

## Questions & Answers Published May 15, 2018

This document contains Questions and related Answers to upcoming changes in state statutes administered and/or supervised by the Indiana Department of Financial Institutions (“DFI” or “Department”). The following are intended to be instructive to assist licensees, regulatory staff, and the general public to learn about recent legislative developments in areas regulated by the Department in preparation for the July 1 effective date. While we have focused on the substantive changes to the statutes, we recommend a careful review of the new law in its entirety, House Enrolled Act 1397 (“HEA 1397”) signed into law as Public Law 69 ([link here](#)).

**NOTE THAT THE INFORMATION BELOW WILL BECOME EFFECTIVE ONCE THE STATUTORY CHANGES GO INTO EFFECT ON JULY 1, 2018.**

### General

- 1) Do certain entities engaging in business regulated by the Department have to maintain financial statements and/or books and records in accordance with United States Generally Acceptable Accounting Principles (“US GAAP”)?

**Answer:** Yes. Non-U.S. based companies engaging in certain transactions subject to the authority of the Department must maintain financial statements and/or books and records according to US GAAP, to include denominations in the US dollar. This applies to the following entity types: **non-mortgage loan**, **rental purchase**, **debt management**, and **money transmitters**.

*Applicable Sections: 22, 44, 46, 60-65*

- 2) When is it permissible for a **retail creditor or non-mortgage lender** under Ind. Code §24-4.5, a **licensed small loan lender** under Ind. Code §24-4.5-7, a **rental purchase company** under Ind. Code §24-7, and a **debt management company** under Ind. Code §28-1-29 to assess a non-sufficient funds (“NSF”) fee?

**Answer:** A charge not to exceed \$25 may be assessed by the above entities for each returned payment of a dishonored check, **electronic funds transfer**, negotiable order of withdrawal, or share draft. The underlined portion, which historically has been permissible, was added for statutory clarification.

*Applicable Sections: 14, 17, 26, 40, 48*

## **Mortgage Lenders**

- 1) Does a mortgage lender have to obtain and maintain two separate licenses to engage in first lien mortgages under Ind. Code §24-4.4 and subordinate lien mortgages under Ind. Code §24-4.5?

**Answer:** No. Beginning July 1, 2017, the Department consolidated a Subordinate Lien Mortgage Lender (“SLML”) License and changed the First Lien Mortgage Lender License into the Mortgage Lender (“ML”) License. All SLML licenses were rolled into or converted to the ML license. Although already permissible by statute, technical clarifications were included in HEA 1397 to make clear one ML license permits both first lien and subordinate lien lending under the respective acts.

*Applicable Sections: 2-11, 13, 19-22, and 24*

## **Debt Management Companies**

- 1) What types of other business may a debt management company carry on?

**Answer:** A debt management company may carry on any other business at a location where the licensee engages in debt management services unless the licensee carries on the other business for the purpose of evasion or violation of the Debt Management Companies Act (Ind. Code §28-1-29). However, it remains a prohibited practice for a licensee to charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt management services or educational services concerning personal finance.

*Applicable Sections: 47 and 49*

## **Pawnbrokers**

- 1) What change was made to the due date for the annual license renewal required under Ind. Code §28-7-5-11?

**Answer:** The renewal due date was changed from June 1 to December 31 for pawnbroker licensees. This change streamlines the Department’s renewal process. Due to the effective date of HEA 1397, a licensed pawnbroker will still be required to file a renewal by June 1, 2018. Further communication specific to renewals will be sent directly to all licensed pawnbrokers and published on the Department’s website.

*Applicable Section: 59*

## **Check Cashers**

- 1) What change was made to the due date for the annual license renewal required under Ind. Code §28-8-5?

**Answer:** The renewal due date was changed from August 1 to December 31 for check casher licensees. This change creates synergy for the Department’s renewal process. Further communication specific to renewals will be sent directly to all licensed check cashers and published on the Department’s website.

*Applicable Sections: 66 and 67*

**Small Loan Lenders (otherwise known as “Payday”)**

- 1) Were clarifications made regarding the timeframe in which a borrower has to rescind a small loan under Ind. Code §24-4.5-7?

**Answer:** Yes. As a result of recent examinations of online lenders, the Department realized delays in funding of online payday loans could result in consumers receiving loan proceeds after the rescission period expired. HEA 1397 clarifies that a borrower may rescind a small loan without cost by paying the cash amount of the principal to the lender not later than the end of the business day immediately following the day on which the borrower *receives the loan proceeds* (emphasis added to highlight the change).

*Applicable Sections: 27 and 29*

- 2) When may a borrower enter into an extended payment plan (“EPP”) for repayment of a small loan?

**Answer:** HEA 1397 added language to Ind. Code §24-4.5-7-401(4) to clarify that a borrower shall be permitted to enter into an EPP at any time during the term of a third or subsequent consecutive small loan if:

- a) The borrower has not defaulted on the outstanding loan and
- b) The rescission period has expired.

Borrowers may no longer enter into EPPs on the same day a small loan is made.

*Applicable Section: 28*

- 3) Will the changes regarding rescission impact the “WARNING” sign in the lobby, “WARNING” in loan documents, and the required pamphlet?

**Answer:** Yes. The amendment regarding rescission will require these signs and documents to be updated by July 1, 2018. The Department drafted pamphlet will be available on the Department’s website at [link] prior to the effective date.

*Applicable Section: 27*

- 4) What other changes were made to the statutory provisions relating to EPPs required to be offered under Ind. Code §24-4.5-7-401?

**Answer:** Language was clarified regarding prohibited lender practices regarding EPPs. A lender shall not:

- a) compel, advise, solicit, or coerce a borrower to not exercise the borrower’s right to request an EPP;
- b) discourage a borrower from exercising the borrower’s right to request an EPP; or
- c) take any other action to influence a borrower’s right to request an EPP.

*Applicable Section: 28*

- 5) Do lead generators for small loan (payday loan) products have to be licensed under Ind. Code §24-4.5-7?

**Answer:** No. The Department licenses and regulates creditors and lenders, not facilitators of credit. As a result, Ind. Code § 24-4.5-7-102 was amended to clarify that Chapter 7 licensing applies to a lender, a depository institution, and a person if the Department determines that such person's transactions are in substance disguised loans or are for the purpose of avoiding the chapter. Lenders are reminded that only the fees permitted by Ind. Code § 24-4.5-7 *et seq.* are permissible in connection with a small loan.

*Applicable Section: 25*

- 6) If a loan that is treated as a small loan does not qualify as a small loan or has violated certain sections of Ind. Code §24-4.5-7 (namely, sections 104, 201, 401, 402, 404, or 410), what remedy will the Department require?

**Answer:** Pursuant to Ind. Code §24-4.5-7-102(6), the Department may conform the loan finance charge for such loans to the limitations in Ind. Code §24-4.5-3-508(2) (emphasis added to show addition of subparagraph 2). Previously, the reference was to the entirety of section 508 of Chapter 3, which would permit a nonrefundable loan origination fee of up to \$50 in addition to a 36% rate of finance charge for the period of time the loan was open. Effective July 1, 2018, such small loans will have the loan finance charge conformed to a rate of 36% for the period the loan is open, not to exceed the originally contracted for finance charge. The nonrefundable prepaid finance charge permitted by statute will not be added to the calculation.

Further, the Department will strictly enforce this provision, to include conforming the loan finance charge on transactions where the borrower's Social Security Number was incorrectly entered into the Veritec database, or where transactions were entirely omitted from the Veritec database.

*Applicable Section: 25*

## **Indiana Uniform Consumer Credit Code (“IUCCC”) Creditors**

- 1) How does the Department regulate ancillary products sold in connection with consumer credit sales and consumer loans, such as guaranteed asset/auto protection (“GAP”) or debt cancellation (“DC”)?

**Answer:** Historically, the Department has reviewed and approved third-party administrators of such non-insurance products as GAP and DC. In approving the administrators, the Department has also historically approved the GAP agreements. These approvals were made by the Members of the Department under the authority granted them by Ind. Code §24-4.5-2/3-202. With the passage of HEA 1397, these charges will no longer be separately approved by the Members but rather permitted explicitly in statute.

As of July 1, 2018, the Department will no longer require approval of third-party administrators of GAP and DC products. As a result, the Department will no longer require review and approval of GAP agreements. All creditors desiring to sell GAP or DC in connection with their consumer credit transactions may do so by strictly following the provisions found in Ind. Code §24-4.5-2/3-202. For additional information, please see the April 2, 2018 letter (“GAP and Debt Cancellation Guidance 4-2-18”) regarding this change found [here](#).

*Applicable Sections: 14 and 17*

- 2) May a creditor subject to the IUCCC assess a charge for services commonly known as skip-a-payment or expedited payment? If so, under what conditions?

**Answer:** As posted by the Legislative Services Agency in the Indiana Register on September 6, 2006, the Members of the Department approved charges, subject to certain limitations, for these services. With the passage of HEA 1397, this publication in the Indiana Register will be revoked. Charges for both skip-a-payment and expedited payment services will be permitted explicitly pursuant to Ind. Code §24-4.5-2/3-202. For charges to be assessed for these services a creditor must strictly comply with the applicable provisions of Ind. Code §24-4.5-2/3-202. The Department will continue to examine for compliance regarding these statutory requirements.

*Applicable Sections: 14 and 17*

- 3) What rate of loan finance charge is permissible on consumer related loans?

**Answer:** For a consumer related loan, essentially a loan made by a lender that is not “regularly engaged” (see Ind. Code §24-4.5-3-602(1)), the parties may contract for a loan finance charge, calculated according to the actuarial method, not to exceed 25% per year on the unpaid principal balance. This change results in consistent application regarding the finance charge permitted between consumer related loans and consumer related sales.

*Applicable Section: 23*

- 4) When must a creditor credit a payment to a consumer's accounts (either credit sale or loan)?

**Answer:** HEA 1397 created a new section applicable to consumer credit sales (Ind. Code §24-4.5-2-417) and amended an existing section applicable to consumer loans (Ind. Code §24-4.5-3-408) to bring the IUCCC in line with requirements found in Federal Regulation Z, implementing the Truth-in-Lending Act, regarding prompt crediting of payments. A creditor shall credit payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a delinquency charge. A delay in posting is not a violation so long as the payment is *credited* as of the date of receipt. If a creditor specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five (5) days of receipt of the payment.

*Applicable Sections: 15 and 18*

### **Rental Purchase**

- 1) Many companies ("lessors") subject to the Indiana Rental Purchase Agreement Act (Ind. Code §24-7 *et seq*) do not have physical locations in Indiana and utilize a network of retail merchants to obtain rental purchase business. Especially in these instances, but applicable to all lessors, what is required of lessors in regards to ownership of the property subject to rental purchase agreements?

**Answer:** The definition of "property" was amended by HEA 1397 to include property that a lessor holds complete and total ownership of, or ownership rights to. As a result, lessors who do not maintain inventory that could become subject to a rental purchase agreement must first obtain 100% ownership or ownership rights to the property from the retail merchant prior to entering into a rental purchase agreement with a consumer ("lessee") for the property. Further, all lessors must maintain adequate books and records that demonstrate the lessor has acquired, *prior to* entering into a rental purchase agreement, complete and total ownership rights to the property subject to the rental purchase agreement. These changes add statutory clarification in line with the [Consumer Credit Advisory Letter 2017-01](#) regarding RPAA Initial Payments.

*Applicable Sections: 30 and 44*

- 2) What changes were made to the disclosures required by Ind. Code §24-7-3-3?

**Answer:** Clarifications were added to subsection (2) regarding the total number, total amount, and timing of all rental payment necessary to acquire ownership of the property. Any initial payment, not including the optional liability waiver and other optional products and services offered contemporaneously, must be included in the total. Further, subsection (11) was added to require an itemization of all charges and fees included in any initial rental payment.

*Applicable Section: 32*

3) What constitutes an “initial payment”?

**Answer:** An initial payment is separate and distinct from a regular rental payment; the legislation makes appropriate clarifications regarding this. HEA 1397 added a new section (Ind. Code § 24-7-4-1.5) regarding up-front or initial payments made by the lessee, regardless of to whom those payments are made. Any up-front payment made at the time of (or before) a rental purchase agreement is entered into *must* be treated as an initial payment for the purposes of Ind. Code § 24-7. As an initial payment, such monies are subject to all disclosure requirements of Ind. Code § 24-7 (see Question 2 under **Rental Purchase**). Finally, a clarification was added that initial payments may be in a sum larger than a regular rental payment due under the rental purchase agreement.

In addition, clarifications were made that a lessor shall not require or permit a lessee to make any payment in addition to an initial rental payment and regular rental payments in order to acquire ownership of the property. A lessor shall not require or permit a lessee to make any payment to a third party as a condition to entering into a rental purchase agreement.

These changes add statutory clarification in line with the [Consumer Credit Advisory Letter 2017-01](#) regarding RPAA initial payments.

*Applicable Sections: 32, 34, 35, 36, 37, 38*

4) If a lessee is liable to a lessor for the replacement cost of property subject to a rental purchase agreement, a lessor may not charge the lessee more than the fair market value for the property. How should the fair market value be determined?

**Answer:** Pursuant to Ind. Code §24-7-5-10(b), the fair market value shall be determined by the lessor in the same manner, and using the same method, that would apply if the lessee were exercising an early purchase option under the rental purchase agreement.

*Applicable Section: 41*