

2200 Licensed Lenders

2207 Exemption of Licensed Lenders

5 Del.C. §2202(b)

Effective Date: August 11, 2014

1.0 Purpose

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del.C. §2202(b).

18 DE Reg. 159 (08/01/14)

2.0 Definitions

For the purpose of this regulation, the following definitions apply:

“**Commissioner**” means the State Bank Commissioner.

“**Exempt Person**” means a person that has been granted an exemption from the Statute pursuant to 5 Del.C. §2202(b) and this regulation.

“**Person**” means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

“**Statute**” means 5 Del.C. Ch. 22.

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3.0 Applicability

3.1 This regulation and the Statute apply only to persons engaged in consumer credit transactions, including but not limited to mortgage lending secured by one to four family residential, owner occupied property located in Delaware and intended for personal, family or household purposes.

3.2 This regulation and the Statute’s licensing requirements do not apply to:

3.2.1 Any person who makes 5 or less loans within any 12 month period;

3.2.2 Any banking organization, as defined by 5 Del.C. §101;

3.2.3 Any federal credit union;

3.2.4 Any insurance company;

3.2.5 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any other applicable law of the State of Delaware; and

3.2.6 Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any applicable law of the United States of America.

3.3 A person shall not be deemed to be transacting the business of lending money within the meaning of 5 Del.C. §2202 and shall not be subject to this regulation or the licensing requirements of the Statute solely because the person is a participating merchant as the term is used in the Statute.

4.0 Qualifications

An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

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5.0 Grant of Exemptions

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- 5.1 Upon finding the qualifications of Section 4.0 of this regulation have been met, the Commissioner may grant an exemption to:
- 5.1.1 Any person whose lending operations are regularly examined, either separately or as part of an examination of an affiliated company, by an agency of the State of Delaware or the United States of America, if that agency regulates banks.
 - 5.1.2 Any person exempt from federal taxation under 26 USC §501(c)(3), as amended.
 - 5.1.3 Any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute, including any person whose operations and financial condition are regularly examined by any other agency of the State of Delaware, the United States of America, or another state.

6.0 Nature of Exemption

- 6.1 An exemption granted pursuant to Section 5.1.1 and 5.1.2 of this regulation shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.
- 6.2 The Commissioner shall determine the nature and extent of any exemption granted pursuant to Section 5.1.3 of this regulation.

7.0 Application of the Statute to Exempt Persons

Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

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8.0 Expiration

Except as otherwise provided in this regulation, exemptions shall expire on December 31 of each year.

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9.0 Application and Renewals

- 9.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.
- 9.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10.0 Changed Information

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

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11.0 Extensions on License Applications

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

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12.0 Suspension or Revocation

- 12.1 The Commissioner may suspend or revoke any exemption upon a finding that:

- 12.1.1 The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;
- 12.1.2 Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;
- 12.1.3 The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or
- 12.1.4 The exempt person does not meet the qualifications specified in Section 4 of this regulation.
- 12.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
- 12.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

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13.0 Exemption Denials

If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

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14.0 Fees

- 14.1 The investigation fee for an application for an exemption shall be \$250.00 and shall be submitted with the application.
- 14.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.
- 14.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

4 DE Reg. 1993 (6/1/01)

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