

**TO: Small Loan Licensees**

**FROM: Theresa L. Brady  
Deputy Commissioner**

**DATE: February 1, 2006**

**RE: Proposed Amendments to the Regulations for the Small Loan  
Regulatory Law and the Small Loan Privilege Tax Law**

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The Department of Banking and Consumer Finance proposes amendments to the Regulations, dated March 1, 2002, governing the Small Loan Regulatory Law and the Small Loan Privilege Tax Law. In general, the purpose of the amendments is to conform the Regulations to the Department's current practice, to eliminate obsolete provisions and to add clarification. Please find enclosed a copy of the proposed regulations with all deletions containing a strike-through and additions being highlighted.

Pursuant to the Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq., Miss. Code Ann., notice is hereby given this date to the Secretary of State, State of Mississippi, and all other persons required by statute to receive advance notice of this agency's rule-making proceedings that new Regulations are being promulgated to supersede all prior Regulations and/or Guidelines of the Department of Banking and Consumer Finance and its predecessor agency, the Department of Bank Supervision, governing the small loan business. Notice is also hereby given that the repeal of all prior Regulations of this Department and its predecessor agency, the Department of Bank Supervision, governing the small loan business and related consumer finance activities, will become effective on the same date that the new Regulations proposed by this Notice become finally effective.

Any comments you may have concerning these Proposed Regulations must be received in writing on or before Monday, February 27, 2006. Please submit your comments to me at the Department of Banking and Consumer Finance, P.O. Box 23729, Jackson, Mississippi 39225-3729, or by email to [tbrady@dbcf.state.ms.us](mailto:tbrady@dbcf.state.ms.us)

After the required comment period, and provided that no significant changes are required, the adopted Regulations will be filed with the Secretary of State, State of Mississippi, and the effective date of the adopted Regulations will be on or about March 30, 2006.

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

**\*\*\*PROPOSED\*\*\*  
REGULATIONS**

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



**John S. Allison, Commissioner**

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

**Regulations  
Table of Contents**

<b>SECTION 1.</b>	Purpose .....	1
<b>SECTION 2.</b>	Definitions .....	1
<b>SECTION 3.</b>	Insurance: General .....	2
<b>SECTION 4.</b>	Insurance: Property .....	4
<b>SECTION 5.</b>	Insurance Claims .....	4
<b>SECTION 6.</b>	Fees .....	5
<b>SECTION 7.</b>	Prepayment Penalties.....	5
<b>SECTION 8.</b>	Refund of Unearned Finance Charges.....	5
<b>SECTION 9.</b>	Default Charges or Late Charges.....	6
<b>SECTION 10.</b>	Records .....	6
<b>SECTION 11.</b>	Loan Payoff Requests.....	8
<b>SECTION 12.</b>	General.....	8
<b>SECTION 13.</b>	Freedom From Liability.....	8
<b>SECTION 13.</b>	Violations.....	9

**State of Mississippi**  
**Department of Banking and Consumer Finance**  
**Consumer Finance Division**

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

**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 ~~These Regulations~~ 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. ~~required to be disclosed by creditors to consumers pursuant to that Act.~~
- (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 ~~and includes every~~ **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 for family, household or personal purposes and that is generally governed by the truth-in-lending statutes and regulations. Licensing under the aforementioned statutes 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) “Interest Loan” means a loan on which the finance charge is calculated at an agreed rate on the unpaid balance of the State Amount Financed, with such calculations being made either under an amortization schedule assuming timely periodic payments or at the time of the payment of an installment.~~
- (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 part of the State amount financed and not part of the finance charge: (i) ~~premium (including commission) for insurance written on collateral for the loan, on credit life insurance, and on credit disability insurance;~~ actual cost of authorized insurance premiums (ii) closing costs excluded from the definition of finance charge by State law; and (iii) ~~closing fees collected pursuant to State law.~~ any reasonable fee paid to an attorney for the investigation of a title.
- (h) ~~“Agreed Rate of Charge” or “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 ~~or incident to or as a condition of the extension of credit~~ that is calculated by using the State Contract Rate, the term of the note and the State Amount Financed.
- (j) ~~“Term of the Loan” and “Period of Time for which Loan is Extended” means the period of time from the date of the loan through the scheduled date of the final payment. on such loan.~~
- (k) ~~“Actual cost of any premium paid” for insurance, whether property, disability, or life, means the total premium due for any such insurance coverage, as authorized by Miss. Code Ann. Section §75-67-121.~~
- (l) ~~“The Rule of 78’s” also known as the sum of the digits method, is a formula used for calculating earnings and rebates for pre-computed installment loans.~~
- (m) “Total Amount of Note,” “Total Amount of Loan,” ~~“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 ~~for such coverage~~ 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~~ ~~of all~~ 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) ~~In connection with any insurance written,~~ 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(ies) 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. ~~with~~ Such refund ~~being~~ shall be calculated under the Rule of 78's, unless the policy or certificate calls for a greater refund amount. Calculations shall be based ~~on~~ 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 screen print hard computer generated copy.

#### **SECTION 5. Insurance Claims**

~~For all insurance claims, A Licensee shall maintain for twenty four (24) months from date of last transaction, a file containing the following information and/or documents, as applicable~~ the following information and documents for all insurance claims:

- (a) a Fire Marshal's report or dated published public notification of such 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 assigned and/or endorsed to protect the interest of the Licensee written in connection with a loan and a notification or certificate of cancellation of the policy; as of the date the loan is paid in full;
- (e) ~~evidence of cancellation of all credit insurance policies (other than the policy or policies paying off the loan) and evidence~~ proof of refunds of any unearned premiums as of the date of the loss; however, 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 charge a closing fee not exceeding two percent (2%) of the total payments on the loan or Fifty Dollars (\$50.00), whichever is less. Such fee may be charged on any type of loan. The closing fee shall not be a part of the State Finance Charge and no portion thereof is refundable in the event of a prepayment. If the closing fee is paid from proceeds of the loan, such fee shall be a part of the State Amount Financed.~~ 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. §75-17-21 (3) Miss. Code Ann.
- (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 submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card and/or on a screen print hard 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. ~~Such~~ This fee must be paid by the Licensee to an attorney. ~~However, this fee and~~ should not exceed the maximum amount shown on the Notification of Fees Schedule submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card and/or on a screen print hard computer generated copy.
- (d) Notary Public Fee - ~~No~~ 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 ~~the~~ 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 and/or on a screen print hard computer generated copy. In addition, licensee must maintain a register of all prepayment penalties which includes the customer name, account number and date of 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 ~~based and~~ 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 pay-off 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 ~~any~~ a pre-computed consumer credit transaction loan of ~~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 ~~in subsection (b) below and the records listed in subsections (c) and (d) below~~ shall be maintained in **separate** folders, envelopes, or similar method of separation ~~containing original or hard copies of the required documents with an appropriate index, filed alphabetically or numerically. Such records may be traditional hard copies, printouts from computers, or on magnetic~~ **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 ~~kept~~ **maintained** for twenty-four (24) months after the date of 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 a statement of loans or a 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 chronological order according to date of loan.
- (d) The following information shall be maintained on a loan ledger or on a screen print hard 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 authorized by pursuant to Miss. Code Ann. §75-17-25
  - (5) 2% closing fee authorized by pursuant to Miss. Code Ann. §75-17-21
  - (6) ~~agreed rate of charge~~ State Contract Rate
  - (7) State Amount Financed
  - (8) ~~type~~ 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 paid to examine title to real estate 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) ~~if the loan has been terminated:~~ for terminated loans:
    - (i) date of termination
    - (ii) whether terminated by payment, renewal or refinancing
    - (iii) any insurance claim payments
  - (26) ~~if the loan is~~ 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 ~~under each license~~ 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 ~~in the borrower's file~~ 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. 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. ~~Such~~ 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 13. Freedom From Liability**

Pursuant to ~~Section 75-67-137 and Section 75-67-245, Mississippi Code of 1972, as amended:~~

~~“(1) A Licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation~~

~~or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.~~

~~-(2) — A Licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.”~~

### **SECTION 13. 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 Licensee’s license and/or a civil money penalty not to exceed Five Hundred Dollars (\$500.00) per violation.

DRAFT