



FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE PDL-001 *Payday Loans Licensing and Ongoing Obligations*

PART 1

DIVISION A
INTERPRETATION

Definitions

1. In this Rule:

“Act” means the *Cost of Credit Disclosure and Payday Loans Act*;

“total cost of credit”, as defined in the Act, also includes for the purposes of Part V.1 the costs of insurance and any other good or service that are required for the borrower to receive the loan proceeds, including any of the following:

- (a) fees, commissions, charges, penalties or interest for cashing or negotiating a cheque;
- (b) pre-authorized debit;
- (c) activation fees;
- (d) re-activation fees;
- (e) inactivity fees; and
- (f) initial service fees in the case of a cash card.

DIVISION B
APPLICATION

Application

- 2.** Pursuant to section 37.1 of the Act, portions and divisions of the public service specified under Parts I, II, III and IV of the First Schedule of the *Public Service Labour Relations Act* are designated as government agencies for the purposes of Subdivision C of the Act.

Non-Application

- 3.** Along with the financial products or services excluded by subsection 37.11(3) of the Act, Part V.1 of the Act also does not apply to the products and services regulated under:
- (a) the *Bank Act* (Canada);
 - (b) the *Trust and Loan Companies Act* (Canada);
 - (c) the *Cooperative Credit Associations Act* (Canada); or
 - (d) the *Insurance Companies Act* (Canada).

DIVISION C LICENSING

Licence criteria

- 4. (1)** For the purposes of section 37.14 of the Act, a licence to offer, arrange or provide payday loans may only be issued if the applicant consents to a criminal record check concerning the following individuals:
- (a) in the case of a corporation, each director and officer of the corporation;
 - (b) in the case of a partnership, each partner of the partnership; or
 - (c) in the case of a sole proprietor, the sole proprietor.
- (2)** For the purposes of section 37.2 of the Act, each director, officer, partner or sole proprietor of the applicant must indicate on the application whether they:
- (a) have been convicted of an offence under the Criminal Code of Canada;
 - (b) are the subject of a judgment, including a default judgment, in respect of a claim arising out of the business of payday lending against the applicant;
 - (c) are an undischarged bankrupt; or
 - (d) have had a payday lender licence previously suspended or cancelled in another jurisdiction.

Terms and conditions of a licence

- 5.** Pursuant to subsection 37.17(2) of the Act, a licensee must:
- (a) operate under the licensee's legal name(s) and use only the business name(s) listed on the licence when carrying on business activities and making payday loans;
 - (b) display its licence in an area to which the public has access, so that the licence is visible to persons immediately upon entering the office;

- (c) immediately return the licence to the Director upon notification by the Director that the licence has been cancelled;
- (d) display and provide educational materials about the payday lending industry, financial planning, the Act, the regulations and the rules, that the Director approves and that are visible to borrowers immediately upon entering the office, the website or the mobile application of the licensee; and
- (e) In the event of a payday loan provided over the Internet or other electronic means:
 - (i) communicate to the borrower, as soon as the borrower makes contact with the licensee, that the educational materials described in paragraph (d) are available; and
 - (ii) immediately provide the educational materials to the borrower if requested by the borrower.

Further information or documents required

- 6. **(1)** An applicant for a licence or for the renewal of a licence must declare on the application whether the applicant is applying to offer, arrange or provide payday loans.
- (2)** An applicant for a licence or for the renewal of a licence must include with the application the following documents that the applicant uses or intends to use:
 - (a) for each loan option offered by the applicant, a completed sample payday loan agreement for a \$300 loan for a 14 day term that demonstrates that neither the total cost of credit nor any component of the total cost of credit exceeds any maximums set in accordance with the regulations;
 - (b) the form to be used by the borrower to cancel the loan, pursuant to section 12 of this Rule;
 - (c) the form used by the applicant to acknowledge receipt of the loan cancellation, pursuant to section 13 of this Rule; and
 - (d) the form of receipt used by the applicant to acknowledge cash payments made by the borrower, pursuant to subsection 25(6) of this Rule.
- (3)** The applicant must provide:
 - (a) an address for service in New Brunswick;
 - (b) the names and addresses of all officers and directors; and
 - (c) the name of an officer or employee who resides in New Brunswick and who is authorized to provide information requested by the Director and to receive and disseminate information given by the Director.
- (4)** A licence renewal application must be submitted to the Director at least 60 days before the expiry of the licence.

- (5) An applicant for a licence or for the renewal of a licence must include with the application documents demonstrating that the applicant maintains separate accounts with a financial institution that:
- (a) are in the legal name(s) of the licensee;
 - (b) are with a financial institution located in New Brunswick;
 - (c) hold all amounts received and disbursed in connection with licensed activities; and
 - (d) hold only funds received and disbursed in connection with licensed activities.
- (6) An application for a licence or renewal of a licence must contain the following information in relation to the applicant's financial institution:
- (a) the name of the financial institution;
 - (b) the address;
 - (c) the branch number;
 - (d) the account number; and
 - (e) the names of all persons with signing authority.

Further application

7. Pursuant to section 37.24 of the Act, a period of 12 months must elapse before the Director may consider a new application, when an applicant has been refused a licence or a renewal of a licence, or has had the licence cancelled.

DIVISION D OBLIGATIONS & PROHIBITIONS

Payday loan agreements

8. (1) Before the parties enter into a payday loan agreement, a payday lender must ensure that:
- (a) the borrower is advised of all the means available for obtaining a payday loan from the payday lender;
 - (b) the borrower has selected a means of advance of the loan;
 - (c) the initial advance of money under a payday loan will be delivered to the borrower immediately after the payday loan agreement is entered into; and
 - (d) in the case of an Internet payday loan or other payday loan not obtained by the borrower in person, the payday lender must deliver instructions to its financial institution to transfer the amount of the initial advance under the payday loan to the borrower's account with a financial institution on the same day on which the borrower and the payday lender enter into the payday loan agreement.

- (2) Pursuant to paragraph 37.28(2)(s) of the Act, a payday lender must include the following terms and information in the payday loan agreement:
- (a) the time of day the payday loan agreement was entered into;
 - (b) the time of day the initial advance is made or the cash card is activated;
 - (c) the form of receipt the payday lender will provide upon cancellation of the loan by the borrower, pursuant to section 13;
 - (d) the total amount to be repaid by the borrower;
 - (e) the cost per \$100 borrowed;
 - (f) the maximum allowable cost per \$100 borrowed as fixed by regulation;
 - (g) the borrower's address and telephone number;
 - (h) any of the following charges that may be included in the cost of borrowing:
 - (i) fees related to pre-authorized debits used to repay a payday loan, even if the pay day loan is past due;
 - (ii) fees payable to an agent or broker of the payday lender; and
 - (iii) fees, commissions, charges, or other amounts related to issuing, loading, activating and using a cash card, including those payable to a third party;
 - (i) if a cash card is issued in respect of a payday loan, the following information:
 - (i) the terms and conditions for use of the cash card;
 - (ii) restrictions or exclusions related to the use of the cash card;
 - (iii) instructions on how to use the cash card;
 - (iv) information on how the borrower can verify the current balance of the cash card at no charge;
 - (v) the process to obtain a replacement card and any amount the borrower is required to pay for replacement;
 - (vi) whether or not the cash card can be used for subsequent payday loans with the payday lender;
 - (vii) an itemization of each component of the total cost of credit or consideration charged, paid or given, or to be charged, paid or given, by or to the payday lender or any other person, in relation to the cash card;
 - (j) the total cost for any optional insurance premiums paid by the borrower; and

- (k) if the payday lender provides internet payday loans, it must ensure that the payday loan agreement contains the address of its office in New Brunswick for service of documents.
- (3) Pursuant to paragraph 37.28(2)(s) of the Act, a payday lender must include the following statements to the borrower in the payday loan agreement:
- (a) the supply of other goods or services is separate and optional from the payday loan;
 - (b) if the payday lender requires the borrower to obtain insurance as a condition of the payday loan, the borrower has the right to obtain the insurance from any insurer authorized by law to provide it;
 - (c) if any optional services are provided by the payday lender, the borrower is entitled to cancel those services;
 - (d) rollover loans used to grant an extension or renewal of a payday loan or an advancement of a new payday loan to payout an existing loan are prohibited;
 - (e) the borrower is entitled to prepay the outstanding balance at any time without charge or penalty and is entitled to make partial prepayments without charge or penalty on any scheduled payment date;
 - (f) the borrower has the right to obtain a free copy of the payday loan agreement from the payday lender at any time upon request; and
 - (g) payday loans are regulated by the *Cost of Credit Disclosure and Payday Loans Act*.
- (4) The payday loan agreement must include the contact information for the Commission, including website and toll-free number.
- (5) The payday loan agreement must be signed by the payday lender.

Consent to Internet payday loan

9. Before providing the initial advance to the borrower under an Internet payday loan agreement, a payday lender must ensure that the borrower has consented to entering into the payday loan agreement, and must make a record, satisfactory to the Director, evidencing that consent, including electronic acknowledgement of paragraphs 37.28(2)(k) and (p) of the Act.

Copy of payday loan agreement

10. In addition to the requirement in subsection 37.28(6) that the payday lender provide the borrower with a copy of the payday loan agreement when it is signed by the borrower, a borrower may request an additional copy of the borrower's completed and signed final payday loan agreement, at any time after entering into the agreement, and the payday lender must provide or mail the copy to the borrower within one business day of the request.

Copy of Internet payday loan agreement

11. (1) Upon entering into an Internet payday loan agreement, a payday lender must immediately provide a copy of the Internet payday loan agreement to the borrower in the following manner:
- (a) by sending the payday loan agreement to the e-mail or other electronic address the borrower has provided the payday lender for the purposes of providing information relating to the payday loan; or
 - (b) by transmitting the payday loan agreement to the fax number the borrower has provided the payday lender for the purposes of providing information relating to the payday loan.
- (2) The payday lender must ensure that, for the term of the Internet payday loan, its website and mobile application are designed and maintained in such a manner that they allow the borrower to print a copy of the payday loan agreement.

Cancellation form requirements

12. (1) The cancellation form which is given to the borrower when the payday loan agreement is entered into, as required by paragraph 37.28(2)(p) of the Act, must contain the following statement:

CANCELLATION RIGHTS	DROITS DE RÉSILIATION
<p>You may cancel this payday loan within 48 hours after you have received the first advance or a cash card that is capable of being used. You must provide written notice to the payday lender if you choose to cancel the loan. The notice period may be extended by a further period of up to 48 hours if the 48 hours included a Sunday or holiday. You do not have to give a reason for cancelling the payday loan agreement. To cancel the payday loan agreement, you must provide your notice of cancellation, together with the amount you borrowed, to the business you dealt with to get your loan. If you have made any payments under the loan, the payday lender must return those payments to you without delay.</p>	<p>Vous pouvez résilier ce prêt sur salaire dans les 48 heures suivant la réception de la première avance ou d’une carte porte-monnaie électronique. Vous devez alors donner un préavis écrit au prêteur. La période de préavis peut être prolongée d’une autre période maximale de 48 heures si les premiers 48 heures incluaient un dimanche ou un congé. Vous n’êtes pas tenu de fournir un motif pour la résiliation du contrat de prêt sur salaire. Afin de résilier le contrat de prêt sur salaire, vous devez fournir votre préavis de résiliation ainsi que le montant de l’emprunt à l’entreprise avec laquelle vous avez traité pour obtenir le prêt. Si vous avez fait des paiements aux termes du prêt, le prêteur doit vous rembourser ces paiements sans délai.</p>

- (2) The above-noted statement must be satisfactory to the Director and must:
- (a) have the heading **“CANCELLATION RIGHTS / DROITS DE RÉSILIATION”** in fourteen point bold capital letters;
 - (b) be in both official languages;

- (c) have both versions of the cancellation rights statement arranged side by side on the cancellation form;
- (d) be outlined so as to be noticed by the borrower; and
- (e) occupy the full width of the page and be at least seven centimeters in height.

Cancellation receipt requirements

13. Pursuant to subsection 37.29(6) of the Act, the receipt provided to the borrower must state:

- (a) the business name and address of the payday lender;
- (b) the borrower's name and address;
- (c) the date and time the payday loan was advanced;
- (d) the date and time the repayment was received; and
- (e) a statement to indicate that the payday loan has been cancelled at the borrower's request within the 48 hour cancellation period and that the borrower is released from any further obligation in connection with the payday loan.

Repayment of a cancelled payday loan

14. A borrower may repay advances he or she received by electronic means by an electronic method, or by any other method acceptable to the payday lender.

Information to be posted

15. (1) Pursuant to subsection 37.3(1) of the Act, a payday lender must prominently display at each of its physical locations where a payday loan is negotiated or entered into signs in both official languages that are visible to borrowers immediately on entering any such locations, and that contain the following information in the same order:

- (a) the heading "Maximum Allowable Cost per \$100 Borrowed" in letters that are at least 72 point font size;
- (b) centered below the heading, the amount "\$__.00" in 144 point font size;
- (c) a subheading in at least 54 point font size with the words:
"Example: \$300 loan for 14 days:"
"Principal Amount \$300.00"
"Total Cost of Credit" followed by the total cost of borrowing per each \$300 advanced under the payday loan agreement.
"Annual Percentage Rate (APR)" followed by the APR for \$300
"Total to Repay" followed by the total of \$300 and the total cost of borrowing per each \$300 advanced under the payday loan agreement;
- (d) at the bottom of the sign, the following statements in at least 36 point font size:

“If you have any questions or concerns about payday loans, cancellation rights or collection practices, contact the Financial and Consumer Services Commission (FCNB) toll free at 1-866-933-2222.”

“This information meets the requirements under the *Cost of Credit Disclosure and Payday Loans Act*”

- (2) The signs referred to in subsection 1 must be a minimum size of 61 cm in width x 76 cm in height and the lettering must clearly contrast with the background and must have a brightly coloured border that is at least five centimetres wide.
- (3) Along with the signs in subsection 1 being visible to borrowers immediately on entering any location where a payday loan is negotiated or entered into, a payday lender must also ensure that signs are visible to borrowers at each place within that location where payday loans are negotiated or entered into, and contain the information set out in subsection 1 in not less than 28-point type and in a colour that contrasts with the background.

Disclosure for loans negotiated by telephone

16. If a payday loan is negotiated by telephone, a payday lender must provide the disclosure required by section 15 of this Rule to a prospective borrower before the prospective borrower enters into the payday loan agreement. The payday lender must maintain records of the content of the disclosure, including who made it, the date and time that the disclosure was provided and records of the borrower’s acknowledgement of the disclosure.

Disclosure of licence information on website and mobile application

17. If a payday lender offers, arranges or provides Internet payday loans, it must prominently display its name as shown on its licence, its licence number and its licence expiry date at or near the top of the introductory page of its website and mobile application for borrowers in New Brunswick.

Disclosure of loan information on website and mobile application

18. A payday lender that offers, arranges or provides Internet payday loans must display on its website and mobile application a notice that contains the information required by section 15 of this Rule in a manner that is:
 - (a) displayed in a clear and understandable manner in a colour clearly contrasting with the background;
 - (b) made visible to borrowers at or near the top of the introductory page for borrowers in New Brunswick; and
 - (c) displayed and acknowledged by prospective borrowers before they are able to access a payday loan application.

Prohibited practices

19. (1) Pursuant to subsection 37.39 of the Act, a payday lender must not engage in any of the following practices:
 - (a) contact an employer of a borrower or any employees of that employer unless:

- (i) the contact occurs before the borrower enters into a payday loan agreement;
 - (ii) the contact is for the sole purpose of confirming the borrower's employment, length of employment, employment income, occupation and business address; and
 - (iii) the borrower has provided written consent to contact an employer for the purposes outlined in subparagraph (ii);
- (b) operate an office from a private dwelling;
 - (c) represent, either expressly or by implication, that its licence is an endorsement or approval by the Commission;
 - (d) deduct or withhold from the initial advance of a payday loan an amount representing any portion of the cost of borrowing;
 - (e) require, request or accept information that would give the payday lender, or any employee or agent of the payday lender, direct access to a borrower's account with a financial institution;
 - (f) charge a borrower an amount that is not reasonable to replace a cash card issued as part of a payday loan;
 - (g) give, offer to give, or promise to give — directly or indirectly — any prize or reward as an incentive or enticement to enter into a payday loan agreement, or for entering into a payday loan agreement; and
 - (h) use any documentation relating to a payday loan agreement for any purpose other than providing the payday loan.
- (2) If a borrower provides a pre-authorized debit in exchange for the advance of money, the payday lender may only use the information about the borrower's account with a financial institution to access the account for the purposes of the borrower's repayment of the payday loan.

Prohibitions on repayment

20. (1) Pursuant to subsection 37.39 of the Act, a payday lender is prohibited from engaging in any of the following practices in regards to repayment of a payday loan:
- (a) making unauthorized withdrawals from a borrower's account;
 - (b) requiring a borrower to provide pre-authorized debits or future payments for an amount greater than the amount necessary to repay the payday loan on the due date;
 - (c) accepting a cheque from the borrower that is not payable to the payday lender;

- (d) requiring that a payday loan be due before the first day on which the borrower will receive his or her pay or other income following the date of the loan;
 - (e) requiring multiple or open ended agreements providing access to the borrower's accounts with a financial institution;
 - (f) using an agreement for a payment arrangement from a prior loan; or
 - (g) requiring more than one form of repayment from a borrower.
- (2) Each payday loan agreement must have a specific repayment date and specific amount authorized by the borrower.

No repeated attempts to process repayment

21. Pursuant to section 37.39 of the Act, a payday lender must not attempt to obtain repayment by means of a cheque, pre-authorized debit or other negotiable instrument provided by the borrower after an attempt to obtain repayment through the cheque, pre-authorized debit or other negotiable instrument is dishonoured, except as follows:
- (a) only one additional attempt to obtain repayment is made;
 - (b) where the payday lender is charged a fee, penalty or other amount by the financial institution to process it, the payday lender does not in turn charge a fee to the borrower;
 - (c) the amount attempted to be repaid under the additional attempt is the same as under the initial attempt; and
 - (d) the additional attempt is made within 30 days after the payday lender received notice that the initial attempt was not successful.

Provision of Information

22. (1) Pursuant to section 37.391 of the Act, a payday lender must submit any changes to its payday loan agreement, and a complete sample of the payday loan agreement, to the Director at least 21 days before the revised payday loan agreement is used.
- (2) Pursuant to section 37.391 of the Act, a payday lender must immediately notify the Director of:
- (a) the surrender, amendment, suspension or cancellation of the payday lender's licence, or other form of approval, to operate as a payday lender in any other jurisdiction;
 - (b) the imposition or variation of any terms, conditions or restrictions on the payday lender's licence, or other form of approval, to operate as a payday lender in any other jurisdiction; or
 - (c) any information provided in an application that has changed, prior to the issuance of a licence.

- (3) If there is any change in respect of a payday lender's account with a financial institution, including the information required by subsection 6(6) of this Rule, the payday lender must notify the Director in writing of the change within five business days of the date the change took effect.
- (4) Pursuant to section 37.391 of the Act, a payday lender must provide the Director with corrected information or material within 14 days after any of the following changes occur:
- (a) a change in any of the information previously provided to the Director in an application for a licence, a renewal of a licence or the reinstatement of a licence, including:
 - (i) an address, including an address for service, or a telephone number;
 - (ii) the fiscal year;
 - (iii) if the applicant is a corporation, an officer or director of the corporation;
 - (iv) if the applicant is a partnership, a partner of the partnership;
 - (v) the location at which the applicant retains or will retain records required to be kept by the Act; and
 - (vi) any other material change;
 - (b) any change in any officer or employee of the payday lender who resides in New Brunswick and who is authorized to provide information requested by the Director and to receive and disseminate information given by the Director;
 - (c) any change in ownership in the business or a termination of the business;
 - (d) any conviction against the payday lender or one of its directors, officers or partners of an offence under the *Criminal Code* of Canada;
 - (e) any judgment, including a default judgment, in respect of a claim arising out of the business of payday lending against the payday lender or one of its directors, officers or partners;
 - (f) the commencement of any proceedings involving a payday lender or one of its directors, officers or partners under the *Bankruptcy and Insolvency Act* (Canada);
 - (g) any change to the operation of the payday lender's business that affects or is likely to affect the offering, arrangement or provision of payday loans;
 - (h) a civil action or administrative proceeding against the payday lender alleging fraud, breach of trust, deceit or misrepresentation by the payday lender;
 - (i) if the payday lender providing Internet payday loans does not have a business office in New Brunswick, a relocation of that payday lender's address.

Annual filing requirements

- 23.** A payday lender must, in accordance with section 37.391 of the Act, provide to the Director the following information on loans granted during the 12-month period immediately before the date of the licence renewal:
- (a) the total number of loans granted;
 - (b) the total value of the loans granted;
 - (c) the number of repeat borrowers to whom loans were granted;
 - (d) the duration of the loans, categorized by different periods; and
 - (e) the number of defaults on loans granted, categorized by different periods.

Minimum working capital

- 24. (1)** Pursuant to section 37.4 of the Act, a payday lender must demonstrate a positive working capital that is satisfactory to the Director.
- (2)** Within three months of the end of its fiscal year, a payday lender must file with the Director audited financial statements in respect of its activities during the fiscal year, of the business for which the payday lender is licensed.
- (3)** The audited financial statements provided to the Director must include:
- (a) a written certification of its accuracy, signed by two directors of the payday lender; and
 - (b) an auditor's report expressing an unmodified opinion.
- (4)** No payday lender will change its fiscal year if, as a result of the change, the fiscal year will exceed 15 months.

Records to be maintained

- 25. (1)** Pursuant to subsection 37.41 of the Act, a payday lender must keep on file a copy of all payday loan agreements, all records on payday loans granted and all payment and collection activities for at least three years from the end of the term of the payday loan agreements to which all such information relates. The payday lender must also maintain logs of all telephone calls and all other records of contacts with borrowers or prospective borrowers, along with any documents relied upon in making the determination of any borrower's net pay for at least three years.
- (2)** A payday lender's record retention system must be capable of providing an inspector with all payday loan agreements and the particulars of all payday loans advanced during the previous three years, including the name, address and phone number of each borrower, each charge and payment relative to each payday loan and whether the payday loan is paid out or outstanding.

- (3) A payday lender must ensure that any record, whether in paper or electronic form, can be made immediately available and accessible to an inspector.
- (4) A payday lender must keep all documents and records relating to licensed activities separate from the documents and records of any other activity and must keep them at the office authorized by the licence to which they relate.
- (5) A payday lender's documents and records relating to all payday loans activities must be accessible from a location in New Brunswick.
- (6) Receipts issued for a cash payment on a payday loan must be issued in duplicate and meet the following requirements:
 - (a) one copy must be provided to the borrower;
 - (b) one copy must be retained by the payday lender; and
 - (c) all copies of the receipts must contain the name of the borrower, the date of payment, the amount paid and the amount still owing on the payday loan, if any.

Security of records

26. A payday lender must take precautions that are appropriate to the form of its records, to maintain the integrity and security of all records.

Payout of balances on cash cards

27. (1) Pursuant to paragraph 37.44(2)(a) of the Act, the borrower is entitled to be paid in cash for any credit remaining on a cash card issued by the payday lender when the balance of credit remaining on the cash card is less than \$25 or the payday loan has been repaid by the borrower and the cash card has expired.
- (2) Pursuant to subsection 37.44(6) of the Act:
 - (a) if a delinquent borrower has a balance of credit remaining on an expired cash card, the payday lender may recover from the cash card only the amount due on the delinquent loan, including default fees, and must return any remaining balance to the borrower immediately on demand of the borrower or of the Director; and
 - (b) the payday lender must issue a receipt to the borrower for money recovered from a cash card and must inform the borrower of any remaining balance on the cash card and how the balance may be refunded.

PART 2 TRANSITION

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PART 3 COMING INTO FORCE

28. This Rule comes into force on 1 January 2018.