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Department of Consumer Affairs

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Celebrating Over 30 Years of Public Service

June 20, 2008

The Honorable George R. Powell, Deputy Commissioner
State Board of Financial Institutions
Consumer Finance Division
P.O. Box 11905
Columbia, SC 29211

RECEIVED
JUN 25 2008
STATE BOARD OF
FINANCIAL INSTITUTIONS
CONSUMER FINANCE DIVISION

Re: Licensing of Supervised Internet Based Lenders

Dear Mr. Powell:

I have received your letter requesting an informal opinion regarding the licensing of internet based lenders. It is the opinion of this Department that internet lenders may be licensed as supervised lenders to make loans to South Carolina citizens if the other requirements to obtain a supervised lender license are satisfied.

More and more business is being conducted electronically, and nothing in the South Carolina supervised lender law requires a brick and mortar location in South Carolina. Also, both the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 1701 *et seq.*, and South Carolina's Uniform Electronic Transactions Act (Act), *S.C. Code* §§ 26-6-10 *et seq.*, provide procedures to enable the use of voluntary electronic commerce for most purposes and to provide for the keeping of electronic records.

Section 26-6-50(B) allows the use of electronic business transactions only when the parties agree to conduct the transaction through electronic means. Subsection (A) provides that a party cannot be required to use electronic means, and subsection (C) allows a party that has agreed to conduct a particular transaction by electronic means to refuse to conduct other transactions by electronic means. Subsection (C) further provides that this right to refuse to conduct other transactions electronically may not be waived by agreement. Section 26-6-60 provides that the Act must be construed and applied, among other things, to facilitate electronic transactions consistent with other provisions of law. Section 26-6-30(D) also provides that a transaction subject the Act is also subject to other applicable law. Therefore, existing supervised lending law will govern the licensing of internet lenders.

You have identified some specific issues that need to be addressed if internet lenders are licensed.

- License Requirement. Section 37-3-503(4) requires each place of business to have a separate license. Further, section 37-3-503(5) provides that a lender using an electronic device to make consumer loans must apply for and obtain a license if located off the premises of a licensed location. Since the internet lending would constitute a new place of business, it would need its own license.

- Posting of License. Given the nature of internet transactions, a license may be deemed to be posted if it can easily be viewed on the website.

- Posting of Maximum Rate Schedule. For any lender charging more than 18% APR, section 37-3-305 requires the posting of the Maximum Rate Schedule in a conspicuous place in every place of business. An internet lender could meet this requirement by including the Maximum Rate Schedule on the website so that it can easily be viewed.

- Providing Disclosures. Section 37-3-301 requires the borrower be given the Truth in Lending Disclosures. This must be done before the borrower becomes bound to the transaction. The disclosures may be shown on the loan contract before the borrower signs with an electronic signature. The borrower should be able to view and print or save the agreement.

- Rights and Responsibilities Pamphlet. Section 37-6-117(j) requires that a rights and responsibilities pamphlet be available at all licensed loan offices. For an internet lender the loan office will be the internet. Therefore, the pamphlet may be posted on the website so the borrower can easily view, print or save it.

- Default. Sections 37-5-109 through 111 provide the Notice of Right to Cure requirements in the event of default. These requirements still apply; however, § 26-6-30(B)(2)(c)(ii) provides that the Notice cannot be given electronically.

- Books and Records. Section 37-3-505 requires certain records kept, and § 37-3-506 requires the records be made available to the Board. Several methods are recognized for making the records available. Any of the approved methods could be used to examine the records of an internet lender.

I hope this answers your questions, but as other issues arise, we will try to answer them.

Sincerely,

Danny R. Collins

Danny R. Collins
Deputy for Regulatory Enforcement