in these types of transactions is entirely understandable, given the need of the creditor eventually to recover its principal.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1002
Refund of Credit Insurance Premiums
January 27, 1993; amended October 13, 1999

The purpose of this Administrative Interpretation is to clarify the requirements of K.S.A. 16a-4-108(3) in regard to the notices to be provided to consumers who may be eligible for a refund of credit insurance premiums.

Section 16a-4-108(3) states “. . . (3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the consumer with respect to any separate charge made to him for insurance if (a) the insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or (b) the insurance terminate prior to the end of the term for which it was written because of prepayment in full or otherwise . . .”

The phrase “promptly make or cause to be made” does not have a definition in the code and apparently has been misunderstood by creditors. For purposes of K.S.A. 16a-4-108(3), 30 days shall be considered a reasonable time within which to promptly make or cause to be made” a refund or credit to the consumer.

This interpretation outlines the Administrator’s opinion of the appropriate format for notices to be sent to consumers in order to comply with the above quoted statute. The notices are required of creditors who have become an assignee of a consumer credit transaction which has separate prepaid charges for credit insurance which have been retained by the original creditor.

A creditor who accepts such a consumer credit transaction from an original creditor should notify the consumer within ten calendar days that they have been assigned the consumer credit transaction. If credit insurance was purchased, a notice in the following form will be deemed by the Administrator to satisfy the requirements of K.S.A. 16a-4-108:

“YOU HAVE PURCHASED CREDIT LIFE AND/OR DISABILITY INSURANCE IN CONNECTION WITH THE ABOVE-STATED CONSUMER CREDIT TRANSACTION.”

“PLEASE BE ADVISED THAT IF YOU PAY THE CONSUMER CREDIT TRANSACTION IN FULL BEFORE THE END OF THE TERM FOR WHICH IT WAS WRITTEN, YOU MAY BE ENTITLED TO A REFUND OR CREDIT FOR CREDIT INSURANCE PREMIUMS PAID.”

“TO OBTAIN YOUR REFUND, YOU MUST CONTACT THE ORIGINAL CREDITOR.”

“IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER, DIVISION OF

**CONSUMER AND MORTGAGE LENDING AT 700 SW JACKSON,
SUITE 300, TOPEKA, KANSAS 66603.”**

Upon prepayment of any consumer credit transaction described above, an additional notice must be made to the consumer with a copy sent to the original creditor. The notice should include the following:

1. DATE OF CONSUMER CREDIT TRANSACTION REPAYMENT.
2. NAME OF CONSUMER AND CONSUMER CREDIT TRANSACTION NUMBER.
3. A STATEMENT INDICATING THAT A POTENTIAL REFUND MAY BE DUE TO THE CONSUMER.
4. THE ORIGINAL CREDITOR’S NAME AND CURRENT ADDRESS.
5. A STATEMENT THAT THE ORIGINAL CREDITOR IS INITIALLY RESPONSIBLE FOR MAKING THE REFUND OF THE UNEARNED PREMIUM.
6. A STATEMENT INDICATING THE ORIGINAL CREDITOR MUST RETAIN WRITTEN PROOF OF THE REFUND.
7. A STATEMENT DIRECTING THE CONSUMER TO CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER DIVISION OF CONSUMER AND MORTGAGE LENDING WITHIN THIRTY (30) DAYS IF THEY HAVE FAILED TO RECEIVE THEIR REFUND.

A sample notice is available upon request.

Creditors will be considered to have substantially complied with K.S.A. 16a-4-108 by providing to consumers the information outlined above. Failure by a creditor to comply with K.S.A. 16a-4-108(3) may result in action by the Administrator, including the possible imposition of a fine.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

SAMPLE NOTICES

A. INITIAL NOTICE

DATE OF NOTICE

RE: Loan Number

You have purchased credit life insurance in connection with the above stated loan.

Please be advised that if you pay the loan in full before the end of the term for which it was written, you may be entitled to a refund or credit for credit insurance premiums paid.

To obtain your refund, you must contact the original creditor.

If you have any questions, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

B. NOTIFICATION OF POTENTIAL REFUND ON CREDIT INSURANCE DUE TO PREPAYMENT

DATE OF NOTICE

TO: BORROWER

RE: Loan Number

Date of Loan Prepayment

This is notification that there may be a refund or credit due to the above-named consumer for credit insurance premiums paid.

Because the loan identified above has been prepaid in full, there may be a refund due for credit insurance premiums that have already been paid for the full term of the loan.

According to Kansas law, a consumer shall receive a refund or a credit for any insurance premiums paid when the insurance terminates prior to the end of the term for which it was written because of prepayment of the loan. (See K.S.A. 16a-4-108)

Upon prepayment in full, the consumer must contact the dealer/originator of the loan and request payment of any funds due for credit insurance premiums paid. The dealer/originator of the loan may be contacted at the following address:

For examination purposes, the originator of the credit insurance must keep written proof that a refund has been properly made, and thus all obligations under law regarding this matter have been satisfied.

If the consumer does not receive a refund or credit due within thirty (30) days of their request, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending, at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

Administrative Interpretation No. 1003

Clarification of Charges on Discretionary Overdrafts by Financial Institutions

July 14, 1994; Amended October 13, 1999

This administrative interpretation is given to clarify whether overdraft charges imposed by financial institutions constitute a finance charge and subsequently are subject to the Kansas Uniform Consumer Credit Code (Code). This interpretation applies only to discretionary overdrafts allowed by the financial institution where there is not a prearranged agreement to extend credit by paying checks drawn on a customer's checking account where the checking account contains less funds than the amount of the check or checks presented for payment.

The definition of an overdraft does not clearly come under the definition of consumer loan as defined in 16a-1-301(17). Comments included in the Code on that section indicate that a consumer loan usually includes “. . .all loans under \$25,000 made by professional lenders to individuals for personal, family or household purposes as long as they are payable in installments or a finance charge is imposed”. Overdrafts could better be defined as “sale of services” as defined in 16a-1-301(40). Again, the Kansas Comments of the Code relating to the definition of “loan” provide a distinction between loans and sales, and state “. . .thus, forbearance of debt arising from sales or leases is not a loan transaction within this act . . .”

Kansas Regulation K.A.R. 75-6-26 requires creditors to disclose to consumers the information required by Truth-in-Lending Regulation Z, 12 CFR 226 et seq., including all appendices thereto as amended and in effect on September 1, 1999 (Reg Z) (authorized by and implementing K.S.A. 16a-1-301 and 16a-6-117). Reg Z, 226.4 (c) (3) (“charges excluded from the finance charge”) states, “charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing”. Official Staff Commentary on Reg Z further expresses the following opinion on 226.4 (c) (3), “a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items”.

Conclusions:

1. Discretionary overdrafts by a financial institution without a prearranged agreement to create an overdraft, although generally considered as extensions of credit, do not constitute a consumer loan as defined by the Code in K.S.A. 16a-1-301 (17).
2. Charges on overdrafts without a prearranged agreement, however calculated, do not constitute a finance charge as defined by the Code in K.S.A. 16a-1-301(22).
3. The Code is silent in regard to charges imposed on discretionary overdrafts by a financial institution. When the Code is silent, Reg Z is used for reference. Reg

Z in paragraph 226.4(c) (3) specifically excludes charges on discretionary overdrafts from the definition of “Finance Charge”.

Therefore, it is the interpretation of this office, based on the facts, interpretations and conclusions stated above, that transactions involving financial institutions’ imposition of charges on discretionary overdrafts are not subject to the Kansas Uniform Consumer Credit Code.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Amended Administrative Interpretation No. 1004

Guaranteed Asset Protection (“GAP”)

December 19, 2012

Administrative Interpretation No. 1004 was issued October 20, 1994 and first amended August 7, 1997. This Administrative Interpretation provides guidelines that must be followed for creditors to exclude the cost of Guaranteed Asset Protection (“GAP”) waiver agreements from the calculation of the finance charge with consumer credit sales and closed-end consumer loans pursuant to the Uniform Consumer Credit Code. A GAP waiver agreement cancels or waives all or part of the outstanding balance due on a consumer’s finance agreement in the event physical damage insurance does not pay the consumer’s debt in full following a total loss or unrecovered theft of the vehicle. This Amended Administrative Interpretation is limited to GAP waiver products offered in connection with the finance agreement on a consumer vehicle. For purposes of this Amended Administrative Interpretation, “vehicle” means self-propelled or towed vehicles designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, travel trailers, all-terrain vehicles, snowmobiles, and personal watercraft.

GAP waiver products may be offered to consumers and the charges for GAP products may continue to be excluded from the finance charge in Kansas provided the following conditions are met:

1. There must be a reasonable expectation that the condition will exist where the loan balance will exceed the fair market value of the vehicle at some point in time during the life of the loan in order for a creditor to offer GAP to the consumer. The price charged for GAP shall be subject to the principles of unconscionability expressed in K.S.A. 16a-5-108.
2. In accordance with the Truth in Lending Act and implementing regulations, as they may be amended from time to time, all GAP waiver agreements must:
 - a. contain a written statement that GAP coverage is not required by the creditor;
 - b. disclose the cost of the GAP product; and
 - c. have the consumer affirmatively sign a written request for GAP coverage after receiving the required disclosures.
3. In addition to the requirements of the Truth in Lending Act, all GAP waiver agreements shall contain the following provisions:
 - a. The GAP waiver agreement must identify the name of the dealership or financial institution selling the GAP product and the GAP Administrator;
 - b. The GAP waiver agreement remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor;

- c. The consumer must have no less than a 30-day unconditional right to cancel with a full refund of the purchase price of the GAP waiver agreement, provided no amounts have been waived pursuant to the agreement;
 - d. The GAP waiver agreement must include, at a minimum, coverage of the physical damage insurance deductible up to \$500; however, the GAP waiver agreement may cover deductibles in excess of \$500;
 - e. The GAP waiver agreement must include a warning in bold type that the GAP coverage may not cancel or waive the entire amount owing at the time of loss;
 - f. The procedure the consumer must follow to obtain GAP waiver benefits under the terms and conditions of the GAP waiver agreement, including a telephone number and address where the consumer may apply for waiver benefits; and
 - g. The GAP waiver agreement must contain a statement that advises Kansas consumers with questions or complaints may contact the Office of the State Bank Commissioner, 700 S.W. Jackson #300, Topeka, KS 66603, (785) 296-2266 or toll free 1-877-387-8523.
4. The GAP waiver agreement must provide coverage, subject to conditions and exclusions identified in the agreement, for all physical damage claims or unrecovered theft that constitute a total loss. All conditions and exclusions to GAP coverage must be clearly and conspicuously disclosed in the GAP waiver agreement in easy to read language. A creditor or such other entity acting on the creditor's behalf shall not sell GAP coverage on a vehicle that does not meet the eligibility requirements of the GAP waiver agreement.
 5. The amount waived or cancelled pursuant to the GAP waiver agreement shall be computed as the difference between the outstanding balance on the date of loss and the primary insurance carrier's determination of the Actual Cash Value of the vehicle. The GAP waiver agreement must clearly define the method used to determine the outstanding balance on the date of loss in a manner in which a consumer may reasonably be expected to understand, including disclosure of all items that will be excluded from the outstanding balance on the date of loss. (For example: delinquent or deferred payments, late payment charges, refundable items, etc.)

The GAP waiver agreement must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage at the time of the loss, the market value of the vehicle will be determined by the National Automobile Dealers Association ("NADA") Official Used Car Guide or equivalent. Terms such as "Payable Loss" and "Constructive Total Loss" must be consistent with this method of calculating the GAP waiver benefit.

6. The initial creditor that offers a GAP waiver agreement must report the sale of, and forward funds received on all such waivers to the designated GAP Administrator identified in the GAP waiver agreement.
7. Each creditor must insure its GAP waiver obligations under a contractual liability insurance policy issued by an insurer licensed in this state. Additionally, each creditor must maintain copies, in paper or electronic form, of all GAP waiver agreements for a period of not less than three years following the termination of the agreement. GAP administrators must also be prepared to provide records as requested by the Administrator of the Uniform Consumer Credit Code.

Failure to meet the requirements of this Administrative Interpretation will require that the cost of the GAP product to be included in the finance charge and disclosed accordingly.

This Amended Administrative Interpretation applies to all GAP waiver agreements executed on and after 1/1/2013.

Kevin Glendenning
Administrator
Kansas Uniform Consumer Credit Code

Administrative Interpretation No. 1005

The Sale of Credit Insurance After the Consummation of a Closed-End Consumer Credit Transaction or Open-End Consumer Line of Credit

December 13, 1994

The question has arisen whether written authorization by the consumer is required on the post-loan sale of credit insurance on consumer credit transactions. The requirement to obtain specific affirmative written indication of the consumer's desire to purchase such insurance as required in K.S.A. 16a-2-501(2)(b) is intended if the insurance is written in connection with the extension of credit. The term "extension of credit" is not a defined term in the Kansas Uniform Consumer Credit Code, so it is the interpretation by the Commissioner that is specifically relates to the period of time when the loan is contemplated and approved by the creditor and ends upon the consummation or opening of a consumer credit transaction. The Official Staff Commentary on Regulation Z, Truth-in-Lending in section 226.4(b)(7) and (8) 2. states, "Insurance written in connection with a transaction. Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not 'written in connection with' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a plan (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed)".

Although disclosures are required by Regulation Z if the premium is financed in an open end credit transaction by adding the monthly premium to the balance on which a finance charge is assessed, the written authorization by the consumer is a separate action from disclosure by the creditor and not required in this instance.

Conclusion: Written authorization by the consumer on the sale of credit insurance after consummation of a closed-end or opening of an open-end consumer credit transaction is not required if it fits the circumstances set forth above. Disclosure of finance charges in connection with the financing of the credit insurance premium is required.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1006

Mortgage Broker Fees

August 7, 1997

REVOKED OCTOBER 13, 1999

Administrative Interpretation No. 1007

Interest Rates on Mortgage Loans

September 1, 1998; Amended October 13, 1999

This administrative interpretation will modify the previous policy of this agency regarding the Kansas Uniform Consumer Credit Code (the “Code”), specifically K.S.A. 16a-2-401(7) and (8), and the maximum permissible interest rate for first mortgage loans made subject to the Code and subordinate mortgage loans

A first mortgage loan is only subject to the Code if the parties so agree in writing pursuant to K.S.A. 16a-1-109. K.S.A. 16a-2-401(7) provides that the interest rate of these first mortgage loans is governed by K.S.A. 16-207(b) *unless made subject hereto by agreement*.

It is the opinion of the Acting Consumer Credit Commissioner that for purposes of K.S.A. 16a-2-401(7) and (8), a promissory note or other loan document signed by a borrower, in connection with a first or subordinate mortgage loan as described above, which discloses an interest rate not exceeding the interest rate ceilings established by K.S.A. 16a-2-401(1) or (2), constitutes an “agreement” by the parties that the loan is made subject to the provisions of K.S.A. 16a-2-401, including the interest rate ceilings.

This administrative interpretation applies to mortgage loans made before July 1, 1999, the effective date of 1999 Substitute Senate Bill 301. Code references in this interpretation refer to the Code prior to the effective date of 1999 Substitute Senate Bill 301.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1008

Notice for high loan-to-value mortgages

October 13, 1999, Amended November 30, 2000

A notice in substantially the following form should be used in order to satisfy the notice requirement set forth in K.S.A. 16a-3-207, as amended, regarding high loan-to-value mortgage loans:

[date]

[name of consumer(s)]

[address of consumer(s)]

Dear [name of consumer(s)]

*You have applied for a loan which will be secured by a mortgage on your home. **We are required by the Kansas Uniform Consumer Credit Code to provide you with the following information not less than three days prior to the time you receive the loan funds.***

An appraisal is attached (or will be provided to you as soon as available) which estimates that the value of your home may be less than the amount of the loan for which you have been approved (plus any existing mortgage loans you have). If the value of your home is less than the combined amount of all mortgage loans on your home, then you don't have any "equity" in your home. This means, if you were to sell your home, that the sale proceeds may not be enough to repay your mortgage loans. The amount of equity you have in your home depends on how much you pay down your mortgage loans, and whether the value of your home increases or decreases.

Under Kansas law, most "unsecured" creditors, such as a credit card lender, cannot obtain a court-ordered lien on your home if you default, which would allow them to foreclose. However, if you give a creditor a mortgage on your home, then the creditor can foreclose on your home if you do not repay the loan. For example, if you refinance unsecured credit card debt with a second mortgage loan, then the second mortgage lender could foreclose on your home if you default. Foreclosure would force you to move, and your home would be sold. The sale proceeds would be paid to the lender

You may want to consider credit counseling, which could help you in budgeting and developing a plan to pay off your current debts. Credit counseling is available at little or no cost from non-profit and for-profit entities. Consumer Credit Counseling Service is a nationwide non-profit provider with locations across Kansas. You can call 1-800-388-2227 for a referral to a Kansas office which can assist you in person or by phone.

If you have additional questions regarding consumer credit matters, contact the Deputy Commissioner of Consumer and Mortgage Lending for Kansas at 1-877-387-8523 (toll free) to obtain additional information

If, within three days after receipt of this notice, you decide not to take the mortgage loan you have applied for, then you are entitled to a refund of any application fee or other amounts you have paid to the lender. However, you are not entitled to a refund of any out-of-pocket costs that the lender pays to a third party to process your loan application.

[name of lender]

The undersigned consumer(s) was provided this notice at least three days prior to receiving the loan funds

[signature of consumer(s)]

The three-day time period in K.S.A. 16a-3-207, as amended, must be calculated in accordance with K.S.A. 60-206.

For the purpose of K.S.A. 16a-3-207, as amended, a loan is determined to be made at the time the loan proceeds are disbursed.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1009

Calculation of the 8% Cap on Prepaid Finance Charges in K.S.A. 16a-2-401(6)

October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify K.S.A. 16a-2-401 regarding charges to be included when calculating the 8% cap on prepaid finance charges for consumer loans secured by an interest in real estate. The listed examples contained in this interpretation should not be strictly construed. They are not all-exclusive nor all-inclusive, as the type of charge being levied depends on the factors described below.

For consumer loans secured by real estate, state law imposes an 8% cap on prepaid finance charges, with a maximum of 5% of those charges allowed to be retained by the lender. A prepaid finance charge is any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time. However, finance charges are not "prepaid" merely because they are precomputed, regardless of whether a portion of the charge will be rebated to the consumer upon prepayment.

K.A.R. 75-6-26 defines "finance charge" to have the same meaning as "finance charge" under Regulation Z, with one major exception. Except for appraisals, which can be payable to the lender or a related party, the Code limits costs in real estate transactions to bona fide and reasonable fees that are paid *to unrelated third parties*. Regulation Z, on the other hand, allows some real estate transaction costs to be paid to the creditor or to a related party and still be excluded from the finance charge.

In calculating the cap on prepaid finance charges, a lender should first determine which charges constitute "finance charges" under Regulation Z. All of those items are included in the 8% cap. Next, the lender must look at the remaining charges which do not constitute finance charges under Regulation Z and determine to whom the fee was paid. Other than appraisal fees, if the fee was paid to the lender or a related party, then pursuant to state law, they also must be included in the cap.

A. Common examples of items that ARE included in the 8% cap, either because they are finance charges under Regulation Z, or because they are finance charges under state law are:

1. Administrative fees
2. Assignment fees
3. Broker's fees/Finder's fees
4. Buyer's points
5. Closing fees, unless paid to a third party
6. Credit investigation fees
7. Credit report review fees, unless secured by real estate and paid to a third party
8. Documentation preparation fees, unless paid to a third party
9. Lender's inspection fees

10. Loan fees
11. Loan guarantee insurance premiums, if such insurance is required by the creditor
12. Processing fees
13. Service fees
14. Underwriting fees
15. Origination fees
16. Flood insurance monitoring fees (ongoing monitoring over the life of the loan)
17. Tax service fees (ongoing monitoring over the life of the loan)

B. Common examples of items that are NOT included in the 8% cap, because they are not finance charges under Regulation Z or under state law include:

Even if retained by the lender or a related party:

1. Application fees, if they are charged to all borrowers
2. Appraisal fees

Only if they are paid to a third party not related to the lender:

3. Closing agent fees, if the lender does not require use of the closing agent or retain a portion of the charge
4. Courier fees
5. Credit report fees
6. Document preparation fees
7. Flood insurance determination fees, if imposed as part of the initial credit decision and performed prior to closing
8. Notary fees
9. Pest inspection fees
10. Recording fees to government entities
11. Survey fees
12. Tax service fees, if imposed as part of the initial credit decision
13. Title examination or title insurance fees

Administrative Interpretation No. 1010
Prompt Crediting of Payments; Date of Receipt
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify the difference between K.S.A. 16a-2-104 and Truth in Lending, Regulation Z, 12 CFR Section 226

The language of K.S.A. 16a-2-104 and Regulation Z, Section 226.10, is substantially similar. However, Section 226.10 of Regulation Z applies only to open-end credit transactions. K.S.A. 16a-2-104 was adopted to apply to all consumer credit transactions. Its application is not limited to open-end credit transactions.

The creditor is to credit the payment as of the date of receipt. The Administrator interprets the "date of receipt" as used in K.S.A. 16a-2-104 to mean the date that the payment instrument or other means of completing the payment reached the creditor. For example:

1. Payment by check is received on the date the creditor receives the check, not when the funds are collected.
2. In a voluntary payroll deduction plan in which funds are deposited in the creditor's asset account, payment is received on the date when it is debited to the asset account, (rather than on the date of the deposit), provided the consumer retains use of the funds until the contractual payment date.
3. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer.
4. If the consumer elects to make payment in a type of night deposit or drop box and such payment is made after the creditor's business hours, on a national holiday, or weekend, the payment is considered received the morning of the next business day.
5. Setting a cut-off hour for receipt of payments would be a "reasonable requirement" under the statute. A creditor may specify that payments must be received by a certain cut-off hour in order to be credited as being received that day, so long as the creditor specifies that requirement in writing to the consumer. The statute states that reasonable requirements may be imposed if a creditor specifies the requirements "in a writing delivered to the consumer".

It is the interpretation of the Administrator that this language requires a written notice to each consumer whose consumer credit transaction would be subject to the requirement. Simply posting a notice in the lobby, for example would not satisfy the statutory requirement.

Franklin Nelson
State Bank Commissioner

Administrative Interpretation No. 1011
Computation of Interest; Prepaid Finance Charges
July 14, 2004

This interpretation concerns K.S.A. 16a-2-103(5) and the computation of interest in consumer loans and consumer credit sales. K.S.A. 16a-2-103(5) was passed as part of a bill containing several revisions to the Kansas Uniform Consumer Credit Code (UCCC) in 1999. That section is designed to address when interest can be charged, from a timing perspective.

Periodic interest may not be charged on a consumer loan until, and may only be charged to the extent that, principal has been disbursed to or for the benefit of the consumer. (An exception is made for loans, other than cash advances, pursuant to lender credit cards.) If principal is disbursed in multiple advances, interest may accrue on each advance only when it has been disbursed as directed by the consumer. Similarly, in a consumer credit sale transaction, interest may not be charged until the related goods, services or interest in land, as the case may be, have been shipped, delivered, furnished or otherwise made available to or for the benefit of the consumer.

K.S.A. 16a-2-103(5) does not prohibit a creditor from charging interest on points or other prepaid finance charges. Consumers sometimes elect to finance closing costs such as these through the creditor deducting and retaining the prepaid finance charges from the loan proceeds. Prepaid finance charges which are not paid separately in cash or by check by the consumer are considered to be part of the principal amount of the loan (see K.S.A. 16a-1-301 (37)). When the consumer elects to pay prepaid finance charges from the proceeds of the loan, rather than paying them separately out of pocket, that portion of the principal has, in effect, been disbursed for the benefit of the consumer, and interest may be charged.

Kevin C. Glendening
Deputy Commissioner
Administrator of the UCCC



Office of the State Bank Commissioner Guidance Document MT 2014-01

Date: June 6, 2014

Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act

Purpose

The purpose of this guidance document is to clarify the applicability of the Kansas Money Transmitter Act (KMTA)¹ to persons or entities engaging in the use and/or transmission of virtual currencies.² This guidance document provides the policy of the Office of the State Bank Commissioner (OSBC) regarding the regulatory treatment of virtual currencies pursuant to the statutory definitions of the KMTA.

Types of Virtual Currency

In broad terms, a virtual currency is an electronic medium of exchange typically used to purchase goods and services from certain merchants or to exchange for other currencies, either virtual or sovereign.³ As of the date of this memorandum, the OSBC is not aware of any virtual currency that has legal tender status in any jurisdiction, nor of any virtual currency issued by a governmental central bank. As such, virtual currencies exist outside established financial institution systems. There are many different virtual currency schemes, and it is not easy to classify all of them, but for purposes of this document, they can generally be divided into two basic types: centralized and decentralized.

Centralized virtual currencies are created and issued by a specified source. They rely on an entity with some form of authority or control over the currency. Typically, the authority behind a centralized virtual currency is also the creator. Centralized virtual currencies can be further divided into subclassifications that quickly become too complex to apply a universal policy. Some can be purchased with sovereign currency, but cannot be exchanged back to sovereign currency; some can be converted back to sovereign currency; some are used only for purchase of goods and services from a closed universe of merchants, while others may have a

¹ Kansas Statutes Annotated 9-508 *et seq.*

² Much of this document is modeled after guidance issued by the Texas Department of Banking in Supervisory Memorandum 1037 and we thank them for allowing the OSBC to adapt it for use in Kansas.

³ As used in this document, sovereign currency refers to government-issued currency with legal tender status in the country of issuance, such as U.S. Dollars or Euros. This includes both government-issued fiat currency and commodity-backed currency that is designated as legal tender.

theoretically open universe of merchants. Some centralized currencies are backed by the issuer with sovereign currency or precious metals, and therefore derive intrinsic value.

In contrast, decentralized virtual currencies are not created or issued by a particular person or entity, have no administrator, and have no central repository. Thus far, decentralized currencies are all cryptocurrencies such as Bitcoin, Litecoin, Peercoin, and Namecoin. A cryptocurrency is based on a cryptographic protocol that manages the creation of new units of the currency through a peer-to-peer network. The creation of cryptocurrency happens through a process called mining that basically involves running an application on a computer that performs proof-of-work calculations. When the computer performs a sufficient amount of these calculations, the cryptocurrency's underlying protocol essentially generates a new unit of the currency that can be delivered to the miner's wallet. Because users' wallets act as the connection points of the cryptocurrency's peer-to-peer network, transfers of cryptocurrency are made directly from wallet to wallet, without any intermediary, whereas transmissions of sovereign currencies must be made through one or more intermediaries such as a financial institution or money transmitter.

One important characteristic of cryptocurrency is its lack of intrinsic value. A unit of cryptocurrency does not represent a claim on a commodity, and is not convertible by law. And unlike fiat currencies,⁴ there is no governmental authority or central bank establishing its value through law or regulation. Its value is only what a buyer is willing to pay for it. Most cryptocurrencies are traded on third party exchange sites, where the exchange rates with sovereign currencies are determined by averaging the transactions that occur. Some experts consider cryptocurrency to be a new asset class that is neither currency nor commodity, but possessing characteristics of both, as well as characteristics of neither.

Application of Kansas Money Transmitter Act to Virtual Currency

Currency Exchange

The act of two-party currency exchange by itself is not covered by the KMTA regardless of whether it is sovereign currency being exchanged or virtual currency. Further, it is not regulated by the OSBC. However, the presence of a third party involved in a currency exchange transaction, will likely subject the transaction to the KMTA as "money transmission" and is discussed further below.

Money Transmission

This guidance document does not address money transmission activities involving the various centralized virtual currencies in existence. Many of these types of virtual currency schemes are complicated and nuanced and general guidance cannot adequately cover all the possible types

⁴ Fiat currency is government-issued legal tender, such as the U.S. Dollar. It has no intrinsic value and does not represent a claim on a commodity; its value is established by law.

of these currencies. Thus, operators engaging in activities that may be considered money transmission involving a centralized virtual currency will have to seek an individual licensing determination from the OSBC.

This guidance is focused on money transmission activities involving decentralized cryptocurrencies, such as Bitcoin. Whether or not a Kansas money transmitter license is required for an entity to engage in the transmission of cryptocurrency turns on the question of whether cryptocurrency is considered “money” or “monetary value” under the KMTA. Money transmission is defined in statute and means “to engage in the business of receiving money or monetary value for transmission to a location within or outside the United States by...electronic means or any other means...”⁵ Money is not defined in statute, but Black’s Law Dictionary defines “money” as the “medium of exchange authorized or adopted by a government as part of its currency.” Since no cryptocurrency is currently authorized or adopted by any governmental entity as part of its currency, it is clear that cryptocurrency is not considered “money” for the purposes of the KMTA.

Monetary value, however, is defined in statute as “a medium of exchange, whether or not redeemable in money.”⁶ Medium of exchange is not defined by statute, but Black’s Law Dictionary defines “medium of exchange” as “anything generally accepted as payment in a transaction and recognized as a standard of value.” Cryptocurrencies are not generally accepted as payment in the current economy. While there may be a few retailers who are accepting Bitcoin or other cryptocurrencies, it is not generally accepted throughout the entire economy and does not even approach the extent to which U.S. Dollars (or other sovereign currencies) are accepted. Nor, does it have a recognized standard of value. There is no set value for a single unit of a cryptocurrency. As stated above, the value of a unit of cryptocurrency is only what a buyer is willing to pay for it and what a seller is willing to accept in order to part with it. There is no intrinsic or set value for a unit of cryptocurrency.

Therefore, because cryptocurrencies as currently in existence are not considered “money” or “monetary value” by the OSBC, they are not covered by the KMTA. Since the KMTA does not apply to transmission of decentralized cryptocurrencies, an entity engaged solely in the transmission of such currency would not be required to obtain a license in the State of Kansas. However, should the transmission of virtual currency include the involvement of sovereign currency in a transaction, it may be considered money transmission depending on how such transaction is organized.

To provide further guidance, the regulatory treatments of some common types of transactions involving cryptocurrency are as follows:

- Exchange of cryptocurrency for sovereign currency between two parties is not money transmission under the KMTA. This is essentially a sale of goods between two parties. The seller gives units of cryptocurrency to the buyer, who pays the seller directly with sovereign

⁵ K.S.A. 9-508(g).

⁶ K.S.A. 9-508(f).

currency. The seller does not receive the sovereign currency with the intent to transmit to another entity

- Exchange of one cryptocurrency for another cryptocurrency is not money transmission. Regardless of how many parties are involved, since cryptocurrency is not considered “money” under the KMTA, no money transmission occurs.
- Transfer of cryptocurrency by itself is not money transmission. Because cryptocurrency is not money or monetary value, the receipt of it with the intent to transmit it to another entity is not money transmission. This includes intermediaries who receive cryptocurrency for transfer to a third party, and entities that, akin to depositories, hold cryptocurrencies on behalf of customers.
- Exchange of cryptocurrency for sovereign currency through a third party exchanger is generally considered money transmission. For example, most Bitcoin exchange sites facilitate exchanges by acting as an escrow-like intermediary. In a typical transaction, the buyer of cryptocurrency sends sovereign currency to the exchanger who holds the funds until it determines that the terms of the sale have been satisfied before remitting the funds to the seller. Irrespective of its handling of the cryptocurrency, the exchanger conducts money transmission by receiving the buyer’s sovereign currency in exchange for a promise to make it available to the seller.
- Exchange of cryptocurrency for sovereign currency through an automated machine may or may not be money transmission depending on the facts and circumstances of its operation and the flow of funds between the operator of the automated machine and the customer. For example, several companies have begun selling automated machines commonly called “Bitcoin ATMs” that facilitate contemporaneous exchanges of bitcoins for sovereign currency. Most such machines currently available, when operating in their default mode, act as an intermediary between a buyer and a seller, typically connecting through one of the established exchange sites. When a customer buys or sells bitcoins through a machine configured in this way, the operator of the machine receives the buyer’s sovereign currency with the intent to transfer it to the seller. This would be considered money transmission under the KMTA and would require licensure. However, at least some Bitcoin ATMs can be configured to conduct transactions only between the customer and the operator or owner of the machine, with no third parties involved. If the machine never involves a third party, and only facilitates a sale or purchase of bitcoins by the machine’s operator directly with the customer, there is no money transmission because at no time is sovereign money received by the owner or operator of the machine with the intent to transfer it to another entity.

Additional Issues with Virtual Currency

- A cryptocurrency business that conducts money transmission, as outlined above, must comply with all applicable licensing, reporting, net worth and other relevant requirements of the Kansas Money Transmitter Act under K.S.A 9-508 *et seq.*
- Any entity engaged in money transmission must comply with the permissible investment requirements of K.S.A 9-513b and as defined in K.S.A. 9-508(j). For purposes of allowed permissible investments, no virtual currency has been approved for use under this section by the Commissioner. Therefore, if a licensed money transmitter is seeking to comply with the permissible investment requirement, it must have adequate U.S. currency or other approved investments to cover its outstanding payment instruments.
- For any entity intending to obtain licensing as a money transmitter, the OSBC will require any applicant who regularly handles virtual currencies in the course of its activities to submit a current third party security audit of all relevant computer and information systems. Because of the increased risk that Kansas consumers may face when using the services of a money transmitter involved with virtual currencies, it is incumbent upon any license applicant to demonstrate that all of a customer's sovereign and virtual currency are secure while controlled by the transmitter.

(*This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued June 6, 2014.)



Office of the State Bank Commissioner Guidance Document MT 2016-01

Date: 11/30/2016

Regulatory Treatment of an Agent-of-the-Payee

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the Kansas Money Transmitter Act (KMTA)¹ licensure requirements of persons who enter into an agency relationship to accept and process payments on behalf of a principal acting as a payee in a money transmission transaction.

The KMTA also discusses agents of exempt entities and agents of licensees. This guidance document does not alter the licensing requirement for agents of exempt entities² or a licensee's requirement to gain prior approval from the commissioner prior to agent designation.³

An agent-of-the-payee relationship typically arises in situations where the payee provides goods or services to a consumer, and it is not cost effective or feasible for the payee to handle immediate credit payments directly. For instance, a consumer may wish to make a payment on a utility bill but does not find it convenient to drive to the utility bill's headquarters. The hypothetical payee utility company wishes to allow consumers to make payments at convenient locations and receive immediate credit, but it is not cost effective for the utility company to hire employees to be located throughout the city. The utility company finds it cost effective to pay a commission to a local grocery store to accept payment on the utility company's behalf and permit the agent to provide immediate credit on the consumer's account.

Interpretation

An agent-of-the-payee relationship is money transmission as defined by the KMTA. Money transmission is defined under the KMTA as "to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United State by wire, facsimile, electronic means or any other means..."⁴ An agent-of-the-payee is considered to be engaged in money transmission because in exchange for money, an agent-of-the-payee is either appointed or agrees to collect and process payments from the consumer and forward payment to the payee.

¹ Kansas Statutes Annotated § 9-508 *et seq.*

² Kansas Statutes Annotated § 9-510(d)

³ Kansas Statutes Annotated § 9-510(b)

⁴ Kansas Statutes Annotated § 9-508(h).

Application under Kansas Common Law

While under the KMTA an agent-of-the-payee engages in money transmission, Kansas agency common law recognizes the customer's transaction is completed once the agent-of-the-payee receives payment in certain situations. Because the customer's transaction is completed upon the agent-of-the payee receiving payment, there is no money transmission.

Under Kansas agency common law, an agent's actions will impute⁵ to a principal if the principal intends the agent to act on the principal's behalf and the agent acts within the authority granted.⁶ In an agent-of-the-payee relationship, a payee would be the principal and the agent-of-the-payee is the agent. Kansas agency common law recognizes express and apparent agency authority⁷. A person is considered an agent if the person has express or apparent authority from a principal to do an act. Express authority is created if the principal has specifically delegated authority to the agent to do an act. Apparent authority is created based on the conduct of the principal and a consumer's reasonable reliance that an agent has authority to bind the principal. Apparent authority is a highly subjective test that often must be determined by a trier of fact. For this reason, the OSBC will only consider agent-of-the-payee relationships with written express authority when determining if licensure is required.

An agent-of-the-payee would not be subject to KMTA licensure based on common law express agency principles if the agent-of-the-payee can prove that:

1. There is a preexisting written agreement between the payee and the agent;
2. The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement;
3. Payment is treated as received by the payee upon receipt by the agent; and
4. Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

If an agent acts within its express authority to accept the funds on behalf of a payee, the law of Kansas deems the payee to have accepted and received the payment. The payee is considered liable to the consumer whether or not the agent actually transmits the funds to the payee. The legal responsibility of the payee to the consumer remains the same if the funds are in the hands of the agent or the payee. Thus, the agent receiving the money subject to the four steps above renders the transaction a two-party transaction between the customer and the payee.⁸ The agent-of-the-payee doesn't accept money from the customer with the promise to make it available at a different location, so there is no money transmission.⁹ The customer leaves the transaction with the benefit of the bargain and the payee has no recourse with the customer if the payee never receives the payment.

⁵Imputation is to ascribe or attribute; to regard as being done, caused, or possessed by. Black's Law Dictionary 14c (10th ed. 2014).

⁶ *Golden Rule Ins. Co. v. Tomlinson*; 300 Kan. 944, 958-59; 335 P.3d 1178, 1190 (2014).

⁷ *Id.*

⁸ Texas Department of Banking Opinion Number 14-01 issued May 9, 2014.

⁹ *Id.*

Predetermination Requirement

Current licensees may request a review by the OSBC to confirm that the services they currently offer qualify for the agent-of-the-payee exemption. Licensees must continue to report eligible activity until the OSBC determines their qualification. Once confirmed, the company may choose not to report the eligible activity during the annual assessment period. All other activity that requires licensure must be reported.

Unlicensed persons that believe they may have a business model eligible for exemption must request a review before conducting activity in the state. A person must request the confirmation from the OSBC by June 30, 2017 to avoid a potential enforcement action.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued 11/30/2016.

RELATED TO GUIDANCE DOCUMENT MT 2016-01

Instructions for Submitting a Request for an Agent-of-the-Payee Exemption

If you are seeking an exemption for Agent-of-the-Payee based on Guidance Document MT 2016-01, please submit the following items:

1. A letter that specifically requests a review for an Agent-of-the-Payee exemption on your company. Reference within the letter the contractual language that pertains to the criteria required by the Guidance Document.

Specifically:

- ✓ The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement.
 - ✓ Payment is treated as received by the payee upon receipt by the agent. If applicable, this shall include who is liable for lost payments.
 - ✓ Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.
2. A copy of each preexisting written agreement(s) that pertains to this request between your company as the agent and the payee.

Your letter and all supporting documents must be received in order for this request to be considered "complete" and for our office to begin such review. Failure to provide all required information will result in a denial.

Complete requests may be submitted by mail or email to:

Bailey Burghart, Licensing Program Analyst
Office of the State Bank Commissioner
700 SW Jackson, Suite 300
Topeka, KS 66603

bailey.burghart@osbckansas.org