

GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Interpretative Opinions

Table of Contents

Determining Maximum Service Fee That Can Be Charged By Delayed Deposit Licensees.....	3
Definition of “Maker”.....	4
Definition of “Check”, Presentment; Penalty Charges; Prepayment.....	5
Method of Payment.....	8
Holding of Checks.....	9
Collection of Returned Checks; Partial Collection Payments.....	11
Collection Items; Documentation Required.....	13
Use of the Terms “Loan” and “Payday Loan”	15
Extended Payment Plan.....	16
Rescission; Redemption.....	19
Military Personnel, Spouses and Dependents.....	20

DDS INTERPRETATIVE OPINION NO. 1 - DETERMINING MAXIMUM SERVICE FEE THAT CAN BE CHARGED BY DELAYED DEPOSIT LICENSEES

This Interpretative Opinion discusses the amount that may be charged by licensees under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-918(1) states that a licensee shall not impose an annual percentage rate greater than thirty-six percent in connection with a delayed deposit transaction.

The Department interprets this to mean that a licensee may not collect any amounts or fees in excess of this rate, based on the face amount of the check being written by the maker. This is inclusive of any and all fees, charges, or other amounts to be paid by the maker in connection with the transaction. This rate calculation will necessarily be dependent on the length of the agreement and the amount of the check. The limitation in this section on service fees shall apply in each delayed deposit transaction, notwithstanding whether the form of the check is paper, electronic, or otherwise.

The maximum amount to be charged may be calculated by the following formula:

(Cash Amount X .36) X (days of agreement/365)*

*All numbers are to be calculated to three digits, with final rounding to two digits.

Example: A \$100 delayed deposit transaction to be repaid in 14 days is calculated as follows:
 $(100 \times .36) \times (14/365) = 36 \times .038 = \1.37

Notwithstanding the foregoing, Neb. Rev. Stat. § 45-918(2) provides that the fees set forth in this section shall not be charged to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowed under 10 U.S.C. 987, as such section existed on January 1, 2018 [See DDS Interpretative Opinion No. 11].

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: December 7, 2020
Revised January 1, 2019
Revised May 1, 2011
Revised July 15, 2006
Revised December 15, 2000
Originally issued October 1, 1994

DDS INTERPRETATIVE OPINION NO. 2 – DEFINITION OF “MAKER”

This Interpretative Opinion discusses joint accountholders under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-902(9) defines “maker” as an individual who receives the proceeds of a delayed deposit transaction.

Neb. Rev. Stat. § 45-919 sets forth a number of restrictions on a licensee, including the number of checks which can be held at any one time, the aggregate dollar amount of such checks, and the method of payment of deferred deposit checks. The statute uses the term “any one maker” in Sections 45-919(1)(a) and (b) in connection with these restrictions.

The Department interprets the term “any one maker” to mean any signatory on a personal account. As such, the statute does not require a licensee to aggregate delayed deposits of joint accountholders. For example, assume A and B are signatories (makers) on one account: the licensee may hold two checks aggregating \$500.00 from A and two checks aggregating \$500.00 from B, without being in violation of the statute. However, the licensee must ensure that transactions are separately signed and authorized by separate accountholders. For example, absent other authorizations, one spouse may not sign a check or transaction agreement for the other spouse on their joint account.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Revised May 1, 2011
Revised July 15, 2006
Revised December 15, 2000
Originally issued October 1, 1994

DDS INTERPRETATIVE OPINION NO. 3 – DEFINITION OF “CHECK”; PRESENTMENT; PENALTY CHARGES; PREPAYMENT

This Interpretative Opinion discusses the prepayment of a check, the presentment of a check, and the charging of a penalty for a non-negotiable check, under the Delayed Deposit Services Licensing Act (“Act”).

Neb. Rev. Stat. § 45-902(2) defines the term “check” as any check, draft, or other instrument for the payment of money, including an authorization to debit an account electronically. Neb. Rev. Stat. § 45-919(1)(i) further provides that no licensee shall negotiate or present a paper check for payment unless the check is endorsed with the actual business name of the licensee.

The Department interprets “an authorization to debit an account electronically” as set forth in Section 45-902(2) to be considered as one check, whether or not such authorization provides for one or more debits on one or more different days. The Department interprets the “actual business name” of licensee as set forth in Section 45-919(1)(i) to be the name under which the business of licensee is conducted, or the legal name of licensee, if different, as shown in licensee’s application for a license under the Act, or in any renewal thereof.

Neb. Rev. Stat. § 45-917(1)(a) provides that at the time of any delayed deposit transaction, a licensee must provide to the maker of the check a written notice in plain English disclosing the name of maker, transaction date, transaction amount, payment due date, total payment due, total fees on transaction expressed as both a dollar amount and an annual percentage rate (as defined in Neb. Rev. Stat. § 45-902(1)), and the fees and penalties for all services provided. A licensee must specifically disclose to customers the date on which a check is to be deposited or presented for negotiation, and any penalty which will be charged if a check is not negotiable. A licensee must also disclose that additional fees may be allowed by court order or required in association with civil collection efforts performed by a county attorney in accordance with Neb. Rev. Stat. § 28-611. A licensee may not, directly or indirectly, indicate to a customer that a non-sufficient funds check will be turned over to a county attorney for criminal prosecution.

Neb. Rev. Stat. § 45-917(1)(a)(v) allows a licensee to charge a penalty not to exceed fifteen dollars if the check is not negotiable on the date agreed upon. Thus, the licensee is allowed to charge the fee allowed by the statute only if the check is presented by the licensee on the date negotiated between the licensee and the customer. If presentment does not occur on that date, a penalty may not be charged, unless presentment is delayed because the licensee has agreed to allow the customer to pick up the check at a later date within the thirty-four day maximum time period and the customer fails to do so, or the licensee has agreed to extend the date of presentment to a later date within the thirty-four day maximum time period. Extensions of time beyond the date originally negotiated between the licensee and the customer may be done only at the customer’s request, must be documented in the customer’s file, and may not exceed the thirty-four day maximum time period. No additional fees may be charged by the licensee for allowing the customer to extend the date of presentment.

In the absence of an extension as described in the foregoing paragraph, the Department does understand that there may be logistical issues which prevent a check from being presented on the date agreed, such as the closing of licensee’s bank before the end of licensee’s business hours, that may prevent a licensee from presenting a check on the date

agreed, and therefore, the Department will typically not assess a penalty upon licensee for failure to present a check on the date agreed, so long as such check is presented within the thirty-four day maximum time period, and absent unreasonable delay or other aggravating circumstances.

The Department further interprets this section to mean that a licensee must either deposit or physically present a check at the institution on which it is written, and the check must have been returned to the licensee as not negotiable. The returned item must carry a stamp, notation, or other proof by the rejecting institution that it was not negotiable when deposited or presented. If there is no stamp, notation, or other proof that the check was not negotiable, a licensee is not authorized to charge or collect any penalty. Pursuant to Neb. Rev. Stat. § 45-918.04(2), a licensee may initially present or deposit a check as an electronic withdrawal or transfer of funds from a maker's account, but only with the written authorization of the maker [See DDS Interpretative Opinion No. 6].

Neb. Rev. Stat. § 45-917(1)(b) provides that the notice given to a maker, at the time any delayed deposit transaction is made, shall include statutorily dictated language disclosing that this service should only be used for short term cash needs, that the transaction may not exceed a total of \$500.00, including fees and charges, that the maker has a right to rescind the transaction before 5 p.m. on the next business day, and that the maker has the right to rescind any authorization for electronic payment [See DDS Interpretative Opinion No. 10].

The Department notes that Neb. Rev. Stat. § 45-918.02 provides that a licensee shall accept prepayment in full of a delayed deposit transaction from a maker prior to the due date without charging a penalty of any kind. Prepayment of a delayed deposit services transaction will likely result in a change to the calculation of the maximum amount allowed to be charged [See DDS Interpretative Opinion No. 1].

The Department interprets this section to mean that a licensee may not accept any partial payment prior to the date agreed on for presentment or pick up and then subsequently deposit the check because this results in the collection of more than the amount allowed by Neb. Rev. Stat. § 45-918. This is true even if the licensee returns the partial payment after the check has cleared. The licensee who collects partial payments prior to the date agreed on for presentment or pick up could lose all right to collect the check and may also violate the thirty-four day maximum time period for holding the check.

For the purposes of this Interpretative Opinion, the term "deposit" shall include back office capture for Check 21 purposes only, provided that:

- A licensee has a copy of any agreement with its financial institution regarding back office capture for examiner review on file at each store location utilizing back office capture. A licensee develops a policy regarding destruction of the original check once a substitute check has been created. Such policy shall include the time frame for destruction of the original check which shall be no later than 90 days after the substitute check has been created. Such policy shall also include the licensee's risk management assessment regarding liability if the original check is re-presented. The policy shall be kept on file for examiner review at each store location utilizing back office capture.

The Department further interprets the Act as permitting a licensee's use of programs which generate a maker's check from information provided by the maker, at the time of

initiation of a delayed deposit transaction, such as bank routing number, checking account number, and name of account holder, to generate and print a check using store equipment, for physical signature by the maker, so long as there is no additional fee charged to maker for such service.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: December 7, 2020
Revised January 1, 2019
Revised May 1, 2011
Revised October 1, 2008
Revised July 15, 2006
Revised August 1, 2003
Revised July 2, 2003
Revised May 8, 2000
Originally issued October 1, 1994

DDS INTERPRETATIVE OPINION NO. 4 – METHOD OF PAYMENT

This Interpretative Opinion discusses the method of payment to a maker (as defined in Neb. Rev. Stat. § 45-902(9)) of a deferred check under the Delayed Deposit Services Licensing Act (“Act”).

Pursuant to Neb. Rev. Stat. § 45-918.04, a licensee may pay the proceeds from a delayed deposit transaction or rebate to the maker (as defined in Neb. Rev. Stat. § 45-902(9)) in the form of check, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. Neither the licensee nor any affiliate of the licensee shall charge the maker an additional finance charge or fee for cashing the licensee’s check or for negotiating forms of transaction proceeds or rebates. Neb. Rev. Stat. § 45-919(1)(d) further prohibits a licensee from requiring the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee, an affiliate of licensee, or other person (as defined in Neb. Rev. Stat. § 45-902(10)).

The Department interprets these provisions as prohibiting licensees and affiliates from charging any additional fees or charges, with regard to the payment of the proceeds from a delayed deposit transaction or rebate to the maker in any form other than cash, other than the amount provided for in the initial delayed deposit transaction pursuant to Neb. Rev. Stat. § 45-918(1), regardless of the designation, e.g. origination fee, set-up fee, check cashing fee, transaction fee, negotiation fee, handling fee, conversion fee, processing fee, service fee, or otherwise. Further, no licensee shall require a maker to receive payment by a method that causes a maker to pay any additional or further fees or charges to licensee, an affiliate of licensee, or any other person (as defined in Neb. Rev. Stat. § 45-902(10)). The Department interprets an “affiliate” of a licensee to include a person related to the licensee by common ownership or control, whether direct or indirect, a person in whom licensee has a financial interest, or an employee, officer, director, manager, partner, member or agent, or other similarly situated person, of licensee.

All records relating to the payment of proceeds to the maker will be reviewed during the Department’s examination of a licensee. Neb. Rev. Stat. § 45-915.01 states that each licensee shall keep or make available the books and records relating to transactions made under the Act as are necessary to enable the Department to determine whether the licensee is complying with the Act. At a minimum, a licensee shall include in its books and records copies of all application material relating to makers, disclosure agreements, checks, payment receipts, and any required proofs of compliance. The Department interprets the Act as prohibiting the payment of proceeds to any person other than the maker.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Revised May 1, 2011
Revised July 15, 2006
Revised August 1, 2002
Revised September 25, 2000
Originally issued August 1, 1997

DDS INTERPRETATIVE OPINION NO. 5 – HOLDING OF CHECKS

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding the holding of a delayed deposit check under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-919(1)(c) prohibits a licensee from holding or agreeing to hold a check for more than thirty-four days. A check which is in the process of collection because it was not negotiable on the day agreed upon is not considered as being held in excess of the thirty-four day period.

It is the opinion of the Department that the term “in the process of collection” means that a licensee must first have physically presented, attempted to present, deposited, or attempted to deposit, the check, to or in a financial institution. A telephone call to, or other informal contact with, the financial institution to determine if funds are available is not sufficient. Pursuant to Neb. Rev. Stat. § 45-918.04(2), a check may be initially presented or deposited by a licensee utilizing electronic payment through transfer or withdrawal of funds from a maker’s account, but only with the written authorization of the maker. Presentment must initially occur on the date negotiated between the licensee and the customer [See DDS Interpretative Opinion No. 3]. So long as the initial presentment or negotiation of the check occurs before expiration of the thirty-four day maximum holding period prescribed by Section 45-919(1)(c), a licensee may attempt to present or negotiate a check again. However, as set forth in Neb. Rev. Stat. § 45-919(1)(l), a licensee may not present or negotiate a check after two consecutive failed collection attempts, unless a new, written payment authorization is obtained from the maker. In addition, no additional fees may be charged to the customer [See DDS Interpretative Opinion No. 3]. Any checks being held for initial presentment are not in the process of collection.

If the financial institution refuses to allow presentment, or if the deposited check is returned unpaid because of insufficient funds or for any other reason, and the licensee does not intend to, and does not, attempt presentment again as shown by a written notation to the customer file, or if the deposited check is returned unpaid for a second time because of insufficient funds or for any other reason, and the licensee has not and does not intend to obtain a new written payment authorization from maker as shown by a written notation to the customer file, then the check is considered non-negotiable and any actions taken by the licensee after that time are considered to be part of the check collection process.

For those licensees who allow a customer to bring cash into the office and pick up a check rather than the licensee depositing the check, it is important to know that if the customer does not pick up the check on the agreed upon date, the thirty-four day period does not stop running at that time. Rather, the licensee must take the additional step of presenting, attempting to present, depositing, or attempting to deposit the check in order for the check to be determined as non-negotiable. Thus, if the customer is required to pick up the check on day thirty-four, and fails to do so, the licensee must leave itself enough time to present, attempt to present, deposit, or attempt to deposit the check to the financial institution prior to the end of that same day in order to determine if the check is negotiable.

The Department is also of the opinion that an additional exception exists with respect to the thirty-four day holding period limit. This exception occurs when the licensee has received written notification that the maker of the check has filed for bankruptcy. This

notification can be from any source, including the maker of the check, the maker's representative, a Bankruptcy Court, or a trustee in bankruptcy. Upon receipt of such notification, the licensee has no authority to present, deposit, or attempt to present or deposit a check for negotiation, nor does it have the authority to collect the check. As such, the licensee is not deemed to be holding or agreeing to hold the check in violation of Section 45-919(1)(c).

All records relating to the holding of checks will continue to be reviewed during the Department's examination of a licensee. If the records show that the check was in the licensee's possession for more than thirty-four days, the licensee should have proof that it presented or deposited the check, or attempted to do so, or that it has received notice that the customer is in bankruptcy.

For the purposes of this Interpretative Opinion, the term "deposit" shall include back office capture for Check 21 purposes only, provided that certain conditions are met [See DDS Interpretative Opinion No. 3].

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Revised May 1, 2011
Revised October 1, 2008
Revised July 15, 2006
Revised August 1, 2003
Revised July 2, 2003
Revised August 1, 2002
Originally issued September 25, 2000

DDS INTERPRETATIVE OPINION NO. 6 – COLLECTION OF RETURNED CHECKS, PARTIAL COLLECTION PAYMENTS

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding collection practices under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-918.01 provides that if a check held by a licensee as a result of a delayed deposit transaction is returned unpaid to the licensee from a payor financial institution due to insufficient funds for any reason, other than bank error, the licensee shall have “the right to exercise all civil means authorized by law” to collect the face value of the check. The licensee may attempt to present or deposit the unpaid check a second time, including as an electronic withdrawal or transfer of funds from a maker’s account, but only with the written authorization of the maker, pursuant to Neb. Rev. Stat. § 45-918.04(2). As provided in Neb. Rev. Stat. § 45-919(1)(l), a licensee may not present or negotiate a check after two consecutive failed collection attempts, unless a new, written payment authorization is obtained from the maker.

In addition, under Neb. Rev. Stat. § 45-918.01, a licensee may contract for and collect one returned check fee for each delayed deposit transaction, not to exceed fifteen dollars, plus court costs and reasonable attorney’s fees as awarded by a court. Such attorney’s fees may not exceed the amount of the check.

A licensee may attempt to collect any such returned check as an electronic Automated Clearing House (“ACH”) transaction, provided the following conditions are met.

- 1) The licensee shall comply with all National Automated Clearing House Association rules.
- 2) Electronic collection efforts will be permitted for full collection of the check and full amount of any penalty fee only; partial debits will not be allowed unless the licensee has entered into a separate written contract with the consumer as outlined in paragraph 6, below. Separate debits must be initiated for the full amount of the returned check and the full amount of any penalty fee.
- 3) If the licensee intends to use ACH to collect the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(a)(v), the customer must provide a separate authorization for this potential charge in the original customer agreement. In addition, the returned item fee must appear as a separate item for each customer on the report maintained as part of the collection files.
- 4) The licensee must maintain, as part of its collection files at the office where the item originated for examiner review, a report which:
 - a) contains each customer’s name, checking account number, check number, and amount of item;
 - b) clearly differentiates between the date of the customer’s contract, the initial physical presentment date, and the return date of each item;
 - c) shows each date of ACH presentment for each item, the date the check was collected, the date the returned item fee was collected, if collected, and/or each date the item was returned, with the reason for return, if applicable; and

- d) the report shall be maintained as either a physical copy in each customer's collection file, or if maintained electronically, shall be easily accessible at the time of examination by the Department.
- 5) The licensee must provide conspicuous notice to the customer that a returned check may be collected as an ACH transaction.
 - a) Such notice must include a statement describing an ACH transaction and what additional charges could be incurred from third parties if the licensee attempts to collect a returned check and the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(v) as an ACH transaction.
 - b) Such notice shall also include a statement that if the customer has any concerns about the transaction, they should contact the Nebraska Department of Banking and Finance at (402) 471-2171.
 - c) Such notice must be included and highlighted in the customer contract or attached as a separate notice which is given to the customer at the time of each transaction. If a separate notice is used, the customer must sign and date the notice to acknowledge receipt and a copy must be maintained in the customer's file.
 - d) Such notice must be posted in each office of the licensee, including any branch office.
- 6) There may be circumstances in which the licensee determines that it would be beneficial to allow the customer to make partial payments on a returned check. After initial presentment or deposit, if the item is returned, the licensee may enter into a separate, written contract with the customer for repayment, authorizing a partial payment schedule either via ACH or by cash installments.

The contract may be for the total amount of the returned check plus the returned item fee allowable by Neb. Rev. Stat. § 45-917(1)(v). No additional fees or amounts may be charged to the customer to enter into such a contract. This contract shall contain, at a minimum, the following items:

- a) the date and amount of each payment and that ACH will be used (if applicable);
- b) a confirmation that the original check will not be re-presented and will be returned to the customer upon successful completion of the contract; and
- c) if ACH is to be used, a disclosure that presentment of each payment via ACH may cause the customer to incur additional fees from the customer's financial institution if any payment is returned.

Should a licensee allow partial payments by written contract as part of the collection process, such payments shall be accurately reflected in each customer's collection file.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Revised May 1, 2011
Originally issued July 15, 2006

DDS INTERPRETATIVE OPINION NO. 7 – COLLECTION ITEMS; DOCUMENTATION REQUIRED

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding collection practices under the Delayed Deposit Services Licensing Act (“Act”).

Neb. Rev. Stat. § 45-917(1)(a)(v) states that a licensee may charge a penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon.

Neb. Rev. Stat. § 45-915.01 states that each licensee shall keep or make available the books and records relating to transactions made under the Act as are necessary to enable the Department to determine whether the licensee is complying with the Act.

- 1) If a licensee conducts its own collection efforts or turns over a check to a collection agency, any payments made on a customer’s check need to be accurately reflected in that customer’s file. The licensee must keep copies of any court orders authorizing any additional fees, if applicable. Once payments are accepted on a check, that check should not be re-presented to a financial institution for payment.
- 2) If a licensee turns over a check to a collection agency and retains an ownership interest in the check, the licensee must keep copies of court orders authorizing any additional fees that were assessed by the collection agency. In addition, the collection agency should submit updated information regarding the collection accounts to the licensee on at least a monthly basis. The monthly reports should include information such as: customer name, check number(s), check amount(s), non-sufficient funds check penalty fee, payments, amount due, date paid in full, and status of paid in full check (sent back or destroyed). A licensee who uses a collection agency may not allow the collection agency to charge an additional fee for its services.
- 3) If a licensee sells a check to a collection agency, and retains no ownership interest, then no further information is needed to be kept in a customer’s file once that notation is made.
- 4) A licensee who proceeds to small claims court may add court fees and costs in addition to the fifteen dollar penalty so long as those fees and costs are awarded by the court and included in the judgment. All such items must be documented separately along with the court order and kept in the customer’s collection file available for review by the Department.
- 5) If post judgment interest, as defined by Neb. Rev. Stat. § 45-103, is awarded by the court, it may be collected by the licensee. The customer’s collection file must document the awarding of post judgment interest and an up-to-date accounting of interest due on the judgment.
- 6) Any post judgment “increased costs,” as noted on a Small Claims Court form, sought after an awarded judgment in a collections proceeding (such as garnishment, execution, cost of serving, etc.) must be as provided for by the court and noted in the customer’s collection file. Any fees not provided for by the court or not listed in the customer’s collection file may not be collected.

- 7) A licensee may accept a charge card as payment for a collection item so long as the licensee does not charge an additional “convenience fee.” Any additional collections payment considerations must meet DDS Interpretative Opinion No. 6 criteria.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Originally Issued May 1, 2011

DDS INTERPRETATIVE OPINION NO. 8 – USE OF THE TERMS “LOAN” AND “PAYDAY LOAN”

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding the improper use of the term “loan” and the permissible use of the term “payday loan” by licensees under the Delayed Deposit Services Licensing Act (“Act”).

Neb. Rev. Stat. § 45-908 provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, shareholders, partners or members, are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.

Neb. Rev. Stat. § 45-902(4) defines “delayed deposit services business,” as a person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check, whether express or implied.

The definition of “delayed deposit services business” does not include offering loans. The Department interprets this to mean that delayed deposit transactions are not recognized as loans, and therefore, should not be represented as loans by the licensee.

In order to operate in accordance with the Act, a licensee may use the phrase “payday loan” in its advertising, signage, coupons, contracts, or other customer contacts, but may not use the term “loan” by itself for any purpose. All printed materials and websites, including the fine print, should be reviewed by licensee to ensure compliance. Licensees may not be listed, or advertise, in a telephone book under the Loans section. Permissible telephone book sections include: Cash Advance Services, Payday Loan, and Payroll Advancement.

Improper use of the term “loan” may lead to Department administrative action, as the Department could find that the licensee is not operating honestly or in accordance with the Act.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019
Originally issued June 5, 2014

DDS INTERPRETATIVE OPINION NO. 9 – EXTENDED PAYMENT PLAN

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretative Opinion regarding a maker’s election to repay a delayed deposit transaction by means of an extended payment plan (“EPP”) under the Delayed Deposit Services Licensing Act (“Act”).

Neb. Rev. Stat. § 45-919.01(1) provides that a maker who cannot pay back a delayed deposit transaction when it is due may elect once in any twelve-month period to repay the delayed deposit transaction to the licensee by means of an EPP. The Department interprets this as a twelve-month period commencing on the date the maker elects to pay back a delayed deposit transaction by means of an EPP.

Neb. Rev. Stat. § 45-919.01(2) provides that to request an EPP, the maker, before the due date of the outstanding delayed deposit transaction, must request the plan and sign an amendment to the delayed deposit agreement that reflects the new payment schedule and terms. The Department interprets this provision as requiring the maker to request such EPP, and to execute an amendment to the delayed deposit agreement prepared by licensee with the terms of the EPP, before the due date of the outstanding delayed deposit transaction. The amendment must contain, at a minimum, the following items:

- a) the date and amount of each payment, and that authorized electronic funds transfer will be used, if applicable;
- b) a confirmation that the original check will not be re-presented and will be returned to the customer, or destroyed in accordance with written store policy, upon successful completion of the contract; and
- c) if authorized electronic funds transfer is to be used, a disclosure that presentment of each payment via electronic funds transfer may cause the maker to incur additional fees from the maker’s financial institution if any payment is returned.

A fully executed copy of the EPP amendment must be given to the maker.

Neb. Rev. Stat. § 45-919.01(3) provides that the terms of an EPP must allow the maker, at no additional cost, to repay the outstanding delayed deposit transaction, including any fee due, in at least four equal payments that coincide with the maker's periodic pay dates. If a maker does not have periodic pay dates, the Department interprets Neb. Rev. Stat. § 45-919.01(3) as requiring payment due dates under an EPP to be at least two (2) weeks apart. Further, an EPP may provide for more than four (4) installments so long as the installments are equal and coincide with the maker’s periodic pay dates. If precisely equal payments are not possible, then negligible differences between installment payments are permissible. The difference in amounts paid between installment payments should not exceed five dollars (\$5.00). If payments are made, other than by deposit of a maker’s check or previously authorized electronic funds transfer obtained in connection with the EPP, such as with cash, the maker must be provided with a written receipt, signed and dated by licensee, for payments received in connection with an EPP, and a copy of such receipt must be maintained in the licensee’s file. A licensee may accept a charge card for a payment by a maker on an EPP so long as no additional fees are charged by licensee or any affiliate in connection therewith.

Neb. Rev. Stat. § 45-919.01(4) provides that a maker may prepay an EPP in full at any time without penalty, and that the licensee shall not charge the maker any interest or additional fees during the term of the EPP. The Department interprets this provision as allowing prepayments in part, without penalty, upon an EPP at any time, and, unless licensee and maker otherwise agree, such prepayments should be applied to the last maturing payment or payments. The Department also interprets Neb. Rev. Stat. § 45-919.01 as precluding a licensee from requiring additional security or collateral from the maker, or the purchase of additional services, as a condition to entering into an EPP.

As provided under Neb. Rev. Stat. § 45-918.04(2), a licensee may obtain maker's written authorizations for electronic funds payments through transfers or withdrawals from a maker's account up to the total amount due under an EPP, which shall occur only on the agreed payment dates. Blanket authorizations are not permissible. Further, a maker shall have the right to rescind any authorization for electronic payment pursuant to Neb. Rev. Stat. § 45-917(1)(b).

The Department is further of the opinion that under Neb. Rev. Stat. § 45-919.01, a licensee may, upon receipt of a payment under an EPP, return a maker's then held check or checks, and require a new check or checks from maker, in an aggregate amount not in excess of the remaining balance. The Department is of the opinion that Neb. Rev. Stat. § 45-919(1)(a), which provides that no licensee may hold more than two checks from any one maker, is not applicable to an EPP. Checks not deposited or returned to maker upon payment in full of an EPP must be destroyed within 90 days in accordance with licensee's written policies for the destruction of original checks. The Department is also of the opinion that a licensee may enter into new delayed deposit transactions with a maker during the period of an existing EPP in an aggregate amount not to exceed \$500.00 less the remaining outstanding balance on the EPP.

The Department further interprets the EPP collection efforts permitted under Neb. Rev. Stat. § 45-919.01(5) to refer to the "civil means authorized by law" for collection set forth under Neb. Rev. Stat. § 45-918.01. In addition, the Department is of the opinion that the existence of an EPP, whether voluntarily entered into between licensee and a maker or unilaterally elected by maker, would not prohibit or otherwise limit licensee's ability to enter into a separate, written contract with maker as part of collection efforts on a returned check in a separate delayed deposit transaction as set forth in DDS Interpretative Opinion No. 6. Further, a licensee may voluntarily offer an EPP to a maker at any time, enter into one or more EPPs with a maker, at any one time, and, with the written agreement of maker, extend the remaining balance, under an EPP by reducing the amount of payments and increasing the number of payments, so long as the remaining installments are equal and coincide with the maker's periodic pay dates. The Department strongly encourages licensees, at the time any delayed deposit transaction is made, to give to the maker, or if there are two or more makers, to at least one of them, a written notice in plain English, all capitalized and in at least ten-point font, disclosing the maker's right to request an EPP, substantially in form as follows:

ANY CUSTOMER WHO CANNOT PAY BACK A DELAYED DEPOSIT TRANSACTION WHEN IT IS DUE MAY ELECT ONCE IN ANY TWELVE-MONTH PERIOD TO REPAY THE TRANSACTION BY MEANS OF AN EXTENDED PAYMENT PLAN ("EPP"). TO REQUEST AN EPP, A CUSTOMER MUST REQUEST SUCH A PLAN AND SIGN AN AMENDMENT TO THE DELAYED DEPOSIT AGREEMENT THAT REFLECTS THE NEW PAYMENT SCHEDULE AND TERMS BEFORE THE DUE DATE OF THE OUTSTANDING TRANSACTION.

Such notice should be included and highlighted in the delayed deposit agreement, or attached as a separate notice, which is given to the maker at the time of each transaction. If a separate notice is used, the maker should sign and date the notice to acknowledge receipt, and a copy must be maintained in the licensee's file. The Department further strongly encourages licensees to post such notice at every office of licensee, along with the schedule of fees, charges and penalties, required to be posted pursuant to Neb. Rev. Stat. § 45-917(2).

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019

DDS INTERPRETATIVE OPINION NO. 10 – RESCISSION; REDEMPTION

This Interpretative Opinion discusses a maker’s right to rescind a delayed deposit transaction, and a maker’s right to redeem a delayed deposit transaction, under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-918.03(1) provides that a maker shall have the right to rescind a delayed deposit transaction before 5 p.m. on the next business day following the delayed deposit transaction.

With respect to the period of time that a maker has to rescind a delayed deposit transaction as set forth in the notice, the Department interprets such right to mean that a maker must rescind the transaction before 5 p.m. on the next full business day that the licensee is open until 5 p.m. For example, if a maker enters into a delayed deposit transaction on a Friday and the licensee is only open until 2 p.m. on the following Saturday and is closed on Sunday, then maker shall have until 5 p.m. on the next business day that licensee is open until 5 p.m., which presumably would be Monday. If licensee is open until 5 p.m. on Saturday in this example, the maker would have until 5 p.m. on Saturday to rescind the transaction. For the purposes of rescission, the term “the next business day” can include a Saturday, Sunday, or a holiday, if the licensee is open for normal weekday business hours, and until at least 5 p.m. on that day. Should licensee have stores in more than one time zone, the time at the location of the store where the original delayed deposit transaction was made shall be the deadline for rescission, notwithstanding that maker may seek to rescind the transaction at licensee’s store in another time zone.

Neb. Rev. Stat. § 45-917(1)(b) provides that a maker shall have the right to rescind any authorization for electronic payment.

The Department interprets this provision to mean that a maker shall have the right to rescind an authorization for an electronic payment up to the close of business on the day before such electronic payment was to occur as set forth in a writing, such as a delayed deposit agreement or amendment thereto between maker and licensee. A licensee may not require the maker to make the payment with cash, or to provide the licensee with a substitute form of payment, as a condition to maker’s exercise of such right.

Neb. Rev. Stat. § 45-917(1)(b) provides that the maker’s right to rescind a delayed deposit transaction before 5 p.m. on the next business day, and the maker’s right to rescind any authorization for electronic payment, must be included in a notice given to a maker, at the time any delayed deposit transaction is made, using the statutorily dictated language set forth in the statute [See DDS Interpretative Opinion No. 3].

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019

DDS INTERPRETATIVE OPINION NO. 11 – MILITARY PERSONNEL, SPOUSES AND DEPENDENTS

This Interpretative Opinion discusses limitations upon the provision of delayed deposit transactions to military personnel and their spouses and dependents under the Delayed Deposit Services Licensing Act.

Neb. Rev. Stat. § 45-918(1) provides the maximum allowable amount that may be charged by a licensee in connection with a delayed deposit services transaction. Notwithstanding the foregoing, Neb. Rev. Stat. § 45-918(2) provides that licensees may not charge fees to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowable under the Military Lending Act of 2006, 10 U.S.C. § 987 (“MLA”), as such section existed on January 1, 2018 [See DDS Interpretative Opinion No. 1].

The MLA established a maximum military annual percentage rate (“MAPR”) of 36 percent, including fees and charges, on “consumer credit” extended to active duty members of the armed forces, Guard and Reserves, and their dependents, including spouses and children, and provided other limitations and mandatory disclosures. The Secretary of Defense (“Secretary”) was directed to issue regulations implementing the MLA, which regulations, at 32 C.F.R. Part 232, became effective October 1, 2007. Such regulations were further amended by the Secretary, effective October 1, 2015, and interpretive rules related thereto, were issued August 26, 2016, at 81 F.R. 58840, and December 14, 2017, at 82 F.R. 58239. Delayed deposit services transactions were originally included in, and remain, within the parameters of the MLA’s broadened definition of “consumer credit” under the amendments.

While a creditor continues to be permitted to apply its own method to assess whether a consumer is a “covered borrower” under the MLA, the amendments to the regulations updated the “safe harbor” provision, at 32 C.F.R. § 232.5, to permit a creditor to use one or both of two methods to confirm whether a consumer is protected. The first is an on-line database, <https://www.dmdc.osd.mil/mla/welcome.xhtml>, maintained by the Department of Defense (“DOD”), in which a consumer’s last name, date of birth, and social security number can be used to verify the military status of a consumer.

Alternatively, a creditor may verify the status of a consumer by using a statement, code, or similar indicator describing military status, if any, shown in a consumer report obtained from a nationwide consumer reporting agency. A creditor’s determination relying upon either method will be conclusive with respect to a pending transaction so long as the creditor timely creates, and maintains, a record of the information so obtained.

Licensees are encouraged to conduct a risk assessment regarding whether to utilize such “safe harbor” provision.

Questions regarding this opinion should be addressed to:

Nebraska Department of Banking and Finance
P.O. Box 95006
Lincoln, NE 68509-5006
(402)471-2171

EFFECTIVE DATE: January 1, 2019