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Oklahoma Department of Consumer Credit

Oklahoma Administrative Code

Title 160

2007 Deferred Deposit Lender Rules

Chapters 1 – 3 – 5 - 70



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Title 160
2007 Deferred Deposit Lender Administrative Code
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TITLE 160. DEPARTMENT OF CONSUMER CREDIT

CHAPTER 1. ORGANIZATION

160:1-1-1. Purpose

The rules in this chapter provide the organizational framework for the Department of Consumer Credit.

160:1-1-1.1. Department of Consumer Credit

(a) The Department is composed of the Administrator, the Deputy Administrator and such employees as are required and provided for by law [14A:6-506, 6-507 and 6-510].

(b) The policy-making and governing authority of the Department is the Commission on Consumer Credit [14A:6-501]. The Commission schedules regular meetings monthly in Oklahoma City [14A:6-504]. The meetings are open to the public [25:303].

160:1-1-1.2. Duties of Administrator

(a) The Administrator, as the head of the Department, is charged with the duty of administering and enforcing all provisions of:

- (1) the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes;
- (2) the Oklahoma Rental-Purchase Act beginning at §1950 of Title 59 of the Oklahoma Statutes;
- (3) the Oklahoma Pawnshop Act beginning at §1501 of Title 59 of the Oklahoma Statutes;
- (4) the Precious Metal and Gem Dealer Licensing Act beginning at §1521 of Title 59 of the Oklahoma Statutes;
- (5) the Credit Services Organization Act beginning at §131 of Title 24 of the Oklahoma Statutes;
- (6) the Oklahoma Health Spa Act beginning at §2000 of Title 59 of the Oklahoma Statutes; ~~and~~;
- (7) the Mortgage Broker Licensure Act beginning at §2081 of Title 59 of the Oklahoma Statutes; and,
- (8) the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.

(b) When the Administrator is absent or unable to act for any reason, then the Deputy Administrator shall perform the duties of Administrator [14A:6-507].

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CHAPTER 3. PROCEDURE

160:3-1-1. Purpose

The rules in this chapter provide the procedural framework for the Department of Consumer Credit and provide the necessary channels through which the public can gain information about the Department and its functions.

160:3-1-1.1. Requests for information

(a) Requests for information may be made electronically, by telephone, by facsimile, by mail, or by personal appearance.

- (1) The Department's web page address is www.okdocc.state.ok.us.
- (2) The Department's telephone numbers are (405) 521-3653 and (800) 448-4904.
- (3) The Department's facsimile number is (405) 521-6740.
- (4) The Department's address is 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105.
- (5) The Department's regular business hours are 8:00 a.m. to 4:30 p.m.

(b) The Oklahoma Open Records Act beginning at §24A.1 of Title 51 of the Oklahoma Statutes sets forth the records that shall be open to any person for inspection, copying or mechanical reproduction.

(c) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service shall be provided upon payment of the appropriate fee.

160:3-1-1.2. Official actions

(a) **Official acts in writing and open to the public.** All official acts of the Administrator shall be evidenced by written record. All final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the functions of the Administrator shall be available for public inspection. Official action of the Administrator shall not be bound or prejudiced by any informal statement or opinion made by the Administrator or employees of the Administrator.

(b) **Official action to be taken only in real cases, controversies or issues.** Official actions shall only be taken on matters formally pending before the Administrator for determination, and then only if such matter be an actual case, controversy or issue.

(c) **Declaratory rulings.**

- (1) An interested person may file a petition for a declaratory ruling as to the applicability of any rule or order. The petition shall:
- (A) be in writing;
 - (B) refer to the rule or order involved;
 - (C) state the nature and purpose of the declaratory ruling sought;
 - (D) state the fact situation with respect to which the declaratory ruling is sought; and,
 - (E) list the name and address of the person requesting the ruling.

(2) The Administrator may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

(3) Official rulings may be made by and at the discretion of the Administrator as to the applicability of any rule or order. Generally, an official ruling will only be given if it is shown that an actual case, controversy or issue is in contemplation on the hypotheses presented and that unreasonable hardship, loss or delay would result if the matter were not determined in advance.

(4) The declaratory ruling requested or refusal to issue such ruling shall be issued within thirty (30) workdays from receipt of the final petition, and shall be subject to review in accordance with the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes [75:307].

(d) **Rights not limited.** This section shall not be interpreted as limiting the right of the Administrator to cause matters to become formally pending and to perform any function or duty prescribed by law or rule.

160:3-1-1.3. Petitions for rulemaking

(a) An interested person may file a petition requesting the promulgation, amendment or repeal of a rule [75:305]. The petition shall:

- (1) be in writing;
- (2) refer to the statutory section that authorizes the rulemaking action requested;
- (3) refer to the statutory section and the rule involved;
- (4) state the exact language requested;
- (5) state the purpose of the rule sought;
- (6) state a fact situation to which the rule sought will apply; and,
- (7) list the name and address of the person requesting the rule.

(b) The Administrator may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

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(c) The petition shall be deemed to have been denied if rulemaking proceedings have not been initiated within thirty (30) calendar days from receipt of a final petition [75:305].

160:3-1-1.4. Complaint form

The complaint form is used by the Department to gather information regarding grievances. This information is used to contact licensees to seek resolutions. The information obtained in the course of any complaint shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state.

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CHAPTER 5. FEES

160:5-1-1. Purpose

The rules in this chapter set forth the fees charged by the Department of Consumer Credit relating to the various entities that are regulated by the Department and to open records.

160:5-1-2. Fees

Fees charged by the Department are as follows:

(1) Supervised Lenders

- (A) \$150.00 application fee for license, except that for any license granted after June 30, the fee shall be \$75.00 [14A:3-503(1)]
- (B) \$225.00 investigation fee for license [14A:3-503(1)]
- (C) \$150.00 annual renewal fee [14A:3-504(5)] and a \$50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]
- (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars (\$650.00) for each licensed office in any calendar year. [14A:3-506(1)]
- (E) \$25.00 fee for a duplicate or amended license [14A:3-504(5)]
- (F) \$25.00 fee for a returned check [14A:3-506(10)]
- (G) \$25.00 late fee for any annual report received after May 1 [14A:3-506(5)]
- (H) All fees are non-refundable unless the Code or these rules require otherwise.

(2) Notifications

- (A) \$20.00 annual filing fee [14A:6-203(1)]
- (B) sellers, lessors, lenders and assignees shall pay the \$20.00 annual filing fee plus \$10.00 per \$100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]
- (C) All fees are non-refundable unless the Code or these rules require otherwise.

(3) Pawnbrokers

- (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1505(A)]
- (B) \$125.00 investigation fee for license [59:1505(A)]
- (C) \$100.00 annual renewal fee [59:1506(C)]
- (D) \$200.00 annual examination fee [59:1508(A)]
- (E) All fees are non-refundable unless the Act or these rules require otherwise.

(4) Rent-to-Own Businesses

- (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1953]
- (B) \$100.00 annual renewal fee [59:1953]
- (C) \$200.00 annual examination fee [59:1955(B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.

(5) Health Spas

- (A) \$200.00 initial registration fee [59:2002(A)(4)]; this fee shall be applied without regard to the date of filing.
- (B) \$200.00 annual renewal fee [59:2002(A)(4)]
- (C) All fees are non-refundable unless the Act or these rules require otherwise.

(6) Credit Services Organizations

- (A) \$100.00 application fee for license [24:143(A)]; this fee shall be applied without regard to the date of filing.
- (B) \$100.00 investigation fee for license [24:143(A)]
- (C) \$100.00 annual renewal fee [24:143(A)]
- (D) \$200.00 annual examination fee [24:146(A)]
- (E) All fees are non-refundable unless the Act or these rules require otherwise.

(7) Precious Metals and Gem Dealers

- (A) \$50.00 application fee for license for dealers, \$25.00 application fee for license for each employee [59:1525(A) and (B)]; these fees shall be applied without regard to the date of filing.
- (B) \$50.00 investigation fee for license [59:1525(A)]
- (C) \$50.00 annual renewal fee for dealers, \$25.00 annual renewal fee for each employee [59:1526(A) and (B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.

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(8) Mortgage Brokers

- (A) \$750.00 application fee for a mortgage broker license; this fee shall be applied without regard to the date of filing [59:2085(A)(2)]
- (B) \$100.00 initial license fee for a mortgage broker license [59:2085(I)(1)]; this fee shall be applied without regard to the date of filing.
- (C) \$100.00 annual renewal fee for a mortgage broker license [59:2085(I)(1)]
- (D) \$25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]
- (E) \$50.00 annual license fee for a branch office license [59:2085(I)(2)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.
- (F) \$50.00 inactive status fee for a mortgage broker license [59:2085(I)(3)]; this fee shall be paid for each year of inactive status [59:2085(E)]
- (G) Reactivation fees for a mortgage broker license [59:2085(F)]
 - (i) If a mortgage broker license has been inactive for a licensing year, then the reactivation fee is \$100.00.
 - (ii) If a mortgage broker license reactivation application is filed on or before June 30 of an inactive license year, then the reactivation fee is \$100.00.
 - (iii) If a mortgage broker license reactivation application is filed after June 30 of an inactive license year, then the reactivation fee is \$50.00.
- (H) \$10.00 change of address fee [59:2085(H) and (I)(4)]
- (I) \$50.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.
- (J) \$50.00 annual renewal fee for a mortgage loan originator license [59:2085(I)(5)]
- (K) \$10.00 change of sponsor fee [59:2085(I)(6)]
- (L) \$150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]
- (M) Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]
- (N) All fees are non-refundable unless the Act or these rules require otherwise.

(9) Deferred Deposit Lenders

- (A) \$250.00 application fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (B) \$500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (C) \$250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]
- (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]
- (E) \$25.00 late fee for any annual report received after May 1 [59:3114(F)]
- (F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]

(10) Other

- (A) \$0.25 fee per page for copies [51:24A.5(3)]
- (B) \$1.00 fee per copied page for a certified copy [51:24A.5(3)]
- (C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)]

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CHAPTER 70. DEFERRED DEPOSIT LENDERS

SUBCHAPTER 1. GENERAL PROVISIONS

160:70-1-1. Purpose

The rules in this chapter provide regulations relating to the licensure of deferred deposit lenders.

160:70-1-2. Severability

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

160:70-1-3. Definitions

Except as otherwise specifically defined in this section, the definitions set forth in the Act are incorporated herein and made a part hereof. The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.

"**APA**" means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

"**Business Day**" means a day on which a deferred deposit lender's office is open to the public for carrying on substantially all of its business functions.

"**COMMUNICATION**" means the conveying of information regarding a deferred deposit loan directly or indirectly to any person through any medium.

"**Days**" mean calendar days. In computing any period of time for communications between a licensee and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the deferred deposit lender, the Department or the office of the court clerk is closed.

"**Debt**" means any obligation or alleged obligation of a debtor to pay money arising out of a deferred deposit loan, whether or not such obligation has been reduced to judgement.

"**Department**" means the Oklahoma State Department of Consumer Credit.

"**Location Information**" means a debtor's place of abode and his telephone number at such place, or his place of employment.

SUBCHAPTER 3. LICENSING

160:70-3-1. Licensure forms

(a) Application.

(1) The deferred deposit lender license application shall be completed by the person seeking a deferred deposit lender license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted.

(3) The Administrator shall grant or deny a license application within ninety (90) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator.

(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a deferred deposit lender's authority to engage in deferred deposit loans within Oklahoma. No other license issued by the Administrator authorizes a person to engage in deferred deposit loans within Oklahoma [59:3103].

(c) **Annual report.** Annual reports shall be filed by all deferred deposit lenders and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [59:3114(F)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The deferred deposit lender license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

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(e) **Delinquency notice.** If the license is not renewed, a delinquency notice may be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid.

160:70-3-2. Investigations for licensure

A thorough investigation shall be conducted of each applicant, and applicants shall provide such additional information as may be requested from the applicant for that purpose. In addition, the Administrator may consult outside sources, including law enforcement agencies, and may require the applicant's consent to release such other relevant information as the Administrator may deem necessary to determine financial responsibility, character, experience and general fitness of the applicant [59:3113(A)(2)]. It shall be within the discretion of the Administrator to determine the fitness of an applicant, provided that such discretion is not arbitrary or capricious and is, or will be, applied uniformly to all similarly situated applicants.

160:70-3-3. License denials

(a) **Denial notice.** The Administrator shall notify the applicant of the denial of a license application in writing stating the reasons for the denial [59:3113(C)]. The notice shall be sent by certified mail with return receipt requested or be delivered in person.

(b) **Hearing request.** The applicant may make a written request for a hearing on the application within thirty (30) days of receipt of the denial notice.

(c) **Hearing notice.**

(1) If the applicant makes a timely request for a hearing, a hearing shall be held within sixty (60) days of receipt of the request. However, the applicant shall be given twenty (20) days notice of the hearing in writing.

(2) The notice shall:

- (A) state the time, place and nature of the hearing;
- (B) state the legal authority and jurisdiction for the hearing;
- (C) refer to the statutory sections and rules involved; and
- (D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(d) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(e) **Order.**

(1) The Administrator shall issue an order granting or denying the license application within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the applicant and the Administrator.

(2) The order shall:

- (A) be in writing;
- (B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
- (C) state conclusions of law; and
- (D) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:70-3-4. Moving or closing a location

(a) At least thirty (30) days before the address of a licensed location is changed, the licensee shall notify the Administrator in writing [59:3112(D)]. The licensee shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. In the change notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a licensed location is to be closed, the licensee shall notify the Administrator in writing. The licensee shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

160:70-3-5. Change of ownership

(a) At least thirty (30) days before any proposed change of ownership of any licensed deferred deposit lender, the licensed owner shall notify the Administrator of the intent to change ownership, and the proposed new owner shall apply for a license. The Administrator shall notify the licensed owner and the proposed new owner when the new owner's license application has been granted. After the licensed owner surrenders its license and transfers the ownership interest, a license shall be issued to the new owner.

(b) If the change of ownership changes the payee on loan obligations, then the licensed owner shall notify the debtors of the change of ownership within thirty (30) days following the change of ownership. The notice shall include the business telephone number and mailing and business addresses of the new owner. The licensed owner shall certify to the Administrator the date the notice was mailed and shall attach a copy of the notice with a list of the names and addresses of the debtors notified.

(c) For purposes of this section, "change of ownership" means a change of an individual owner; a change of partners; a change of the service agent or a change of the principal parties in interest in a corporation.

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160:70-3-6. Ownership of more than one location

- (a) Each location where deferred deposit loans are made shall be licensed [59:3112(A)].
- (b) For purposes of this section, "locations where deferred deposit loans are made" shall include any location at which:
 - (1) a deferred deposit loan application is provided, taken or completed in person, or
 - (2) making, negotiating or offering to make or negotiate a deferred deposit loan occurs.
- (c) For purposes of this section, the term "locations where deferred deposit loans are made" shall not include administrative offices at which only bookkeeping, billing or accounting duties are performed for separate deferred deposit loan locations. [59:3112(C)]

SUBCHAPTER 5. DISCLOSURES

160:70-5-1. Rescission

- (a) A debtor has the right to rescind a deferred deposit loan until 5 p.m. on the next business day following the day the debtor signs the deferred deposit loan agreement [59:3105].
- (b) No right to rescind period shall begin to run until all disclosures have been properly provided to the debtor.

160:70-5-2. Notice of charges, terms and effective annual percentage rate

- (a) The notice shall be posted on the front exterior at each licensed location and on each counter, desk, table or other station where potential debtors are processed. [59:3104(F)]
- (b) Each notice shall be at least legal-size (8.5 inches by 14 inches) with black characters on a white background. The characters shall be legible and at least twenty-point type with the effective annual percentage rates and finance charges in bold type.
- (c) The front exterior notice shall be posted so that it is readable from outside of the licensed location.
- (d) Each notice shall be in plain view so that the whole notice is readable by potential debtors at all times and not obstructed by any other object or signage.

SUBCHAPTER 7. RECORDS

160:70-7-1. Records and changes

- (a) Each licensee shall preserve and make available such books and records related to each of its loans for four (4) years from the date of the loan, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later [59:3114(E)]. The records shall be maintained for such time periods whether the deferred deposit lender is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand or agree in writing to pay for the Department to examine the records at the place where they are maintained, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location. [59:3115(B)]
- (b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted to the Department within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

160:70-7-2. Examinations

- (a) **Initiation.** The Administrator, or duly appointed representatives, shall conduct an examination of each licensee at least annually, and at such other times as deemed necessary [59:3114(A)].
- (b) **Procedure.** Each licensee shall ensure that all records are promptly and reasonably available to be examined and copied [59:3114(A)].
- (c) **Confidentiality.** The information obtained in the course of any examination shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state [59:3114(A)].
- (d) **Noncompliance.** In case of failure to comply with the Administrator's examination processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator [59:3114(A)].
- (e) **Violations.** If the examination finds any violations of the Act or these rules, the Administrator may initiate any authorized action.
- (f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

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SUBCHAPTER 9. ENFORCEMENT

160:70-9-1. Investigative proceedings

- (a) **Initiation.** Investigations and inquiries are originated upon request or complaint of the public or by the Administrator upon the Administrator's motion. The request or complaint shall be in writing, signed by the initiator and shall contain a statement setting forth the alleged violations of law and the name and address of the party or parties at issue in the complaint. No forms or formal procedures are required in making requests or complaints. The initiator is not regarded as a party since the Administrator acts only in the public interest. The Administrator shall not take action when the alleged violation of law is merely a matter of private controversy and does not tend to adversely affect the public.
- (b) **Procedure.** The Administrator encourages voluntary cooperation in investigations. The Administrator may invoke any or all of the compulsory processes authorized by law, including subpoenas and depositions. The Administrator may issue a notice to grant access to, for examination and copying, records of any party being investigated, and may require a party to file a report or to submit answers in writing to specific questions relating to any matter under investigation. Inquiries and investigations are conducted by representatives designated and duly authorized to exercise and perform the duties of their office in accordance with the laws of Oklahoma and the regulations of the Administrator, including the administration of oaths and affirmations, in any matter under investigation by the Administrator. Any party under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation. [59:3114(B) and 3115(A)]
- (c) **Confidentiality.** The information obtained in the course of any investigation shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state. [59:3115(D)]
- (d) **Noncompliance.** In case of failure to comply with the Administrator's investigative processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator.
- (e) **Violations.** If the investigation finds any violations of the Act or these rules, the Administrator may initiate any authorized action.
- (f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

160:70-9-2. Individual proceedings

- (a) **Allegations notice.** The Administrator shall notify the licensee of facts or conduct that warrant the intended action, and give the licensee an opportunity to show compliance with all lawful requirements for the retention of the license [75:314(C)(1)].
- (b) **Violations.** Where the facts indicate that the licensee has not complied with all lawful requirements for the retention of the license, the Administrator may initiate any authorized action.
- (c) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford licensees who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.
- (d) **Hearing notice.**
- (1) If the matter is to be set for hearing, the licensee shall be given twenty (20) days notice in writing [59:3115(F)].
 - (2) The notice shall:
 - (A) state the time, place and nature of the hearing;
 - (B) state the legal authority and jurisdiction for the hearing;
 - (C) refer to the statutory sections and rules involved; and
 - (D) state the matters asserted briefly and plainly [75:309(B)(1) - (4) and 59:3115(F)].
- (e) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].
- (f) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.
- (g) **Order.**
- (1) The Administrator shall issue an order within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the licensee and the Administrator.
 - (2) The order shall:
 - (A) be in writing;
 - (B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
 - (C) state conclusions of law;

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(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H), 312 and 59:3115(F)].

(h) **Impair.** A suspension or revocation shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor [59:3115(H)].

160:70-9-3. Hearing procedure - emergency actions

(a) Hearing notice.

(1) If the public health, safety, or welfare imperatively requires emergency action, such action, including the suspension of a license instantor or a cease and desist instantor, may be ordered pending the final outcome of proceedings instituted by the Administrator [75:314(C)(2) and 314.1]. In such cases, the Administrator shall notify the party of such action by certified mail with return receipt requested or personal delivery, and shall include in such notice an order of hearing. The hearing shall be held within ten (10) days of the notice unless postponed by written agreement between the party and the Administrator.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(b) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(c) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(d) Order.

(1) The Administrator shall issue an order within thirty (30) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:70-9-4. Circumvention prohibited

Whenever a licensee has an administrative action taken against a license, the Administrator may deny the licensee's request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

160:70-9-5. Review of an order

(a) Rehearing, reopening or reconsideration.

(1) Application.

(A) Any party aggrieved by a final order may apply for a rehearing, reopening or reconsideration within ten (10) days from the date of the order [75:317(A)].

(B) The application shall be in writing and assert a statutory ground for a rehearing, reopening or reconsideration.

(C) The statutory grounds are:

(i) newly discovered or newly available evidence, relevant to the issues;

(ii) need for additional evidence adequately to develop the facts essential to proper decision;

(iii) probable error committed by the Department in the proceeding or in the decision such as would be ground for reversal on judicial review of the order;

(iv) need for further consideration of the issues and the evidence in the public interest; or

(v) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter [75:317(A)(1) - (5)].

(2) Application order.

(A) The Administrator shall issue an order granting or denying the rehearing, reopening or reconsideration within thirty (30) days from receipt of the application unless the period is extended by written agreement between the party and the Administrator.

(B) If the application is granted, the order shall set forth the grounds that justify it [75:317(B)].

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(3) Hearing.

(A) If the rehearing, reopening or reconsideration is granted, the hearing shall be limited to the ground or grounds upon which it was ordered [75:317(D)].

(B) All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(4) Rehearing order.

(A) The Administrator shall issue an order from the rehearing, reopening or reconsideration within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(B) The order shall:

(i) be in writing;

(ii) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(iii) state conclusions of law;

(iv) state the effective date; and

(v) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(5) **Tolling.** The period for judicial review shall run from the day the party is notified of the final disposition of the application if the application was filed timely [75:317(E)].

(6) **Prerequisite.** An application shall not be a prerequisite to secure judicial review [75:318(A)(3)].

(b) District Court.

(1) Petition.

(A) Any party aggrieved by a final order may file a petition in the district court of the party's resident county or the situs county of the property interest within thirty (30) days from the day the party is notified of the order [75:318(B)(2)].

(B) The petition shall be served upon the Department and all other parties of record, and proof of service shall be filed in the court within ten (10) days after the petition is filed [75:318(C)].

(2) **Stay.** The filing of a proceeding for review shall not automatically stay the final order, but the Department may stay the order or the court may or shall impose a stay in accordance with the APA [75:319(1)].

(3) **Record.** The Department shall transmit the record of its proceeding to the court within thirty (30) days after the service of the petition unless the court has granted an extension [75:320].

(4) **Review scope.** The review shall be confined to the record and done by the court without a jury [75:321].

(5) **Court order.** The court may affirm, set aside, modify, reverse or remand the agency order in accordance with the APA [75:322], or may grant any temporary relief or restraining order deemed just [59:3115(L)(2)(a)].

(c) **Supreme Court.** Any party aggrieved by a final judgment of a district court may appeal to the Supreme Court in the manner and time provided in civil actions [75:323].

160:70-9-6. Civil and criminal actions

This chapter shall not be interpreted as limiting the right of the Administrator to seek civil remedies or make criminal referrals for any violation of the provisions of the Act or these rules.

SUBCHAPTER 11. COLLECTION PRACTICES

160:70-11-1. Professionally, fairly and lawfully

All collection practices by a licensee or persons acting in the licensee's behalf shall be conducted professionally, fairly and lawfully.

160:70-11-2. Acquisition of location information

A licensee may communicate with any person other than debtor for the purpose of acquiring location information about debtor if:

(1) licensee identifies himself, states that he is confirming or correcting location information concerning debtor, and, only if expressly requested, identifies his business;

(2) licensee does not state that debtor owes any debt;

(3) Licensee does not communicate with any person more than once unless requested to do so by such person or unless licensee reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) licensee does not communicate by post card;

(5) licensee does not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the communication relates to the collection of a debt; and

(6) after licensee knows debtor is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within five (5) business days to communication from licensee.

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160:70-11-3. Communication in connection with debt collection

(a) **Communication with the debtor.** Without the prior written consent of debtor given directly to licensee or the express permission of a court of competent jurisdiction, licensee may not communicate with debtor in connection with the collection of a debt:

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to debtor. It shall be considered an unusual time to communicate with debtor before debtor's due date to remind debtor or the upcoming due date, without debtor's express written authorization, under separate signature indicating no, debtor does not desire to be contacted, or yes, debtor desires to be contacted and the phone numbers, electronic mail addresses or physical mail addresses licensee may use to contact debtor. In the absence of knowledge of circumstances to the contrary, licensee shall assume that the convenient time for communicating with debtor is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at debtor's location;

(2) if licensee knows debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within five (5) business days to a communication from licensee or unless the attorney consents to direct communication with debtor; or

(3) at debtor's place of employment if licensee knows or has reason to know that debtor's employer prohibits debtor from receiving such communication.

(b) **Communication with third parties.** Except as provided in 160:70-11-2, without the prior written consent of debtor given directly to licensee, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, licensee may not communicate, in connection with the collection of a debt, with any person other than debtor, his attorney, a consumer reporting agency if otherwise permitted by law or licensee's attorney.

(c) **Ceasing communication.** If debtor notifies licensee that debtor refuses to pay a debt or that debtor wishes licensee to cease further communication with debtor, licensee shall not communicate further with debtor with respect to such debt, except:

(1) to advise debtor that licensee's further efforts are being terminated;

(2) to notify debtor that licensee may invoke specified remedies which are ordinarily invoked by licensee; or

(3) where applicable, to notify debtor that licensee intends to invoke a specified remedy.

(d) **Debtor defined.** For the purpose of this rule, debtor includes the debtor's spouse, parent (if debtor is a minor), guardian, executor or administrator.

160:70-11-4. Harassment or abuse

A licensee may not engage in any conduct the nature consequence of which is to harass, oppress or abuse and person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

(2) The use of obscene or profane language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of debtors who allegedly refuse to pay debts, except to a consumer reporting agency.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy,

abuse or harass any person at the called number.

(6) Except as provided in 160:70-11-2, the placement of telephone calls without meaningful disclosure of the caller's identity.

160:70-11-5. False or misleading information

A licensee may not use any false, deceptive or misleading representations or means in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The false representation or implication licensee is vouched for, bonded by or affiliated with the United States, including the use of any badge, uniform or facsimile thereof.

(2) The false representation of:

(A) the character, amount or legal status of a debt: or

(B) any services rendered or compensation which may be lawfully received by licensee for the collection of a debt.

(3) The false representation or implication that any person is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person unless such action is lawful and licensee intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause debtor to:

(A) lose any claim or defense to payment of the debt: or

(B) become subject to any practice prohibited by this subchapter.

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- (7) The false representation or implication that debtor committed any crime or other conduct in order to disgrace debtor.
- (8) Communication or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any State, or which creates a false impression as to its source, authorization or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning debtor.
- (11) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (12) The false representation or implication that documents are legal process.
- (13) The use of any business, company or organization name other than the true name of licensee's business, company or organization.
- (14) The false representation or implication that documents are not legal process forms or do not require action by debtor.
- (15) The false representation or implication that licensee operates or is employed by a consumer reporting agency.
- (16) Designing, compiling, and furnishing any form knowing that such form would be used to create the false belief in debtor that a person other than licensee is participating in the collection of or in an attempt to collect a debt such debtor allegedly owes such licensee, when in fact such person is not so participating.

160:70-11-6. Unfair practices

A licensee may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

- (1) The collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) Presenting an instrument for payment more than two (2) times if it causes the debtor to be charged any additional fees.
- (3) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (4) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
- (5) Communicating with debtor regarding a debt by post card.
- (6) Using any language or symbol, other than licensee's address, on any envelope when communicating with debtor by use of the mails or by telegram, except that licensee may use his business name if such name does not indicate that the communication relates to the collection of a debt.

160:70-11-7. Multiple debts

If debtor owes multiple debts and makes any single payment to licensee with respect to such debts, licensee shall apply such payment in accordance with debtor's directions.

160:70-11-8. Administrative enforcement

- (a) A violation of any requirement imposed under this subchapter may be deemed to be a demonstration of incompetency or untrustworthiness to engage in the business of making deferred deposit loans.
- (b) The Administrator may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any authorized action.