

GUIDANCE DOCUMENT

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Frequently Asked Question

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INSTALLMENT LOANS

Q: What is an “Installment Loan?”

A: Under the Nebraska Installment Loan Act, installment loans are personal, consumer loans, whether secured or unsecured, with a maximum amount of \$25,000 and a minimum repayment term of six months. The Nebraska Installment Loan Act (the “Act”) allows for these loans to be made, with certain conditions, with an interest rate of up to 24% on the unpaid principal balance not in excess of \$1,000, and an interest rate of 21% on any remainder of the unpaid principal balance above \$1,000.

The Act does not apply to any loan made by a non-licensee, where the interest rate does not exceed the usury rate, which is currently set at 16% per annum, in Neb. Rev. Stat. § 45-101.03.

Q: Who needs an installment loan license?

A: Any person engaging in the business of making installment loans requires a Nebraska Installment Loan license. Additionally, an Installment Loan license is also required of any person that holds or acquires any right of ownership, servicing or participation in an installment loan under the Act, or any person that engages with or conducts loan activity with an installment loan borrower in connection with an installment loan under the Act.

A license is not required for an affiliate of a current licensee if the affiliate’s activities in Nebraska are limited to securitization of the loans made by the licensee. However, such activities could require licensing or registration under other Nebraska laws, such as the Securities Act of Nebraska or the Nebraska Installment Sales Act.

No financial institution, as defined in Neb. Rev. Stat. § 8-101.03, is eligible for a license under the Act or is allowed to make loans under the Act.

A properly licensed debt collection agency is not required to be licensed under the Act for conducting activities that are covered by such debt collection agency licensure. However, licensure under the Acts may be required where such an agency conducts business beyond the scope of such debt collection agency license that includes licensable business activity under the Act.

LICENSING

Q: How does the Department process and manage licenses?

A: The Department currently handles all installment loan licenses through the Nationwide Mortgage Licensing System (“NMLS”). The NMLS is a secure web-based system created by state regulators to provide efficiencies in the processing of state licenses and to improve supervision of state-regulated industries. Through the NMLS, companies maintain a single record which they use to apply for, maintain, renew, and surrender license authorities in one or more states.

Q: Does a licensee need to have a physical presence in the State of Nebraska?

A: The Act requires that a license is issued to an applicant “to make loans at the location specified in the application, in accordance with the act.” Accordingly, any person making installment loans under the Act is required to have a physical presence in the State of Nebraska. That physical location must be able to fully conduct the business of the licensee.

For persons that are required to hold and maintain an Installment Loan license, but do not engage in the business of making loans under the Act, a physical presence is not required. However, all such licensees **are required** to ensure that all contact information listed in the licensee’s NMLS record and Nebraska Secretary of State business record remain accurate and up to date, at all times.

Q: What is the fee for an Installment Loan license?

A: The application fee is \$500. This fee is nonrefundable.

Q: Are there additional costs surrounding an application besides the fee?

A: Yes. The applicant must submit a surety bond along with the application. Additionally, the applicant must pay the costs of publication of notice of the application, and the costs associated with the hearing that is held on a new application. For applicants that are not required to have a physical presence in Nebraska, publication will be required in Douglas County, Nebraska via the *Omaha World Herald*, and in Lancaster County, Nebraska via the *Lincoln Journal Star*.

Additionally, applicants may be charged processing fees for utilizing the NMLS. NMLS processing fees can be found at:

<https://mortgage.nationwidelicencingsystem.org/about/Pages/systemfees.aspx>.

Q: Does each location have to have its own license?

A: Yes. Each location that conducts business under the Act must be separately licensed. One person may apply for as many such licenses as they have appropriate places of business in which installment loan business will be conducted.

Q: Does an installment loan license expire?

A: Yes. An installment loan license expires annually, on December 31, and must be renewed in order for the licensee to continue conducting installment loan business in the following year. License renewals are processed through the NMLS. A renewal fee of \$250 is also required along with the renewal application. If a licensee holds multiple licenses under the Act, **each** license must be renewed annually and is subject to the renewal application and renewal fee requirements.

Q: Is there always a public hearing on a license application?

A: No. The hearing requirement may be waived if the applicant has held and operated under a Nebraska Installment Loan license for at least one calendar year preceding the filing of the application; no written protest was filed against the issuance of the license following publication of the request in a newspaper of general circulation in the county where the applicant intends to establish its office, or in Douglas County, Nebraska, and Lancaster County, Nebraska, for non-originating applicants; and in the judgment of the Director of the Department (“Director”), the applicant possesses the experience, character, and general fitness to warrant the belief that they will comply with the Act. The applicant is required to pay for any expenses associated with the publication and hearing, if one is held.

Q: What notifications are required to move a licensed installment loan licensee’s business to a new address?

A: A licensee must file an advanced change notice filing through the NMLS system, regarding the change in address, along with a fee of \$150. The Director will then publish the request in a newspaper of general circulation in the county of proposed relocation. The licensee is required to pay any expenses associated with the publication. Any substantive objection resulting from the publication may result in a hearing on the request.

Q: Once licensed, are there other annual requirements that the licensee must meet?

A: Beyond annually filing a renewal application through the NMLS, which would include providing updates from any material changes to the licensee, the Department requires licensees to submit an annual report detailing the earnings and operations of the preceding calendar year. Licensee shall also submit a mortgage report of condition, as required by Neb. Rev. Stat. § 45-1018(2).

LENDING LIMITATIONS

Q: Is an installment loan licensee allowed to conduct other business alongside its installment loan business?

A: Yes. While there are limitations and conditions on a licensee conducting other business in the same location that it conducts its installment loan business, such other business *may* be allowable, if appropriate. If the Director finds that the other business is of such nature that it would tend to conceal evasion of the Act or its associated rules and regulations, the Director has the power to order a licensee to cease and desist conducting that other business in the same location where its installment lending business under the Act is conducted.

Q: Can any additional charges be assessed in connection with making an installment loan?

A: Yes. A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans, and a licensee may require the payment of a nonrefundable loan origination fee. Limitations on the allowable amount of the origination fee are contained in Neb. Rev. Stat. § 45-1024.

Q: Can an installment loan be secured?

A: Yes. Installment loans may be either secured or unsecured loans. Loans may be secured via various means, including liens on tangible personal property, liens on real estate, wage assignments, or other security instruments, where appropriate and allowed for by law.

Installment loans may be secured with an assignment of wages, but such assignments must not be made “in blank” and must be completed prior to execution by the borrower. Similarly, any power of attorney documents executed in connection with an installment loan or security interest under the Act may not be made in blank. Where an assignment of wages is made as a security interest, spousal consent, when the borrower is married, is required for the assignment to be effective.

Q: Can insurance policies be obtained in connection with installment loans and/or collateral or security interest agreements?

A: Yes. Several different types of insurance may be written in connection with an installment loan transaction made by licensees under the Act. There are limits and prohibitions on requiring insurance policies contained in Neb. Rev. Stat. § 45-1026 and in many cases, insurance **may not** be required as a condition of obtaining an installment loan. Any insurance permitted under the Act must be obtained through a duly licensed insurance agent, agency, or broker.

Where insurance is procured by or through a licensee in connection with an installment loan, the licensee is required to provide to the borrower a statement with all pertinent details of the insurance, including the premium amount, insurance amount, expiration date, and a description of the policy. The licensee must also within fifteen days after making the loan, provide the borrower with an executed copy of the insurance policy, or with a certificate of insurance.

In the event that an installment loan contract is renewed, any insurance or motor club service sold in connection with the original loan contract must be cancelled and the licensee must either provide a refund of the unearned premium, or provide the contact information for the party that would be responsible for providing such a refund, within fifteen days of the cancellation. Licensees are required to retain a copy of such notice in its books and records.

Q: Does a licensee have to allow for early payments?

A: Yes. Every licensee shall permit early or advance payments to be made in an amount equal to one or more full installments on any loan contract. The licensee may apply such payments to accrued charges in full, up to the date that the payment was made, before reducing the principal amount of the loan.

Q: Does a licensee have any requirements after a borrower has fully repaid an installment loan?

A: Yes. Once an installment loan is repaid in full, the licensee is **required** to mark every obligation and security or copies of those instruments, as “Paid” or “Cancelled” and shall release any mortgage, lien, or other security interest and return any note or assignment to the borrower.

Q: What kind of notices or disclosures is a licensee required to provide to a borrower?

A: Any time that an installment loan is made under the Act, the licensee **must** provide to the borrower a statement disclosing, in English and in clear and distinct terms, the information required under disclosures made pursuant to the federal Consumer Credit Protection Act.

The licensee must also provide to the borrower a copy of any writing evidencing a loan if the writing required or provided for the signature of the borrower. That writing is required to have the disclosure language provided for in Neb. Rev. Stat. § 45-1055.

Upon written request by the borrower, the licensee shall provide a written statement of the dates and amounts of payments made, any default, deferments, and the total amount unpaid, as well as a copy of the loan agreement, security agreement, and any insurance certificates or agreements issued. The licensee may charge a reasonable fee for these copies, not to exceed \$0.50 per page.

The licensee shall answer, in writing, within 10 business days of any request for payoff information from the borrower or their representative. The licensee may not charge the borrower for this answer, unless the licensee has previously provided such information within the last 60 days. In those situations, the licensee may charge the borrower a processing fee of up to \$10.

Q: What is a “Preauthorized Loan?”

A: A preauthorized loan is one where a licensee and borrower enter into an agreement that lets the borrower obtain advances of money from the licensee under a single loan agreement. The agreement may allow for repayment via monthly installments or fixed or determinable amounts. Any charges may only be computed on the unpaid principal balance. A preauthorized loan may be paid in full at any time. A preauthorized loan is subject to all other provisions of the Act, unless noted within Neb. Rev. Stat. §§ 45-1059 to 45-1067. Please refer to these sections of the Act for additional requirements related to preauthorized loans.

MORTGAGE LENDING

Q: Can an installment loan be secured with a residential mortgage?

A: Yes. An installment loan may be secured with a residential mortgage, originated through a Nebraska licensed mortgage loan originator. In order to secure an installment loan with a residential mortgage, installment loan licensees may employ or enter into an independent agent agreement with an individual that is required to obtain and maintain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act. A licensee making such loans shall comply with and be subject to the Nebraska Residential Mortgage Licensing Act, regardless of whether or not that licensee also holds a mortgage banker license.

Where such employment or independent agent agreement is made, the Installment Loan licensee is required to maintain both the surety bond required solely for Installment Loan lending activities, as well as a supplemental surety bond. This supplemental surety bond is in the initial amount of \$100,000, but may increase based on the mortgage report of condition filed with the Department through the NMLS to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding calendar year. More information on this supplemental bond is provided for in Neb. Rev. Stat. § 45-1007.

Any licensees utilizing reverse-mortgage loans as security for installment loans are required to abide by the conditions outlined in Neb. Rev. Stat. § 45-1068.

Q: If a licensee secures installment loans with residential mortgages, is an appraisal required?

A. In some circumstances, an appraisal may be required to ensure that the appropriate interest and charges are being assessed on the related installment loan. For additional information on real property appraisals and installment loans, refer to Neb. Rev. Stat. § 45-1024(6) and the Department's appraisal-specific guidance document, which is located at: <https://ndbf.nebraska.gov/sites/ndbf.nebraska.gov/files/doc/industries/installment-loan-faqs-09.pdf>.

DEFAULT AND COLLECTIONS

Q: When can a licensee declare an installment loan to be in default?

A: Under the Act, a loan contract can only be declared in default when the borrower fails to make a payment on the loan or other charges required by the contract or agreement, or the prospect of payment, performance, or realization of collateral is significantly impaired.

After a borrower has been in default for ten days for failure to make a payment, a licensee may give the borrower a notice of default delivered either directly or through the mail to the borrower's last known address. The notice shall include all of the information required in Neb. Rev. Stat. § 45-1050. A sample document containing the required and appropriate information for such notice may be found on the Department's website at the following link: [Notice of Right to Cure Loan Default \(SAMPLE FORM\).pdf](#)

Q: Does a borrower have a right to cure?

A: Yes. Where a default is due only to a borrower's failure to make a payment, the licensee **cannot** accelerate maturity of the loan or take possession of the collateral until 20 days after it has provided a notice of the borrower's right to cure. The borrower will have 20 days from after the notice is given to pay all amounts that are in default, plus any unpaid charges, **not to include any accelerated amount**. If a borrower cures the default, the rights under the agreement are restored as if the default had never occurred. A notice of the borrower's right to cure and the right to cure itself is required to be given for the borrower's first default on an obligation, but not for any subsequent defaults on that same obligation.

Q: What kind of contacts can a licensee make after a default has occurred, to try and collect on the loan?

A: The Act does place restrictions and prohibitions on collections-related contact activities in connection with a default. Specifically, while a licensee may generally contact the borrower to provide a notice of default, make amicable demand, or to file suit, and may contact persons related to the borrower if they have previously been given permission in writing to do so, a licensee may **not** make false statements regarding the debt or the purpose of their contact, use or threaten to use violence, use obscene or profane language, or threaten to take unwarranted or unavailable legal action. For the full list of statutorily prohibited collection-based contact activities, please refer to Neb. Rev. Stat. § 45-1047(2).

Q: When can a licensee take possession of any interest or collateral that secures the loan?

A: A borrower may voluntarily choose to surrender any collateral regardless of a right to cure. Otherwise, the licensee can only take possession of the collateral without judicial process if possession can be taken without entry into a dwelling or locked vehicle, and without any use of force or breach of the peace. A licensee cannot take possession of the collateral until 20 days after it has provided a notice of the borrower's right to cure, to the borrower.

Q: What if the loan is still not satisfied after the possession and sale of the security or collateral? Is the borrower liable for the remaining amount?

A: The amount that remains unpaid after a licensee has taken possession of and/or sold the interest or collateral that secured the installment loan is called a deficiency. Under the Act, deficiency actions are not available unless the licensee has disposed of the collateral in a good faith and commercially reasonable manner, and the loan amount is still unsatisfied. Deficiency actions are not available under the Act for loans with an unpaid principal balance of \$3,000 or less.

EXAMINATIONS AND INVESTIGATIONS

Q: What information will Department Examiners request in association with an examination?

A: Pursuant to Section 45-1017, the Department may examine the business, records and accounts of licensees as often as determined by the Director. Examiners may request specific loan files for review. For a current list of information required to be submitted to the Department in advance of each examination, please contact dob.consumerfinance@nebraska.gov.

Q: What types of records does a licensee have to retain?

A: Each licensee shall keep or make available the business, records, and accounts relating to transactions made under the Act as are necessary to enable the Department to determine whether the licensee is complying with the Act.

Q: Why does a licensee need to retain records?

A: A licensee's records must be available to allow the Department to determine whether the licensee is complying with the Act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

Q: How often are Installment Loan licensees examined by the Department?

A: Examinations of Installment Loan licensees are to be conducted as often as determined by the Director. Generally, the Department examines all licensees on a cyclical schedule; however, the Department does take into account factors such as size, volume, consumer complaints, and other consumer-based data when setting the examination schedule. The Department is also statutorily authorized to conduct examinations without providing advance notice, where such examination may be necessary or prudent.

Q: What is the cost to the licensee for such examinations?

A: The current examination rate is \$145.00 per hour. Department Examiners charge for examination related time spent off-site and on-site. A licensee is not directly charged for any Examiner time or expenses incurred surrounding travel from the Examiner's home or office to the licensed location, unless the examination is related to an investigation, or the Examiner must travel out-of-state.

Q: How is the licensee notified about a scheduled examination?

A: Department Examiners may notify the licensee's designated pre-examination contact via secure email of the upcoming examination and request that certain types of information be submitted to the Department in electronic form in advance of that examination. For a current listing of the types of information requested, the acceptable formats, and general response timelines, please send an inquiry to the Department Examiners at dob.consumerfinance@nebraska.gov.

Q: What happens if the requested information is not submitted by the licensee or is in an unacceptable format?

A: Failure to respond to an Examiner email request will not delay the scheduled exam but will increase licensee costs as Examiners will have to spend more billable time on-site waiting for the proper reports to be provided. Submissions of data in other than the prescribed format will result in increased examination costs due to the time necessary for Department Examiners to convert data to acceptable formats.

Q: How does the secure email process work?

A: Department Examiners send initial requests to licensees via secure email. The licensee will need to login and create a password to retrieve the initial email. Requested information must be submitted via reply email, using the login process, in order for the returned information, including any attachments, to be encrypted and secure.

Q: Will a licensee always be notified about an examination?

A: No. The Department reserves the right to conduct an unannounced examination, particularly if there is a complaint or suspected violation of the Act.

Q: How does the Department investigate consumer complaints?

A: The Department has the right to investigate consumer complaints involving licensees under the Act. The Department may conduct an examination or investigation of any such books and records as may be necessary in investigating consumer complaints. Upon receipt by a licensee of a notice of investigation or inquiry from the Department, the licensee **must** provide a response within twenty-one calendar days of the date of the notice. Each day that a licensee fails to respond to such a notice shall be considered a separate violation of the Act.