

GUIDANCE DOCUMENT

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Delayed Deposit Services Business Application General Hearing Questions

Nebraska Department of Banking and Finance

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In any application for a license before the Nebraska Department of Banking and Finance ("Department"), it is the Applicant's burden to prove that it meets the statutory criteria for obtaining the license. The statutory criteria for a Delayed Deposit Services ("DDS") Business License are set forth in the Delayed Deposit Services Licensing Act (Neb. Rev. Stat. §45-901 to §45-930), and in particular section 45-908 of that Act. The applicant is expected to present evidence as to its operations and should address the following factors of importance.

1. Describe the nature of the contemplated delayed deposit service business.
2. Discuss (or provide) any information which will allow the Department to conclude that the character and general fitness of the Applicant is such that the Applicant as a licensee will operate the DDS business in a fair, honest, and efficient manner.
3. The applicant should be prepared to expand on any statements made in the application, particularly with respect to:
 - (a) the experience, character and general fitness of the applicant, officers, directors, shareholders, partners, and/or members;
 - (b) the experience of the manager of the main office and each branch, if such persons are not included in 3a, above;
 - (c) the financial condition of the company; and,
 - (d) any bankruptcies, business reorganizations, license revocations, criminal indictments, and/or convictions.

NOTE: If any person associated with the Applicant, (including consultants) has ever been convicted of any misdemeanor involving a DDS or related activity/business, or **any** felony, that person should be present at the hearing and should expect to give a statement on the record.

4. If the Applicant has submitted only a letter from the bonding company indicating coverage will be issued, the actual bond must be submitted by the Applicant as an exhibit.
5. Discuss the anticipated source of funds for the operation.
6. Discuss the company's recordkeeping procedures, including the records of any proposed branch offices.
 - (a) Confirm the Applicant will, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proof of compliance required by section 45-919 of the Delayed Deposit Services Licensing Act.
 - (b) Will the Applicant keep its books and records relating to every delayed deposit transaction for three years from the date of the inception of the transaction, or two years from the date a final entry is made thereon, including any applicable collection effort, whichever is later? If yes, will the Applicant maintain its books, accounts, and records at its designated principal place of business for the entire three years or will books, accounts, and records which are older than two years be maintained at another place within this state as long as such records are available for inspection by the Department of Banking and Finance?
7. Confirm the applicant will be able to generate at the time of an examination the following reports:
 - (a) Current Inventory Report which lists the customers in the same order as the checks are filed (by due date or alphabetical order).
 - (b) Collection Inventory Report (bankruptcies; checks turned over to collection agencies; checks turned over to County Attorney; checks where partial payments have been made; checks that have been written off but are still being held) which lists the customers in alphabetical order.
 - (c) Combined Alphabetical Report (Current and Collection Inventories) – This report is only required if a licensee has more than one location.

8. Describe any other business/activity which will be conducted at the main office/branches which will be conducted in addition to Delayed Deposit Services Business.

(a) Will there be a segregation of these activities from the DDS Business?

(b) Will separate records be kept for the DDS Business?

(c) Will the applicant conduct check cashing business? If yes, have you registered with FinCEN? What procedures have you implemented to ensure your check cashing activities are in compliance with the Bank Secrecy Act?

9. Has the Applicant obtained a similar license from any other state(s)? If yes, describe the nature of those operations and any disciplinary or other actions taken against those licenses.

10. Does the Applicant have a parent company, subsidiary, or affiliate which has a similar license in Nebraska or any other state/jurisdiction?

(a) If yes, will there be a segregation of these activities and/or separate records kept for the DDS Business?

(b) If a subsidiary, will there be involvement of the officers of the subsidiary company with the parent company and vice versa?

11. Have the proposed officers, directors, shareholders, partners, members, or managers been associated with similar companies in Nebraska or any other state/jurisdiction?

12. Are there any other entities that will maintain a relationship with the Applicant? If yes, discuss:

(a) the nature of this relationship;

(b) the type of oversight which the related entity will exercise over the Applicant; and,

(c) whether the Applicant will maintain autonomy of management.

13. Will the Applicant be using any consultants? If so, who, and what is their experience?

14. In Nebraska a delayed deposit transaction is not considered to be a loan and the term "loan" may not be used in any of the Applicant's advertising, signage, contracts, or other customer contacts. Confirm the Applicant will not use the term "loan" in Nebraska.

15. Has the Applicant drafted the statutorily required notice to be given to customers (date of deposit/negotiation fees, penalties)? If yes:

(a) Is a specimen copy available? Copy should be entered as an exhibit; and

(b) Discuss the Applicant's procedures for complying with Federal Regulation Z.

16. Does the Applicant have available a draft of the schedule of fees, charges, and penalties which must be posted at each business location? Copy should be entered as an exhibit.

17. What procedures does the Applicant have in place to ensure that the following do not occur:

(a) no more than two checks by one maker are to be held at any one time;

(b) a check, or aggregate checks from one maker, do not exceed \$500;

(c) checks are not held for more than 34 days;

(d) checks are not paid by methods which will cause further fees to the maker; and,

(e) checks are not accepted as repayment, refinancing, or consolidation of other checks held by the applicant?

18. Describe the actual process used (or to be used) by the Applicant when a customer comes in and asks to write a check and have the deposit delayed. Include descriptions of credit checks, computer databases, approximate waiting time, recordkeeping, etc.

19. Describe the actual process used (or to be used) by the Applicant when a customer does not come in to pick up their check on the due date stated in the customer's Delayed Deposit Services contract.
20. Will the Applicant collect its returned checks as electronic Automated Clearing House ("ACH") transactions if any check is returned to Applicant as not negotiable following an initial presentment or deposit? If yes:
- (a) Discuss the Applicant's procedures for complying with all National Automated Clearing House Association ("NACHA") rules.
 - (b) Confirm the report the Applicant will maintain as part of its collection files will contain the information required by the Nebraska Delayed Deposit Services Interpretative Opinion No. 6 – Collection of Returned Checks; Partial Collection Payment and the report will be available for the examiners to review at the time of examination.
 - (c) Confirm the applicant has drafted the ACH notice to be given to the customer and posted in each office. Copy should be entered as an exhibit.
 - (d) Will the applicant accept partial payments via ACH? If yes, a copy of the separate written contract authorizing the partial payment schedule should be entered as an exhibit.
21. Provide the following information concerning the physical location:
- (a) Describe the physical location of the company.
 - (b) Have all zoning requirements and any applicable local ordinances been complied with?
 - (c) Does the location have adequate space for examiners to work?
 - (d) What are the proposed office hours?
22. Describe the Applicant's security procedures including the security plan that has been developed by the Applicant to ensure the security and confidentiality of customer records and information. Provide the following information concerning the security plan:
- (a) Which employee(s) will coordinate the safeguards?
 - (b) Identify and assess the risks to customer information in each relevant area of the company's operation.
 - (c) Describe how the safeguards program will be implemented, including how often it will be monitored and tested.
 - (d) Supply the names of the appropriate service providers that will implement safeguards, if appropriate.
 - (e) Describe what criteria the Applicant will use to evaluate and adjust the program in light of relevant circumstances, including changes in the company's business arrangements or operations, or the results of testing and monitoring of safeguards.
 - (f) If the Applicant has not previously submitted its security plan, a copy of the plan should be entered as an exhibit.
23. If the application is granted, describe how the business will benefit the community in which the Applicant will be located.
24. If the license is approved, when would the Applicant intend to open for business?