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Installment Sales Act and Installment Loan Act Updates

April 19, 2021 (LINCOLN, NE) - The Nebraska Department of Banking and Finance ("NDBF") is providing the following notice regarding consumer lenders. Effective March 18, 2021, Legislative Bill 363 (2021) ("LB 363") amended sections of the Nebraska Installment Sales Act and the Nebraska Installment Loan Act (collectively referred to as "the Acts").

Nebraska Installment Sales Act

Section 45-335(11) of the Nebraska Installment Sales Act was amended to define a sales finance company as "a person purchasing one or more installment contracts from one or more sellers *or acquiring any rights of ownership, servicing, or other forms of participation in or otherwise engaging with a consumer on behalf of the purchaser of one or more installment sales contracts from one or more sellers.*" (emphasis added)

Additionally, Section 45-346 of the Nebraska Installment Sales Act was amended to reflect the established practice of NDBF to require an additional bond amount of \$50,000 for each licensed branch location, including branches not physically located in Nebraska, of an applicant or licensee under the Nebraska Installment Sales Act.

Nebraska Installment Loan Act

Prior to the passage of LB 363, a license was required to engage or continue in the business of making loans of money and charge, contract for, and receive the maximum for interest and other charges allowed under the Nebraska Installment Loan Act. Now, sections 45-1004 and 45-1005 of the Nebraska Installment Loan Act have been amended to require a license for non-chartered entities holding, servicing, or otherwise participating in consumer loans made to Nebraska residents with an interest rate greater than 16% per annum, a principal balance of less than \$25,000, and a duration of 145 months or less.

The Nebraska Installment Loan Act still requires lenders who are making installment loans to have a physical presence in Nebraska, but the physical presence requirement does not apply to owners, servicers, or purchasers of installment loans if they are not making such loans.

Conclusion

With the change in the Acts, consumer lenders should consult with legal counsel to determine if licensure is necessary under Nebraska law. As stated above, LB 363 is already effective; therefore, NDBF would expect those now subject to the licensing requirements to file an application for a license on the Nationwide Mortgage Licensing System (“NMLS”) by October 1, 2021.

A properly licensed debt collection agency is not required to be licensed under the Acts due to the changes contained in LB 363, 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 Nebraska Installment Sales Act or the Nebraska Installment Loan Act.

Failure to obtain a license as required under the Acts, may result in administrative actions being taken by NDBF, including the imposition of fines, penalties, and other forms of liability, as set forth in Sections 45-343 and 45-353 of the Nebraska Installment Sales Act and Sections 45-1015, 45-1033, and 45-1069 of the Nebraska Installment Loan Act.

Additional licensing information for consumer lenders is available on NDBF’s website at <https://ndbf.nebraska.gov/industries/consumer-lending-licenses> and on the NMLS website at <https://mortgage.nationwidelicencingsystem.org/Pages/default.aspx>. If you have questions, please call NDBF at 402-471-2171.

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