

# DEPARTMENT OF STATE

## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), and 2906(e);  
(5 Del.C. §§121(b), 2112, 2210(e), and 2906(e))  
5 DE Admin.Code 2101, 2102, 2104, 2201, 2202, 2701, 2901 and 2902

### PROPOSED

#### PUBLIC NOTICE

**2101 Operating Regulation**  
**2102 Minimum Records**  
**2104 Minimum Disclosure and Agreement Requirements**  
**2201 Operating Regulation**  
**2202 Minimum Records**  
**2701 Operating Regulation**  
**2901 Operating Regulation**  
**2902 Minimum Records**

#### Summary

The State Bank Commissioner proposes to amend eight Regulations adopted in accordance with Title 5 of the Delaware Code, Chapters 21, 22, 27 and 29. Regarding Title 5, Chapter 21 (Mortgage Loan Brokers), the proposed amended Regulations are 2101(Operating Regulation), 2102 (Minimum Records) and 2104 (Minimum Disclosure and Agreement Requirements). Regarding Title 5, Chapter 22 (Licensed Lenders), the proposed amended Regulations are 2201 (Operating Regulation) and 2202 (Minimum Records). Regarding Title 5, Chapter 27 (Cashing of Checks, Drafts or Money Orders), the proposed amended Regulation is 2701 (Operating Regulation). Regarding Title 5, Chapter 29 (Financing the Sale of Motor Vehicles), the proposed amended Regulations are 2901 (Operating Regulation) and 2902 (Minimum Records). The purpose of the proposed amendments is to clarify the existing regulations and reduce regulatory burden. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing these proposed amended regulations in accordance with Title 5 of the Delaware Code. This notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, and Chapter 101, Subchapter II.

#### Comments

A copy of the proposed amended regulations is being published in the October 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended regulations or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether these proposed amended regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before November 3, 2014. Written materials submitted will be available for inspection at the above address.

#### Adoption of Proposed Amended Regulations

On or after November 3, 2014, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulations 2101, 2102, 2104, 2201, 2202, 2701, 2901 and 2902, or make additional changes because of the public comments received.

#### 2101 Operating Regulation

5 Del.C. §§2102(b) and 2112  
Effective Date: April 11, 2014

#### 1.0 Applicability of Chapter

- 1.1 5 Del.C. Ch. 21 applies only to extensions of credit secured by one to four family residential owner-occupied property located in this State intended for personal, family, or household purposes.
- 1.2 5 Del.C. Ch. 21 does not apply to:
  - 1.2.1 mortgage loans secured by any property of 25 acres or more; and

1.2.2 mortgage loans intended for commercial purposes.

## **2.0 Compliance with Applicable Laws**

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 21, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 21 and the following regulations:
  - 2.3.1 Regulation 101, Retention of Financial Institution Records;
  - 2.3.2 Regulation 2101, Operating Regulation;
  - 2.3.3 Regulation 2102, Minimum Records;
  - 2.3.4 Regulation 2103, Schedule of Charges;
  - 2.3.5 Regulation 2104, Minimum Disclosure and Agreement Requirements;
  - 2.3.6 Regulation 2105, Report of Delaware Loan Volume;
  - 2.3.7 Regulation 2106, Report of Delaware Assets;
  - 2.3.8 Regulation 2107/2208, Guidance on Nontraditional Mortgage Product Risks;
  - 2.3.9 Regulation 2108/2209, Statement on Subprime Mortgage Lending; and
  - 2.3.10 Regulation 2401, Mortgage Loan Originator Licensing.

## **3.0 Display of License**

- 3.1 Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 21 in clear view of all customers.
- 3.2 ~~Each licensee that operates an internet website shall comply with the requirements of §7.0 of this regulation.~~

## **4.0 Loan Closings in the Name of a Licensee**

A mortgage loan shall not close in the name of a licensee unless such a closing is required by either a government agency or a government sponsored entity.

## **5.0 Mortgage Loan Originators**

- 5.1 Each licensee shall insure that every person who it employs, or is affiliated with it, as a mortgage loan originator, as defined by 5 **Del.C.** Ch. 24, to provide mortgage loan originator services has complied with all the requirements of that chapter and the regulations issued thereunder.
- 5.2 Each licensee shall promptly notify the Commissioner of the cessation of employment or termination of affiliation of any mortgage loan originator who had been providing residential mortgage loan origination services for the licensee.
- 5.3 The unique identifier, issued by the Nationwide Mortgage Licensing System and Registry, of the applicable mortgage loan originator shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual.
- 5.4 ~~The licensee's solicitations, advertisements, business cards, and websites that list the name of any mortgage loan originator who provides residential mortgage loan origination services for the licensee shall also contain that originator's unique identifier issued by the Nationwide Mortgage Licensing System and Registry.~~
- 5.5 A licensee may use its surety bond under 5 **Del.C.** Ch. 21 to cover mortgage loan originators who are its employees or exclusive agents if the bond conforms to all requirements of 5 **Del.C.** §2415 and §12.0 of Regulation 2401.
  - 5.5.1 A licensee's irrevocable letter of credit may not be used to cover mortgage loan originators.
  - 5.5.2 A licensee shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by its surety bond and of any change in such coverage for those originators.

## **6.0 Advertising**

- 6.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 6.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- 6.3 A licensee shall not advertise any credit terms that are not actually available.

- 6.4 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 21, the advertisement ~~shall clearly and conspicuously~~ may state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and may specify the license number and expiration date of the license.

## **7.0 Internet Websites**

- 7.1 ~~Every internet website that a licensee maintains shall meet the following requirements:~~
- 7.1.1 ~~The home page for the website shall clearly and conspicuously state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and specify the license number and expiration date of the license; and~~
  - 7.1.2 ~~The website shall specify the name and identification number of all mortgage loan originators whom the licensee employs or who are affiliated with it.~~
- 7.2 If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

## **8.0 Reports**

Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry such reports of condition at such times, in such form and containing such information as that System shall require.

## **9.0 Information Security**

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

## **10.0 License Applications**

- 10.1 The Nationwide Mortgage Licensing System and Registry, as the multi-state automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2117, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 21, and in that capacity, the System may, with respect to that chapter:
- 10.1.1 process licensing applications;
  - 10.1.2 collect licensing payments;
  - 10.1.3 submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
  - 10.1.4 receive information and maintain records regarding applicants and licensees; and
  - 10.1.5 share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch. 21.
- 10.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch. 21 shall submit the appropriate application and fees to the Commissioner through the Nationwide Mortgage Licensing System and Registry.
- 10.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 10.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$250, the annual licensing fee of \$500.00, and the Nationwide Mortgage Licensing System processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Mortgage Licensing System processing fee and the investigation fee are non-refundable.
- 10.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 10.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review

process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.

- 10.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

#### **11.0 Examination Fees and Supervisory Assessments**

- 11.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2110. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 11.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 11.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

#### **12.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

**13 DE Reg. 862 (12/01/09)**

**3 DE Reg. 653 (11/01/99)**

**17 DE Reg. 994 (04/01/14)**

### **2102 Minimum Records**

5 **Del.C.** §§2111(a) and 2112

Effective Date: April 11, 2014

#### **1.0 Minimum Required Records**

Each licensed office shall maintain the following records on a current basis:

##### **1.1 Register.**

##### **1.1.1 For applicants not granted credit, the office shall maintain a register containing:**

- 1.1.1.1 the applicant's name and address;
- 1.1.1.2 a file identification number;
- 1.1.1.3 the application date;
- 1.1.1.4 the name of the mortgage loan originator for the application together with the unique identifier assigned to the originator by the Nationwide Mortgage Licensing System and Registry;
- 1.1.1.5 the date of the credit decision or the date the application was withdrawn; and
- 1.1.1.6 the reason that applicant was not granted credit.

##### **1.1.2 For borrowers, the office shall maintain a register containing:**

- 1.1.2.1 the information specified in §§1.1.1.1 through 1.1.1.4 of this regulation;
- 1.1.2.2 the date of the loan closing;
- 1.1.2.3 an identification of the security for the loan;
- 1.1.2.4 the amount of the loan;
- 1.1.2.5 the lender's name and address;
- 1.1.2.6 the amount of the broker's fee; and
- 1.1.2.7 the date that fee was paid.

##### **1.2 Applicant Record. For each applicant not granted credit, the office shall maintain a record containing all documents relating to the applicant that shall include:**

- 1.2.1 the applicant's name and address;
- 1.2.2 a file identification number;
- 1.2.3 the application;
- 1.2.4 all disclosures related to the loan that are required by the Federal Truth-in-Lending Act, as amended, and the regulations thereunder;

- 1.2.5 the name of the mortgage loan originator together with the unique identifier assigned to the originator by the Nationwide Mortgage Licensing System and Registry;
- 1.2.6 the Good Faith Estimate for the loan that is required by the Federal Real Estate Settlement Procedures Act, as amended, and the regulations thereunder;
- 1.2.7 the broker agreement with signature(s) of each applicant;
- 1.2.8 all invoices or other evidence of expenses incurred in connection with the application, including any property appraisal, title certificate, and credit report;
- 1.2.9 all receipts provided to the applicant for amounts paid to the licensee;
- 1.2.10 a record of all fees collected by the licensee;
- 1.2.11 a record of all refunds with an explanation of them;
- 1.2.12 the name and address of every lender the licensee contacted concerning the application;
- 1.2.13 any written counteroffer for credit provided to the applicant;
- 1.2.14 any document specifying the reasons that credit was not granted; and
- 1.2.15 all other written communications between the licensee and the applicant.
- 1.3 Borrower Record. For each borrower, the office shall maintain a record containing all documents relating to the borrower that shall include:
  - 1.3.1 the information and documents specified in §§1.2.1 through 1.2.13 of this regulation;
  - 1.3.2 the lender's name and address;
  - 1.3.3 the loan commitment;
  - 1.3.4 the Uniform Settlement Statement required by the Federal Real Estate Settlement Procedures Act, as amended, and the regulations thereunder;
  - 1.3.5 for reverse mortgage loans, the certification from an independent housing counselor that is required by 5 Del.C. §2118; and
  - 1.3.6 all other written communications between the licensee and the borrower.
- 1.4 Daily Transaction Record. The office shall maintain on a daily basis a record of all transactions involving either the receipt or disbursement of any amount whatsoever. Details of disbursements to or for the account of applicants and borrowers shall be itemized.
- 1.5 Litigation Record. The office shall maintain in an individual file or in a separate litigation section, a record of all judicial and arbitration proceedings in which the licensee and an applicant or borrower are adversary parties. Records of judicial or arbitration proceedings being handled by attorneys or corporate collection centers may be maintained in a central office and must reflect the current status of the matter. In addition to all other information required by this regulation, these records shall include:
  - 1.5.1 all documents filed with, or issued by, the court or arbitrator; and
  - 1.5.2 the date and terms of any judgment, arbitration decision, dismissal or settlement.
- 1.6 Advertising Record. The office shall maintain a record containing all advertising materials used by the licensee:
  - 1.6.1 for printed advertising, this record shall contain a copy of each advertisement indicating its type (print publication, billboard, direct mail, etc.) a listing of the publications in which printed, billboard locations by zip code, number of mailings by zip code and the dates of publication, display or mailing;
  - 1.6.2 for radio advertising, this record shall contain a transcript of each advertisement, a listing of the stations on which each advertisement was broadcast, and for each station, the date of each broadcast;
  - 1.6.3 for television advertising, this record shall contain a transcript of the advertisement with visual depictions of each scene, a list of the stations on which each advertisement was broadcast, and for each station the date of each broadcast;
  - 1.6.4 for internet advertising, this record shall contain a copy of ~~each screen on which the advertising appeared, an identification of the website and web address of each screen, and the dates on which the screen appeared at that web location; and the advertisement.~~
  - 1.6.5 ~~for the licensee's own website, this record shall contain a complete copy of the website indicating the dates on which the licensee maintained that site. Whenever any screen on the site is changed, the record shall contain a new copy of the complete site and identify each screen that has been changed.~~
- 1.7 Mortgage Loan Originator Register. The office shall maintain a register of all mortgage loan originators that it has employed, or have been affiliated with it, to provide residential mortgage loan origination services. The register shall contain:
  - 1.7.1 the name of the originator;
  - 1.7.2 the originator's unique identifier issued the Nationwide Mortgage Licensing System and Registry;
  - 1.7.3 the date that the licensee first retained the originator in that capacity; and

1.7.4 the date that the originator's employment or affiliation with the licensee in that capacity ended.

- 1.8 Additional Records. The office shall maintain any other records necessary to verify the licensee's compliance with **5 Del.C. Ch. 21**, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.

## **2.0 Location, Format and Retention of Records**

- 2.1 All records shall be made available to the Commissioner's staff when requested.
- 2.2 Records may be maintained at the licensed office itself or at any other suitable location if they can be available within a reasonable period of time upon request.
- 2.3 All records may be maintained by paper copy or in an electronic format.
- 2.4 All records shall be retained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.

## **3.0 Variations**

The Commissioner may grant written approval for variations from this regulation to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this regulation are satisfied and that the records will be readily available when requested.

**3 DE Reg. 653 (11/01/99)**

**17 DE Reg. 994 (04/01/14)**

## **2104 Minimum Disclosure and Agreement Requirements**

**5 Del.C. §2113**

Effective Date: April 11, 2014

### **1.0 Written Agreement**

The licensee shall enter into a separate, signed, written agreement with the applicant, independent of the loan agreement. The licensee shall provide a copy of this agreement to the lender, and the lender shall disburse licensee compensation only in accordance with that agreement. The terms of the agreement shall be disclosed to the applicant before the payment of any nonrefundable fees other than any credit report fee. A copy of the agreement shall be provided to the applicant at the time the agreement is signed.

### **2.0 Contents of Agreement**

The agreement shall contain, at minimum:

- 2.1 the licensee's name, address, and telephone number;
- 2.2 the name of the mortgage loan originator together with the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry;
- 2.3 the applicant's name, address, and telephone number;
- 2.4 the date of the agreement and the period for which it shall remain in effect;
- 2.5 a statement that the licensee is not the lender;
- 2.6 a complete description of the services the licensee will perform for the applicant. This description must be sufficient to determine whether the services the licensee will provide are commensurate with the compensation the licensee will receive;
- 2.7 a statement of the circumstances under which the licensee will be entitled to obtain or retain compensation from the applicant;
- 2.8 the total amount of the mortgage loan broker's compensation expressed as a dollar amount or range;
- 2.9 a specific statement that "In no event shall the cost of these services exceed the amount disclosed in this agreement";
- 2.10 a statement as to which fees are refundable and nonrefundable and under what circumstances; and
- 2.11 a statement that the applicant may be entitled to the refund of certain funds paid to the licensee upon exercise of the right to rescind the transaction under the Federal Truth-In-Lending Act, as amended, and the regulations thereunder.

**3 DE Reg. 653 (11/01/99)**

**17 DE Reg. 994 (04/01/14)**

## **2201 Operating Regulation**

### **5 Del.C. §2210(e)**

Effective Date: April 11, 2014

#### **1.0 Applicability of Chapter**

- 1.1 5 **Del.C.** Ch. 22 applies only to consumer credit transactions, including but not limited to, extensions of credit secured by one to four family residential, owner-occupied property located in this State intended for personal, family, or household purposes.
- 1.2 5 **Del.C.** Ch. 22 does not apply to:
  - 1.2.1 mortgage loans secured by any property of 25 acres or more;
  - 1.2.2 mortgage loans intended for commercial purposes; and
  - 1.2.3 lending that requires a license under 5 **Del.C.** Ch. 29, Financing the Sale of a Motor Vehicle.

#### **2.0 Compliance with Applicable Laws**

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations, as applicable.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 22 and the following regulations, if applicable:
  - 2.3.1 Regulation 101, Retention of Financial Institution Records;
  - 2.3.2 Regulation 2201, Operating Regulation;
  - 2.3.3 Regulation 2202, Minimum Records;
  - 2.3.4 Regulation 2203, Schedule of Charges;
  - 2.3.5 Regulation 2204, Surety Bond or Irrevocable Letter of Credit;
  - 2.3.6 Regulation 2205, Report of Delaware Loan Volume;
  - 2.3.7 Regulation 2206, Report of Delaware Assets;
  - 2.3.8 Regulation 2207, Exemption of Licensed Lenders;
  - 2.3.9 Regulations 2107/2208, Guidance on Non-traditional Mortgage Products;
  - 2.3.10 Regulation 2108/2209, Statement on Subprime Mortgage Lending;
  - 2.3.11 Regulation 2210, Short-Term Consumer Loans; and
  - 2.3.12 Regulation 2401, Mortgage Loan Originator Licensing.

#### **3.0 Display of License and Payday Loan Notice**

- 3.1 Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 22 in clear view of all customers.
- 3.2 Each licensed office open to the public that provides short-term consumer loans as defined in 5 **Del.C.** §2227 shall also prominently post the following statement in plain view in an area easily accessible to its customers at the entrance to the office: "A payday loan is not intended to meet long-term financial needs."
- 3.3 ~~Each licensee that operates an internet website shall comply with the requirements of §10.0 of this regulation.~~

#### **4.0 Satisfaction of Mortgages and Other Security Interests**

- 4.1 Upon full performance of a debt obligation or duty secured by a mortgage or a conveyance in the nature of a mortgage on real estate, a licensee holding such a mortgage or conveyance shall cause a proper record of its satisfaction or performance to be made within 60 days as required by 25 **Del.C.** Ch. 21.
- 4.2 A licensee shall take all necessary action to discharge, satisfy or release any other security interest for a loan under 5 **Del.C.** Ch. 22 within 30 days from the date that the loan is satisfied or fully performed.

#### **5.0 Insurance**

5.1 ~~Commissions or incentives of any kind for the placement of any type of insurance may not be paid to any licensee, any employee of a licensee, or any office of a licensee. Contracts prepared in advance of a borrower's signature shall not automatically include credit life, health, disability or other insurance.~~

5.2 Credit Life and Health Insurance

5.2.1 A licensee may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to Title 18 of the Delaware Code and all applicable Insurance Commissioner Regulations.

5.2.2 Every licensee offering credit life and health insurance whose charges do not conform to those authorized by Title 18 of the Delaware Code shall maintain in each office a copy of a submission to the Insurance Commissioner requesting the non-conforming charges and the Insurance Commissioner's approval of those charges.

5.2.3 Credit life insurance refunds shall be calculated as of the date of death except as permitted by 18 **Del.C.** §3705(b)(4).

5.2.4 Credit health insurance payments received by a licensee shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue if payment is received after the payment due date.

5.2.5 A licensee may offer, but not require, only such other insurance products as the Commissioner may, upon written approval, permit.

5.3 ~~Other Insurance~~

~~5.3.1~~ Any licensee may require proof of insurance coverage for any loan secured by a motor vehicle, real estate, or other collateral. The borrower has the right to submit any existing policy(s) naming the licensee as beneficiary, provided such policy is acceptable to the licensee as to coverage, term and carrier. Upon notification to the licensee of cancellation of any policy, the licensee may place coverage to protect the licensee's interest. The borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. A licensee may, if requested by the borrower, place such insurance coverage as is necessary to protect the licensee's interest at the inception of the loan.

5.4 Any insurance authorized by this regulation, other than the insurance coverage authorized by §5.3 of this regulation, must be specifically requested by the borrower in writing. This request must be attached to, or part of, the loan application.

**6.0 Purchase or Sale of Loan Contracts**

6.1 A licensee shall not sell, assign, or in any way transfer loan contracts to any person who is not licensed under 5 **Del.C.** Ch. 22 or licensed under a similar statute of another state, without the express written permission of the Commissioner.

6.2 Purchasers, assignees, and transferees shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.

6.3 This section shall not apply to:

6.3.1 the sale, assignment or transfer of loan contracts between licensees under the same management or control;

6.3.2 the sale, assignment or transfer of a loan contract to an out-of-state affiliate of a licensee for collection or for the convenience of a borrower provided however that the out-of-state affiliate must be domiciled in the United States;

6.3.3 the sale, assignment or transfer of a loan contract to any person secondarily liable on the contract; and

6.3.4 the sale, assignment or transfer of a participation interest or an entire loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings bank, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

**7.0 Origination of Mortgage Loans for Resale**

Solely for the purposes of the loan limitation provisions contained in the last sentence of 5 **Del.C.** §2228(a), the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this State (or secured by certificates of stock or other evidence of ownership interest in, or proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise transfers the entire interest in the loan (except servicing, if servicing is retained) within 120 days following the date the loan is made. Upon written request, additional time may be granted at the discretion of the Commissioner.



## **8.0 Mortgage Loan Originators**

- 8.1 Each licensee shall insure that every person who it employs, or is affiliated with it, as a mortgage loan originator, as defined by 5 **Del.C.** Ch. 24, to provide mortgage loan origination services has complied with all requirements of that Chapter and the regulations issued thereunder.
- 8.2 Each licensee shall promptly notify the Commissioner of the cessation of employment or termination of affiliation of any mortgage loan originator who had been providing residential mortgage loan origination services for the licensee.
- 8.3 The unique identifier issued by the Nationwide Mortgage Licensing System and Registry of the applicable mortgage loan originator shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual.
- 8.4 ~~The licensee's solicitations, advertisements, business cards, and websites that list the name of any mortgage loan originator who provides residential mortgage loan origination services for the licensee shall also contain that originator's unique identifier issued by the Nationwide Mortgage Licensing System and Registry.~~

## **9.0 Advertising**

- 9.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 9.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- 9.3 A licensee shall not advertise any credit terms that are not actually available.
- 9.4 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 22, the advertisement ~~shall clearly and conspicuously~~ may state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State under and may specify the license number and expiration date of the license.

## **10.0 Internet Websites**

- 10.1 ~~Every internet website that a licensee maintains shall meet the following requirements:~~
  - 10.1.1 ~~The home page for the website shall clearly and conspicuously state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and specify the license number and expiration date of the license.~~
  - 10.1.2 ~~The website shall specify the name and identification number of all mortgage loan originators whom the licensee employs or who are affiliated with it; and~~
  - 10.1.3 ~~If the licensee provides short-term consumer loans as defined in 5 **Del.C.** §2227, the home page shall prominently display the following statement: "A payday loan is not intended to meet long-term financial needs."~~
- 10.2 If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

## **11.0 Reports**

Each licensee who employs mortgage loan originators shall submit to the Nationwide Mortgage Licensing System and Registry such reports of condition at such time, in such form and containing such information as that System shall require.

## **12.0 Information Security**

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers related to the business governed by this regulation including, but not limited to, all application information, account information, and information from any consumer report.

## **13.0 Repossession Policy**

~~Each licensee shall maintain and follow a written comprehensive policy that describes the manner and timing of repossessing collateral after default. The licensee shall review and update the policy as needed to insure it is consistent with current law and that it reflects the licensee's current practices. Such Repossession Policy shall comply in all respects with 6 **Del.C.** Article 9, Secured Transactions, Part 6, Default.~~

## **14.0 License Applications**

- 14.1 The Nationwide Mortgage Licensing System and Registry, as the multistate automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2213A, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 22 as to persons that employ, or have affiliated, a mortgage loan originator as defined by 5 **Del.C.** Ch. 24, and in that capacity, the System may, with respect to those persons:
- 14.1.1 process licensing applications;
  - 14.1.2 collect licensing payments;
  - 14.1.3 submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
  - 14.1.4 receive information and maintain records related to applicants and licensees; and
  - 14.1.5 share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch 22.
- 14.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch 22 shall submit the appropriate application and fees to the Commissioner through the Nationwide Mortgage Licensing System and Registry when that person employs, or has affiliated, a mortgage loan originator as defined by 5 **Del.C.** Ch 24. All other persons shall submit applications for licenses under 5 **Del.C.** Ch 22 directly to the Commissioner.
- 14.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 14.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$250, the annual license fee of \$250, and, if applicable, the Nationwide Mortgage Licensing System and Registry processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Mortgage Licensing System and Registry processing fee and the investigation fee are non-refundable.
- 14.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 14.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 14.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

## **15.0 Examination Fees and Supervisory Assessments**

- 15.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2210. The cost of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 15.2 The Commissioner shall assess each licensee a supervisory assessment fee which is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 15.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

## **16.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

**2 DE Reg. 781 (11/01/98)**

**17 DE Reg. 994 (04/01/14)**

## **2202 Minimum Records**

5 **Del.C.** §§2210(e) and 2211(a)

## 1.0 Minimum Required Records

Each licensed office shall maintain the following records on a current basis:

### 1.1 Register.

1.1.1 For applicants not granted credit, the office shall maintain a register containing:

- 1.1.1.1 the applicant's name and address;
- 1.1.1.2 a file identification number;
- 1.1.1.3 the application date;
- 1.1.1.4 for mortgage loans, the name of the mortgage loan originator for the application together with the unique identifier assigned to the originator by the Nationwide Mortgage License System and Registry;
- 1.1.1.5 the date of the credit decision or the date the application was withdrawn; and
- 1.1.1.6 the reason that the applicant was not granted credit.

1.1.2 For borrowers, the office shall maintain a register containing:

- 1.1.2.1 the information specified in §§1.1.1.1 through 1.1.1.4;
- 1.1.2.2 the date of the loan closing;
- 1.1.2.3 an identification of any type of security for the loan; and
- 1.1.2.4 the amount of the loan.

1.2 Applicant Record. For each applicant not granted credit, the office shall maintain a record containing all documents related to the applicant that shall include:

- 1.2.1 the applicant's name and address;
- 1.2.2 a file identification number;
- 1.2.3 the application;
- 1.2.4 all disclosures, when applicable, related to the loans that are required by the Federal Truth-in-Lending Act, as amended, and the regulations thereunder;
- 1.2.5 all invoices or other evidence of expenses incurred in connection with the application;
- 1.2.6 all receipts provided to the applicant for amounts paid to the licensee;
- 1.2.7 a record of all fees collected by the licensee;
- 1.2.8 evidence of any refunds with an explanation of them; and
- 1.2.9 for mortgage loans:
  - 1.2.9.1 the name of the mortgage loan originator for the loan together with the unique identifier assigned to the originator by the Nationwide Mortgage Licensing System and Registry; and
  - 1.2.9.2 the Good Faith Estimate for the loan that is required by the Federal Real Estate Settlement Procedures Act, as amended and the regulations thereunder.
- 1.2.10 for short-term consumer loans as defined in 5 Del.C. §2227, evidence that the licensee has complied with all requirements of 5 Del.C. §§2235A and 2235B for each short-term consumer loan or rollover application received from the applicant, including:
  - 1.2.10.1 a copy of the database submission used to determine the applicant's eligibility for the loan or rollover; or
  - 1.2.10.2 a copy of the database ineligibility confirmation for the application.
- 1.2.11 any document specifying the reasons that credit was not granted; and
- 1.2.12 all other written communications with the applicant.

1.3 Borrower Record. For each borrower, the office shall maintain a record containing all documents related to the borrower that shall include:

- 1.3.1 the information and documents specified in §§1.2.1 through 1.2.8 of this regulation;
- 1.3.2 for short-term consumer loans as defined in 5 Del.C. §2227, evidence that the licensee has complied with the requirements of 5 Del.C. §§2235A and 2235B for each short-term consumer loan or rollover made to the borrower, including:
  - 1.3.2.1 a copy of the database submission used to determine the borrower's eligibility for the loan or rollover;
  - 1.3.2.2 a copy of the database eligibility confirmation for the loan or rollover;
  - 1.3.2.3 the database transaction identification number for the loan or rollover; and
  - 1.3.2.4 the date the loan or rollover is paid in full.

- 1.3.3 for title loans as defined in 5 **Del.C.** §2250, evidence that the licensee has complied with the requirements of 5 **Del.C.** Ch. 22 Subch. V including the requirements related to disclosures, rollovers, work-out agreements and rescissions;
- 1.3.4 for mortgage loans:
  - 1.3.4.1 the name of the mortgage loan originator for the loan together with the unique identifier assigned to the originator by the Nationwide Mortgage Licensing System and Registry;
  - 1.3.4.2 the Good Faith Estimate for the loan that is required by the Federal Real Estate Settlement Procedures Act, as amended, and the regulations thereunder;
  - 1.3.4.3 the Uniform Settlement Statement for the loan that is required by the Federal Real Estate Settlement Procedures Act, as amended, and the regulations thereunder;
  - 1.3.4.4 for reverse mortgage loans, the certification from an independent housing counselor that is required by 5 **Del.C.** §2244; and
  - 1.3.4.5 for non purchase money mortgage loans, any evidence that a consumer exercised his or her right to rescind under the Federal Truth-in-Lending Act together with documents evidencing the actions taken by the lender following rescission.
- 1.3.5 the date of the loan closing;
- 1.3.6 the amount of the loan;
- 1.3.7 the repayment terms;
- 1.3.8 the type of any security;
- 1.3.9 the names of any endorsers, co-makers, guarantors, or sureties;
- 1.3.10 the actual date of receipt of each payment of principal and charges;
- 1.3.11 the name of any assignee or purchaser of the note;
- 1.3.12 a breakdown of how payments have been applied to interest, principal and fees;
- 1.3.13 the current balance due on the principal;
- 1.3.14 any workout agreement;
- 1.3.15 any credit related insurance contracts;
- 1.3.16 contracts for any non-insurance products sold by the licensee to the borrower or borrowers related to the credit transaction;
- 1.3.17 evidence that a mortgage or other security interest of record has been properly satisfied or released as prescribed by §4 of Regulation 2201;
- 1.3.18 evidence that the licensee has complied with the interest rate reduction requirements of the Federal Servicemembers Civil Relief Act, as amended, and the regulations thereunder, if applicable, including evidence that the rate was reduced at the appropriate time and remained reduced for the appropriate period;
- 1.3.19 evidence that the licensee has complied with the requirements of 10 **U.S.C.** §987, as amended, and the regulations thereunder, if applicable, relating to the requirements for payday loans, vehicle title loans and tax refund anticipation loans as each of those loans are defined in 32 CFR Part 232 when the loan is extended to a covered borrower as defined in Part 232;
- 1.3.20 if the licensee provides mortgage loan modification services as defined in 5 **Del.C.** §2245, evidence that the licensee has complied with the requirements of that section, including the limitations on compensation; and
- 1.3.21 all other written communications with the borrower.
- 1.4 **Daily Transaction Record.** The office shall maintain on a daily basis a record of all transactions involving either the receipt or disbursement of any amount whatsoever. Details of disbursements to or for the account of borrower's shall be itemized.
- 1.5 **Litigation and Enforcement of Security Record.**
  - 1.5.1 **Litigation.** The office shall maintain in either an individual file or in a separate litigation section, a record of all judicial and arbitration proceedings in which the licensee and an applicant or borrower are adversary parties. Records of judicial or arbitration proceedings being handled by attorneys or corporate collection centers may be maintained in a central office and must reflect the current status of the matter.
  - 1.5.2 **Enforcement of Security Interest.** The office shall maintain in an individual borrower's account file a record of all loans in which the licensee has enforced its security interest by taking possession of the security without a judicial proceeding or in which the borrower has voluntarily surrendered the security.
  - 1.5.3 In addition to all other information required under by this regulation, these records, shall include, as applicable:

- 1.5.3.1 the unpaid balance immediately prior to either the judicial or arbitration proceeding, the licensee's non-judicial repossession of the security, or the borrower's voluntary surrender of the security;
- 1.5.3.2 the type of any security foreclosed, replevined, repossessed, surrendered or of which the licensee otherwise acquires possession;
- 1.5.3.3 all documents filed with, or issued by, the court or arbitrator;
- 1.5.3.4 the date and terms of any judgment, arbitration decision, dismissal or settlement;
- 1.5.3.5 evidence that the terms of any sale of security were fair to the borrower, if the security was sold after a non-judicial repossession;
- 1.5.3.6 any other documents sent or received by the licensee pursuant to the 6 **Del.C.** Article 9. Secured Transactions, Part 6. Default;
- 1.5.3.7 with respect to any judicial or arbitration proceeding, non-judicial repossession or voluntary surrender of a motor vehicle:
  - 1.5.3.7.1 the vehicle identification number (VIN);
  - 1.5.3.7.2 the date the licensee acquired possession of the motor vehicle;
  - 1.5.3.7.3 a description of the motor vehicle;
  - 1.5.3.7.4 the date of the sale of the motor vehicle;
  - 1.5.3.7.5 the terms of the sale of the motor vehicle, including copies of all bids or other offers received together with the purchaser's name and address, price and cash or financing terms;
  - 1.5.3.7.6 evidence that the borrower was notified of the time and place of the sale; and
  - 1.5.3.7.7 evidence of any amount paid to a third party.
- 1.5.3.8 with respect to a mortgage foreclosure proceeding under 10 **Del.C.** Ch. 49:
  - 1.5.3.8.1 the notice of intent to foreclose required by 10 **Del.C.** §5062B;
  - 1.5.3.8.2 proof of the certified mailing of that notice; and
  - 1.5.3.8.3 all documents sent or received by the licensee pursuant to the mediation proceeding required by 10 **Del.C.** §5062C.

1.6 **Credit Insurance Claims Record.** The office shall maintain a credit insurance claims record containing the following information on all claims submitted by borrowers to the insurer:

- 1.6.1 the claim date;
- 1.6.2 the claim amount;
- 1.6.3 the date and amount of the payment by the insurer, or the date of rejection and the reason for the rejection;
- 1.6.4 the borrower's name and address;
- 1.6.5 the file identification number for the loan;
- 1.6.6 the reason for the claim (i.e. death, illness, etc.);
- 1.6.7 proof of death, if applicable;
- 1.6.8 a copy of any check issued by the insurance company for benefit payments or any other record of such disbursement by the insurance company; and
- 1.6.9 a copy of any check issued by the insurance company to return unearned insurance premiums that result from pre-payment of the loan or cancellation of the insurance or any other record of such disbursements by the insurance company.
- 1.6.10 In the event a loan is sold and no servicing performed; only those items listed in this regulation that are available prior to such sale shall be required.

1.7 **Advertising Record.** The office shall maintain a record containing all advertising materials used by the licensee:

- 1.7.1 for printed advertising, this record shall contain each advertisement indicating its type (print publication, billboard, direct mail, etc.) a listing of the publications in which printed, billboard locations by zip code, number of mailings by zip code, and the dates of publication, display or mailing;
- 1.7.2 for radio advertising, this record shall contain a transcript of each advertisement, a listing of the stations on which each advertisement was broadcast, and for each station, the date of each broadcast;
- 1.7.3 for television advertising, this record shall contain a transcript of the advertisement with visual depictions of each scene, a list of the stations on which each advertisement was broadcast, and for each station the date of each broadcast;
- 1.7.4 for internet advertising, this record shall contain a copy of ~~each screen on which the advertising appeared, an identification of the website and web address of each screen, and the dates on which the screen appeared at that web location; and the advertisement.~~

- 1.7.5 ~~for the licensee's own website, this record shall contain a complete copy of the website indicating the dates on which the licensee maintained that site. Whenever any screen on the site is changed, the record shall contain a new copy of the complete site and identify each screen that has been changed.~~
- 1.8 Mortgage Loan Originator Register. The office shall maintain a register of all mortgage loan originators that it has employed, or who have been affiliated with it, to provide residential mortgage loan origination services. The register shall contain:
- 1.8.1 the name of the originator;
- 1.8.2 the originator's unique identifier issued by the Nationwide Mortgage Licensing System and Registry;
- 1.8.3 the date that the licensee first retained the originator in that capacity; and
- 1.8.4 the date that the originator's employment or affiliation with the licensee in that capacity ended.
- 1.9 Additional Records. The office shall maintain any other records necessary to verify the licensee's compliance with 5 Del.C. Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.

## **2.0 Location, Format and Retention of Records**

- 2.1 All records shall be made available to the Commissioner's staff when requested.
- 2.2 Records may be maintained at the licensed office itself or at any other suitable location if they can be available within a reasonable period of time upon request.
- 2.3 All records may be maintained by paper copy or in an electronic format.
- 2.4 All records shall be retained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.

## **3.0 Variations**

The Commissioner may grant written approval for variations from this regulation to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this regulation are satisfied and that the records will be readily available when requested.

**3 DE Reg. 653 (11/01/99)**

**17 DE Reg. 994 (04/01/14)**

## **2701 Operating Regulation** **5 Del.C. §2741**

**5 Del.C. §2741**

Effective Date: June 11, 2013

## **1.0 Compliance with Applicable Laws**

- 1.1 All licensees shall comply with 5 Del.C. Ch. 27, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 1.2 The manager and appropriate staff of each licensed office, including all mobile units, shall familiarize themselves with all such statutes and regulations.
- 1.3 Each licensed office, including all mobile units, shall maintain, either by paper copy or through electronic access, 5 Del.C. Ch. 27 and the following regulations:
- 1.3.1 Regulation 101, Retention of Financial Institution Records;
- 1.3.2 Regulation 2701, Operating Regulation; and
- 1.3.3 Regulation 2702, Minimum Records.

## **2.0 Display of License and Fee Schedule**

Each licensed office, including all mobile units, shall prominently display in clear view of all customers:

- 2.1 its license issued under 5 Del.C. Ch. 27, and
- 2.2 the fee schedule set forth in 5 Del.C. §2742.

## **3.0 Expired Identification**

Licensees shall not accept from a customer any form of identification that has expired.

#### **4.0 Advertising**

- 4.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 4.2 When a licensee advertises with respect to its services under 5 **Del.C.** Ch. 27, the advertisement ~~shall clearly and conspicuously~~ may state that the licensee is licensed to engage in business in this State under that chapter and may specify the license number and expiration date of its license.

#### **5.0 Examination Fees and Supervisory Assessments**

- 5.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §122. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

#### **6.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

**16 DE Reg. 1286 (06/01/13)**

### **2901 Operating Regulation**

5 **Del.C.** §2906(e)

Effective Date: April 11, 2014

#### **1.0 Applicability of Chapter**

- 1.1 Lease Contracts. 5 **Del.C.** Ch. 29 applies to a lease contract only when:
  - 1.1.1 The lessee contracts to pay a sum substantially equivalent to, or in excess of, the value of the motor vehicle for the use of the motor vehicle over the lease term;
  - 1.1.2 The lessee is obligated to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract; and
  - 1.1.3 The value for which the motor vehicle is to be sold at the end of the lease term is not paid in a single installment.
- 1.2 5 **Del.C.** Ch. 29 applies to all motor vehicles meeting the definition of that term in 5 **Del.C.** §2901(1) regardless of whether the intended use is personal or commercial.

#### **2.0 Compliance with Applicable Laws**

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 29, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 29 and the following regulations:
  - 2.3.1 Regulation 101, Retention of Financial Institution Records.
  - 2.3.2 Regulation 2901, Operating Regulation;
  - 2.3.3 Regulation 2902, Minimum Records;
  - 2.3.4 Regulation 2903, Report of Delaware Loan Volume; and
  - 2.3.5 Regulation 2904, Report of Delaware Assets.

#### **3.0 Display of License**

3.1 Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 29 in clear view of all customers.

3.2 ~~Each licensee that operates an internet website shall comply with the requirements of §8.0 of this regulation.~~

#### 4.0 Security Interest Satisfaction

A licensee shall take all necessary action to discharge, satisfy or release a retained title, lien, or other security interest for a retail installment contract within 30 days of the date that the debt is satisfied or fully performed.

#### 5.0 Insurance

~~5.1 Commissions or incentives of any kind for the placement of any type of insurance may not be paid to any licensee, any employee of a licensee, or any office of a licensee. Contracts prepared in advance of a borrower's signature shall not automatically include credit life, health, disability or other insurance.~~

##### 5.21 Credit Life and Health Insurance

5.21.1 A licensee may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to Title 18 of the Delaware Code and all applicable Insurance Commissioner Regulations.

5.21.2 Every licensee offering credit life and health insurance whose charges do not conform to those authorized by Title 18 of the Delaware Code shall maintain in each office a copy of a submission to the Insurance Commissioner requesting the non-conforming charge and the Insurance Commissioner's approval of those charges.

5.21.3 Credit life insurance refunds shall be calculated as of the date of death except as permitted by 18 Del.C. §3705(b)(4).

5.21.4 Credit health insurance payments received by a licensee shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue if payment is received after the payment due date.

5.2.5 A licensee may offer, but not require, only such other insurance products as the State Bank Commissioner may, upon written approval, permit.

##### 5.3 Other Insurance.

~~5.3.1~~ Any licensee may require proof of insurance coverage for any loan secured by a motor vehicle or other collateral. The borrower has the right to submit any existing policy(s) naming the licensee as beneficiary, provided such policy is acceptable to the licensee as to coverage, term and carrier. Upon notification to the licensee of cancellation of any policy, the licensee may place coverage to protect the licensee's interest. The borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. A licensee may, if requested by the borrower, place such insurance coverage as is necessary to protect the licensee's interest at the inception of the loan.

5.4 Any insurance authorized by this regulation, other than the insurance coverage authorized by §5.3 of this regulation, must be specifically requested by the borrower in writing. This request must be attached to, or part of, the loan application.

#### 6.0 Negative Equity Financing

Inclusion of negative equity financing is permissible only if the amount of an existing lien in a credit sales transaction exceeds the value of a trade-in. In a negative equity trade-in transaction where no cash payment is involved, licensees must disclose a zero down-payment. The negative equity must not be disclosed as a negative number for the consumer's down-payment. Any negative equity to be financed under the retail installment sales contract must be disclosed under 5 Del.C. §2907(e)(4), and not 5 Del.C. §2907(e)(2).

#### 7.0 Advertising

7.1 A licensee shall not advertise in any way that is false, misleading or deceptive.

7.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.

7.3 A licensee shall not advertise any credit terms that are not available.

~~7.4 When a licensee advertises with respect to its services under 5 Del.C. Ch. 29, the advertisement shall clearly and conspicuously state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and specify the license number and expiration date of the license.~~

#### 8.0 Internet Websites

~~8.1 Every website that a licensee maintains shall meet the following requirements:~~

~~8.1.1 The home page for every internet website that a licensee maintains shall clearly and conspicuously state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State under and specify the license number and expiration date of the license.~~



- 8.4.2 If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

## **9.0 Information Security**

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers customer related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

## **10.0 Repossession Policy**

Each licensee shall ~~maintain and follow a written comprehensive policy that describes the manner and timing of repossessing collateral after default. The licensee shall review and update the policy as needed to insure it is consistent with current law and that it reflects the licensee's current practices. Such Repossession Policy shall comply in all respects with 6 Del.C. Article 9, Secured Transactions, Part 6, Default.~~

## **11.0 Examination Fees and Supervisory Assessments**

- 11.1 The Commissioner may examine licensees pursuant to 5 Del.C. §§122 and 2906. The cost of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 11.2 The Commissioner shall assess each licensee a supervisory assessment fee, which is due and payable on August 1 of each year, in accordance with 5 Del.C. §127(b).
- 11.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 Del.C. §127(a) and (b).

## **12.0 Examination Responses**

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

**3 DE Reg. 653 (11/01/99)**

**17 DE Reg. 994 (04/01/14)**

## **2902 Minimum Records**

5 Del.C. §2906(e)

Effective Date: April 11, 2014

## **1.0 Minimum Required Records**

Each licensed office shall maintain the following records on a current basis:

- 1.1 Register.
  - 1.1.1 For applicants not granted credit, the office shall maintain a register containing:
    - 1.1.1.1 the applicant's name and address;
    - 1.1.1.2 a file identification number;
    - 1.1.1.3 the application date;
    - 1.1.1.4 the date of the credit decision, or the date the application was withdrawn; and
    - 1.1.1.5 the reason that the applicant was not granted credit.
  - 1.1.2 For borrowers, the office shall maintain a register containing:
    - 1.1.2.1 the information specified in §§1.1.1.1 through 1.1.1.3 of this regulation;
    - 1.1.2.2 the date the loan was granted;
    - 1.1.2.3 the annual percentage rate for the loan;
    - 1.1.2.4 the amount of the loan; and
    - 1.1.2.5 the lender's name and address.
- 1.2 Applicant Record. For each applicant not granted credit, the office shall maintain a record containing all documents relating to the applicant that shall include:

- 1.2.1 the applicant's name and address;
  - 1.2.2 a file identification number;
  - 1.2.3 the application;
  - 1.2.4 any document specifying the reasons that credit was not granted; and
  - 1.2.5 all other written communications with the applicant.
- 1.3 Borrower Record. For each borrower, the office shall maintain a record containing all documents relating to the borrower that shall include:
- 1.3.1 the information and documents specified in §§1.2.1 through 1.2.3 of this regulation;
  - 1.3.2 the loan contract;
  - 1.3.3 the date the loan was granted;
  - 1.3.4 the face amount of the loan;
  - 1.3.5 the total sale price of the motor vehicle financed;
  - 1.3.6 the annual percentage rate for the loan and the amount of all other charges;
  - 1.3.7 the repayment terms;
  - 1.3.8 the vehicle identification number (VIN);
  - 1.3.9 all disclosures related to the loan that are required by the Federal Truth-in-Lending Act, as amended, and the regulations thereunder;
  - 1.3.10 the names of any endorsers, co-makers, guarantors, or sureties;
  - 1.3.11 the actual date of receipt of each payment of principal and charges;
  - 1.3.12 a breakdown of how payments have been applied to interest, principal and fees;
  - 1.3.13 the name of any assignee or purchaser of the retail installment contract;
  - 1.3.14 the current balance due on the principal;
  - 1.3.15 any workout agreement;
  - 1.3.16 any credit related insurance contracts;
  - 1.3.17 copies of any non-insurance products sold by the licensee to the borrower related to the credit transaction;
  - 1.3.18 evidence that a retained title or lien was released within the time period prescribed in §4 of Regulation 2901;
  - 1.3.19 evidence that the licensee has complied with the interest rate reduction requirements of the Federal Servicemembers Civil Relief Act, as amended, and the regulations thereunder, if applicable, including evidence that the rate was reduced at the appropriate time and remained reduced for the appropriate period; and
  - 1.3.20 all other written communication with the borrower.
- 1.4 Daily Transaction Record. The office shall maintain on a daily basis a record of all transactions involving either the receipt or disbursement of any amount related to retail installment accounts. Details of disbursements to or for the account of borrowers shall be itemized.
- 1.5 Litigation and Enforcement of Security Interest Record.
- 1.5.1 Litigation. The office shall maintain in an individual file or a separate litigation section, a record of all judicial and arbitration proceedings in which the licensee and an applicant or borrower are adversary parties. Records of judicial or arbitration proceedings being handled by attorneys or corporate collection centers may be maintained in a central office and must reflect the current correct status of the matter.
  - 1.5.2 Enforcement of Security Interest. The office shall maintain in an individual borrower's account file a record of all loans in which the licensee has enforced its security interest by taking possession of the motor vehicle without a judicial proceeding, or in which the borrower has voluntarily surrendered the motor vehicle.
  - 1.5.3 In addition to all other information required by this regulation, these records shall include, as applicable:
    - 1.5.3.1 the unpaid balance immediately prior to either the judicial or arbitration proceeding, the licensee's non-judicial repossession of the motor vehicle, or the borrower's voluntary surrender of the motor vehicle;
    - 1.5.3.2 the vehicle identification number (VIN);
    - 1.5.3.3 the date the licensee acquired possession of the motor vehicle;
    - 1.5.3.4 a description of the motor vehicle;
    - 1.5.3.5 copies of all documents filed with, or issued by, the court or arbitrator;
    - 1.5.3.6 the date and terms of any judgment, arbitration decision, dismissal or settlement;
    - 1.5.3.7 the date of the sale of the motor vehicle;

- 1.5.3.8 the terms of the sale of the motor vehicle, including copies of all bids or other offers received together with the purchaser's name and address, price and cash or financing terms;
- 1.5.3.9 evidence that the borrower was notified of the time and place of the sale;
- 1.5.3.10 evidence of any amount paid to a third party; and
- 1.5.3.11 any other documents sent or received by the licensee pursuant to 6 Del.C. Article 9. Secured Transactions, Part 6. Default.

## 1.6 Credit Insurance Claims Record

- 1.6.1 The office shall maintain a credit insurance claims record containing the following information on all claims submitted by borrowers to the insurer:
  - 1.6.1.1 the claim date;
  - 1.6.1.2 the claim amount;
  - 1.6.1.3 the date and amount of the payment by the insurer, or the date of rejection and the reason for the rejection;
  - 1.6.1.4 the borrower's name and address;
  - 1.6.1.5 the file identification number;
  - 1.6.1.6 the reason for the claim (i.e. death, illness, etc.);
  - 1.6.1.7 proof of death, if applicable;
  - 1.6.1.8 a copy of any check issued by the insurance company for benefit payments or any other record of such disbursements by the insurance company; and
  - 1.6.1.9 a copy of any check issued by the insurance company to return unearned insurance premiums that result from pre-payment of the loan or cancellation of the insurance, or any other record of such disbursements by the insurance company.

## 1.7 Advertising Record. The office shall maintain a record containing copies of all advertising materials used by the licensee:

- 1.7.1 for printed advertising, this record shall contain a copy of each advertisement indicating its type (print publication, billboard, direct mail, etc.) a listing of the publications in which printed, billboard locations by zip code, number of mailings by zip code, and the dates of publication, display or mailing;
- 1.7.2 for radio advertising, this record shall contain a transcript of each advertisement, a listing of the stations on which each advertisement was broadcast, and for each station, the date of each broadcast;
- 1.7.3 for television advertising, this record shall contain a transcript of the advertisement with visual depictions of each scene, a list of the stations on which each advertisement was broadcast, and for each station the date of each broadcast;
- 1.7.4 for internet advertising, this record shall contain a copy of ~~each screen on which the advertising appeared, an identification of the website and web address of each screen, and the dates on which the screen appeared at that web location; and the advertisement.~~
- 1.7.5 ~~for the licensee's own website, this record shall contain a complete copy of the website indicating the dates on which the licensee maintained that site. Whenever any screen on the site is changed, the record shall contain a new copy of the complete site and identify each screen that has been changed.~~

## 1.8 Additional Records. The office shall maintain any other records necessary to verify the licensee's compliance with 5 Del.C. Ch. 29, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.

## 2.0 Location, Format and Examination of Records

- 2.1 All records shall be made available to the Commissioner's staff when requested.
- 2.2 Records may be maintained at the licensed office itself or at any other suitable location if they can be available within a reasonable period of time upon request.
- 2.3 All records may be maintained by paper copy or in an electronic format.
- 2.4 All records shall be retained in accordance with the time periods specified in Regulation 101, Retention of Financial Institution Records.

## 3.0 Variations

The Commissioner may grant written approval for variations from this regulation to accommodate specific record keeping systems. Requests for such approvals must be in writing and provide sufficient information concerning the system to ensure that the requirements of this regulation are satisfied and that the records will be readily available when requested.

17 DE Reg. 994 (04/01/14)

18 DE Reg. 295 (10/01/14) (Prop.)