

## **Title 5: Banking and Consumer Finance**

### **Part 3: Consumer Finance Activities**

#### **Part 3 Chapter 1: Small Loan Regulatory Law and Small Loan Privilege Tax Law:**

*Rule 1.1 Purpose - Amendment of Prior Rules-* These Regulations are promulgated pursuant to Miss. Code Ann. §75-67-129 of the Small Loan Regulatory Law, Miss. Code Ann. §75-67-243 of the Small Loan Privilege Tax Law, and other applicable statutes to establish administrative procedures required by the Department of Banking and Consumer Finance and shall be applicable to Licensees under the Small Loan Privilege Tax Law and to transactions covered by the Small Loan Regulatory Law. These Regulations are not intended to create any private right, remedy, or cause of action in favor of any borrower or against any Licensee, nor are these Regulations intended to apply to any business transaction of a Licensee not covered by Mississippi Law. While these Regulations are intended to and do supersede all prior Rules, Regulations and Guidelines of the Department of Banking and Consumer Finance, these Regulations are intended only to clarify the existing law (both statutory and regulatory) governing the small loan business. These Regulations do not create any new or substantive rights in favor of any borrower or against any Licensee, regardless of whether the loan was made prior to or after the effective date of these Regulations.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.2 Definitions.* The following words and phrases, when used in these Regulations or in the related statutes shall, for the purposes of these Regulations, have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

1. “Actuarial Method” shall have the same meaning as it is used in the Federal Truth-In-Lending Act in determining the annual percentage rate.
2. “Commissioner” means the Commissioner of the Department of Banking and Consumer Finance of the State of Mississippi.
3. “Department” means the Department of Banking and Consumer Finance of the State of Mississippi.
4. “Licensee” means any person holding a license from the Department of Banking and Consumer Finance to conduct business under the Small Loan Privilege Tax Law and the Small Loan Regulatory Law.
5. “Loan” means a loan that is made to individuals primarily for personal, family or household purposes. Licensing under the Mississippi Small Loan Regulatory Law and Small Loan Privilege Tax Law does not apply to persons engaged in the business of extending credit to borrowers primarily for business or commercial purposes.
6. “Pre-computed Loan” means a loan on which the finance charge is calculated for the entire term of the loan and added to the State Amount Financed to determine the total amount of payments.
7. “State Amount Financed” means the amount financed as defined by the Federal Truth-In-

Lending Act and Regulation Z, plus the closing fee authorized by state law, including all charges in the amount of credit extended which are not a part of the finance charge, the total being the amount of credit which will be paid to the borrower or to another person on his behalf. The following are a part of the State Amount Financed and not a part of the finance charge: (i) actual cost of authorized insurance premiums (ii) closing costs excluded from the definition of finance charge by State law; and (iii) any reasonable fee paid to an attorney for the investigation of a title.

8. "State Contract Rate" means the annual percentage rate of the finance charge determined by the actuarial method for the term of the loan, calculated on the State Amount Financed, as defined herein.
9. "State Finance Charge" represents an amount paid by the debtor for receiving a loan that is calculated by using the State Contract Rate, the term of the note and the State Amount Financed.
10. "Term of Loan" means the period of time from the date of the loan through the scheduled date of the final payment.
11. "The Rule of 78's" is a formula used for calculating earnings and rebates for pre-computed loans.
12. "Total Amount of Note," "Total Amount of Loan," "Total Payments" and "Total Amount Repayable" each mean the total sum of payments to be paid by the borrower to the lender according to the schedule of payments.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

### *Rule 1.3 Insurance: General*

1. All insurance policies issued by or through a Licensee or an agent of a Licensee shall be written only through insurance companies authorized to do business in the State of Mississippi and only through an insurance agent or broker licensed by the State of Mississippi. Only licensed agents or brokers shall solicit sales of insurance coverage. The insurance license of the agent or broker shall be current and conspicuously posted in the Licensee's office.
2. A Licensee shall not require additional insurance from or procure additional insurance for the borrower if the borrower furnishes to the lender evidence of insurance sufficient to protect the full amount of the lender's lien. Such evidence shall indicate that the premium has been paid and the certificate of insurance shall name the Licensee as loss payee.
3. A Licensee shall accept properly endorsed pre-existing insurance policies owned by the borrower at the time of the making of a loan.
4. Each Licensee shall maintain in its licensed office a copy of all insurance policies issued. Records for all policies issued by or through the Licensee or an agent of Licensee, shall indicate the name and address of the insurance company and the insured borrower, name of second beneficiary, type of insurance, premium amount, amount of coverage, term of policy, and any property covered by such policy.
5. Each Licensee shall maintain a file in its licensed office containing all pertinent information regarding claims made under any insurance sold with proof of payment made to or on behalf of the borrower or designated beneficiary, or a signed receipt from the borrower or

- beneficiary acknowledging receipt of payment.
6. A copy of all documentation including the initial claim worksheet and all correspondence pertaining to an insurance claim shall be maintained for twenty-four (24) months after the date of the final transaction.
  7. An original copy of the policy or certificate shall be given to the borrower and a copy shall be retained in the borrower's loan file.
  8. A licensee shall maintain documentation of all insurance rates approved by the Mississippi Department of Insurance.
  9. In the event of a loss, the Licensee shall, upon being notified by the borrower of such loss, promptly report such fact to the insurance company and when requested by the borrower, advise and assist the borrower in completing the necessary forms to report to the insurance company or its designated claim agent or representative. The Licensee shall exercise reasonable efforts to insure that such claim is processed without undue delay in accordance with the terms of the policy.
  10. In the event of the payment of a loan in full one or more months prior to the maturity date, whether by cash, new loan renewal, or refinancing, the insurance policy(s) or certificates shall be cancelled and the borrowers shall be entitled to a refund of the unearned portion (in excess of \$2.00) of the premium on any property insurance written through the Licensee. Such refund shall be calculated under the Rule of 78's, unless the policy or certificate calls for a greater refund amount. Calculations shall be based from the date of the loan to the date the loan is paid-off. In calculating a Rule of 78's refund, one (1) day shall constitute a full month earned.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.4 Insurance: Property* - Property insurance may be written in connection with any loan on which real or personal property is taken as collateral on the following terms and conditions:

1. Personal property insurance shall be written for an amount not to exceed the lesser of the total sum of payments to be paid by the borrower to the lender according to the schedule of payments or the value of the personal property. The Licensee may rely on borrower's representation of the value of personal property; however, if a motor vehicle is part of the collateral for the loan, its value may be established by a nationally recognized evaluation guide. The borrower shall furnish a list of collateral indicating the value of each item.
2. The original term of insurance must not exceed the contractual term on the loan. If the term and loan amount of insurance is less than the term and amount of the loan, the term and amount of the insurance must be shown on the contract and on the ledger card and/or computer generated copy.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.5 Insurance Claims* A Licensee shall maintain the following information and documents for all insurance claims:

1. A Fire Marshal's report or dated published public notification of the fire or loss and a list of collateral covered by insurance with an individual valuation of each item pledged at the time of the loan closing for all claims on property insurance
2. A copy of the death certificate or a dated published public notification of the death for all claims on credit life insurance
3. An original paid check issued by the Licensee to the borrower or beneficiary and/or a copy of the check issued by the insurance company to the borrower or beneficiary indicating proper endorsements or a signed receipt from the borrower or beneficiary for benefits paid by the Licensee and/or insurance company indicating the total amount of the payment or refund
4. A copy of all insurance policies written in connection with a loan and a notification or certificate of cancellation of the policy
5. Proof of refunds of any unearned premiums as of the date of the loss; In the event the insurance does not pay the loan in full, all other insurance policies may remain in effect until the loan is paid.
6. A copy of the borrower's payment history

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

#### *Rule 1.6 Fees*

1. Closing Fee\_- A licensee may contract for and charge a closing fee as follows: (i) for loans in the amount of Ten Thousand Dollars (\$10,000.00) or less, four percent (4%) of the total payments due on the loan or Twenty-five dollars (\$25.00), whichever is greater; (ii) for loans in an amount greater than Ten Thousand Dollars (\$10,000.00), a maximum charge of Five Hundred Dollars (\$500.00). Such closing fee shall not be part of the finance charge. Miss. Code Ann. §75-17-21(3)
2. Appraisal Fee - Licensees may charge the borrower the actual fee for appraising real property taken as collateral on loans secured by an interest in real property provided the appraiser is an unrelated third party. The appraisal fee shall not be a part of the finance charge and no portion thereof is refundable in the event of a prepayment. If the appraisal fee is paid from proceeds of the loan, such fee shall be a part of the State Amount Financed. However, this fee should not exceed the maximum amount shown on the Notification of Fees Schedule that is submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card or on a computer generated copy.
3. Title Opinion - A Licensee may charge a borrower, on loans of One Hundred Dollars (\$100.00) or more, a reasonable fee for the investigation of the title to any property given as security for a loan. This fee must be paid by the Licensee to an attorney and should not exceed the maximum amount shown on the Notification of Fees Schedule that is submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card or on a computer generated copy.
4. Notary Public Fee\_- A Licensee shall not charge or collect from a borrower any notary fee in connection with a loan.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.7 Prepayment Penalties.* In the event of the prepayment of a loan secured by an interest in real estate, the Licensee may charge a prepayment penalty not exceeding the amounts authorized by Miss. Code Ann. §75-17-31. A prepayment penalty may not be applied in the event of the prepayment of a loan by insurance proceeds or as a result of the renewal or the refinancing of a loan by the same Licensee. The prepayment penalty and amount must be shown on the paid-out ledger card or on a computer generated copy. For examination purposes, the Licensee must be able to identify the customers that were charged a prepayment penalty.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.8 Refund of Unearned Finance Charges: Pre-computed Loans Only:* When a pre-computed loan is paid in full prior to maturity, whether by cash, renewal, or otherwise, the borrower is entitled to a refund of \$1.00 or more of the unearned finance charges based on the Rule of 78's. The refund shall be calculated on the number of days by which the loan is paid in advance, less twenty (20) days.

1. If the prepayment is from the proceeds of insurance, the unearned finance charge may be calculated as of the date the insurance proceeds are actually received by the Licensee.
2. If there is a charge on the loan for additional days to the first payment (i.e. first payment extension charge) the following must be taken into consideration:
  - a. If such charge was included in the first payment and the payoff is prior to the first payment due date, the first payment extension charge shall be fully refundable; or
  - b. If such charge was included throughout the term of the note, the first payment extension charge is refundable based on the Rule of 78's.

If a Licensee has a pre-computed loan with a term exceeding sixty-one (61) months, the Licensee is required to compute the refund based on a method that is at least as favorable to the consumer as the actuarial method. (15 U.S.C. § 1615 (b))

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.9 Default Charges or Late Charges.* A default charge shall not be assessed after the date of loss for any loan paid from the proceeds of insurance coverage. Default charges shall not be deducted from any regular payment for the purpose of creating an additional default charge. Either of the following methods may be used to assess a default charge and such charge must be disclosed on the written contract:

1. Five Percent (5%) Default Charge: any installment that is ten (10) days or more in default not to exceed **the lesser of** Five Dollars (\$5.00) **or** five percent (5%) of the portion of the payment in default. Miss. Code Ann. §75-17-15
2. Four Percent (4%) Default Charge: any installment that is more than fifteen (15) days in default not to exceed **the greater of** Five Dollars (\$5.00) **or** four percent (4%) of the

portion of the payment in default. This charge shall not exceed Fifty Dollars (\$50.00) unless the amount of the loan exceeds One Hundred Thousand Dollars (\$100,000.00) and the term of the loan exceeds five (5) years. Miss. Code Ann. §75-17-27

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

#### *Rule 1.10 Records*

1. Each Licensee shall maintain certain files or records at its licensed location. The required documents and information listed below shall be maintained in separate folders with an appropriate index, filed alphabetically or numerically. Such records may be in the original form, in the form of computer printouts or on electronic media, if readily accessible for viewing on a screen with the capability of being promptly printed upon request. All records shall be maintained for twenty-four (24) months after the date of the final transaction.
2. A separate file for each principal borrower shall be maintained and shall contain all pertinent information and documents including but not limited to deed of trusts, security agreements, financing statements, promissory notes, insurance policies, deferment agreements, releases, cancellations, termination statements and disclosure statements. All documents pertaining to the loan shall contain the loan number.
3. A loan register or a copy of all disclosure statements shall be maintained in order according to date of loan.
4. The following information shall be maintained on a loan ledger or on a computer generated copy:
  - a.name and address of the borrower and each co-borrower
  - b.date of loan and loan number
  - c.total amount of payments
  - d.finance charges pursuant to Miss. Code Ann. §75-17-21
  - e.closing fee pursuant to Miss. Code Ann. §75-17-21(3)
  - f. State Contract Rate
  - g.State Amount Financed
  - h.dollar amount of default charge authorized by Section 9 of these Regulations
  - i. deferral charge
  - j. credit life insurance premium, coverage, and terms
  - k.credit disability insurance premium, coverage, and terms
  - l. other types of insurance premiums, coverage, and terms
  - m. fees paid to public officials
  - n.attorney fees for title search
  - o.appraisal fees
  - p.terms of repayment
  - q.type of collateral
  - r. date of maturity
  - s. whether the loan is new, a renewal, or a remaking of a previous loan, and, if so, the account number of the previous loan
  - t. unpaid balance
  - u.amount and date of receipt of all payments

- v. date and amount of all default charges imposed and date and amount of the payment thereof
  - w. payments from insurance proceeds
  - x. any information regarding litigation, repossession, or foreclosure pertaining to the loan and/or the collateral
  - y. for terminated loans:
    - 1. date of termination
    - 2. whether terminated by payment, renewal or refinancing
    - 3. any insurance claim payments
  - z. for loans terminated by renewal, remaking or refinancing:
    - 1. loan number of renewal, remake or refinancing
    - 2. refunds for unearned finance charge
    - 3. refunds of any unearned insurance premiums
  - aa. real estate prepayment penalty
5. Any errors in records shall be corrected by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when, and by whom such correcting entry was made.
  6. All files and records shall be maintained separately so as to readily identify business transacted under the Small Loan Regulatory Law and Small Loan Privilege Tax Law.
  7. Licensee shall document all overpayments by the borrower and proof of all refunds.
  8. A check register shall be maintained in numerical order and the purpose of each check issued shall be indicated.
  9. Licensee shall maintain a record of the itemization of the amount financed in the borrower's file.
  10. Licensee shall maintain a register of all deferment charges which includes customer name, account number and date of deferment charge.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.11 Loan Payoff Requests.* A Licensee shall provide the loan payoff amount within three (3) business days of an oral or written request from a borrower or receipt from a third party of written proof of the borrower's authorization to disclose the loan payoff amount. A business day does not include a Saturday, Sunday or legal holiday. No fee may be charged for providing a payoff amount.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.12 Sale and Financing of Auto Club Memberships (Effective July 1, 2006)*

1. Requirements for the Sale and Financing of Auto Club Memberships
  - a. The sale and financing of an auto club membership is strictly voluntary and shall never be made as a condition for the extension of credit or the granting of a loan.
  - b. Licensee may offer the borrower the opportunity to purchase an auto club membership only after the Licensee has fully approved a loan to the borrower.
  - c. Borrower must have a valid driver's license.

- d. Borrower must certify that they own or lease at least one automobile.
- e. Auto club membership applications must be signed by the borrower and a copy of the application must be maintained in the borrower's file.
- f. A copy of the auto club service contract must be given to the borrower and such agreement must contain the name and address of the auto club company, the various services to be provided to the customer by the auto club company and any fees to be charged to the borrower.
- g. Borrower shall have the option of paying the auto club membership dues by using funds other than loan proceeds.
- h. Auto club companies must be licensed with the Mississippi Department of Insurance.
- i. Auto club agents must be licensed with the Mississippi Department of Insurance and proof of such licensing must be maintained at the Licensee's office.

## 2. Disclosure Statement

A disclosure statement must be given to the borrower at the time of purchase and the statement must be initialed or signed by the borrower. The disclosure statement must include the following information:

"You are entitled to pay the cost of the auto club membership by using funds other than loan proceeds."

"If you finance the auto club membership fee with your loan, please be advised that you will pay additional interest charges as a result."

"Do you already have an active auto club membership with this same auto club company, sold to you by this consumer finance company? If so, do you understand that you are purchasing another auto club membership and, therefore, extending the term of your existing membership?"

"You may cancel your auto club membership within thirty (30) days after the date of purchase and receive a full refund if you have not used any of the services provided through the auto club membership."

The following statement must be in bold type immediately above the borrower's signature:

**"NOTICE TO BORROWER: Purchase of this auto club membership is optional and is not required as a condition of this loan. Failure to purchase this auto club membership will not affect the lender's approval of the loan or the receipt of the loan by the borrower."**

## 3. Cancellations

Members may cancel their auto club membership within thirty (30) days after the date of purchase and receive a full refund of the membership fee if the member has not used any of the services provided through the auto club membership. If canceled after thirty (30) days from the date of purchase, refunds will be pro-rated for the unused months on the membership. Records



Licensee must maintain information on all auto club memberships sold and financed that contains the borrowers name, date, number of months purchased and cumulative number of months paid as of that date.

#### 4. Prohibited Acts

A licensee shall not sell and finance an auto club membership in conjunction with a loan which has an initial term longer than the term of the loan.

Licensee shall not sell and finance additional auto club memberships to the same borrower unless the term on their current policy is extended. Membership terms shall not exceed thirty-six (36) months from the date of the most recent loan. In no event shall the terms of the multiple autos club memberships sold by the Licensee run concurrently.

#### 5. Reporting Requirements

Licensee shall report to the Department the total number of loans made and the total number of those loans made which the borrower chose to purchase an auto club membership. The request for this information will begin on September 30, 2006, and subsequent requests upon notification by the Commissioner. This information must be submitted to the Department within fifteen (15) days of the request. Failure to report this information will subject the Licensee to civil money penalties.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date July 1, 2006*

#### *Rule 1.13 General*

1. Licensees must provide a written response to the Department within thirty (30) days upon receipt of the Report of Examination. Such response must address the corrective action taken on any violations and errors noted in the report. The reports are to be maintained in the licensed office for two (2) years.
2. In the event a licensed office ceases to operate, the license shall be returned to the Department along with information regarding the location of the loan records of the closed office.
3. Licensee shall post and display a sign that measures at least twenty (20) inches by twenty (20) inches in a conspicuous place and in easy view of all persons who enter the place of business. The sign shall display bold, blocked letters, easily readable, with the following information: "This business is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you encounter any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, Post Office Drawer 23729, Jackson, MS 39225-3729; phone 1-800-844-2499."

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

*Rule 1.14 Violations.* The Commissioner shall enforce these Regulations and any willful violation of and/or failure to comply with these Regulations may result in the revocation of the license and/or a civil money penalty not to exceed Five Hundred Dollars (\$500.00) per violation.

Source: *Miss. Code Ann. §75-67-139; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

### **Part 3 Chapter 2: Debt Management Services Act**

*Rule 2.1 Purpose – Rescission of Prior Regulation.* Section 81-22-17 (b), Miss. Code Ann., authorizes the Commissioner to adopt reasonable administrative regulations that are not inconsistent with the law in order to enforce the Mississippi Nonprofit Debt Management Services Act.

Pursuant to the Mississippi Administrative Procedures Law, §25-43-1.101 *et seq.*, Miss. Code Ann. a regulation was adopted on June 1, 2005, governing the debt management services industry. The substance of these regulations was included in Senate Bill #2439 which was signed into law by Governor Barbour during the 2006 Legislative session, and was effective on July 1, 2006. Therefore, the prior regulation governing the Mississippi Nonprofit Debt Management Regulations was rescinded.

Source: *Miss. Code Ann. §81-22-17(b); Effective date July 1, 2010*

### **Part 3 Chapter 3: Mississippi Check Cashers Act Law**

*Rule 3.1 Purpose.* These regulations are promulgated pursuant to Section 75-67-501 *et seq.*, Miss. Code Ann., known as the “Mississippi Check Cashers Act”, to establish administrative regulations required by the Department of Banking and Consumer Finance. Section 75-67-515(1), Miss. Code Ann., authorizes the Department to adopt reasonable administrative regulations, not inconsistent with the law, in order to enforce the Mississippi Check Cashers Act. These regulations are not intended to create any private right, remedy, or cause of action in favor of any customer or against any licensee nor are these regulations intended to apply to any business transactions of a licensee not covered by Mississippi Law. While these regulations are intended to and do supersede all prior regulations issued by the Department of Banking and Consumer Finance regarding the check cashing industry, these regulations are intended only to clarify the existing law. In order to ensure compliance with the provisions set forth in the Mississippi Check Cashers Act, the following regulations have been implemented.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

*Rule 3.2 Records.* “Records” or “documents” means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original. Records may be in the form of

traditional hard copies, computer printouts or magnetic media if readily accessible for viewing on a screen with the capability of being promptly printed upon request.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

### *Rule 3.3 Delayed Deposit Transaction*

#### 1. Records

- a. Licensee shall maintain all files and records at its licensed office.
- b. Licensee shall maintain a separate file folder for each customer containing documentation for all delayed deposit transactions.
- c. Licensee shall maintain a daily journal containing a record of all delayed deposit transactions in consecutively numbered order. The daily journal shall include at least the customer name and transaction date and may be maintained either manually or by computer. In lieu of maintaining a daily journal, Licensee may maintain a file with a copy of each delayed deposit agreement in consecutively numbered order. This number shall be printed on the agreement. Licensee must be able to account for any voided agreements or lapse in numbering sequence.
- d. The check number must be clearly disclosed on each delayed deposit agreement.
- e. The date of the transaction and the maturity date must be stated on each delayed deposit agreement.
- f. A new check must be used for each delayed deposit agreement. (i.e. the same check shall not be reused on subsequent check cashing transactions).

#### 2. Processing Fee

The Processing Fee authorized by §75-67-519(7), Miss. Code Ann., shall be disclosed in the delayed deposit agreement. Thirty Dollars (\$30.00) is set as the maximum amount a licensee may charge for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment. The Processing Fee is considered a one-time charge; regardless of the number of times the check associated with the delayed deposit agreement has been processed.

#### 3. Processing Fee Journal

Licensee must maintain a daily journal of all Processing Fees charged along with the following information:

- a. Copy of check
- b. Amount of Processing Fee
- c. Customer name
- d. Date of transaction
- e. Check number
- f. Amount of check
- g. Documentation verifying the financial institution's refusal to pay

#### 4. Computation of Annual Percentage Rate

Pursuant to Section 75-67-519(3), Miss. Code Ann., the fee charged in a delayed deposit transaction must be disclosed as a dollar amount and as an annual percentage rate (APR) in the delayed deposit agreement.

**Example:**

\$100.00 delayed deposit transaction due in 14 days, when a \$120.00 check is held:

$$\begin{aligned} & \$20.00/\$100.00 \times 365/14 = 521.43 \text{ APR} \\ & \text{Fee} \div \text{amount financed} \times 365 \text{ (or 360)} \div \text{number of days} = \text{APR} \end{aligned}$$

#### 5. Rollover Fee

Licensee shall not accept a fee to renew or extend (i.e. rollover) any delayed deposit transaction. The delayed deposit agreement shall not be renewed; the transaction must be collected in full.

#### 6. Checks Written on Joint Bank Accounts

Each individual on a joint bank account may write checks in an amount not to exceed an aggregate total of Five Hundred Dollars (\$500.00) per individual. However, a separate delayed deposit agreement must accompany each check.

#### 7. Multiple Checks

Licensee may accept multiple checks on a customer with the aggregate amount not to exceed Five Hundred Dollars (\$500.00). However, a separate delayed deposit agreement must accompany each check.

#### 8. Payment Plan

Licensee may set up a payment plan for customers in default. If a customer defaults and Licensee agrees to accept a payment plan and customer later defaults in the payment plan, the Licensee may cash the check but may not receive more than the original amount of the check, plus the Processing Fee set forth in these regulations. Licensee shall maintain supporting evidence of all payments received.

#### 9. Wage Assignments

Licensee shall not encumber a customer's wages in the form of a wage assignment. However, nothing contained herein shall prevent a licensee from garnishing wages pursuant to a court order.

#### 10. Acceptance of Credit Cards as Payment

Licensee may accept a credit card as payment on the due date. The Licensee shall not swipe the customer's credit card at the beginning of a transaction thus encumbering the customer's funds and later completing the transaction on the due date.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. 75-67-519(3); Effective date February 20, 2003*

**Rule 3.4 Checks Cashed for a Fee and Required Records.** Licensee shall maintain a copy of each check cashed along with the following information:

1. Date of transaction
2. Fee charged expressed as a percentage rate, §75-67-517 Miss. Code Ann.
3. Fee charged expressed as a dollar amount
4. Customer signature acknowledging fees charged

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-517; Effective date February 20, 2003*

**Rule 3.5 Disclosure of Fees and Rates.** Pursuant to §75-67-515(4) Miss. Code Ann., a Licensee shall display a sign disclosing the maximum fees allowed to be charged for cashing checks. The sign must be at least 20"x 20" and the print must be large and bold in order to allow customers to easily read the information. Such sign must be displayed in a conspicuous place and in easy view of all persons who enter the place of business. The following is an example of the required sign:

The following is a list of maximum fees allowable for services that may be offered at this check cashing business:

1. Government checks: 3% of the face amount of the check or five dollars (\$5.00), whichever is greater
2. Personal checks: 10% of the face amount of the check or five dollars (\$5.00), whichever is greater
3. All other checks or money orders: 5% of the face amount of the check or five dollars (\$5.00), whichever is greater
4. Delayed deposit transaction: \$20.00 per \$100.00 advanced for checks \$250.00 and under  
\$21.95 per \$100.00 advanced for checks over \$250.00

<u>Amount Advanced</u>	<u>Fee</u>	<u>Face Amount of Check</u>
\$100.00	\$20.00	\$120.00
\$200.00	\$40.00	\$240.00
\$300.00	\$65.85	\$365.85
\$400.00	\$87.80	\$487.80

Mississippi law prohibits this check cashing business from accepting a fee to renew or extend any delayed deposit transaction. Therefore, a delayed deposit check must be deposited or the check face value paid in full prior to entering into another delayed deposit transaction.

This check cashing business is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you have any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, P.O. Drawer 23729, Jackson, MS 39225-3729; Phone 1-800-844-2499.

Any of the above information that is not currently posted may be posted on a separate sign using the dimensions described above. Licensee is only required to post fees for the type of services offered.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-515(4); Effective date December 1, 2012*

*Rule 3.6 Advertisement.* §75-67-505(1), Miss. Code Ann., states in part that “A person may not engage in the business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business.” Therefore, the displaying of external signage outside a business, advertisement via print, broadcast or electronic media announcing or referencing a check cashing service constitutes a person’s intent to portray himself as a check casher and not incidental to any other service offered and therefore, must obtain a license to participate in a check cashing business.

Persons that are principally engaged in the retail sale of goods and exempt from licensing under §75-67-507(c), Miss. Code Ann. are prohibited from advertising they offer check cashing services.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-507; Miss. Code Ann. §75-67-505(1); Effective date February 20, 2003*

*Rule 3.7 Violations.* The commissioner shall enforce these regulations. Any violation of and/or failure to comply with these regulations may result in the assessment of a civil money penalty not to exceed Five Hundred Dollars (\$500.00) for each violation or revocation of the Licensee’s license, or both, in accordance with Mississippi law.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

### **Part 3 Chapter 4: Mississippi Title Pledge Act**

*Rule 4.1 Purpose - Amendment of Prior Rules-* These Regulations are promulgated pursuant to Miss. Code Ann. §75-67-405 and 75-67-407 of the Miss. Code Ann. §75-67-243 and the Mississippi Administrative Procedure Act, Section 25-43-1, et seq.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

#### *Rule 4.2 Records*

1. Each Title Pledge licensee shall maintain all files or records at its licensed office. In addition to the information required by Sections 75-67-405 and 75-67-407 of the Mississippi Code of 1972, Annotated, each title pledge lender shall maintain a consecutively numbered record or log of each title pledge agreement executed, with that number being placed on the corresponding Title Pledge Agreement.
2. The following information must be maintained on a ledger card or computer system that can be printed upon request:
  - a. **Name and address of the pledgor(s)**
  - b. **Date of the title pledge transaction and the title pledge transaction number**
  - c. **Total amount of payments**
  - d. **Title Pledge Service charge**
  - e. **Terms of repayment**
  - f. **Description of collateral, including VIN number**
  - g. **Maturity date**
  - h. **Unpaid balance**
  - i. **Amount and date of receipt of all payments**
  - j. **Distribution of all payments to principal and interest**
3. A file(s) shall be maintained for each pledgor and shall include, the title pledge agreements and all documents pertaining to the title pledge transaction. All documents pertaining to the title pledge transaction shall contain the title pledge number.
4. Licensee shall maintain a check book register or cash journal, in numerical order, indicating the distribution of each title pledge transaction and to whom such proceeds were disbursed.
5. Records may be in the form of traditional hard copies, computer printouts or on magnetic media if readily accessible for viewing on a screen with the capability of being promptly printed upon request. Licensee shall keep all records for a period of no less than two (2) years from the date of the closing of the last transaction.
6. A record indicating the total number of accounts and the dollar value of all title pledge receivables shall be maintained and available on a monthly basis.
7. Any errors in records shall be corrected by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when, and by whom such correcting entry was recorded.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

#### *Rule 4.3 Sale of Repossessed Vehicle*

1. Licensee must maintain a repossession log or separate record of all repossessed vehicles. Such record must include the customer's name, vehicle information (including make, model and VIN number), date of repossession, date of sale, name of purchaser, amount of sale or payment, and method of payment by purchaser. Licensee shall maintain supporting documentation of each sale by a cash ticket or a financing agreement.
2. Documentation shall be maintained on all repossessed vehicles that are sold indicating

the value of each vehicle. Such documentation shall include a written condition report and at least two (2) photographs depicting the condition of the vehicle. In the event a licensee finances a vehicle they have repossessed, the licensee must comply with the rates authorized by the Mississippi Motor Vehicle Sales Finance Law. Such sale shall not be executed on a Title Pledge Agreement.

3. In the event a licensee declares a vehicle to be salvage pursuant to Section 75-67-411 (5), Mississippi Code of 1972, as amended, licensee must obtain a “junk certificate” from the Mississippi Tax Commission pursuant to Mississippi Title Law Regulation 51 (a) (4) which is defined as “an administrative letter issued by the Tax Commission for a vehicle which has been scrapped, dismantled or destroyed and the owner has surrendered the Mississippi Certificate of Title to the Tax Commission in accordance with Section 63-21-39, Mississippi Code of 1972, as amended .” A copy of the required documentation and “junk certificate” shall be maintained in the customers file folder. The value received from the sale of any salvage shall be evidenced by a bill of sale or cash ticket and applied to the customer’s account balance.
4. For repossessions that are not declared salvage, licensee shall maintain a record that includes: balance owed plus service charge calculated up to the date of repossession; repossession fee that consists of actual towing and storage charges paid to an unrelated third (3rd) party; charges paid to an unrelated third (3rd) party for repairs to make property operable; the allowed one hundred dollar (\$100.00) sales fee; to whom sold; and the amount of sale. Licensee must maintain a copy of all bills/invoices for any charges paid to a third party in the customers file folder. To verify amount of sale, licensee must obtain two (2) bids on vehicles less than ten (10) years old or a receipt from an auction seller indicating the amount received from the sale. For vehicles that are not sold at an auction and are ten (10) years old and older, licensee must have at least two (2) photographs depicting the condition of the vehicle and any other documentation to support the value of the vehicle.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

*Rule 4.4 Sign.* Each Licensee shall post and display a sign that measures at least 20 inches by 20 inches, in a conspicuous place and in easy view of all persons who enter such place of business. The sign shall display bold, blocked letters easily readable and shall include the following information:

### **NOTICE TO BORROWER**

**Mississippi law states, “A title pledge lender shall not advance funds to a pledgor to pay off an existing title pledge agreement”. It is illegal to renew or pay off an existing title loan you have with this lender with the proceeds of a new title loan from this lender. We encourage you to report any violation to the Mississippi Department of Banking and Consumer Finance. You may be entitled to a refund if this Title Pledge Lender is found to be in violation of the law. If you have any questions or need additional information about this type of transaction or about any other activity or procedure conducted in this office, please call or write:**



**Mississippi Department of Banking & Consumer Finance**  
**Post Office Drawer 23729**  
**Jackson, Mississippi 39225-3729**  
**Phone: 1-800-844-2499**

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

*Rule 4.5 Title Pledge Office.* Section 75-67-435, Mississippi Code of 1972, Annotated defines a Title Pledge Office as “the location at which, or premises in which, a title pledge lender regularly conducts business. No other business other than title pledge business shall be conducted at a Title Pledge Office.” Therefore, to meet the requirements of this provision of the law, a Title Pledge Office is one that is further defined as: a location that has a definitive U. S. Postal address and/or E911 address; meets local zoning requirements; has a minimum of 100 square feet, with walls from floor to ceiling separating the operation from any other business(es); has an outside entrance, however you may be located in an area that has a common lobby shared by another business(es); proper signage; and maintain separate books and records. All title pledge business must be conducted in this location.

Upon adoption of this regulation, a current licensee operating a configuration less than these requirements has until June 30, 2001, the end of the current licensing period, to conform or their license will not be renewed. Any new application for license, after adoption of this regulation, shall include documentation attesting to the compliance of these regulations.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

*Rule 4.6 Other Fees/Charges.* Section 75-67-413 (1) states, “A title pledge lender may contract for and receive a title pledge service charge in lieu of interest or other charges for all services, expenses, cost and losses of every nature not to exceed twenty-five percent (25%) of the principal amount, per month, advanced in the title pledge transaction.” Therefore, a licensee may not charge any additional fees such as collection fees, late fees or any other type of fees.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

*Rule 4.7 Customer Refunds.* In the event a customer has been overcharged, licensee shall make refunds to the customer in the form of cash or check. The customer’s account may not be credited for any refund amount.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

*Rule 4.8 Violations.* The Commissioner shall enforce these Regulations. Any willful violation of and/or failure to comply with these Regulations may result in the assessment of a Civil Penalty not to exceed Five Hundred Dollars (\$500.00) for each violation thereof, the revocation of the

Licensee's license, or both in accordance with Mississippi law.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

### **Part 3 Chapter 5: General Hearing Procedures**

#### **DBCF General Procedures for Hearings**

**RULES AND PROCEDURES TO BE OBSERVED AT ANY HEARINGS CONDUCTED BY THE COMMISSIONER OR ANY HEARINGS PROVIDED FOR IN CONNECTION WITH ANY OTHER ACTS, BUSINESSES, PROFESSIONS OR LICENSES THAT MAY BE REGULATED, ABSENT EXPRESS AUTHORITY INDICATING OTHER HEARING PROCEDURES**

Rule 1.0 Purpose of These Rules and Procedures: These rules and procedures are adopted for the purpose of providing a general guideline for the conduct of any administrative hearings for which the Commissioner of the Department of Banking and Consumer Finance, State of Mississippi ("Commissioner") has been charged by law to conduct relating to businesses, professions, or licenses within the jurisdiction of the Mississippi Department of Banking and Consumer Finance (the "Department" or "DBCF").

1.1; These Rules and Procedures are intended to supercede and replace only the existing Department rules at "Docket Number 25" adopted effective January 3, 1997. No other rules or regulations previously adopted by the Department are affected by these Rules and Procedures.

1.2; As of the adoption of these Rules and Procedures, the Department is charged with the oversight of fourteen (14) separate industries in the State of Mississippi. Certain industries have an existing statutory or separately adopted regulatory framework that control hearings for that given industry. There presently exist separate rules and procedures for all hearings conducted by the State Board of Banking Review; for hearings involving state-chartered banks; as well as hearings pursuant to the Mississippi Small Loan Acts, the Motor Vehicle Sales Finance Laws, and Consumer Loan Broker Laws.

Small Loan Regulatory Law §§ 75-67-101, et seq.

Small Loan Privilege Tax Law §§ 75-67-201, et seq.

Motor Vehicle Sales Finance Law §§ 63-19-1, et seq.

Consumer Loan Broker Act §§ 81-19-1, et seq.

None of the existing statutes, rules or regulatory procedures are amended by these Rules and Procedures, however, these Rules and Procedures may supplement existing statutes or rules to provide a mandatory appeal process following the written denial of a license application or renewal application.

Absent conflict with statutes or rules, these Hearing Rules and Procedures may control Hearings in any industries regulated by the Department, now or any time in the future, unless otherwise expressly provided in statute or regulation.

1.3 Authority to Promulgate; In addition to the statutory authority listed above, these Rules and Procedures are adopted pursuant to various existing sections of the Code of Mississippi (1972) including, but not limited to the following, as well as any other delineated licensing, chartering, supervisory or regulatory authority in any industry expressly vested in the Commissioner, now or in the future.:

- Money Transmitters Act §§ 75-15-1, et seq.
- Insurance Premium Finance Law §§ 81-21-1, et seq.
- Mississippi Pawnshop Act §§ 75-67-301, et seq.
- Mississippi Title Pledge Act §§ 75-67-401, et seq.
- Mississippi Check Cashers Act §§ 75-67-501, et seq.
- Mississippi Debt Management Services Act §§ 81-22-1, et seq.
- Credit Availability Act §§ 75-67-601 et seq.

1.4 Severability; If any provision, section, subsection, sentence, clause or phrase of any of the Rules and Procedures, or the application of the same to any person or entity or any set of circumstances, is for any reason challenged or held to be invalid, null or void, the remaining rules, procedures or regulations or any application thereof to any person or circumstances shall remain valid.

1.5 Notice of Hearing; A written notice specifying the violation(s) or offense(s) for which the licensee (or any person or entity subject to the jurisdiction of the Department) is charged and a notice of the time and place of the hearing shall be served at least ten (10) days prior to the hearing date. Such notice may be served by mailing a copy of the notice, via certified mail postage prepaid, to the last known residential or business address of the licensee, person or entity. Service via hand-delivery, electronic communications, or other methods may also be used to perfect service of the notice upon the party or its representative. Notice to a representative shall be deemed notice to the party represented.

1.5.1 Waiver; A properly noticed party's failure to timely respond to Notice shall constitute that party's full and complete waiver of the party's intent to attend the noticed Hearing or otherwise defend against the charges. A properly noticed Hearing may thereafter be conducted by the Commissioner without the party charged being present or represented.

1.6; Unless expressly prohibited by statute or regulation, the Commissioner shall have discretion to control all aspects of the hearing, including any motion practice or depositions that may be authorized, in order to maintain order, maximize administrative/agency economy and to set controls for the behavior of all participants involved in any manner. All hearings shall be conducted by the Commissioner, who shall not be bound by strict rules of civil procedure or by the rules of evidence in the conduct of any phase of the hearing process.

1.7 Hearing Counsel to Commissioner; The Commissioner may appoint Hearing Counsel in order to provide legal counsel to the Commissioner on all aspects of the hearing and assist in

conducting any part of the hearing or activities related thereto. Hearing Counsel shall have experience with conducting hearings that are judicial or administrative in nature and will assist and solely represent the Commissioner to ensure an orderly and fair hearing process. Hearing Counsel shall be an attorney that does not represent any other party interested in the hearing and may be an attorney from the Mississippi Attorney General's Office. All parties shall be notified upon appointment of Hearing Counsel.

1.7.1 Authority Hearing Counsel shall have authority to conduct the hearing process in his/her discretion, and in consultation with the Commissioner. Hearing Counsel may make recommendations on any question or issue, but the Commissioner shall have the ultimate discretion and sole authority in all situations to make the final determination of any issue.

1.8 Administration of Oaths; At any hearing or related matter the Commissioner shall administer oaths as may be necessary for the proper conduct of the hearing. The Commissioner's authority may be administered by a certified Court Reporter.

1.9 Extensions of time; Upon motion by any party or on his/her own initiative, the Commissioner has sole discretion to order an extension of any deadline that may be established during the hearing process.

#### Rule 2.0 Enrollment of Representatives, Attorneys and Accountants;

2.0.1 Eligibility to Practice; No person shall be eligible to practice before the Commissioner unless such person is enrolled in accordance with these regulations, except that any individual may appear, without enrollment, on his own behalf or on behalf of a member of his immediate family, if such appearance is without compensation; and a member of a partnership, an officer of a corporation, or an authorized regular employee of an individual, partnership, corporation, or other business entity may likewise appear without enrollment in any matter relating to such individual or business entity.

2.0.2 Scope of Practice; Practice before the Commissioner shall be deemed to include all matters relating to the presentation of a client's matter to the Commissioner, Deputy Commissioner, the Division Director, or an examiner, including the preparation and filing of applications, reports, systems of internal control, financial statements, or other documents submitted to the Department on behalf of such client.

2.0.3 Qualifications for Enrollment; In addition to the individuals described herein, the following persons may be admitted to practice before the Commissioner:

- (a) Attorneys at law admitted to practice before the Supreme Court of the State of Mississippi and who are lawfully engaged in the active practice of their profession.
- (b) Certified public accountants and public accountants qualified to practice under Mississippi law and who are lawfully engaged in active practice as such.

2.0.4 Procedures for Enrollment; An attorney or accountant meeting the qualifications described in the subsection above shall be deemed automatically enrolled at the time the attorney or accountant first appears for or performs any act of representation on behalf of a client in any matter before the Commissioner.

2.0.5 Enrollment for a Particular Matter; The following persons may, upon motion of an enrolled (or exempt) person, be admitted to practice before the Commissioner for the purposes of a particular case or matter:

(a) Attorneys at law who have been admitted to practice before the courts of any state or territory or the District of Columbia, and who are in good standing with the court by which they are licensed.

(b) Certified public accountants or public accountants who have duly qualified to practice as such in their own names, under the laws and regulations of any state or territory or the District of Columbia, and who are in good standing with the entity by which they are licensed.

No person enrolled for a particular matter may practice before the Commissioner except in association with the enrolled person who sponsored his enrollment.

2.0.6 Suspension or Revocation of Enrollment;

(a) A person's enrollment to practice before the Commissioner shall be suspended automatically without a hearing if his professional license is suspended or revoked.

(b) Any person enrolled to practice before the Commissioner may have his enrollment to practice suspended or revoked if, after due consideration, the Commissioner finds that:

i.) The person made a materially false or misleading statement with regard to his application for enrollment;

ii.) The person willfully failed to exercise diligence in the preparation or presentation of any application, report, or other document filed with the Department, or knowingly misrepresented any material fact to the Commissioner;

iii.) The person willfully violated or aided and abetted in the violation of any provision of an applicable statute or the Department's regulations; or

iv.) The person does not possess the requisite qualifications or expertise to represent others before the Commissioner, lacks character or integrity, or has engaged in unethical or improper conduct.

### **Pre-Hearing Procedures**

Rule 3.0 Formal Docket Number Assigned; Each matter coming before the Commissioner shall be assigned a concise title that is descriptive and a unique cause number, and be docketed accordingly. Thereafter, all submissions related to the Hearing shall bear the title and docket number and shall be included on the Commissioner's pre-hearing docket and made part of the Record.

3.1; Submissions to the Commissioner related to the Hearing shall be on 8 ½" x 11" standard white paper, or as otherwise deemed appropriate and allowed by the Commissioner. The parties'

submissions shall be typed and double-spaced unless impractical and otherwise allowed by the Commissioner.

3.2 Amendments; The Commissioner in his/her sole discretion, under such conditions as the Commissioner may prescribe, may allow any pleading, application, motion or other paper filed in a Hearing proceeding to be amended, corrected or otherwise supplied with an omission.

3.3 Scheduling; The Commissioner may call an in-person Scheduling Conference with counsel for the respondents and counsel for the Department in order to establish hearing guidelines, clarify issues, and set deadlines to complete any action items prior to the hearing. A scheduling order may be adopted by the Commissioner thereafter. The deadlines set are at the sole discretion of the Commissioner and may include, but are not limited to, the following:

- Initial exchange of proposed witnesses
- Initial exchange of proposed documents to be included in the Hearing Record
- Pre-hearing conference
- Final exchange of documents to be included in the record and witnesses to appear at the hearing.

Additionally, the Commissioner may consider any inquiries or requests from the parties to ensure clarity, transparency and fairness of the hearing.

3.4 Discovery; Except as provided by these Rules and Procedures, there is no right to discovery in any hearing conducted by the Commissioner.

3.4.1; An interlocutory action by any respondent filed in a Chancery Court requesting a “Bill of Discovery” or seeking any other “discovery” based on equitable relief under common law or otherwise, is an improper attempt to circumvent the Department’s Rules and Procedures and shall be summarily dismissed by the Court.

3.5 Motion Practice Prior to Hearing; The Commissioner may require all parties to submit written direct and rebuttal testimony, all documentary evidence and exhibits the parties plan to submit into evidence at the hearing, witness lists specifying the witnesses the parties plan to call and the subject matter of the testimony, and written motions and motion responses in advance of the hearing pursuant to deadlines established by a Scheduling Order or other written directive.

3.5.1; Any written motion, request, or correspondence directed to the Commissioner by a party shall be provided to all attorneys of record or directly to an unrepresented party such that there shall be no earwiggling of the Commissioner. Any submission and service of same on counsel of record may be submitted electronically (e.g. e-mail) or otherwise in accordance with directives from the Commissioner or Hearing Counsel.

## **The Hearing**

Rule 4.0 Location; A hearing shall be conducted at the offices of the Department or at an alternative location that is deemed suitable by and within the sole discretion of the Commissioner.

4.1; These Rules and Procedures are not intended to address all aspects of the hearing process. The Commissioner may determine that more specific procedural rules for the hearing of a matter are necessary and should be implemented to ensure the order, fairness and efficiency of the hearing. The Commissioner's authority provides the sole discretion to amend and/or supplement the hearing rules as deemed necessary and upon proper notice to all parties.

4.2; The "Rules of Evidence" used in judicial proceedings and any other rules of procedure or evidence that apply in other contexts may be considered informative for all matters before the Commissioner, however, all such rules are non-binding and any standards set forth therein are relaxed for all purposes of an administrative hearing conducted by the Commissioner.

4.3 Court Reporter; Each conference presided over by the Commissioner with all parties and/or their representatives may be transcribed for the Record with costs borne by the party requesting the Court Reporter's services. The Department shall procure the services of a competent and certified Court Reporter who shall transcribe everything done and said on the Record and shall keep and properly index all exhibits as directed by the Commissioner or the Hearing Counsel.

4.4 Deposit of Costs; The Commissioner may, in his/her sole discretion, require a deposit or other guaranty that the fees and costs of the service of process and, should the Commissioner determine that the costs of the hearing will outstrip the amount of the bond(s) maintained by a regulated entity on file with the Department, may require an additional security bond from the respondent(s).

4.5 Witnesses; Issuance of subpoenas by Commissioner; Upon proper written application of any party or its attorney, a subpoena may be issued by the Commissioner as follows:

4.5.1 Subpoenas *Duces Tecum*; At any time, no later than 14 days prior to hearing, at the instance of any party, the party or its attorney may make application for the issuance of a document subpoena directed to any non-party requesting documents that are or may be pertinent to the issues to be heard at the hearing of the matter. The issuance of a document subpoena is at the sole discretion of the Commissioner, and predicated upon a finding that the request sets forth as plainly as possible the documents that are sought and the purpose of the requested production. Absent extraordinary circumstances, a total of fifteen (15) separate document subpoenas is the maximum limit. Additional document subpoenas may issue only after a showing of extraordinary circumstances by the party making the requests.

4.5.2 Summons/Subpoena to Appear in Person; Rule 45 of the Mississippi Rules of Civil Procedure is considered instructive guidance to the parties, but it is not necessarily binding for the purposes of any matter before the Commissioner.

4.5.3 Enforcement by Commissioner: Unless otherwise prohibited by statute, the Commissioner shall have full authority to enforce any summons, subpoena or order that issues during the hearing process. The Commissioner may further request the Chancery Court in any county to assist with the enforcement of any such document.

4.5.4 Service of Process: All subpoenas, subpoenas *duces tecum*, summons or any other process issued in proceedings pending before the Commissioner shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record in this state.

4.5.5 Costs borne by Requestor: A process server shall be entitled to collect appropriate fees for such service as allowed in the courts of this state, with all such costs to be borne by the party requesting the service of process.

4.6 Depositions of Witnesses: In any hearing proceeding before the Commissioner, the Department or a party may request the issuance of a subpoena requiring an individual to be deposed upon a showing of good faith need to take the deponent's testimony under oath. If the Commissioner finds that a party's request is well-taken, that the requested deposition will not adversely affect the deponent and is not being requested for any improper purpose, he/she may issue a subpoena requiring the attendance of the deponent at a date and time certain. Any deponent is entitled to be paid an attendance fee and/or travel costs related to the deposition as allowed in Rule 45 of the Mississippi Rules of Civil Procedure. All costs shall be borne by requesting party.

4.6.1 Limit on Depositions: Unless there is an extraordinary need established by a clear and convincing showing, a party shall be granted no more than five (5) depositions. A deposition shall be limited to no more than eight (8) hours and shall be conducted at a location that is reasonably convenient to the deponent and properly noticed to all other parties. The Commissioner has sole discretion to expand or limit the scope, content, location, environment, manner and decorum of any deposition requested by any party. The Commissioner may refuse to allow any such request or revoke a previously issued summons if the Commissioner determines that such action is necessary to prevent cumulative, repetitive or duplicative testimony, to avoid unnecessary delay or obstruction, or to prevent the harassment or embarrassment of a witness. No party shall be entitled to depose or require testimony at a deposition or at the Hearing from the Commissioner (current or former), the Hearing Counsel, or the Department's attorney(s).

4.7 Attendance of Hearing: A witness may be summoned/subpoenaed to attend the Hearing in person for the purposes of giving live testimony before the Commissioner. A witness should be reimbursed for actual expenses incurred as a result of their attendance and the party requesting the issuance of the subpoena requiring attendance shall bear the cost of expenses such that the witness shall not incur losses as a result of compliance. A reasonable daily witness fee should also be provided to each subpoenaed witness, not to exceed the amount described in Rule 45 of the Mississippi Rules of Civil Procedure.



4.8 Exchange of Witness Lists, Exhibits; The Commissioner has sole discretion to require the parties to provide and/or exchange lists of witnesses that are likely to or may be called to provide live testimony at the Hearing and may require the same for any or all exhibits that a party plans to use as affirmative evidence at the Hearing. Evidence that may be submitted solely for the purpose of impeachment or rebuttal may be excluded from this requirement.

4.9 Taking of Evidence; The Commissioner and Hearing Counsel shall maintain full control over the taking of any evidence at the hearing and may limit the number of witnesses to be called, the topics to be discussed, the documents entered and all other manner of evidence in order to maintain order, maximize administrative economy and prevent duplicative, irrelevant, superfluous or improper submissions.

Since the Hearing will not be limited to strict rules of evidence, the Commissioner may consider any evidence he/she finds to be highly probative and has a strong indicia of reliability. As the fact-finder for the Hearing, the Commissioner is empowered to assess credibility, weigh conflicting evidence and draw factual inferences from the testimony and exhibits introduced by the parties. Additionally, as the fact-finder, the Commissioner may reject the subject statements as implausible, properly countered by other evidence, or otherwise not compelling.

4.10 Taking Notice; The Commissioner may take official notice of any generally accepted information or technical or scientific matter within the fields of expertise within the purview of the Department and of any other fact which may be judicially noticed by the courts of this state. The parties must be informed of any information, matters or facts so noticed and must be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the Commissioner or Hearing Counsel.

4.11 Time Limit on Hearing; The Commissioner has the discretion to limit the number of days allowed for the Hearing. Absent a showing of extraordinary circumstances, no hearing shall be conducted for more than 40 hours of testimony or argument. The Commissioner has discretion in the scheduling of the Hearing days and may require all parties to comply with further time restrictions. Limits may be uniformly placed on all parties and/or witnesses. An opportunity for cross-examination of any live witness shall be provided to the party-opposite, subject to above limitations.

4.12 Failure to Appear at Hearing—Default; If the respondents fail to appear at the scheduled time and place set for the Hearing, the Commissioner may adjourn the Hearing and may thereafter proceed with the determination and final ruling based solely on the submitted Record. Failure to attend and present all defenses to the Commissioner the Hearing shall constitute waiver of the party's ability to raise on appeal any issue that could have been raised during the Hearing Process.

4.13 Subsequent Submission of Further Written Legal Arguments/briefs; The Commissioner may direct a party to provide additional written submissions to complete or clarify legal or factual issues, following the conclusion of the live Hearing. The submission of additional documents shall be only at the direction of the Commissioner and shall serve to postpone the

“close” of the Hearing until after the parties’ submissions are complete. Documents that are intended to rebut testimony may likewise be submitted after the conclusion of live testimony, if directed by the Commissioner. Nothing will be accepted for consideration or entered upon the Record after the end of the Hearing, unless it is expressly allowed or directed by the Commissioner.

Rule 5.0 Hearing Record: The Hearing Record will consist of all transcripts and documents of related proceedings including all pre-hearing motion practice, all submitted documentation, exhibits and testimony admitted as part of the Record at the Hearing, any other papers filed by the parties, all pre-filed testimony and attached exhibits and any subsequently filed briefs or supplements that are directed by the Commissioner.

Rule 6.0 Attendance limited: Control of all attendees of the Hearing shall be vested in the discretion of Commissioner and may be restricted as needed to maintain order, while recognizing the need for transparency. The Commissioner shall further have discretion to limit the number of individuals attending on behalf of the same entity. The Commissioner may also take any necessary actions to prevent the unlawful disclosure of personal identifiers, confidential or proprietary information, or any other information that, if otherwise made available for public consumption could cause harm or injury.

Rule 7.0 Final Order of Commissioner: At the close of the Hearing (as determined by the Commissioner), the Commissioner shall, within no more than 60 business days, issue a written “Final Order” memorializing the conclusions of fact and/or law and any other determinations made by the Commissioner and based upon the Record. All parties and their representatives shall be provided with a copy of the Final Order in the typical manner and the Respondent(s) or their representatives shall further be provided the Final Order via hand-delivery or certified mail to the last known address on file with the Department. The Final Order shall be made public and enforced by the Commissioner unless expressly prohibited.

7.1 Standards of Proof: The Commissioner’s Final Order and the determinations contained therein shall be based on “clear and convincing” evidence. All other determinations made by the Commissioner and reduced to writing are subject to an “abuse of discretion” standard for the purposes of any appeal or court intervention.

7.2 Appeal of Final Order to Chancery Court: A Final Order may be appealed to the Chancery Court of Hinds County, Mississippi, First Judicial District, or any other court of competent jurisdiction as authorized by statute. An appeal shall in no way function to stay the effectiveness of the Final Order, absent express statutory authority allowing a stay or a proper order from a court of competent jurisdiction.

*Source Authority:* Money Transmitters Act §§ 75-15-1, et seq.; Insurance Premium Finance Law §§ 81-21-1, et seq.; Mississippi Pawnshop Act §§ 75-67-301, et seq.; Mississippi Title Pledge Act §§ 75-67-401, et seq.; Mississippi Check Cashers Act §§ 75-67-501, et seq.; Mississippi Debt Management Services Act §§ 81-22-1, et seq.; Credit Availability Act §§ 75-67-601 et seq.;

**APPEAL OF DENIAL OF APPLICATION(S) FOR LICENSURE IN A REGULATED  
INDUSTRY; MANDATORY APPEAL DIRECTLY TO COMMISSIONER;  
ABBREVIATED HEARING PROCESS**

Rule 8.0: In the absence of any express authority to the contrary, the following shall amend the general hearing process described above or elsewhere and provide a *mandatory administrative appeal process* for any applicant or licensee that is *denied a license application or renewal application* in writing by the Department. This Regulation is adopted for all regulated industries that do not expressly state an application denial appeal process in statute, and pursuant to the same statutory authorities delineated above and any subsequent statutory authority requiring the Department to consider applications and issue licenses to qualified applicants.

- a) Following a denial of an application for license, the applicant must, within 10 business days of the receipt of the written denial from the Department, submit an appeal in writing to the Commissioner and request a hearing be held to appeal the denial of an application by the Department.
- b) All above rules shall govern the hearing of the denial application, unless expressly revised herein below.
- c) Absent a showing of extraordinary circumstances, the denial hearing shall be conducted in one day and shall last no longer than 5 hours. The applicant shall be allotted two (2) hours to present evidence and/or testimony in favor of its application. The Department shall thereafter be allotted two (2) hours to present its rebuttal in support of the denial of the application.
- d) No deposition testimony shall be allowed with regard to a denial hearing. All witness testimony must be presented live at the hearing.
- e) The Commissioner shall be allotted at least one (1) hour to conduct inquiry of the witnesses and/or parties.
- f) A Final Order on the hearing of the denial of an application for licensure shall be published within no more than 30 days following the close of the Hearing.
- g) Any Final Order that is entered by the Commissioner denying an application for any reason shall memorialize the findings of the Commissioner and the applicant may thereafter, within ten (10) days of the date of the Final Order, appeal to the Chancery Court of Hinds County, Mississippi, First Judicial District.

*Source Authority*: Money Transmitters Act §§ 75-15-1, et seq.; Insurance Premium Finance Law §§ 81-21-1, et seq.; Mississippi Pawnshop Act §§ 75-67-301, et seq.; Mississippi Title Pledge Act §§ 75-67-401, et seq.; Mississippi Check Cashers Act §§ 75-67-501, et seq.;

Mississippi Debt Management Services Act §§ 81-22-1, et seq.; Credit Availability Act §§ 75-67-601 et seq.; Small Loan Regulatory Law §§ 75-67-101, et seq.; Small Loan Privilege Tax Law §§ 75-67-201, et seq.; Motor Vehicle Sales Finance Law §§ 63-19-1, et seq.; Consumer Loan Broker Act §§ 81-19-1, et seq.

### **Part 3: Chapter 6: Mississippi Credit Availability Act (2016):**

#### **Rule 6.1: Promulgation and Purpose.**

**General.** These Regulations are promulgated pursuant to Miss. Code Ann. §75-67-601, et seq., known as the “Mississippi Credit Availability Act” (MCAA). Specifically, §75-67-615(1) empowers the Department of Banking and Consumer Finance (DBCF) to adopt reasonable administrative regulations, not inconsistent with law, in order to enforce the MCAA. These Regulations are neither intended to create any private right, remedy, or cause of action in favor of any account holder or against any Licensee, nor are these Regulations intended to apply to any business transaction of a Licensee not covered by Mississippi Law. These Regulations are intended only to clarify the existing statutory law governing the “Credit Availability” business. In order to ensure compliance with the provisions set forth in the MCAA, the following regulations have been implemented.

Source: *Miss. Code Ann. §§ 75-67-601 et seq.; Miss. Code Ann §§ 75-67-615 (1) and 75-67-621(1).*

#### **Rule 6.2: Definitions.**

Unless otherwise defined in the MCAA, the following terms shall be defined as follows:

**AMOUNT FINANCED.** The amount of money disbursed to the account holder excluding any fees or charges. Pursuant to Regulation Z (12 C.F.R. § 1026.18(b)), this may be described to the account holder as “the amount of credit provided to you or on your behalf.”

**NOTE:** Under the MCAA, the “Amount Financed” is referred to as the “Principal” and is specifically defined below.

**BUSINESS DAY.** Any day of the week between and including Monday through Friday, and excluding Saturdays, Sundays and all official national holidays recognized by the United States federal government.

**FINANCE CHARGE.** For Truth and Lending Act (TILA) purposes, a finance charge under the MCAA includes the Handling Fee and Origination Fee, if any, charged by the Licensee. This may be described to the account holder as “the dollar amount the credit will cost you.”

**HANDLING FEE.** A fee paid monthly by the account holder “for services, expenses, and costs” of the Licensee. Said amount may not exceed “twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or portion thereof...” The Handling Fee shall not be deemed interest for any purpose of law.

**MONTH.** (a) One of the months as named in the calendar or (b) The period from a day of one month to the corresponding day of the next month if such exists, or, if such does not exist, to the last day of the next month (i.e., use of either 360-day or 365-day year is permitted). For the purposes of earning the “monthly Handling Fee” allowed by statute, one (1) calendar day in a calendar month equals one (1) full month of Handling Fees earned unless otherwise prohibited by law (e.g., one-business day statutory right of rescission by account holder at Miss. Code Ann. §75-67-621(2)).

**ORIGINATION FEE.** A fee, in addition to the Handling Fee, that may be charged by a Licensee to cover “costs associated with providing a credit availability transaction.” Miss. Code Ann. Section 75-67-619(c). This fee may not exceed “one percent (1%) of the amount disbursed to the account holder or five dollars (\$5.00), whichever is greater.” The Origination Fee shall not be deemed interest for any purpose of law.

**OUTSTANDING PRINCIPAL BALANCE.** The *lesser* of (a) the amount of money *initially* borrowed at the consummation of the transaction (i.e., the Principal/Amount Financed) or (b) the actual amount outstanding Principal/Amount Financed (not including any late fees) on the date the monthly payment is due and owing.

**PAST DUE AMOUNT.** For purposes of calculating late fees, the past due amount is the amount of a single payment that is more than 10 **business days** in arrears during a Calendar Month.

**PRINCIPAL.** The amount of money initially borrowed by the consumer at the consummation of the transaction. Also referred to as the “Amount Financed.” This amount does not include any Handling Fee, Origination Fee or late fees.

**REFUND.** The amount due and owing to the account holder for overpayments or credits of any nature.

Source: *Miss. Code Ann. §§ 75-67-603 and 75-67-619; 12 C.F.R. § 1026.18.*

### **Rule 6.3: Record Keeping Requirements**

#### **Customer records:**

1. Must be maintained at the licensed location or be immediately available upon request via electronic access.
2. Must maintain a consecutively numbered log/journal with corresponding number placed on the credit availability agreement. (loan register)
3. Must maintain the following information on a ledger card or computer system generated transaction history that can be printed upon request:
  - a. Name and address of the account holder(s)

- b. Date of the credit availability transaction
  - c. Total amount of payments
  - d. Monthly percentage charged for Handling Fee
  - e. Daily Rate if using the simple interest method
  - f. Terms of repayment
  - g. Maturity date
  - h. Unpaid balance
  - i. Amount and date of receipt of all payments
  - j. Distribution of all payments to principal and fees charged
  - k. Description of collateral, including VIN number, if applicable
4. Must maintain a separate file for each account holder containing all documents pertaining to credit availability transactions.
  5. Must maintain a check book or cash journal in numerical order indicating the distribution of all proceeds and to whom disbursed.
  6. Must maintain a separate file containing complete transaction histories of all loans that are paid-in-full.
  7. Shall be maintained for no less than twenty-four (24) months after the date of the final transaction."
  8. Shall maintain detailed records re: repossession of vehicles and sale thereafter in customer files for two (2) years after sale of collateral. Shall include evidence of the commercially reasonable sale of collateral.

Source: *Miss. Code Ann. § 75-67-615.*

#### **Rule 6.4: Collateral.**

The Licensee shall not "hold a personal check" as collateral for a credit availability loan. However, the Licensee may utilize an ACH authorization to debit funds from an account holder's account provided the authorization is agreed to by the account holder and fully disclosed in the written agreement. If the account holder defaults, the Licensee must not debit more funds from the account holder's bank account than what is currently owed on the credit availability account.

Source: *Miss. Code Ann. §§ 75-67-615 and 75-67-619(1),*

#### **Rule 6.5: Written Explanation of Fees Required, Prepayment and Right of Rescission.**

##### **1. General.**

Before a credit availability transaction is finalized, the Licensee must provide each prospective account with "a written explanation of the fees and charges to be charged and the due dates for all payments.

**2. All Fees and Charges Must Be Included.**

All fees and charges allowed under the MCAA which the Licensee intends to collect from the account holder must be clearly disclosed in the credit availability agreement. This includes any Origination Fee, Handling Fee, late fees, and collection fees. Any fee or charge not included in the agreement cannot be assessed and collected.

**3. Style, Content and Method of Executing Prepayment.**

a. The style, content, and method of executing the required written explanation must comply with the federal truth-in-lending laws and must contain a statement that the account holder may prepay the unpaid balance in whole or in part at any time. No penalty shall be incurred by the account holder as a result of prepayment.

b. At a minimum, the written explanation must include:

- (i) The amount of the transaction;
- (ii) The date the agreement was entered into;
- (iii) An amortization schedule which is a description of the payments including the distribution of payments between principal and fees;
- (iv) The name and address of the licensed office;
- (v) The name of the person primarily obligated on the agreement;
- (vi) The amount of the principal;
- (vii) The agreed rate of charge stated on a percent per year basis and the amount in dollars and cents;
- (viii) The percentage of the daily or monthly rate; and
- (ix) All other disclosures required pursuant to state and federal law.

**4.** If an existing loan is paid-off via a new loan, refinanced, rolled-over, etc., the existing Loan number or account number and the total amount paid-off via the new loan shall be itemized on the new loan agreement.

**5. Right of Rescission.**

The contract for any credit availability agreement shall include, along with other state or federal law requirements, the right for an account holder to rescind the transaction within one (1) **business day**; provided, however, that if the account holder accepts funds from the credit availability Licensee prior to the expiration of the one-day rescission period, any Origination Fee charged shall be nonrefundable.

Source: *Miss. Code Ann. § 75-67-621.*

**Rule 6.6: Handling Fees/Origination Fees.**

**1. Origination Fees.**

- a. The Origination Fee shall be calculated based on 1% of the “Amount Financed” to the account holder” or five dollars (\$5.00) whichever is greater.
- b. For the purposes of the federal APR calculation, an Origination Fee must be included as part of the “Finance Charge” disclosure as required by the federal Truth-in-Lending Act, Regulation Z. (i.e., Total Handling Fees + Origination Fee = Finance Charge shown in federal TILA box)
- c. An Origination Fee is optional; however, if charged, it shall be disclosed in the written agreement. It may be collected with the first payment or it may be allocated in the amortization schedule and collected monthly; however, it must not be included in the calculation of the Handling Fee.

## 2. **Handling Fees.**

- a. The Handling Fee is for services, expenses, and costs of the license. This includes any and all costs associated with checks or ACH authorizations that are returned for nonsufficient funds. **The Licensee is not allowed to charge a separate NSF fee.**
- b. The Handling Fee must be calculated based on a percentage up to but not exceeding “twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or portion thereof. All other fees shall be excluded from the calculation of the Handling Fee (e.g., Origination Fee, late fees, collection fees, etc.)
- c. In no event shall any Handling Fees be charged or collected in an amount greater than the fees shown in the Federal TILA box and the “written explanation of fees.” Unearned Handling Fees shall be refunded or credited if an account holder pre-pays a loan before the final fixed maturity date.

Source: *Miss. Code Ann. §§ 75-67-619 and 75-67-621.*

### **Rule 6.7: Scheduled Loan Payments.**

All contractual monthly payments shall be substantially equal. The threshold for variance between the initial (or final) payment and remaining payments should be no more than five dollars (\$5.00.) The determination of compliance with this threshold shall not take into consideration any variance in the final payoff amount that is the result of one or more late fees incurred during the loan term. Approval of payment variance may be requested by writing to the Director of Consumer Finance at DBCF.

There is currently no prohibition on an account holder making multiple payments in any given Month or agreeing with the Licensee to make payments on a higher rate of frequency than monthly. See below regarding Bi-weekly late fees.

Source: *Miss. Code Ann. §§ 75-67-603(e), 75-67-619(4)*



### **Rule 6.8: Late Payment Fees.**

No interest or additional fee shall be charged on any late fees or other default-related fees allowed by MCAA.

1. A late fee of ten percent (10%) of the past-due amount may be charged and collected by a Licensee if **both** of the following conditions are met:
  - a. The account holder fails to pay a monthly payment “within ten (10) **business days** after the due date.” And
  - b. Such fees are “clearly disclosed in the credit availability agreement.”
2. Late fees shall be tracked as a separate line item and shall not be added to or combined with the principal balance to incur additional fees. The statutory limit of a maximum 10% late fee penalty on the amount due/owing for a delinquent monthly payment is sufficient to compensate for any late payment without the incurrence of additional fee/interest on a late fee itself.
3. Late fees shall not be deducted from any regular payment for the purpose of creating an additional late fee.
4. The addition/inclusion of any previous late fee to increase the Outstanding Principal Balance is prohibited.
5. A late fee may be charged and collected only once on any scheduled payment, regardless of the period during which the scheduled payment remains in default.
6. Bi-Weekly late fees: Late fees may only be charged after 10 **business days** have elapsed following the monthly due date. No more than 10% of the total monthly payment shall be collected as a result of late payment due during any month.

Example: A Licensee contracting for bi-weekly payments in lieu of one monthly payment, may only charge a 10% late fee on a single bi-weekly payment that is more than 10 **business days** late, thus ensuring that if both bi-weekly payments are more than 10 days late, the account holder incurs total late fees not greater than 10% of the total payment due in any given Month.

Source: *Miss. Code Ann. § 75-67-619(5)*.

### **Rule 6.9: Other Fees Prohibited During Term of a Producing Loan.**

No other fees shall be charged by a Licensee as a result of “insufficient funds” (marked “NSF”), or a dishonored/returned check or ACH debit attempt from a financial institution during the term of an active producing loan. Returned or NSF payment attempts may, however, retroactively result in the account holder incurring a late fee as allowed herein. Only one late fee per monthly

payment is allowed, even if the payment is late and it is also subsequently returned NSF.

Source: *Miss. Code Ann. §§ 75-67-619 (1) & (5).*

**Rule 6.10: Collection Fees Allowed After Default.**

1. If an account holder fails to make a payment for more than sixty (60) days, the Licensee may thereafter deem the credit availability agreement in default and place such in collection.

2. If placed in collection, the Licensee may charge and collect the following fees in connection with any such default, provided that such fees are clearly disclosed in the credit availability agreement:

(a) If the Licensee is required to employ a third party, including an attorney, to collect on the account the Licensee may:

(i) If the credit availability agreement so provides, charge and collect a reasonable collection fee and attorney's fee; and

(ii) If the credit availability agreement so provides, shall be entitled to recover from the account holder all court costs incurred and to recover any court-awarded damages, including those incurred on appeal.

(b) If applicable, the Licensee may charge and collect from the account holder any fees and costs relating to the repossession and sale of collateral, including, but not limited to, fees and costs associated with the repossession, storage, preparation for sale and sale of collateral. Proof of these expenses shall be maintained in the account holder's file.

**NOTE:** None of these fees may be charged and collected unless and until the account holder is in default for more than 60 days. In other words, collection fees cannot be assessed until day 61 of default.

Source: *Miss. Code Ann. § 75-67-619(6).*

**Rule 6.11: Limitation on Multiple Loans.**

There is no statutory prohibition on more than one credit availability transaction being made to the same account holder account by a single Licensee, except as described herein. There is likewise no statutory restriction on the parties' ability to renew, or otherwise modify, an existing contract, except as provided herein.

Based on §§75-67-619(2)(a) and (b), any given credit availability account assigned to an account holder means that all outstanding "transactions" to that credit availability account must be combined together for the purposes of determining under which section of the statute a loan shall be made.

When any credit availability account has an outstanding principal balance that is or will be greater than \$500.00, any new credit availability transactions made shall be calculated on the entire principal balance owed and such loan shall be made under Section 2(b), with a term of six to twelve (6-12) months.

Source: Miss. Code Ann. §§ 75-67-619(a) and (b).

**Rule 6.12: Itemized Receipt Required.**

For each payment made on account of any loan, the Licensee shall give to the person making the payment a receipt specifying in plain, clear, and simple terms the amount of the payment, an itemized line for EACH FEE being incurred that day, any fees deferred and unpaid during the life of the loan, and the balance owing on the combined principal and fees following the account credit for the payment. A copy or scan of each receipt shall be kept in the account holder's records.

Source: Miss. Code Ann. § 75-67-621.

**Rule 6.13: Conversion/Rollover of Existing Title Pledge or Check Cashers Act Loans.**

No accrued interest or service charge shall be capitalized or added to the original principal of a Title Pledge Act transaction during any conversion of the Title Pledge Act loan to an MCAA loan or any other extension or continuation of a loan made under the Title Pledge Act. Similarly, no fees or charges shall be capitalized or added to a delayed deposit transaction during any conversion of the delayed deposit transaction to an MCAA loan. Handling Fees may only be calculated on the original principal of the previous loan. Services charges and fees owed from the previous loan shall be itemized separately in the written agreement on the new loan.

Source: Miss. Code Ann. § 75-67-615(1).

**Rule 6.14: Refund Calculations; Prepayment.**

1. Any refund that is due to any account holder due to accidental overpayment, prepayment or early payoff shall be promptly issued to the account holder.
2. Notice shall be provided to an account holder in writing of any refund due and owing for more than 45 days.
3. When any agreement is paid in full, the Licensee shall credit or refund all unearned Handling Fees. The sum of the digits or rule of 78ths method of calculating prepaid refunds is prohibited.
4. All refunds shall be documented on a receipt, signed by the account holder acknowledging receipt thereof.
5. All refund receipts and all notice letters regarding refunds shall be maintained within the customer's file.
6. No penalty shall be incurred by the account holder as a result of prepayment.

Source: Miss. Code Ann. § 75-67-615.

**Rule 6.15: Change in Ownership, Notice Required.**

To ensure compliance with Miss. Code Ann. §§ 75-67-605(5), written notice is required to be provided to the DBCF, through NMLS, within thirty (30) days of the direct or beneficial change in ownership of a Licensee. Notice may be provided on a form created by the DBCF and may include additional information related to the change in ownership.

Source: Miss. Code Ann. §§ 75-67-605, 75-67-615(1).

**Rule 6.17: Prohibition on Sale of Insurance or Ancillary Products.**

No insurance policies or any other ancillary products shall be sold or offered by a Licensee or agent thereof in conjunction with a credit availability loan.

Source: Miss. Code Ann. § 75-67-615(1).

**Rule 6.18: Consumer Credit Reports; Checking; Reporting.**

If a Licensee utilizes or requires information from a consumer's credit-report from a credit bureau that receives or reports on a consumer credit history, the Licensee shall, in a reciprocal manner, report favorable credit/payment information if/when the customer honors and timely complies with payment requirements.

Source: Miss. Code Ann. § 75-67-615(1).

**Rule 6.19: Signage Requirements; Pamphlet.**

1. **Signage.** Pursuant to Miss. Code Ann. §75-67-621 and these Regulations a Licensee shall display a sign disclosing the maximum fees allowed to be charged for credit availability Loans. The sign must be at least 20"x 20" and the print must be large and bold in order to allow customers to easily read the information. Such sign must be displayed, at eye-level or above, in a conspicuous place and in easy view of all persons who enter the place of business.

The following is an example of the required sign:

**BEFORE YOU SIGN A CONTRACT TO MAKE A LOAN, BE CERTAIN YOU HAVE READ THE LOAN DOCUMENTS SO YOU UNDERSTAND YOUR OBLIGATIONS AND RIGHTS UNDER THE MISSISSIPPI CREDIT AVAILABILITY ACT (“MCAA”)**

The following is a list of fees and terms allowable for services that may be offered under the MCAA:

1. Handling Fee:

a. **Loans up to or totaling not more than \$500.00:**

- i. A term of **4 to 6 months to repay**
- ii. Substantially equal payments each month
- iii. Up to 25% FEE PER MONTH (**amortized for the term of the loan**)

b. **Loans totaling \$501.00, up to \$2500.00:**

- i. A term of **6 to 12 months to repay**
- ii. Substantially equal payments each month
- iii. Up to 25% FEE PER MONTH (**amortized for the term of the loan**)

2. Origination Fee: You may be charged an Origination Fee (to make your loan) of up to 1% of the amount disbursed or \$5.00 (whichever is greater).

3. Late Fee: If you are **10 business days LATE** in making any scheduled payment you may incur LATE FEES of up to **10% of the amount you owe** for that monthly payment. These late fees may be collected after your final scheduled payment.

**YOU MAY PAY-OFF YOUR LOAN AT ANY TIME — WITHOUT ANY PENALTY.**

**IF YOU PAY-OFF EARLY YOU MAY INCUR LESS FEES.**

**YOU HAVE ONE (1) DAY TO REVIEW YOUR LOAN AND RETURN THE LOAN PROCEEDS IF YOU DECIDE TO CANCEL YOUR LOAN.** You may still be charged the Origination Fee even if you cancel.

This business is licensed and regulated by the Mississippi Department of Banking and Consumer Finance.

If you have any unresolved problem with a transaction at this location, you are entitled to assistance. Please CONTACT:

**Mississippi Department of Banking and Consumer Finance**

**P.O. Box 12129, Jackson, MS 39236-2129**

**Phone 1-800-844-2499 For additional information visit: [www.dbcf.ms.gov](http://www.dbcf.ms.gov)**

Any of the above information that is not currently posted may be posted on a separate sign using the dimensions described above. A Licensee is only required to post fees for the type of services offered.

2. **Pamphlet.** The above information must be provided in a pamphlet prepared by the DBCF, to any account holder that requests it. The Licensee must add the account information and/or complaint hotline telephone number of the Licensee to the pamphlet. A Licensee without a physical location in this state shall make the information available on its website.

Source: *Miss. Code Ann. §§ 75-67-617 through 75-67-621.*

**Rule 6.20: Collection, Civil Actions for Recovery, and Remedies.**

If a vehicle secures a credit availability loan, and it is repossessed and thereafter sold to satisfy a loan in default, the Licensee shall NOT be entitled to recover a “deficiency” from the account holder following the sale of the vehicle, if the sale of the vehicle does not result in an amount equal to or greater than the principal balance owing at the time of default. However, recovery of fees and costs as allowed by Section 75-67-619(6) may be recovered from the court. Any amount recovered over and above the amount owed by the account holder shall be promptly refunded. The Licensee shall maintain proof of refund in the account holder’s file.

A Licensee shall not accelerate the full term of a delinquent loan and recover or request the whole amount due and owing as if the contract had been honored by the account holder (i.e., the entire benefit of the bargain). Demands shall only be made for fee amounts actually accrued or incurred. A Licensee’s request for judgment for monthly fees shall in no instance exceed the precomputed amount of the loan agreement.

Source: *Miss. Code Ann. §§ 75-67-615(1) and 75-67-619(6).*

The above Regulations are promulgated pursuant to Miss. Code Ann. §75-67-615(1) of the Mississippi Credit Availability Act (effective July 1, 2016); Miss. Code Ann. §§75-67-601 et seq.