

Deferred Presentment and Small Loan Act

Required Annual Education

2015



Annual Education Requirement

- ▶ Pursuant to LAC 10:XI Chapter 11, each licensee which makes or offers deferred presentment transactions (payday) and small loans are required to provide education to all lender personnel annually no later than January 1 of each year and to all new lender personnel within the first month of employment and each calendar year thereafter no later than January 1.

Annual Education Requirement

- ▶ "Lender Personnel" is defined as a person who is employed by, contracted with or engaged in the performance of services that involve the general public including but not limited to, those that offer, market negotiate and/or sell deferred presentment transaction or small loans.

Annual Education Requirement

- ▶ Once the annual education has been completed, the "Annual Education Affidavit" must be completed by an authorized company representative for each location. For purposes of record retention, a copy of the signed and completed affidavit must be maintained at each location.

Annual Education Requirement

Deferred Presentment & Small Loan Act Annual Education Affidavit

I _____ in my official capacity as _____ of
(Authorized Company Representative) *(Official Position held)*

(Name of Company, Address and NMLS Unique ID)

affirm that ALL of the following lender personnel, who are employed by, contracted with or engaged in the performance of services that involve the general public including but not limited to, those that offer, market negotiate, and/or sell deferred presentment transactions or small loans at the above referenced location have successfully completed the annual education requirement as required by LAC 10:XI Chapter 11:

Employee Name	Employee Name
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

Signed on the _____ day of _____, 20__

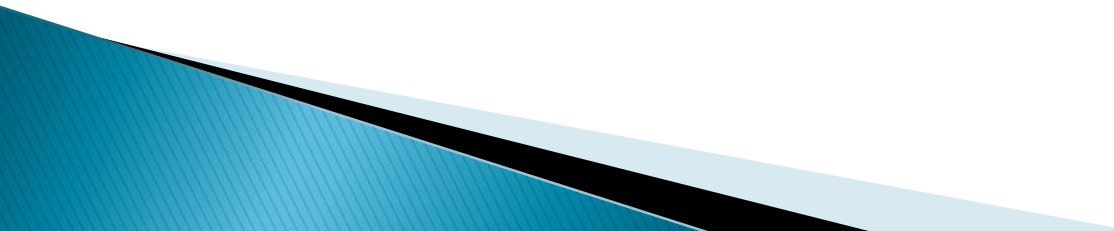
(Signature and Title)

**Please note, an affidavit must be completed for each location. For purposes of record retention, a copy of the signed and completed affidavit must be maintained at the above referenced location.*

Definitions

- ▶ “Deferred presentment transaction” means a transaction made pursuant to a written agreement whereby a licensee:
 - (a) Accepts a check from the issuer dated as of the date it was written;
 - (b) Agrees to hold the check for a period of time not to exceed thirty days prior to negotiating or presentment; and
 - (c) Pays to the issuer of the check the amount of the check less the fee permitted in R.S. 9:3578.4(A). The amount paid to the issuer of the check may not exceed three hundred fifty dollars.

Definitions

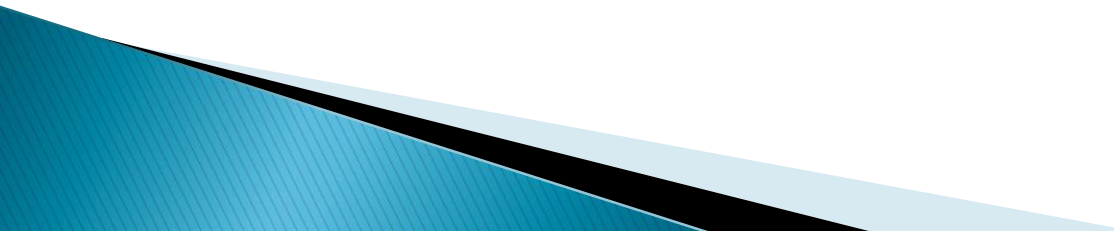
- ▶ “Partial payment” means a payment of fifty dollars or more on a deferred presentment transaction or small loan.
 - ▶ “Prepayment” means payment in full of the deferred presentment transaction or small loan amount prior to the end of the term of that transaction or loan.
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Definitions

- ▶ “Small loan” means a consumer loan, as defined in R.S. 9:3516 (14), of three hundred fifty dollars or less, made for a term of sixty days or less.
- ▶ “Consumer loan” means a loan of money or its equivalent made by a supervised financial organization, a licensed lender, or a lender in which the debtor is a consumer, and the loan is entered into primarily for personal, family, or household purposes and includes debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financing.

Limits on Fees and Charges

▶ Finance Charge and Fees

- Limit of fees to 16.75% of the face amount of a customer's check or the total loan amount of a small loan with a maximum of \$45.00
 - Documentation fee of \$10
 - Effective January 1, 2015 no delinquency charges are allowed
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Calculation of Fee Limits

No Doc Fee

- ▶ Determining Compliance with 16.75% limit on fees
 - Finance Charge (Percentage):

$$\frac{\text{Face Amount of Check} - \text{Cash Given to Consumer}}{\text{Face Amount of Check}}$$

To avoid a violation this percentage should never exceed either 16.75% and total fee should not exceed \$45 (total fee does not include doc fee)

Calculation of Fee Limits

No Doc Fee

Example (no doc fee) Compliant:

Face Amount of Check - Cash Given to Consumer
Face Amount of Check

(\$240 Face Amount of Check - \$200 Cash to borrower)
\$240 Face Amount of Check

$$\$40/\$240 = 16.67\%$$

Fee of \$40 does not exceed \$45 or 16.75%
and is compliant

Calculation of Fee Limits

No Doc Fee

Example (no doc fee) with Violation:

Face Amount of Check – Cash Given to Consumer
Face Amount of Check

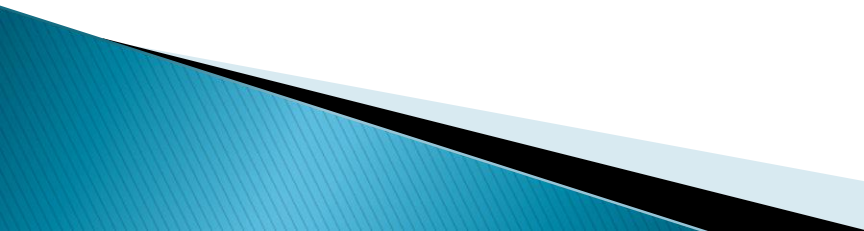
(\$245 Face Amount of Check – \$200 Cash to borrower)
\$245 Face Amount of Check

$$\$45 / \$245 = 18.37\%$$

Fee of \$45 does not exceed \$45 cap but the rate exceeds 16.75% and is a VIOLATION

Calculation of Fee Limits

With Doc Fee

- ▶ For loans with a Doc Fee calculations are different.
 - ▶ Cap on fee (not including doc fee) is limited to a 16.75% of the face amount of the check with a cap of \$45.
 - ▶ To calculate compliance the doc fee should also be subtracted from the amount of the check.
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Calculation of Fee Limits With Doc Fee

Example (with doc fee) Compliant:

Face Amount of Check – Cash Given to Consumer – Doc Fee
Face Amount of Check

(\$305 Face Amount of Check – \$250 Cash to borrower – \$10 Doc Fee)
\$305 Face Amount of Check

$$\$45 / \$305 = 14.75\%$$

Fee of \$45 does not exceed \$45 cap or 16.75%
and is compliant

Calculation of Fee Limits With Doc Fee

Example (with doc fee) Violation:

Face Amount of Check – Cash Given to Consumer – Doc Fee
Face Amount of Check

(\$255 Face Amount of Check – \$200 Cash to borrower – \$10 Doc Fee)
\$255 Face Amount of Check

$$\text{\$45} / \text{\$255} = 17.65\%$$

**Fee of \$45 does not exceed \$45 cap but exceeds the
16.75% limit and is a VIOLATION**

NSF and Returned Items

- ▶ A licensee may contract with the borrower for reimbursement of the actual fee assessed to the licensee by the licensee's depository institution as a result of a borrower's check being returned for any reason
 - MUST BE SPECIFICALLY INCLUDED IN CONTRACT
 - CAN ONLY BE CHARGED ONCE PER CHECK REGARDLESS OF THE NUMBER OF TIMES THE CHECK WAS RETURNED

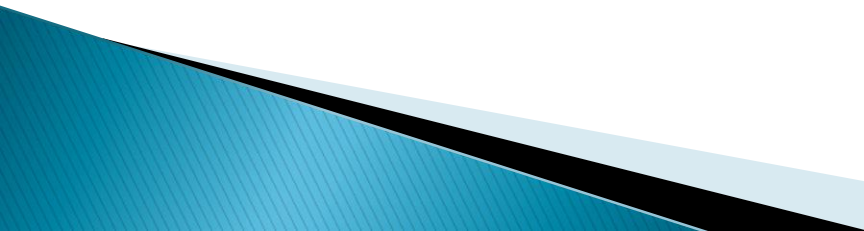
NSF and Returned Items

- ▶ The parties in a consumer credit transaction may contract for an additional charge to be assessed against the consumer's account if the consumer tenders a check or makes an electronic debit in payment on such account and such check or electronic debit is returned from any bank, savings and loan association, thrift institutions, or credit union.
 - The charge must be specified in the contract
 - The charge shall not exceed \$25 or 5% whichever is greater
 - The charge may be collected only once in connection with a particular check or electronic debit regardless of how many times it may be returned

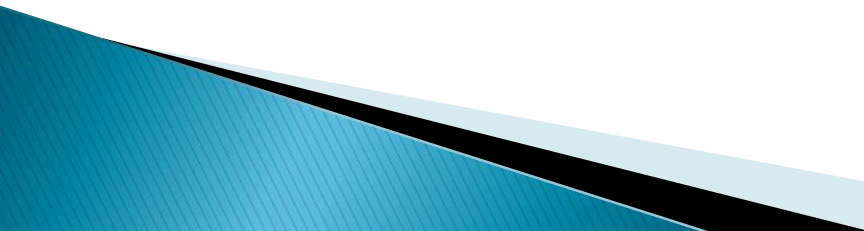
Extended Payment Plan

- ▶ A consumer who is unable to repay either a deferred presentment transaction or small loan when due to a licensee, may elect once in any twelve-month period to repay the licensee the amount due by means of installments, referred to as an extended payment plan in the Act.
 - This is the consumers option
 - Generally a lender may not refuse to grant a extended payment plan

Extended Payment Plan

- ▶ To be eligible, the consumer shall request to enter into the plan before the due date of the outstanding deferred presentment transaction or small loan.
 - ▶ A consumer is ineligible for an extended payment plan if they previously obtained an extended payment plan from the licensee (location) within the previous twelve months.
 - ▶ The consumer and licensee are prohibited from entering into a subsequent deferred presentment transaction or small loan until repayment in full of the extended repayment plan.
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Extended Payment Plan

- ▶ The extended payment plan shall be in writing and modify the terms of the outstanding small loan or deferred presentment transaction and establish the terms of the plan.
 - ▶ If a consumer is unable to request or enter a plan prior to the due date because of incapacitation which results in hospitalization, the lender shall allow the consumer to request to enter into the plan within 72 hours from hospital discharge.
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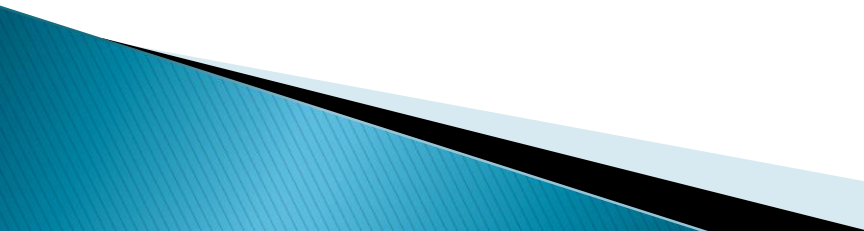
Extended Payment Plan Terms

- ▶ The terms of the payment plan shall provide for the following:
 - Allow the consumer to repay the outstanding balance in at least four substantially equal installments.
 - Allow the consumer to prepay during the plan without penalty.
 - Prohibits the licensee from charging any additional charges or fees during the term of the plan.

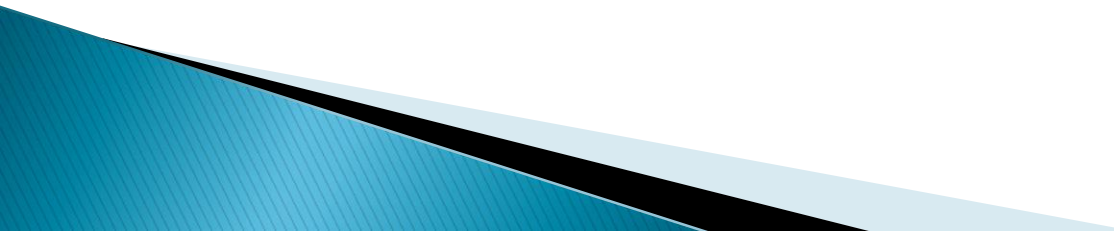
Extended Payment Plan Terms

- ▶ The first plan installment shall not be due sooner than thirty days following execution of the plan.
 - ▶ The consumer may agree to (but not required to) a shorter period of time based upon when they receive income.
 - ▶ Due dates and amount of installments must be spread out substantially evenly over the term of the plan.
 - ▶ Receipts signed and dated must be provided to consumer with each payment and include the balance due after the payment.
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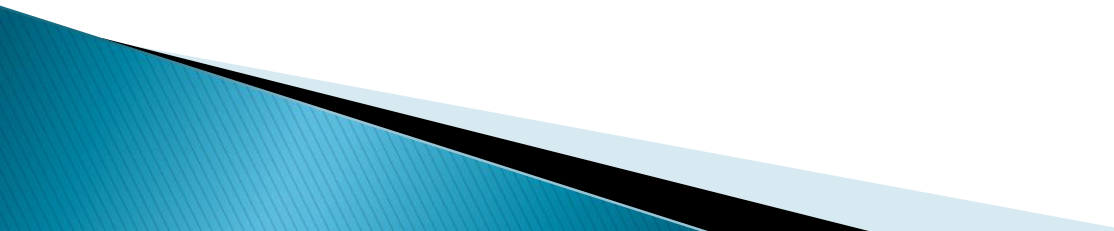
Extended Payment Plan

- ▶ Lenders may:
 - With each payment under the plan, return the consumer's previously held check (deferred presentment loan) and require a new check for the remaining balance under the plan.
 - Require consumer to provide multiple checks, one for each of the installments in the amount of each installment at the time the plan is executed.
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Extended Payment Plan Default

- ▶ If the consumer fails to pay any payment plan installment when due, the licensee may immediately accelerate payment on the remaining balance.
 - ▶ Upon default, the licensee may collect only the amount outstanding on the extended payment plan.
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Repayment Plan Disclosure

- ▶ At each licensed location or on the homepage of a licensee's website, the licensee shall prominently post a notice visible to the public and all those visiting stating that if the consumer is unable to repay their deferred presentment transaction or small loan when due, they may enter into one extended payment plan.
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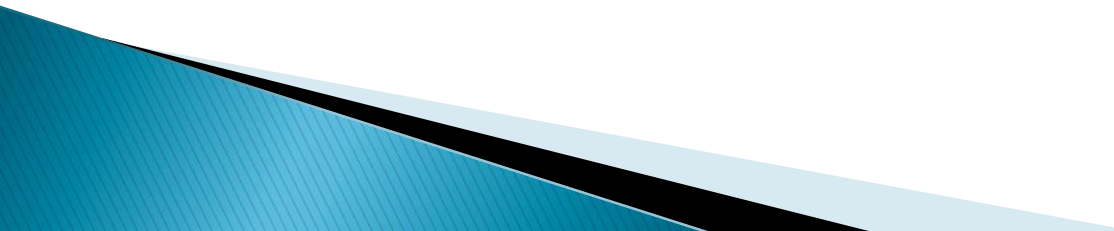
Repayment Plan Disclosure

- ▶ The following statement is required on the first page of all deferred presentment transactions or small loan agreement:
- ▶ **“IF YOU CANNOT MAKE A PAYMENT WHEN DUE, YOU CAN ASK TO ENTER INTO AN EXTENDED PAYMENT PLAN ONCE IN A TWELVE-MONTH PERIOD, BUT THE REQUEST MUST BE MADE BEFORE PAYMENT IS DUE. SHOULD YOUR LENDER (LICENSEE) REFUSE TO ENTER INTO AN EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTION AT 1-888-525-9414.”**

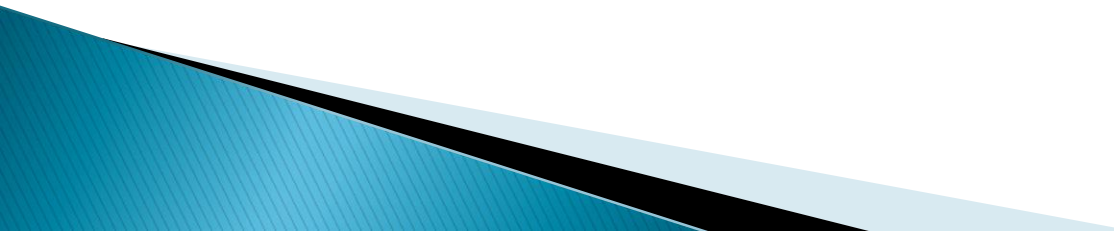
Repayment Plan Disclosure

- ▶ **The following statement shall be signed by the consumer on the first page of each deferred presentment transaction or small loan agreement. The statement shall be in at least twelve point bold type.**
- ▶ **“I acknowledge that I understand that I may be eligible to enter into an extended payment plan if I cannot make payment when due. In order to be potentially eligible for an extended payment plan, I understand that it is my responsibility to notify my lender that I cannot make payment before payment is due. I have asked any questions I have about the extended payment plan and lender (licensee) answered all question to my satisfaction.”**

Rebate upon Prepayment

- ▶ Upon prepayment in full of a deferred presentment transaction or small loan, during the first 5 days of the term, the licensee shall refund all unearned charges.
 - ▶ For prepayments after the first 5 days, no refund is required.
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Rebate upon Prepayment

- ▶ For refunds within the first 5 days, \$20 of original fees are not required to be refunded.
 - ▶ The remaining fees must be rebated by method no less favorable to the consumer than the actuarial method.
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Rebate Calculation

Example:

Actuarial Rebate Calculation of 14 day loan

Amount borrowed	\$300
Fees/charges /\$10 Documentation Fee (interest)	<u>\$55 (\$45 + \$10)</u>
Amount of borrower's check (total pay back)	\$355

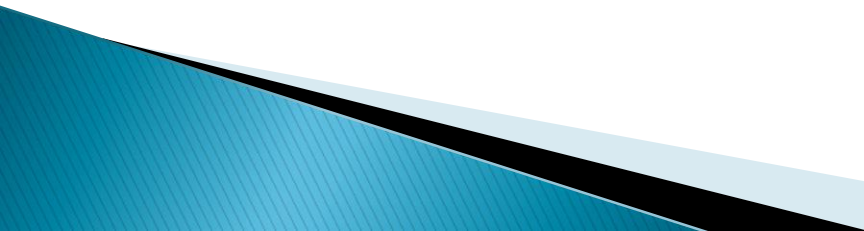
Loan pays off on the 4th day; a rebate of the unearned interest is due beginning with the 5th day:

Total Charges/Interest	\$55.00
Less: amount earned	20.00
Less: Documentation Fee (if applicable)	<u>10.00</u>
Net Charges/Interest	\$25.00
Rebate Factor (14-4)/14	<u>X .7143</u>
Amount of Rebate	\$17.86

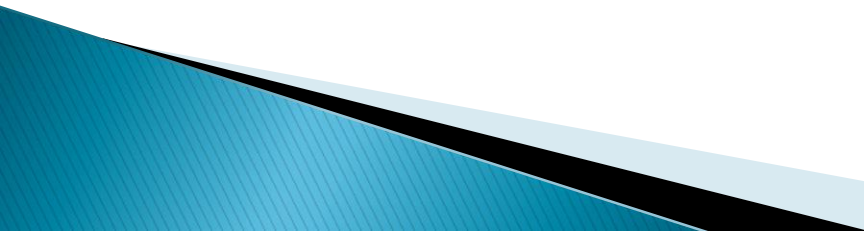
Prohibited Acts

- ▶ A licensee shall not:
 - Charge, contract for, receive, or collect a loan finance charge or credit service charge, or any other fee or charge other than authorized by the Act.
 - Sell goods when those goods are financed with proceeds of a deferred presentment transaction or small loan
 - Sell insurance in connection with a deferred presentment transaction or small loan

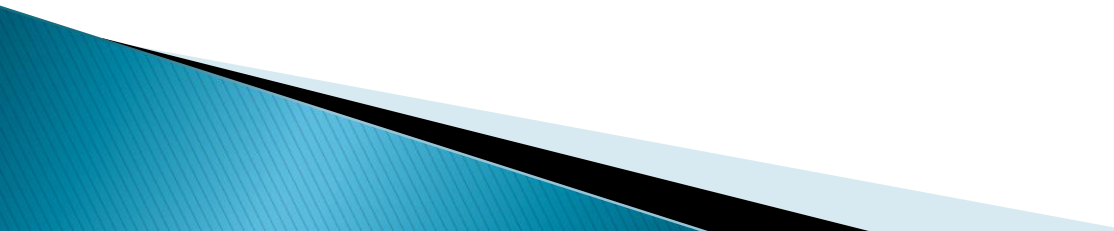
Prohibited Acts

- ▶ Refuse a partial payment of fifty dollars or greater
 - ▶ Divide a deferred presentment transaction or small loan into multiple agreements for the purpose of obtaining a higher fee or charge.
 - ▶ Threaten any customer with prosecution or refer for prosecution any check accepted as payment of a deferred presentment transaction and returned by the lender's depository institution for reason of insufficient funds.
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Prohibited Acts

- ▶ Structure the repayment of a loan in such a manner as to attempt to circumvent the provisions of the Law.
 - ▶ Renew or roll over a deferred presentment transaction or small loan.
 - Licensee may accept a partial payment of 25% of the amount advanced plus fees charged and enter into a new deferred presentment transaction or renew the small loan for the remaining balance owed.
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Prohibited Acts

- ▶ Take any direct or indirect interest, possessory or otherwise, whether perfected or unperfected, in any property in connection with a small loan, or deferred presentment transaction.
 - ▶ It is unlawful by any means to accept as payment, offer to accept as payment, or require for use as a security any check issued pursuant to the federal Social Security Act.
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Prohibited Acts

- ▶ It is unlawful for any lender making small loans to act as a depository institution for the acceptance of any check issued pursuant to the federal Social Security Act, unless such lender is a federally insured financial institution.

Posting of Notice & Toll Free Number

- ▶ A notice must be posted in a conspicuous place and manner by the licensee at the lending location (if in the state of LA) and the homepage of the website of the licensee which includes the toll free number of the Commissioner's Office.
- ▶ Notices are provided by OFI with license certificates.
- ▶ Also see OFI website for required notices.
 - www.ofi.la.gov