

DEPARTMENT OF STATE
OFFICE OF THE STATE BANK COMMISSIONER
Statutory Authority: 5 Delaware Code, Section 121(b) and 2235B(e)
(5 Del.C. §121(b) and 2235B(e))

FINAL

2210 Short-Term Consumer Loans

ORDER

IT IS HEREBY ORDERED, this 14th day of November 2012, that new Regulation 2210, "Short-Term Consumer Loans", is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 2210 is attached hereto and incorporated herein by reference. The effective date of Regulation 2210 is December 11, 2012. This Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapter 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. Notice of proposed new Regulation 2210 and its text was published in the October 1 issue of the Delaware *Register of Regulations*. The notice also was published in both *The News Journal* and the *Delaware State News* on September 12, 2012, posted on the State of Delaware's electronic Public Meeting Calendar, and mailed to all persons who had made timely written requests to the Office of the State Commissioner for advance notice of regulation-making proceedings. The notice included, among other things, a summary of the proposed new regulation and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 7, 2012. The notice also stated that the proposed new regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 7, 2012 at 10:00 a.m. in the third floor hearing room of the Carvel State Office Building, 820 North French Street, Wilmington Delaware, 19801.

2. One written comment was received prior to the hearing. This was submitted by State Representative Helene M. Keeley and co-signed by Joe L. Myer of NCALL Research, Inc., Paul F. Callisto, Jr. of West End Neighborhood House, Michelle A Taylor of the United Way of Delaware, Rashmi Rangan of DE-Community Reinvestment Action Council, James R. Thornton of the Claymont Community Center, and Ginny Marino of the YWCA of Delaware. The comment expressed qualified support of the regulation. It briefly summarized the new statute that the regulation was implementing, 78 **Del. Laws** Chapter 278, and indicated that the proposed regulation fairly balanced the issues that this law presented. The comment also stated that because of the statute's novel approach to payday lending, the reporting provisions of 5 **Del.C.** §2235C should be clearly and fully implemented to understand fully how payday loans are used in Delaware and also to identify potential circumventions of the law.

3. A public hearing was held on November 7, 2012 at 10:00 a.m. regarding proposed new Regulation 2210. The State Bank Commissioner, Deputy Bank Commissioner Francis S. Babiarz, Deputy Attorney General Frank Broujos, members of the public, and a court reporter attended the hearing. Six members of the public commented at the hearing.

a. Representative Helene Keeley read her comment letter into the hearing record and then noted that the new statute had passed the legislature overwhelmingly and was also supported by the Governor's Office.

b. Jon Geidel, Chief Operating Officer of Sure Advance, a Delaware licensed lender offering online payday loans nationwide, commented that because of the new statute, expansion plans for his business had been put on hold. He briefly described the history of his company and stated that it offered payday loans exclusively online. Because his company would not be able to import non-Delaware customers under the new law, it would not be able to expand and likely would contract. He added that only about 2% of this company's customers were from Delaware and they would still be able to receive payday loans' from non-Delaware licensed lenders. Mr. Geidel therefore requested that the proposed regulation be amended to permit small-dollar, short-term, unsecured loans to non-Delaware customers without the statutory restrictions.

c. Michael Beatty, president of Cash Cure, another Delaware licensed nationwide internet payday lender, commented that under the new statute, Delaware residents would still be able to receive payday loans from internet lenders not licensed in Delaware, and for that reason those borrowers would not receive the consumer protections provided them under current Delaware law. He also briefly explained how his company operated, and added that his company had hired employees previously laid off by other financial institutions. He also noted that only about 1% of his company's customers were Delaware residents. Mr. Beatty further stated that 11 of the approximately 60 Delaware licensed payday lenders had been surveyed and that these companies had 235 Delaware employees and paid approximately \$2.1 million in state taxes.

d. Jason Crook, Vice President of Operations for Government Employees Credit Center, a Delaware licensed payday lender, commented that the new statute would not protect Delaware borrowers since the legislation targeted only Delaware lenders. He stated that "bad actors" not regulated in Delaware would still lend to consumers in this state and thus have an unfair advantage over the "good actors" in the non-depository lending industry based in Delaware. He added that

the legislation represented an over regulation that would drive good lenders from Delaware leaving this state's consumers at risk to bad lenders. He explained that his company currently employed 32 people in Delaware and paid approximately \$500,000 in corporate, city and licensing fees, in addition to \$10,000 in philanthropic contributions. His company was a national operation with less than 2% its customers in Delaware. Mr. Crook concluded that the legislation would adversely affect business growth and that his company would reduce staff and cease Delaware operations.

e. David Swayze, representing the Delaware members of the Online Lenders Alliance commented that applying the new statute to Delaware online lenders would be impractical and unreasonable for the reasons given in the previous testimony. Such an application would cost Delaware both a significant number of well-paying jobs and jobs and a large amount of revenue with no countervailing benefit. In addition, doing so would also be inconsistent with the Financial Center Development Act, whose purpose was to facilitate the exportation of Delaware law. If the legislation were applied as proposed, Delaware licensed lenders would be burdened, and borrowers throughout the country would be disadvantaged. Mr. Swayze also stated that no members of the Delaware online lending industry were consulted about the legislation before it was introduced into the General Assembly, and that while the legislation was pending, discussions with legislative caucuses indicated the bill would not affect non-Delaware borrowers. The industry therefore mistakenly had not opposed the legislation in the Senate. Mr. Swayze concluded by explaining his belief that exemptions from the new law were permitted and requested that all loans non-Delaware borrowers should be exempted.

f. Greg Wilson from the Delaware Community Reinvestment Action Council commented that he supported Representative Keeley's comments. The new statute had broad support from the public and the non-profit community. The legislation was a bipartisan compromise that will benefit Delaware's economy because Delaware residents will have more money to spend when they do not have to pay high interest rates on payday loans. Mr. Wilson also stated that the database established by the statute was important to an understanding of the effect of payday loans in Delaware.

g. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner finds that no changes should be made to proposed Regulation 2210. 5 **Del.C.** §2235B(e) requires the State Bank Commissioner to adopt rules or regulations for the administration and enforcement of §2235B and proposed Regulation 2210 conforms to all of the specified requirements. In addition, the proposed new regulation properly applies and implements the provisions of 5 **Del.C.** §§2235A, 2235B and 2235C, as enacted by the General Assembly and as set forth in 78 **Del. Laws** Chapter 278.

5. Therefore, the State Bank Commissioner hereby adopts new Regulation 2210 as proposed.

Robert A. Glen, State Bank Commissioner

2210 Short-Term Consumer Loans

1.0 Application of Statute

- 1.1 5 Del.C. §§2235A, 2235B and 2235C and this regulation apply to all short-term consumer loans made in the State of Delaware or to any resident of this State by a licensee.
- 1.2 5 Del.C. §§2235A, 2235B and 2235C and this regulation do not apply to any short-term consumer loan that is not made in the State of Delaware or to a resident of this State.

2.0 Definitions

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

“Commissioner” means the State Bank Commissioner.

“Database” means the database established and maintained by the Commissioner pursuant to 5 **Del.C.** §2235B to verify requests from a licensee as to whether a potential borrower is eligible for a short-term consumer loan under 5 **Del.C.** § 2235A and to determine any other information a licensee may need in order to comply with 5 **Del.C.** Ch. 22 and this regulation.

“Licensee” means any person licensed under 5 **Del.C.** Ch.22.

“Right of rescission” means with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incurrence of any fee or other charges.

“Rollover” means with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

“Short-term consumer loan” means a loan of \$1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle. This term also includes a rollover and a refinancing.

“Workout agreement” means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. The workout agreement must provide for payments in

equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

3.0 Short-Term Consumer Loans

- 3.1 All licensees shall comply with 5 Del.C. Ch. 22, all regulations issued thereunder, and all other applicable State and federal statutes and regulations. In addition, all short-term consumer loans shall be subject to the following:
- 3.1.1 Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than five short-term consumer loans from all licensees in any twelve-month period. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of 5 Del.C. §2235A is a violation of Chapter 25 of Title 6 of the Delaware Code.
- 3.1.2 No licensee shall make more than four rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.
- 3.1.3 No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.
- 3.1.4 No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.
- 3.1.5 No licensee shall make a short-term consumer loan unless the application for the loan shall be written in both English and Spanish.
- 3.2 Nothing in this regulation prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed by 5 Del.C. §2235A and this regulation.
- 3.3 In addition to such other disclosure requirements as are imposed pursuant to other provisions of 5 Del.C. Ch. 22, Subch. III and the regulations in 5 DE Admin. Code Ch. 22, no licensee shall make a short-term consumer loan unless the application for the loan contains a written disclosure, conspicuously displayed, that:
- 3.3.1 The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;
- 3.3.2 Additional fees may accrue if the loan is rolled over; and
- 3.3.3 Credit counseling services are available to consumers who are experiencing financial problems.
- 3.4 Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."
- 3.5 A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of 5 Del.C. Ch. 22 and the regulations thereunder through any method including, but not limited to, mail, telephone, internet or any electronic means, including:
- 3.5.1 Offering, making, or assisting a borrower to obtain a loan in violation of 5 Del.C. §2235A and this regulation, or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.
- 3.5.2 Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of 5 Del.C. §2235A and this regulation.

4.0 Short-Term Consumer Loan Database

- 4.1 Prior to entering into a short-term consumer loan with a potential borrower, a licensee shall access the database to determine:
- 4.1.1 Whether a potential borrower has an outstanding short-term consumer loan;
- 4.1.2 The number of short-term consumer loans the borrower has outstanding;
- 4.1.3 Whether the borrower is eligible for a short-term consumer loan under 5 Del.C. §2235A and this regulation; and
- 4.1.4 Any other information necessary for the licensee to comply with 5 Del.C. Ch. 22.
- 4.2 Immediately upon entering into a short-term consumer loan with a borrower, a licensee shall accurately submit to the database in the appropriate format:

- 4.2.1 The borrower's name, address, social security or employment authorization number, and gross monthly income;
 - 4.2.2 The amount of the transaction;
 - 4.2.3 The annual percentage rate of the transaction as computed under the federal Truth in Lending Act;
 - 4.2.4 The date of the transaction; and
 - 4.2.5 The anticipated date that the transaction will be paid off.

4.3 A licensee shall promptly submit to the database:

 - 4.3.1 The date that a short-term consumer loan is paid in full or is otherwise satisfied; or
 - 4.3.2 The date that a short-term consumer loan defaults and the amount of the default.

4.4 A licensee shall promptly correct any incorrect data entered into the database that was previously submitted.

4.5 A licensee must continue to enter and update all required information for any short-term consumer loans subject to 5 Del.C. §2235A that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by 5 Del.C. Ch.22.

 - 4.5.1 Within ten business days after ceasing to make such loans, the licensee must submit a plan for continuing compliance with 5 Del.C. §2235B(d) to the Commissioner for approval.
 - 4.5.2 The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with 5 Del.C. §2235B(d).

4.6 All borrower identifying information shall be deleted from the database on a regular and routine basis twelve months after the borrower's short-term consumer loan is paid off or otherwise satisfied.

4.7 All data collected pursuant to 5 Del.C. §2235B and this regulation shall be used only as prescribed by 5 Del.C. Ch.22 or for research and reporting as authorized by the Commissioner.

5.0 Fees

- 5.1 In addition to the annual license fee required by 5 Del.C. §2203(b), each licensee making short-term consumer loans shall pay an annual high-cost loan license fee surcharge of \$1,500 for each licensed office.
 - 5.2 Each licensee making short-term consumer loans shall pay a database fee for each transaction that the licensee submits to the database.
 - 5.2.1 The database fee shall be paid directly to the operator of the database, as agent of the Commissioner.
 - 5.2.2 Licensees shall not charge customers for the database fee.
 - 5.3 The Commissioner shall establish the database fee as authorized by 5 Del.C. §2235B(e)(4).
 - 5.3.1 The database fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of 5 Del.C. §2235B.
 - 5.3.2 The Commissioner may revise the amount of the database fee as required from time to time based upon changes to those expenses.
 - 5.3.3 The Commissioner shall promptly notify all licensees in advance of any revisions to the amount of the database fee.

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