

**STATE OF MISSISSIPPI
DEPARTMENT OF BANKING AND CONSUMER FINANCE
CONSUMER FINANCE DIVISION**

**REGULATIONS
FOR THE
SMALL LOAN REGULATORY LAW
AND
SMALL LOAN PRIVILEGE TAX LAW**



John S. Allison, Commissioner

Sections 1 – 11, 13 and 14 Effective on March 30, 2006

Section 12 Effective on July 1, 2006

Compiled by the
Department of Banking and Consumer Finance
For Licensees governed by
Mississippi Small Loan Laws

**Regulations
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REGULATIONS
FOR THE
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SECTION 1. Purpose

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.

SECTION 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:

- (a) “Actuarial Method” shall have the same meaning as it is used in the Federal Truth-In-Lending Act in determining the annual percentage rate.
- (b) “Commissioner” means the Commissioner of the Department of Banking and Consumer Finance of the State of Mississippi.
- (c) “Department” means the Department of Banking and Consumer Finance of the State of Mississippi.
- (d) “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.
- (e) “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.

- (f) “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.
- (g) “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.
- (h) “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.
- (i) “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.
- (j) “Term of Loan” means the period of time from the date of the loan through the scheduled date of the final payment.
- (k) “The Rule of 78’s” is a formula used for calculating earnings and rebates for pre-computed loans.
- (l) “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.

SECTION 3. Insurance: General

- (a) 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.
- (b) 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.
- (c) A Licensee shall accept properly endorsed pre-existing insurance policies owned by the borrower at the time of the making of a loan.
- (d) 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.

- (e) 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.
- (f) 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.
- (g) 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.
- (h) A licensee shall maintain documentation of all insurance rates approved by the Mississippi Department of Insurance.
- (i) 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.
- (j) In the event of the payment of a loan in full one or more months prior to 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.

SECTION 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:

- (a) 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.

- (b) The original term of insurance must not exceed the contractual term of the loan. If the term and the amount of insurance is less than the term and the amount of loan, the term and amount of the insurance must be shown on the contract and on the ledger card and/or computer generated copy.

SECTION 5. Insurance Claims

A Licensee shall maintain the following information and documents for all insurance claims:

- (a) 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
- (b) a copy of the death certificate or a dated published public notification of the death for all claims on credit life insurance
- (c) 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
- (d) a copy of all insurance policies written in connection with a loan and a notification or certificate of cancellation of the policy
- (e) 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.
- (f) a copy of the borrower's payment history

SECTION 6. Fees

- (a) 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)
- (b) 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.

- (c) 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.
- (d) Notary Public Fee - A Licensee shall not charge or collect from a borrower any notary fee in connection with a loan.

SECTION 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.

SECTION 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.

- (a) 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.
- (b) 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:
 - (i) 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
 - (ii) 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))

SECTION 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:

- (a) 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
- (b) 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

SECTION 10. Records

- (a) 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.
- (b) 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.
- (c) A loan register or a copy of all disclosure statements shall be maintained in order according to date of loan.
- (d) The following information shall be maintained on a loan ledger or on a computer generated copy:
 - (1) name and address of the borrower and each co-borrower
 - (2) date of loan and loan number
 - (3) total amount of payments
 - (4) finance charges pursuant to Miss. Code Ann. §75-17-21
 - (5) closing fee pursuant to Miss. Code Ann. §75-17-21(3)
 - (6) State Contract Rate
 - (7) State Amount Financed
 - (8) dollar amount of default charge authorized by Section 9 of these Regulations
 - (9) deferral charge
 - (10) credit life insurance premium, coverage, and terms
 - (11) credit disability insurance premium, coverage, and terms
 - (12) other types of insurance premiums, coverage, and terms
 - (13) fees paid to public officials
 - (14) attorney fees for title search
 - (15) appraisal fees

- (16) terms of repayment
 - (17) type of collateral
 - (18) date of maturity
 - (19) whether the loan is new, a renewal, or a remaking of a previous loan, and, if so, the account number of the previous loan
 - (20) unpaid balance
 - (21) amount and date of receipt of all payments
 - (22) date and amount of all default charges imposed and date and amount of the payment thereof
 - (23) payments from insurance proceeds
 - (24) any information regarding litigation, repossession, or foreclosure pertaining to the loan and/or the collateral
 - (25) for terminated loans:
 - (i) date of termination
 - (ii) whether terminated by payment, renewal or refinancing
 - (iii) any insurance claim payments
 - (26) for loans terminated by renewal, remaking or refinancing:
 - (i) loan number of renewal, remake or refinancing
 - (ii) refunds for unearned finance charge
 - (iii) refunds of any unearned insurance premiums
 - (27) real estate prepayment penalty
- (e) 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.
 - (f) 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.
 - (g) Licensee shall document all overpayments by the borrower and proof of all refunds.
 - (h) A check register shall be maintained in numerical order and the purpose of each check issued shall be indicated.
 - (i) Licensee shall maintain a record of the itemization of the amount financed in the borrower's file.
 - (j) Licensee shall maintain a register of all deferment charges which includes customer name, account number and date of deferment charge.

SECTION 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.

SECTION 12. Sale and Financing of Auto Club Memberships *(Effective July 1, 2006) *

(a) Requirements for the Sale and Financing of Auto Club Memberships

- (1) 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.
- (2) 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.
- (3) Borrower must have a valid driver's license.
- (4) Borrower must certify that they own or lease at least one automobile.
- (5) Auto club membership applications must be signed by the borrower and a copy of the application must be maintained in the borrower's file.
- (6) 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.
- (7) Borrower shall have the option of paying the auto club membership dues by using funds other than loan proceeds.
- (8) Auto club companies must be licensed with the Mississippi Department of Insurance.
- (9) 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.

(b) 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.”**

(c) 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.

(d) 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.

(e) 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 auto club memberships sold by the Licensee run concurrently.

(f) 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.

SECTION 13. General

- (a) 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.
- (b) 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.
- (c) 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."

SECTION 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.