

MEMORANDUM

DATE: March 5, 2013

TO: Senator Kim Koppelman, Chairman
Administrative Rules Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Department of Financial Institution – Consumer Rules 2013

In a March 5, 2013, email addressed to the Department of Financial Institutions, Code Reviser John Walstad asked that a representative of the Department appear before your committee to testify on the proposed amendments to Article 13-04 through 13-08 relating to the regulation of consumer finance entities and specifically respond to the following questions.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

These rules did not result from any statutory changes made by the Legislative Assembly. These amendments were drafted as a result of matters that came to the Department's attention by way of examinations and investigations.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

The proposed rules are not based on any federal statute or regulation.

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3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

Notice was published in every official county newspaper in North Dakota. Notice was also mailed to each licensee. The Department also met with a trade association representing in-state collection agencies in order to ensure that industry input was taken into account. The public hearing on the proposed rule amendments was held at 10:00 am on November 6, 2012, in the Office of the Department of Financial Institutions, before Assistant Commissioner Aaron Webb, who acted as the Hearing Officer. The final comment period ended at 5:00pm on November 19, 2012. After the comment period had expired, the Commissioner reviewed the comments, and made a non-substantive change to the rule amendments. The rules were sent to the Attorney General's Office for examination as to the legality on December 20, 2012; on January 16, 2013, the Attorney General issued an opinion that the rules, in substantial compliance with N.D.C.C. Ch. 28-32, were approved as to their legality. The rules were adopted in final form by the Commissioner on January 22, 2013, and filed with Legislative Council on January 22, 2013.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

No comments were received at the public hearing concerning the rules. The Department received two written comments regarding the rules.

The first comment was in the form of a November 2, 2012 email from Kim Granfor. The comment addressed section 13-04-02-05(5) of the proposed rules, and pointed out that the term "imply" was overly vague. As a result

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of reviewing this comment, the Commissioner removed the words “or imply” in order to address the commenter’s remarks. The Commissioner made the determination that this change was non-substantive, and would not require re-publication.

The second comment was in the form of a November 19, 2012 letter from Danielle Fagre Arlowe of the American Financial Services Association (AFSA). This comment concerned the definition of “Debt Collector” as found under section 13-04-02-01 of the proposed rule amendments. Specifically, it appeared that the commenter took exception with the fact that North Dakota law did not exempt from licensure entities collecting debt associated with an affiliated company. Upon reviewing the comment, it was the conclusion of the Commissioner that any changes associated with exemptions from licensure were better suited for the legislative process. Further, the Commissioner noted that one reason for the rule change was to incorporate the parameters of licensure under the statute.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost for publication of the notice was \$2,024.52. The Assistant Commissioner performed the duties of the hearing officer and the hearing was short in duration so the costs were minimal.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Chapter 13-04-02 relates to the regulation of collection agencies. The majority of changes within this chapter relate to definitions. The rules are being amended to add definitions for “debtor” and “person” and modify the term “debt collector”. Throughout the chapter, the term “claim” is replaced with “debt”, and the term “consumer” is replaced with “debtor”. The purposes of these changes are to make the rules consistent with statute. The

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amendment also removes references to the issuance of debt collector identification cards since these are no longer issued by the Department. Finally, the amendment clarifies the rule on threatening legal action, providing that a collector may not threaten action unless the action is lawful, the collector is entitled to bring such action, and the collector intends on bringing the action.

Chapter 13-05-01 relates to the regulation of money brokers. This section is being amended to remove disclosure requirements already addressed under federal law. Additionally, the filing of annual reports to the Department section is being repealed because the Department already receives the information contained within the annual report through the quarterly call reports submitted through the Nationwide Mortgage Licensing System.

Chapter 13-06-01 relates to the regulation of deferred presentment service providers (payday lenders). The changes in this section relate to the state-wide transactional database ("database") maintained by the Department to monitor the amount of loans taken by each borrower in North Dakota. Currently, the Department contracts with a vendor named Veritec to administer the database. The purpose of tracking this information is to ensure that borrowers do not exceed the aggregate six-hundred dollar statutory limit on payday loans. Various amendments contained in this chapter address the need for updated terminology relating to both the database and the electronic transactions currently used to replace paper checks. The amendments to this chapter also remove the need for licensees to file reports with the Commissioner based on the fact that this information is already being captured through the database. Additionally, the period of time for which a deferred presentment instrument must be presented is being increased from 45 to 60 days to create consistency with statute. The written agreement section of the chapter is being repealed because these requirements were brought into statute during the 2011 session. Finally, this chapter is being amended in order to address various matters relating to the administration of the database, transactions conducted on the database, and fees associated with usage of the database. These rules are being proposed under Section 13-08-12(4) of the North Dakota Century Code, which

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provides: “The commissioner shall adopt rules governing the creation, structure, and use of the database.”

Chapter 13-07-01 relates to the regulation of money transmitters. The only change proposed to this chapter is the creation of a definition for “past due or doubtful of collection”. This amendment is based on a specific question that came up during prior examinations.

Chapter 13-08-01 relates to the regulation of mortgage loan originators. The only change proposed to this chapter is the creation of a section relating to fees. Section 13-10-10(2) of the North Dakota Century Code provides that the commissioner may establish by rule a requirement providing for the payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System. As provided in the proposed rule, an applicant would be subject to a twenty-five dollar fee for investigating the application and a fifty dollar licensing fee. Additionally, the section provides for a fifty dollar renewal fee. Finally, the section provides for a fee of up to fifty dollars for a delinquent renewal and a twenty-five dollar fee for processing a change of employment. The foregoing fees would be submitted through the Nationwide Mortgage Licensing System.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued.

A regulatory analysis was not required nor issued.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.

The Department completed a small entity regulatory analysis and a small entity economic impact statement. Both documents indicate that the financial and regulatory impact of these proposed rule amendments will be minimal in nature.

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9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.

A fiscal note was not deemed to be required because these rules have no fiscal effect on state revenues or expenditures.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

No constitutional takings assessment was required.

11. If these rules were adopted as an emergency (interim final) rules under North Dakota Century Code Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and provide a copy of the Governor's approval of the emergency status of the rules.

The rules were not adopted as emergency rules.