STATE OF MISSISSIPPI
DEPARTMENT OF BANKING AND CONSUMER FINANCE

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Department of Banking and Consumer Finance
Mississippi Credit Availability Act Regulations
Frequently Asked Questions
(Issued: 8-9-2021, Revised 12-27-2021)

1. Effective Date of the MCAA Rules:

   DBCF: 3/03/2021

2. We do want to ensure that we are using the most current version of the department's pamphlet. If you would, please provide us with a current copy.

   DBCF: The current pamphlet is available on our website and complies with the new regulations: https://dbcf.ms.gov/wp-content/uploads/2020/06/Credit-Availavbility-Consumer-Pamphlet-PDF.pdf

3. Rule 6.2: Would the definition of "month" allow a loan with the following term (assuming a handling fee of no more than 25% x 12 was charged)?

   Loan origination date: 6/20/2020
   First payment Due Date: 8/1/2020
   Maturity Date: 7/1/2021

   The loan term exceeds 365 days in order to adjust to the borrower's "pay dates" and to provide a consistent due date. The alternative would be to schedule the payments as follows:

   Loan origination date: 6/20/2020
   First payment Due Date: 8/1/2020
   Maturity Date: 6/20/2021

This would be a shorter term for the borrower and create an odd final payment – which doesn't seem beneficial to the borrower.

DBCF: On a 12-month loan, the first payment may be extended so that the total term of the loan is greater than 12 months but less than 13; however, monthly handling fees charged may not exceed 12 exact months (i.e. 365 days). For example, a term running from June 1, 2021 to June 30, 2022 is okay and would be considered less than 13 months, but a term running from June 1, 2021 to July 1, 2022 is not okay and would be considered 13 months. Monthly handling fees shall not be charged for more than an exact 12 months/365 days.

4. Rule 6.2: The provision concerning earning of the monthly handling fee seems to suggest that the entire fee is earned if just one day of the term falls in a calendar month. Does that mean that a loan could have a term from April 25, 2021 to July 1, 2021 and earn 4 monthly handling fees? Or would the term have to go to August 1, 2021 or August 25, 2021 to meet the 4-month term minimum?

DBCF: For loans with monthly handling fees charged on a precomputed basis (not simple interest/daily accrual), the next month's monthly handling fee is charged one day past the due date. For example, on a loan made on April 1 with a first payment date of May 1, the second monthly handling fee would be due on May 2, the third monthly handling fee on June 2, and so on. On simple interest/daily accrual loans, the monthly handling fee accrues by the day based on the daily rate with the total monthly handling fees not to exceed the amount disclosed in the TILA box, which is based on the original loan amortization.

5. Rule 6.3: (Customer Records), Item 6 requires providers to maintain a "separate" file containing transaction histories of all paid off loans. It appears that the regulations do not specifically require physical copies, meaning that an electronic copy that can be pulled on demand would seem to be sufficient, but my clients wanted me to confirm this point.

DBCF: Yes. That is correct.

6. Rule 6.3(2): 9. The Regs. require a consecutively numbered transaction number on the loan agreement. How should this requirement be met with "live check" loans mailed to MS customers? The "live checks" are typically sequentially numbered within each campaign but there is no way to have consecutive numbered loan agreements because a company has no idea whether a customer receiving a "Live check" with cash it and agree to the loan terms.

DBCF: Rule 6.3(2): As long as the Licensee can account for any gaps in sequence, a separate loan register may be maintained for live check loans.

7. Rule 6.5(1): requires a written explanation of fees and charges to be charged, along with due dates for payments, before the transaction is finalized. Is the TILA disclosure that is provided as part of the transaction sufficient to satisfy this requirement if all fees and due dates are included and provided prior to signature, or does the disclosure need to be separated from the agreement?

DBCF: Correct. The written explanation of fees does not have to be separate from the TILA as long as the TILA discloses all allowable fees, charges, terms, due dates, etc. In addition, as required by Rule 6.5(3)(b)(iii), an amortization schedule must be part of or included in the written agreement that is signed by the account holder.

8. Rule 6.5(2): requires all fees to be "clearly disclosed" in the agreement itself. Some of the fees are formulas, for example, late fees that are a percentage of the late amount or handling fees that are "up to 25%," and can be adjusted down for customers with whom the licensees have longstanding relationships. Please confirm whether providing a description of how the fee is to be calculated, as set forth in the example provided, is sufficient.

DBCF: The Department considers fees to be "clearly disclosed" in the credit availability agreement if it includes an amortization schedule as required by Rule 6.5(3)(b)(iii) as well as a written description of the calculation of handling fees, and other charges such as the origination fee, late fees, collection fees, etc.

9. Rule 6.5(3)(b): The Regs. require the providing of an "amortization schedule" including the distribution of payments between principal and fees. We assume that the federally required "payment schedule" in the TILA disclosure is NOT sufficient since it does not break the payment into principal and fees? If so, does the licensee have to maintain a signed copy of the amortization schedule in the customer file or provide some other proof it was provided?

DBCF: Rule 6.5(3)(b): The TILA disclosure is not sufficient to meet this requirement. An amortization schedule must be a part of or included in the written agreement that is signed by the account holder. The written agreement containing this amortization schedule shall be maintained in the customer file.

10. Rule 6.5(4): "If an existing loan is paid-off via a new loan, refinanced, rolled-over, etc., the existing Loan number and or account number and the total amount paid-off via the new loan shall be itemized on the new loan agreement."

The existing loan being paid off is self-explanatory but REFINANCED and ROLL OVER is not. Can you please define what is a REFINANCE and what is a ROLLOVER?

DBCF: Any time a previous loan is paid-off by a new credit availability loan, the previous loan information shall be itemized on new loan contracts. For instance, when refinancing an existing credit availability loan into a new credit availability loan or rolling over an existing delayed-deposit transaction or title loan into a credit availability loan, Licensees shall itemize the previous loan information in the new loan contract.

11. Rule 6.5(4): Discusses the procedure for a loan that is paid off via a new loan. While this appears to be fairly straightforward (that is, if any of the loan proceeds go toward paying off an existing loan with that licensor, that would clearly be a refinance), we are unclear as to whether this could include a transaction whereby a customer brings in cash to pay off an existing loan, and then immediately obtains a new loan. Please clarify whether or not a refinance would include that scenario, as well.

DBCF: Any time a previous loan is paid-off by a new credit availability loan, the previous loan information shall be itemized on new loan contracts. For instance, when refinancing an existing credit availability loan into a new credit availability loan or rolling over an existing delayed-deposit transaction or title loan into a credit availability loan, Licensees shall itemize the previous loan information in the new loan contract.

Rule 6.5(4) does not apply when a customer pays off a loan prior to the maturity date and is issued a new loan, or when a customer pays off a loan at the maturity date and is issued a new loan. However,

the purpose of a credit availability transaction is to provide customers with an installment loan that provides for minimum terms of 4-12 months based on the dollar amount to give borrowers ample time to pay those loans off. Licensees shall not circumvent the installment requirements of 75-67-619(4) by allowing or encouraging credit availability customers to pay off a loan prior to maturity and issuing a new loan for a similar amount and terms on a repeated basis as a pattern of practice. Further, Licensees shall not engage in unfair, deceptive, or abusive acts or practices, also known as UDAAP.

For example, a customer is issued a credit availability loan in the amount of $500 to be paid off in 6-monthly installments. The customer pays the loan off at the first installment due date, the Licensee immediately issues a new loan for similar terms, and this process occurs every month for several months or on a regular basis. This practice circumvents the requirements of 75-67-619(4). This is also an abusive practice that perpetuates a cycle of debt and does not benefit the consumer, but allows the Licensee to collect substantially more in handling fees compared to a loan paid over the full term, as well as collecting an origination fee every 30-days rather than one time over the course of the original term.

12. Under the MCCA, when a lender refinances a prior credit availability transaction and charges an origination fee, can the origination fee be calculated on the full Amount Financed, including the amount paid on the borrower's previous account?

The Act states that the origination fee must be calculated on the "amount disbursed to the account holder." Miss. Code Ann. § 75-67-619(2)(c)(i). We believe that the amount "disbursed to the account holder" includes any cash paid directly to the borrower, as well as any amount paid on the borrower's behalf (such as an amount paid on a previous transaction). The applicable rule appears to support this interpretation when it says that the origination fee must be "calculated based on 1% of the 'Amount Financed' to the account holder…." 5 Miss. Admin. Code Pt. 3, R. 6.6(1)(a). We believe that this reference to the Amount Financed means that the origination fee can be calculated on the full Amount Financed, including any amounts paid on the borrower's behalf. Does the Department agree that the origination fee can be charged on the full Amount Financed, including amounts paid on a prior account?

DBCF Response: DBCF agrees that the "amount disbursed to the account holder" would also include any amount paid on the borrower's behalf such as the payoff of a previous loan. Therefore, it would be included as part of the "amount financed" and subject to the origination fee calculation as provided in the statute.

(Q&A Added 12-20-2021)

13. Rule 6.6(1)(c) and Rule 6.7: There appears to be a conflict between these two rules. If a Licensee collects the full amount of the origination fee with the first payment in accordance with Rule 6.6(1)(c) and the loan is more than $500.00, this would create an odd first payment in excess of the $5.00 limit set by Rule 6.7. Are Licensees effectively prohibited from collecting the origination fee with the first payment on loans of more than $500.00?

DBCF: The origination fee may be collected with the first payment on loans of $500.00 or less, but for loans of more than $500.00, the origination fee must be allocated in the amortization schedule and collected monthly, unless the Licensee requests in writing approval for a variance from the DBCF-Director of Consumer Finance, and the request is approved in accordance with Rule 6.7.

14. Rule 6.7: Does the $5.00 allowable variance for purposes of "substantially equal payments" apply to all payments including a short or long first payment period?

DBCF: Rule 6.7: Mississippi Code § 75-67-603(e) uses the term "substantially equal" and § 75-67-619(4) plainly states "equal payments." DBCF believes that the intent of the law is that a credit availability transaction should provide a borrower with a payment schedule that consists of payments that are as equal in amount as possible, and that any variance should be minor. The Licensee should make every effort to accommodate the account holder by arranging for equal payments to allow that account holder to budget for the payments more easily. However, this rule does provide that the DBCF-Director of Consumer Finance may consider and approve a larger payment variance if requested by a Licensee.

15. Rule 6.11: While the regulation says that if an account has a balance over $500 new transactions shall be calculated on the total balance, that would leave the existing loan continuing to be paid as a six month loan with higher payments, even though the account balance is now over $500. Essentially, if the account balance is to be treated as one lump sum, then maintaining one payment schedule of less than 6 months and one of more is problematic. Does this regulation require the existing loans to be extinguished and incorporated into the new loans so that the entire balance is to be paid over 6-12 months?

DBCF: Yes.

16. Rule 6.12: The Regs. provide a receipt requirement for "each payment." Receipt requirements are typically only required for "cash" payments because the borrower would not otherwise receive evidence for the payment unlike with electronic payments in which the borrower would receive evidence of payment via a statement from their bank. Providing a receipt for an electronic payment could create confusion if the electronic payment ultimately returns unpaid. We assume the licensee is NOT required to provide a receipt for a non-cash payment (ACH, debit, etc.) but please confirm? If a receipt is required for a non-present electronic payment, then we assume it may be sent to the borrower via email.

DBCF: Rule 6.12: A receipt is required for all payments, regardless of the method of payment. Providing electronic receipts is acceptable.

17. May credit availability transaction proceeds be used to pay off an outstanding title pledge transaction, including the outstanding interest and service charges?

Rule 6.13 states, "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."

We read this rule to mean that the handling fee in a credit availability transaction cannot be calculated on any portion of an outstanding title pledge attributable to interest or service charges. However, we do not believe that this rule prohibits using the <u>proceeds</u> of the credit availability transaction to pay off the outstanding title pledge transaction, including outstanding interest and service charges. Therefore, where a credit availability transaction is used to pay off an outstanding title pledge transaction, the amount of the CAA transaction can be based on the full amount of the outstanding title pledge

transaction, but the handling fee could be calculated only on the principal amount of the title pledge transaction (which would not include interest or services charges). Does the Department agree?

DBCF Response: Yes, DBCF agrees.

(Q&A Added 12-20-2021)

18. We are hoping to get further clarification on Rule 6.13, which states,

> 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.

This rule applies to a "conversion" of a title pledge transaction into an MCAA transaction. Neither the statute nor the rules define "conversion." We believe that "conversion" is what happens when one licensee pays off and replaces a title pledge transaction from that licensee with a new MCAA transaction from that same licensee. Therefore, we believe Rule 6.13 applies only when a licensee is "converting" prior transactions that it originated, and the rule would not apply when a licensee issues a new MCAA transaction to pay off another creditor (at the borrower's direction) - such as an outstanding title pledge transaction from another licensee. From a practical perspective, in a payoff scenario involving two distinct creditors, a licensee typically receives a total payoff amount from the customer's current creditor, as opposed to an itemized breakdown of charges on the outstanding transaction. Since the licensee cannot know information about the other loan or other creditor, such as how much of the payoff amount is attributable to principal vs. interest or other charges, we believe Rule 6.13 only restricts a licensee from capitalizing interest and service charges on transactions that it originated. We think our understanding is consistent with the language of the Rule as well as its intent to prohibit a licensee from capitalizing its own interest and charges. Let us know if the Department agrees.

DBCF agrees. A conversion occurs when a licensee that originated a title pledge or a delayed deposit transaction converts that loan into a MCAA transaction by paying off the title pledge or delayed deposit transaction by replacing it with a new MCAA transaction. A conversion does not occur when a new licensee issues a new MCAA transaction to pay the balance on a title pledge or delayed deposit transaction owed to another licensee that originated those transactions.

(Q&A Added 12-27-2021)

19. Rule 6.18: Can a licensee pull a credit report from one bureau and report to a different bureau?

DBCF: Rule 6.18 requires Licensees to report favorable credit/payment information in a "reciprocal manner" to utilizing a consumer's credit report. DBCF interprets this as requiring Licensees to report favorable credit/payment information to the same bureau used by the Licensee to pull a credit report.

20. Rule 6.18: When does the Department expect licensees to begin reporting to a credit bureau with respect to CAA loans?

DBCF: The rules are now effective. Licensees should start reporting immediately.

21. Rule 6.18: Do licensees have to report on existing loans or just on loans made after a certain date?

DBCF: If a credit report was required to issue the existing loan, the Licensee should report on existing loans and new loans going forward.

22. Rule 6.18: How often does the Department expect licensees to report on each customer file?

DBCF: The Licensee should report when the customer "honors and complies with payment requirements." DBCF interprets this to mean when a customer makes a payment, the Licensee shall report that information.

23. Rule 6.18: Also, note that Bureaus typically do not allow the reporting of only "positive" payment information because it distorts the credit file and devalues the Bureaus information. Most Bureau contracts require the reporting of both positive and negative payment information. Given that information what does the Department want licensees to do?

DBCF: It is not the intent of this regulation to have a Licensee only report on-time payments and skip the delinquent ones. Rather, the Licensee should report the details of when a customer has favorable payment information as opposed to not reporting any payment information at all and/or only reporting single entries of charge-off/bad debts.

24. Rule 6.20: The following language is confusing: "A licensee shall not accelerate the full term of a delinquent loan and recover or request the whole amount due and owing 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." We assume the intended language is "[as] if the contract had been honored …." We also assume it allows a licensee to accelerate the full principal outstanding but can only collect the actual fees accrued at the time of acceleration, correct?

DBCF: Rule 6.20: Yes, a Licensee is allowed to accelerate the full principal outstanding, but the Licensee can only collect the actual fees accrued at the time of acceleration.