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Frequently Asked Questions on House Bill 07-1261
Deferred Deposit Loan Payment Plans

Listed below are frequently asked questions on House Bill 07-1261 on payday loan payment plans. In this document, “payday loan” is used interchangeably with “deferred deposit loan.” This document is intended to answer basic questions but does not constitute legal advice or a formal opinion of the Administrator of the Uniform Consumer Credit Code. This document replaces the prior Frequently Asked Questions memo dated August 6, 2007.

Is a payment plan mandatory?

It is mandatory that the lender offer written notice of the plan after the required number of consecutive loans, but the consumer may accept or reject the plan.

When must a payment plan be offered?

The plan must be offered when a lender or its affiliate originates a 4th (or more) consecutive payday loan with a consumer. In addition, after a break in loans (no new loan made within 5 calendar days after a prior loan is repaid) the plan must be offered whenever the lender or an affiliate makes 4 (or more) consecutive payday loans. Start by counting the first 4 consecutive loans made on or after July 1. This is because the effective date of the HB 07-1261 is July 1 and applies to loans made after that date.

Is it correct that a payment plan must be offered only after every 4 consecutive loans?

Yes. The lender must offer a payment plan notice on every 4th (or more) loan in a series of consecutive loans. Initially, a payment plan must be offered on the 4th (or more) consecutive loan made on or after July 1, 2007. After a break in loans (no new loan made within 5 calendar days after a prior loan is repaid), the lender/affiliate need not offer a payment plan until it makes the next 4th (or more) consecutive loan. Although the statutory language may be read to require lenders to offer a plan on every consecutive loan after the initial four, this was not the bill sponsor’s intent.

Is the payment plan initially offered on the 4th or the 5th loan?

The plan must be offered on the 4th loan (initial loan plus three additional consecutive loans). Start counting consecutive loans with the 1st loan made on or after July 1, 2007. Then include every loan made within 5 calendar days (including weekends and holidays) after that. On the 4th loan in the series, you must offer the first payment plan. The initial loan need not be consecutive to a prior loan.

Example:

July 2, 2007 – loan made, due and paid on July 16

July 16 – loan made, due and paid on July 30

July 31 – loan made, due and paid on August 14

Aug. 17 – loan made, due (and paid) on Aug. 31, payment plan must be offered on Aug. 17

Aug. 31 – loan made, due (and paid) on Sept. 14, payment plan must be offered on Aug. 31

Sept. 19 – loan made, due on Oct. 3, payment plan must be offered on Sept. 19

How is “consecutive” defined?

The law defines consecutive loan as a payday loan made within 5 calendar days (including weekends and holidays) after repayment of a previous payday loan. Note that counting begins after repayment of a prior loan, not after the due date. For example, if a loan is in default and finally collected 2 months after it was due, a new loan made within 5 days thereafter is consecutive. For example, if a loan is paid off on Wednesday, a loan made on Monday is a consecutive loan but a loan made on Tuesday is not.

If a lender has 2 or more outstanding loans to a consumer at the same time are they consecutive?

They are not consecutive with each other because they are both outstanding and neither one has been repaid. They may count as consecutive if either or both of the outstanding loans were made within 5 days after repayment of a prior payday loan. For example, if a loan is paid on Thursday, a new loan is made on Monday, and a second loan is made on Tuesday, the loans made on Monday and Tuesday are consecutive to the loan paid on Thursday.

If a consumer completes a payment plan and then obtains a new payday loan, is the new loan consecutive?

Yes, it can be consecutive. Completing a payment plan means that the prior payday loan is now repaid. If a new payday loan is made within 5 calendar days of payment in full of a payment plan, the new loan is consecutive.

What is an “affiliate”?

An affiliate is any entity owned by, that owns, that is under common ownership with, or related to the lender. An entity is “related to” the lender if it has common officers, common control, or with individuals related by blood or marriage. An affiliate’s loans count as part of the lender’s consecutive loans. In addition, both the lender and its affiliates are prohibited from making additional payday loans before a consumer completes a payment plan.

Is a payment plan a new loan that requires disclosures under the federal Truth in Lending Act, Regulation Z, or UCCC section 5-3-101?

No, the payment plan is not a new loan. It is equivalent to a loan modification or workout agreement. The payday loan’s payment schedule is “converted” into a payment plan. The payment plan is not a new loan agreement, the obligation under the old loan agreement is not satisfied or extinguished, and if the consumer fails to comply with the payment plan, the lender retains its legal remedies under the payday loan agreement.

If a consumer signs up for a payment plan, when is the first payment of the payment plan due?

The due date of the first of the six payments is normally the same date as the original payday loan’s due date – the consumer’s next payday. The exception to this would be if the consumer had requested in writing that the payday loan be due before his or her next payday. If a consumer selected a payment plan on that loan, the first of the six payments would be due on the next payday after the payment plan was signed.

A payment plan must be scheduled in 6 equal installments. What if the loan amount does not allow for 6 equal payments?

If the loan amount is not evenly divisible by 6, the payment amounts should be substantially equal. Usually, this means that one payment will be for a larger or smaller amount of one dollar or less. Lenders should ensure that they do not over collect the loan.

The 6 payments on a payment plan are due on the date the consumer is paid or receives benefits. Can a lender skip pay dates as a courtesy to the consumer?

Yes, the lender may allow a consumer to skip a payment on a payment plan and pay later.

Can concurrent loans be rolled into one payment plan agreement or does each loan require a separate payment plan agreement?

If the consumer selects a payment plan for two loans, there is nothing in the law that prohibits combining them into one payment plan.

What location must provide notice of the payment plan?

The payment plan notice must be provided by the lender or its affiliate when the borrower enters into a 4th (or more) consecutive loan on or after July 1, 2007. Consequently, the payment plan notice must be provided at any location of the lender or affiliate where the consumer obtains a 4th (or more) consecutive payday loan. Counting consecutive loans is aggregated per lender/affiliate rather than per branch location.

Where can a consumer enter into a payment plan?

The payment plan itself can be entered into at the originating store location, any other store operated by the lender in Colorado (branch, and in some cases affiliate location), or the lender's web site, telephone number, or other remote location where the loan was originated. Because the consumer receives the payment plan notice at the time of the 4th (or more) consecutive loan, but has until the day before that loan is due to elect a payment plan, it is possible that the payment plan will be entered into at a location different from the location that provided the payment plan notice.

Can a consumer make payments under a payment plan at any location?

The law does not address where payments on the payment plan can be made. It does allow a lender to require post-dated checks or electronic authorizations. If a lender does so, it will likely require post-dated checks or ACH authorizations when the payment plan is signed, which can be at any of the lender's locations. If a lender does not require post-dated checks or ACH authorizations, it could require the consumer to go to the originating location to make payments or accept those payments at any branch.

What constitutes a consumer's "request" for a payment plan?

It depends on the "point of sale" location. If the 4th (or more) consecutive payday loan was made in person, the consumer should return to the originating location or a branch office and make the request in person. The payment plan itself must be in writing. A request for a payment plan may be a simple verbal request made by the day before the loan is due. A lender may honor requests made by telephone, but does not have to do so. If the loan was made over the internet, the consumer's request can be made online or by sending an e-mail or calling the lender depending on what contact information the lender provides on the payment plan notice.

If a consumer signs a payment plan agreement can the lender retain the original check or ACH authorization given as initial security for the loan, or must that be returned?

A lender can hold only one instrument (post-dated check or ACH authorization) on a payday loan. No other collateral is allowed. The payment plan law allows the lender to hold 6 instruments. If a lender requires post-dated checks or ACH authorizations for the payment plan in advance, it should return the original post-dated check or ACH authorization or the

loan will be over-collateralized. In no event should the lender deposit the original instrument and partial payments under the payment plan. This results in intentional overpayment and may cause the consumer to incur additional NSF check fees and other harm. Refunds and other corrective action would likely be required. If a consumer defaults under the payment plan, the lender can exercise its legal rights under the original payday loan agreement such as the right to collect or sue for the outstanding balance.

Can a lender set a business policy on how it will be paid (post-dated checks, ACH authorizations, or cash)?

Yes, a lender may require post-dated checks or ACH authorizations for payment plan payments. Or, the lender may allow any form of payment, including cash (receipt must be provided).

What happens if a consumer fails to make payments under a payment plan?

If the consumer defaults on a payment plan, the lender may collect the remaining amount due under the payday loan plus the \$25 default fee. The lender may also sue for court costs and reasonable attorney fees (not exceeding the loan amount). The lender need not wait until the due date of the 6th payment to take action. However, even after default, the lender may choose to allow the consumer to make the remaining installments. Only one \$25 charge is permitted per loan. No treble damages are allowed. In addition, prior to transferring the instruments to a collection agency or attorney, or selling the instruments, they must be stamped with the warning “THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT.”

Because a consumer can enter a payment plan at any branch location, where should the original paperwork be retained?

A copy of each signed payment plan notice given to consumers, and the original of all signed payment plan agreements, must be retained by lender. These documents may be retained at the originating loan location or any branch so long as they are accessible during a compliance examination. If the notice was given or a plan entered into at a non-originating location, the lender may keep originals or copies at both the originating location and the branch. This also applies to payment histories for payment plans.

What documents must the lender retain?

Lenders must retain copies of all signed payment plan notices provided to eligible consumers, originals of all payment plans, and payment histories reflecting payments on these plans.

Can a lender establish cooling off periods or other policies to avoid offering a payment plan?

A lender can set business policies such as requiring cooling off periods after every single payday loan. However, because payment plans are a legal right for eligible consumers rather

than privilege, a lender should carefully review any policies that affect only those consumers who are eligible for or select payment plans.

What happens if a lender does not comply with the law or rules on payment plans?

The lender is subject to all possible discipline in the UCCC. This includes corrective and disciplinary action such as changing future procedures, refunding the loan's finance charge, penalties of up to \$1,000 per violation, and license suspension and revocation. As with other UCCC violations, a consumer may sue a lender that does not comply with the law.