

2014 Legislative Amendments to the Indiana Code Relating to Financial Institutions and Consumer Credit Organizations: May 22, 2014

Effective July 1, 2014 (except as otherwise indicated)

Questions, Answers, and Administrative Interpretations: The Indiana Department of Financial Institutions (“DFI” or the “Department”) administers the Indiana Financial Institutions Act (IC 28 *et seq.*) which includes state chartered banks, corporate fiduciaries, credit unions, thrifts and industrial loan and investment companies. The Department also administers various consumer credit acts including First Lien Mortgage Act (IC 24-4.4 *et seq.*) (“FLMA”); Uniform Consumer Credit Code (IC 24-4.5 *et seq.*) (“UCCC”); Indiana Rental Purchase Agreements (IC 24-7 *et seq.*); Debt Management Act (IC 28-1-29 *et seq.*); Indiana Pawn Law (IC 28-7-5 *et seq.*); Money Transmitters (IC 28-8-4 *et seq.*) and Check Cashers (IC 28-8-5 *et seq.*) The Department also administers the Mortgage Loan Originators Rule (750 IAC 9 *et seq.*)

Commonly referred to as the DFI Omnibus Bill, House Enrolled Act 1245 (“HEA 1245”), is comprised of a number of provisions assembled by the DFI staff during the preceding year consisting of corrections and improvements to the various acts administered by the Department and amendments required to keep Indiana law consistent with various federal laws. While much of HEA 1245 is technical or non-substantive, the following are “frequently asked questions” designed to help our licensees, regulatory staff and the general public learn about the changes HEA 1245 made affecting financial institutions and consumer credit organizations. While we have tried to focus on the substantive provisions HEA 1245, we recommend a careful review of the entire bill. HEA 1245 can be found in its entirety at the following link: <http://iga.in.gov/legislative/2014/bills/house/1245/#>. Governor Pence signed HEA 1245 into law on March 25, 2014 (which is the effective date for those sections that are effective on passive).

First Lien Mortgage Act (IC 24-4.4 *et seq.*) and Uniform Consumer Credit Code (24-4.5 *et seq.*)

1. Why were the terms "consumer credit sale" in the First Lien Mortgage Act ("FLMA"), and "consumer credit sale", "consumer loan", "consumer related loan" and "consumer related sale" in the Uniform Consumer Credit Code ("UCCC") amended?

Answer: "Consumer credit sale" at IC 24-4.4-1-301(5) and IC 24-4.5-1-301.5(8); "consumer loan" at IC 24-4.5-1-301.5 (9); "consumer related sale" at IC 24-4.5-2-602; and "consumer related loan" at IC 24-4.5-3-602 are being amended effective July 1, 2014:

1. To increase the exempt threshold amount to \$53,500; and
2. To be consistent with Regulation Z by applying the same factors in determining whether a credit transaction exceeds the exempt threshold amount specified in Regulation Z.

Brief history: On July 21, 2010, Section 1100E of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) increased the amount of the threshold amount exemption from the Truth in Lending Act (“TILA”) \$25,000 to \$50,000 and requires annual adjustments in the threshold to reflect the effect of inflation. For 2014, the threshold amount is \$53,500. Therefore, after July 1, 2014, transactions that exceed \$53,500 and not secured by a dwelling are not subject to TILA.

Regulation Z: In addition to incorporating the requirements of Section 1100E into Regulation Z, the Federal Reserve Board ("Board") and the Consumer Financial Protection Bureau ("CFPB") (to whom rule-making authority was generally transferred) adopted new rules implementing Section 1100E and providing an extensive commentary regarding how the threshold amount exemption works. For example, there are two different ways that open-end credit can qualify for the threshold amount exemption: (1) where the creditor makes an initial advance of credit at account opening that exceeds the threshold amount then in effect and (2) where the creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount then in effect. See the Official Interpretation to § 1026.3(b) at the following link on the CFPB website for a helpful and detailed explanation on the factors applicable to determining whether a transaction exceeds the exempt threshold amount and how subsequent events can affect the exemption:

<http://www.consumerfinance.gov/eregulations/1026>

FMLA & UCCC: In preparing legislative changes for 2014, the DFI staff concluded that in addition to increasing the exempt threshold amount to \$53,500, the terms consumer credit sale, consumer loan, consumer related sale and consumer related loan based the exemption amount solely on the sale amount in the case of consumer credit sales and loan amount in the case of consumer loans. These criteria are much narrower than those now in effect under Regulation Z. Consequently, the four terms set out above will be amended as of July 1, 2014 to provide that the exempt threshold amount is based upon the "credit extended, the written credit limit, or the initial advance" so that these terms are consistent with Regulation Z.

2. What other dollar amounts in the UCCC are amended?

Answer: In the 2013 General Assembly HEA 238 amended various provisions of the UCCC to increase for the first time in many years certain interest rates for consumer credit sales and loans, finance charges and fees which can be charged on such transactions and the dollar amounts and interest rates to which the rate ceilings and increased fees apply.

For the 2014 General Assembly, the Department suggested that certain other sections of the UCCC - on subordinate mortgage liens, deficiency judgments, payment of supervised loans and other sections - should also be amended in the interest of consistency. Since 1971 these sections as listed below have also been amended in a similar fashion whenever changes were made like those in HEA 238 in 2013. Although the amendments in HEA 1245 did not make all the changes that had historically been made when these dollar amounts were adjusted, it did make significant dollar adjustments to the following four sections of the UCCC:

- **IC 24-4.5-2-407** was amended to increase the amount of the debt on which a consumer credit seller may take a subordinate mortgage lien from \$1,000 (as adjusted pursuant to IC 24-4.5-1-106 on July 1, 2012 to \$3,600) to \$4,000 or more.
- **IC 24-4.5-3-510** was amended to increase the principal amount of a supervised loan that can be secured by interest in land from \$1,000 (as adjusted to \$3,600) to \$4,000 or more.
- **IC 24-4.5-3-511**, which requires the debtor to pay a supervised loan (which is not a revolving loan) in a single installment or a specified number of equal installments, was amended to increase the principal amount of the loan from \$1,000 (as adjusted to \$3,600) to \$4,000 or less.
- **IC 24-4.5-5-103** was amended to increase the cash price from of a sale from \$1,000 (as adjusted to \$3,600) to \$4,000 on which a Seller may obtain a deficiency judgment after repossessing or accepting surrender of goods securing the debt.

3. What dollar amounts in the sections of the UCCC described in #2 above were not changed by the 2014 General Assembly?

Answer: The General Assembly in 2014 only increased the higher amount so that the \$1,000 (as adjusted every two years to \$3,600 as of July, 2012) in the specified four sections was changed to \$4,000. The lesser amount of \$300 (as adjusted every two years to \$1080 as of July 1, 2012) in those sections and in IC 24-4.5-4-301 relating to credit insurance were not amended by HEA 1245.

Effective July 1, 2014, 750 IAC 1-1-1 will be amended as follows:

- In IC 24-4.5-2-407 the amount of the debt in the case of a security interest in goods remains at \$300 (adjusted to \$1,110).
- In IC 24-4.5-3-511, the supervised loan must be paid in a single installment or in 37 equal installments if the debt is more than \$300 (adjusted to \$1,110) or 25 equal installments if the debt is less than \$300 (adjusted to \$1,110).
- As stated, IC 24-4.5-4-301 remains unchanged by any statutory amendments so that a creditor may contract for a separate charge for credit insurance if the "amount financed or principal exclusive of charges for insurance" is more than \$300 (as adjusted to \$1,110) or the value of the property is \$300 (as adjusted to \$1,110) or more.

4. What index will be used to adjust the dollars in the four sections described in #2 above?

Answer: Due to a drafting error, each of the four sections (IC 24-4.5-2-407, IC 24-4.5-3-510, IC 24-4.5-3-511 and IC 24-4.5-5-103) refers to the Reference Base Index for October, 1992. The correct index is October, 2012. The Department intends to correct these errors in the 2015 session of the General Assembly before the adjustments are scheduled to occur on July 1, 2016.

5. Since the dollar amounts for IC 24-4.5-2-407, IC 24-4.5-3-510, IC 24-4.5-3-511 and IC 24-4.5-5-103 have been adjusted in both statutory amendments and amendments to the administrative rule at 750 IAC 1-1-1 and both are effective as of July 1, 2014, which amendments will take precedent over the other adjustments?

Answer: The statutory amendments to IC 24-4.5-2-407 (subordinate lien mortgages); IC 24-4.5-3-510 (supervised loan secured by land); IC 24-4.5-3-511 (supervised loan payable in installments) and IC 24-4.5-5-103 (deficiency judgments) will supersede the amendments to the Rule in 750 IAC 1-1-1.

Nationwide Mortgage Licensing System and Registry

6. HB 1245 authorizes the Director to expand the use of the Nationwide Mortgage Licensing System and Registry ("NMLSR") to consumer credit loans, including payday loans; and debt management companies? When will the use of NMLRS be effective for the licensing or registering of these industries?

Answer: Like it did for money transmitters effective November 1, 2013, the 2014 General Assembly in HEA 1245 authorized the Director to use the NMLSR as a licensing platform for non-mortgage consumer credit loan licensees under IC 24-4.5-3-502.2; small loans (i.e. Payday Loans) under IC 24-4.5-7-102; and debt management companies under IC 28-1-29-5.5. Each industry will receive ample time before such a licensing regime is adopted to put in place necessary procedures to use the new process.

Investigatory Authority

7. What changes to the department's investigatory authority does HEA 1245 make relating to Rental Purchase Agreements, Debt Management Companies, Money Transmitters and Check Cashers?

Answer: In 2013, the General Assembly amended the FMLA at IC 24-4.4-3-104 and UCCC at IC 24-4.5-6-106 to provide that the department has the same investigatory and enforcement authority as it does with respect to financial institutions under the Indiana Financial Institutions Act at IC 28-11-4. In 2014, to promote consistency amount the various consumer credit acts HEA 1245 adds similar provisions to relating to rental purchase agreements at IC 24-7-7-2; debt management companies at IC 28-1-29-10.5, money transmitters at IC 28-8-4-41 and check cashers at IC 28-8-5-19. A similar provision relating to pawnbrokers was added at IC 28-7-5-15 in 2006.

Rental Purchase Agreements

8. Under what circumstances may a rental purchase lessor offer for sale products and services (commonly referred in the rental purchase industry as "club plans") at the lessor's rental purchase business location?

Answer: IC 24-7-8-6 is a new section that deals with the sale of products and services which may be related, unrelated or partially related to the lessor's rental purchase agreement business and are commonly referred to in the rental purchase business as "club plans." Such plans are often structured as consumer membership plans and may include healthcare savings membership plans and medical health insurance products. This provision also emphasizes that such other business activities cannot be for the purpose of evasion or circumvention of IC 24-7-8-6, the Rental Purchase Act.

9. Is a person required to enter into a rental purchase agreement before being eligible to purchase a "club plan" under IC 24-7-8-6?

Answer: No. IC 24-7-8-6 (b) provides that a lessor may offer property or services described in subsection (a) i.e. "club plans" if:

(1) The lessor:

(A) does not require that the lessee or prospective lessee purchase the property or services as a condition to entering into a rental purchase agreement;

(B) does not require that any purchaser or prospective purchaser of the property or services enter into a rental purchase agreement as a condition to purchasing the property or services; and

(C) clearly discloses in writing to the lessee or prospective lessee before the purchase is completed that:

(i) the purchase of the property or services is not a condition to entering into a rental purchase agreement; and

(ii) entering into a rental purchase agreement is not a condition to purchasing the property or services.

10. Can a lessor sell a club plan to an existing customer at a different price than the lessor sells the plan to the general public?

Answer: No. IC 24-7-8-6 (b)(2) provides that the lessor may not charge the lessee or prospective lessee more for the property or services than the lessor charges members of the general public for the property or services.

11. Can a club plan be made a part of the rental purchase agreement?

Answer: No. IC 24-7-8-6 (b)(3) provides that the transaction for the purchase of the property or services (i.e. club plan) is conducted separately from any rental purchase agreement, and the cost for purchasing the property or services is not made a part of any rental purchase agreement.

Credit Unions

12. What clarification to the provisions relating to investment securities does HEA 1245 contain?

Answer: Prior to the 2014 amendment, IC 28-7-1-9 (J)(ii) provided that the total amount of *any* investment securities purchased or held by a well capitalized credit union (as defined in Part 702 of the Rules and Regulations of the National Credit Union Administration, 12 CFR 702) may not exceed ten percent (10%) of the capital and surplus. Effective July 1, 2014, HEA 1245 amended IC 28-7-1-9 (J)(ii) to clarify that the total *aggregate* amount of investment securities purchased or held by a well capitalized credit union may not exceed ten percent (10%) of the capital and surplus. [Emphasis added.]

13. What revisions were made relating to the issuance of the annual audit reports for credit unions?

Answer: IC 28-7-1-18 was amended to provide that the audit report must be issued not later than one hundred twenty (120) days following the close of the audit period.

Pawnbrokers Act

14. Why was a definition of "pawn" added to the Pawn Act?

Answer: The DFI staff has discovered that there is some confusion about whether a buy-sell business can buy items with a verbal or written understanding that the seller can buy the item back at a later date. Since 1993, the DFI has taken the position that any agreement, verbal or written, to sell an item back to the seller is a "disguised pawn" and, therefore, a pawn license is required to avoid violating the Pawn Act. To avoid this confusion, IC 28-7-5-2 was amended in HEA 1245 to add the following definition:

"Pawn" means lending money on the deposit or pledge of personal property, or purchasing personal property on the condition of selling the property back again at a stipulated price, *with the condition indicated verbally, in a written agreement, or in any other form indicating that the seller may repurchase the personal property sold.* For purposes of this chapter, "personal property" does not include general intangibles, accounts (including deposit accounts), chattel paper, commercial tort claims, documents, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction. [Emphasis added.]

Money Transmitters Act

15. If a money transmitter is a wholly owned subsidiary of a publicly traded company what can the subsidiary file with the department to satisfy the filing of annual financial statements when renewing its license?

Answer: IC 28-8-4-38 was amended by HEA 1245 to clarify that money transmitters who are wholly owned subsidiaries can satisfy the annual financial statement filing at license renewal by filing the parent's organization's most recent consolidated audited annual financial statements or the parent organization's most recent SEC Form 10K report, along with the licensee's unaudited annual financial statements. Note that the previous requirement of filing the parent organization's Form 10Ks for the previous three (3) years has been eliminated in favor a filing just the most recent Form 10K.

16. When are the audited financial statements for money transmitters required to be filed?

Answer: Effective July 1, 2014, HEA 1245 changed the renewal filing date for audited financials from April 30 to not later than 120 days after the close of the calendar or fiscal year covered by the statements.

Check Cashers Act:

17. When do check casher licenses expire?

Answer: Effective upon passage (March 23, 2014), check cashers' licenses expire as of August 1 (changed from July 1).

Depositories

18. What change has been adopted relating to emergency closings for state chartered depository institutions?

Answer: IC 28-13-10-9 provides that if an emergency closing is for more than 48 consecutive hours on business days, excluding other legal holidays, the *approval* of the director is required. Effective July 1, 2014 IC 28-13-10-9 will provide that only *prior notice* to the director is required for emergency closings of more than 48 hours. [Emphasis added.]

Other Bills of Interest:

HEA 334 Mortgage Lending: The bill provides for an exemption from licensing under the First Lien Mortgage Act (FLMA) and UCCC for certain companies who sponsor independent agents as mortgage loan originators (MLOs). It was supported by State Farm to accommodate its particular corporate structure of independent agents who have exclusive contracts with State Farm. With DFI recommendation, the scope of the exemption was limited to apply only to federal savings banks¹ which have exclusive contracts with agents who hold valid insurance producer licenses in Indiana and obtain mortgage loan origination licenses under 750 IAC 9 *et seq.* Under this provision, the company is exempt from licensing under FMLA, but it will be responsible for the surety bond for the agents who must get fully licensed as mortgage loan originators. The Department was neutral on the bill, but advised its supporters that we would not object to the legislation which would exempt the company from licensing so long as the exemption was narrowly constructed, the agents became licensed as MLOs (meeting the background checks, education and bonding requirements) and that we receive assurance from the CFPB that the legislation complies with the mandates imposed upon states under the federal SAFE Act.

HEA 1155 Expungement: This bill amended various expungement laws adopted in the 2011 and 2012 General Assembly to relocate and restate certain provisions dealing with the expungement of arrest records, and to delete inconsistent language. (Under prior law, there are two inconsistent procedures for expunging arrest records.) This bill which was originally prepared by the criminal law and sentencing policy study committee provides:

- Grants a defense attorney and a probation department access to expunged records if authorized by court order.
- Prohibits a person from waiving the right to expungement as part of a plea agreement.

¹ The federal SAFE Act does not apply to the employees of depository institutions. State Farm has agents; not employees and having relied on this structure for many years was reluctant to alter its organizational structure.

- Specifies the procedure to be used to regain the right to possess a firearm by a person convicted of a misdemeanor crime of domestic violence.
- Grants access to expunged records to: (1) the Supreme Court and the state board of law examiners to determine a person's fitness for admission to the bar; and (2) *a person required to access expunged records to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act.*
 - Item (2) in the preceding bullet point was proposed by the Department so that the Department may request records of expunged crimes to determine whether there are character and fitness issues of a proposed MLO applicant notwithstanding expungement of the criminal conviction and to examine whether the SAFE Act seven-year ban for felonies and lifetime ban for crimes involving acts of fraud, dishonesty, or a breach of trust, or money laundering might prohibit licensing of the proposed MLO².

HEA 1235 Prize Linked Savings for Credit Unions: This bill allows state chartered credit unions to offer and conduct a savings promotion raffle that: (1) is associated with one or more qualified accounts or qualified financial programs offered by the credit union; and (2) offers eligible individuals one or more chances to win specified prizes.

- Provides that a savings promotion raffle must allow an eligible individual to obtain an entry to win a prize only by doing either or both of the following: (1) Depositing a minimum specified amount in a qualified account. (2) Participating in one or more qualified financial programs.
- Provides that a savings promotion raffle must be approved by: (1) the director of the department of financial institutions; and (2) the credit union's board of directors.
- Permits the director to: (1) adopt rules, policies, or guidance; and (2) exercise certain enforcement powers; with respect to the conduct of savings promotion raffles in Indiana.
- Specifies that Indiana Code provisions concerning: (1) charity gaming; (2) promotional gifts and contests; and (3) criminal gambling; do not apply to a savings promotion raffle.
- Federal credit unions conducting savings promotion raffles that comply with this act are not in violation of (1) charity gaming; (2) promotional gifts and contests; and (3) criminal gambling.

HEA 1224 Title Insurance: This bill requires the Department of Insurance (DOI) to create a title insurance consumer comparison tool. It states that the filed rates of all insurers that issue title insurance policies in Indiana will be included on the tool, and that the information on the tool shall be designed to allow an average consumer of ordinary intelligence to compare and differentiate between substantially similar title insurance rates offered by title insurers. It specifies that the tool must be made available to the public free of charge on the DOI's Internet website by Sept. 1, 2014, and that, after that date, when an insurer makes a new, approved filing, the DOI shall make the insurer's rates available on the tool not more than 10 business days after the insurer's application is stamped "filed" by the DOI.

² Although HUD in its commentary to the final SAFE Rule stated that it "will not consider an expunged conviction to render an individual ineligible to be licensed under the SAFE Act. In general, an expungement is viewed to completely eliminate the conviction in the eyes of the law and to prevent further legal consequences of the conviction. []As in the case of pardoned convictions, the revised regulatory provision does not prohibit a state that becomes aware of the conduct that led to the conviction from evaluating whether the conduct renders the individual unfit for the profession in question." DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, 24 CFR Parts 30 and 3400[Docket No. FR-5271-F-03] SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities, p66. The CFPB has generally adopted these rules and HUD's interpretations when it became the primary federal regulator responsible for the SAFE Act.

SEA 1 State and Local Taxation: Among a variety of issues dealt with in this bill is the phase down of the corporate income tax rate from 6.5% in 2015 to 4.9% in 2021 and **the financial institutions tax rate to 4.9% in 2023.**