

Title 5: Banking and Consumer Finance

Part 3: Consumer Finance Activities

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 handlings) 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

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.