

Scott Leshner
Administrator

Ruben Tornini
Deputy Administrator



Mary Fallin
Governor

Todd Lamb
Lt. Governor

STATE OF OKLAHOMA
DEPARTMENT OF CONSUMER CREDIT

November 12, 2013

**Re: Official declaratory ruling
Deferred Deposit Lending Act,
Loan proceeds paid to a debtor via pre-paid debit card**

The question has arisen as to whether or not a deferred deposit lender may pay the proceeds of a deferred deposit loan to a debtor by loading the deferred deposit loan proceeds on a pre-paid debit card. The Deferred Deposit Lending Act, 59 O.S. §§ 3101-3119, states that a deferred deposit lender may "pay the proceeds of a deferred deposit loan to a debtor by a business instrument, money order or cash." 59 O.S. § 3104(D). A business instrument is defined by the Act as "a draft, check or evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender." 59 O.S. § 3102(3). The Act does not define evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender.

The Act further provides that a deferred deposit lender shall not "charge fees other than, or in excess of those authorized by the Act." 59 O.S. § 3106(1). The Act authorizes a deferred deposit lender to charge a finance charge and contract for and collect a dishonored instrument charge, not to exceed Twenty-Five Dollars (\$25.00). 59 O.S. § 3108 (A) and (B). The Act authorizes a deferred deposit lender to charge an applicant for a deferred deposit loan a fee for a database verification to determine if an applicant has any deferred deposit loans outstanding with any deferred deposit lender. 59 O.S. § 3109(B)(2). The fee for database verification may not exceed the actual fee charged to a deferred deposit lender by the database provider. The Act also requires a consumer to pay a processing fee of ten percent (10%) of the principal amount of a deferred deposit loan, not to exceed Fifteen Dollars (\$15.00), for the administration of an repayment plan in accordance with the provisions of 59 O.S. § 3109(D). The Act does not authorize a deferred deposit lender to charge any other fees in connection with a deferred deposit loan.

The first issue that arises in determining whether or not a deferred deposit lender may pay the proceeds of a deferred deposit loan to a debtor via a pre-paid debit card is whether or not a pre-paid debit card is a business instrument. A pre-paid debit card is not a draft or a check. Although the Act does not define the meaning of evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender, a pre-paid debit card "loaded" with the proceeds of a deferred deposit loan satisfies the definition of a business instrument under the Act as evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender. A deferred deposit lender shall maintain documentation indicating the amount of any deferred deposit loan proceeds paid to a debtor via a pre-paid debit card.

Since the Act does not authorize such a charge, a lender is prohibited from charging a debtor any fee for paying the proceeds of a deferred deposit loan via a pre-paid debit card or for "loading" the proceeds of a deferred deposit loan on a pre-paid debit card.

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Based on the foregoing, it is the opinion of the Administrator that a deferred deposit lender may pay the proceeds of a deferred deposit loan by "loading" the proceeds of a deferred deposit loan on a pre-paid debit card. However, a deferred deposit lender is prohibited from charging a debtor any fee for either paying the proceeds of a deferred deposit loan via a pre-paid debit card or for "loading" the proceeds of a deferred deposit loan on a pre-paid debit card. This ruling supersedes any previous informal statement or opinion made by the Administrator or by Department staff.


Scott Leshner
Administrator