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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
ANDREW S. LEVIN, ACTING DIRECTOR

KEN ROSS
COMMISSIONER

August 23, 2010

RE: Deferred Presentment Service Transactions – Common Violations Found During the Examination Process

Dear Licensee:

The following is a listing of the violations most commonly noted during on-site examinations performed since 2007 by the Office of Financial and Insurance Regulation (“OFIR”), pursuant to the Deferred Presentment Service Transactions Act (“DPSTA”), MCL 487.2121 *et seq.* The purpose of examining licensees is to verify compliance with the DPSTA. The purpose of this correspondence is to make licensees aware of frequently cited violations and provide licensees with an opportunity to avoid or correct these types of violations.

The following bulleted items include the Sections of the DPSTA violated and an example of the violations:

- Section 2(1)(c) of the DPSTA defines a transaction as closed when “a check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.” Section 22(6) of the DPSTA explains when a transaction is designated as closed by the database provider. Veritec Solutions, LLC (“Veritec”) is Michigan’s current database provider. A transaction is automatically closed by the database provider 5 days after the transaction maturity date unless a licensee reports to the database provider the transaction should remain open.

Transactions are improperly closed in the Veritec database as a result of:

- Auto-closing prior to the licensee receiving evidence the customers’ obligations have been satisfied.
- Auto-closing prior to the presentment of customers’ checks.
- Immediately closing transactions when customers’ checks are deposited or an ACH is presented.

Please refer to OFIR Bulletin 2008-14-CF and the DPSTA Frequently Asked Questions for specific information regarding the proper closing of transactions in the Veritec database. OFIR Bulletin 2008-14-CF and the DPSTA Frequently Asked Questions are both posted on the OFIR website: www.michigan.gov/ofir.

- Section 2(1)(m) of the DPSTA defines a maturity date as the “date on which a drawer’s check is to be redeemed, presented for payment, or entered into the check-clearing process in a deferred presentment service transaction.” For example, in a transaction with a transaction date of June 1, 2010 and a maturity date of June 15, 2010, the licensee must

present the check on June 15, 2010. However, there are some exceptions as discussed below.

A licensee is required to deposit the check on the maturity date unless the customer enters into a valid repayment plan, or the customer's maturity date is properly extended in accordance with Section 35(1) of the DPSTA. Section 35(1) allows the licensee to extend a deferred presentment transaction to a term not greater than 31 days, however, the extension must be agreed to by both the licensee and the customer.

- Customers' checks are being deferred in excess of 31 days in violation of the DPSTA. The DPSTA clearly states that licensees are required to include language in their deferred presentment service agreements that indicate that they cannot defer presenting a customer's check for payment beyond 31 days from the date of the agreement.

Examples of practices by licensees that are contrary to the DPSTA are:

- Transaction date is June 1, 2010 with a maturity date of June 30, 2010. The check is not deposited until July 5, 2010, 34 days after the agreement date.
- Transaction date is June 1, 2010 with a maturity date of June 30, 2010. Customer enters into a repayment plan on June 30, 2010 with the first installment payment due July 15, 2010. The customer defaults on the installment payment; however, the check is not deposited until July 30, 2010. If a customer defaults on an installment payment and it has been more than 31 days from the original agreement date, the check must be deposited.

A check held under the DPSTA *must* be presented within 31 days of the transaction date, unless the customer is eligible for and has entered into a written repayment plan.

- Section 32(2) of the DPSTA defines the requirements of a written deferred presentment service agreement.

The following are the items most commonly omitted from agreements that result in licensees being in violation of this section:

- The signature of the customer.
- The Veritec database transaction number.
- The itemization of the fees to be paid by the customer.
- The listing of the schedule of all fees associated with the deferred presentment service transaction and an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction.
- The identification of the customer's "Maturity Date."

Please refer to Section 32(2) of the DPSTA for a listing of *all* items required on the written deferred presentment service agreement.

- Failure to timely close transactions within the Veritec database results in the violation of Section 34(8) of the DPSTA. Section 34(8) requires the licensee to notify the database provider by 11:59 p.m. on the day a transaction is closed, and states the commissioner shall assess an administrative fine of \$100 per day for each day the licensee fails to notify the

database provider. Licensees must ensure all transactions are closed in the database by 11:59 p.m. on the day the transaction is satisfied to be in compliance with this section.

Examples of not properly closing transactions are:

- Transaction date is June 1, 2010 with a maturity date of June 15, 2010. Customer pays cash on June 10, 2010, and redeems his/her check. Licensee does not close the transaction with the database provider until August 1, 2010. The transaction must be closed by 11:59 p.m. on June 10, 2010.
- Transaction date is June 1, 2010 with a maturity date of June 15, 2010. Licensee places a “hold” on the customer’s transaction with the database provider on June 15, 2010. Customer’s check is presented by ACH on June 15, 2010, and the licensee receives notice that the ACH cleared on June 17, 2010; however, the licensee does not close the transaction with the database provider until August 1, 2010. The transaction must be closed by 11:59 p.m. on June 17, 2010.
- Transaction date is June 1, 2010 with a maturity date of June 15, 2010. Licensee properly presents the check on June 15, 2010. The customer provides proof the check has cleared on June 25, 2010, and the licensee appropriately closes the transaction on this same date. On September 1, 2010, the licensee re-opens the customer’s June 1, 2010 transaction due to receiving a returned check for the customer’s August 1, 2010 transaction. Licensee does not close the June 1, 2010 transaction until December 1, 2010, when an examiner reviews the transaction. Licensees must ensure the appropriate transaction is re-opened in the event a check is returned unpaid.

Licensees should daily review open accounts to verify that the open accounts are in compliance with Section 34(8) of the DPSTA.

- Customers who are eligible for a repayment plan have the option of repaying their obligation by making 3 equal installment payments due on the *next 3* dates on which the customer receives regular wages, as allowed under Section 35(2)(b) of the DPSTA. However, customer installment dates are not always set up in accordance with this Section.

Examples of a violation of Section 35(2)(b) are:

- Requiring a customer to pay any amount on the date that he/she enters into the repayment plan other than the \$15 repayment plan fee.
- Scheduling more than 3 installment payments to repay a transaction.
- Scheduling unequal installment payments.
- Scheduling installment payments on days other than a customer’s pay date.

To prevent violation of this section and meet regulatory requirements, licensees must structure repayment plans as 3 equal installment payments due on the *next 3* dates on which the customer receives regular wages.

Please take a moment to review these sections of the DPSTA to become familiar with the regulatory requirements. Knowing and applying the requirements of the DPSTA can help reduce the possibility of the occurrence of a violation, as well as prevent the possibility of a fine assessment due to non-compliance. You can access the DPSTA through the OFIR website:

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www.michigan.gov/ofir. Select Statutes, Rules and Regulations; then select Codes and Acts; then select Deferred Presentment Service Transactions Act.

Please contact our office toll free at 877.999.6442 if you have any questions concerning this correspondence.

Sincerely,

/s/

Mark W. Weigold, Director
Consumer Finance Section

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