OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

June 9, 2010

Dear Lender:

On July 1, 2010, payday loans will no longer be permitted under Arizona law. A.R.S. §6-1263 ("The deferred presentment licensing program established by this chapter ends on July 1, 2010"). While I have every expectation that you will abide by the law, I write to express concerns about potentially illegal activity based on experiences of other states that have abolished or restricted payday loans. Be advised that I intend to use every available legal tool to enforce the sunset of payday loans in Arizona, including investigative and enforcement authority under the Arizona Consumer Fraud Act.

In other states where payday lending has been curtailed, some lenders adopted the guise of a seemingly legitimate business model, but continued to illegally charge exorbitant interest rates on consumer loans. For instance, some lenders transformed into "credit services organizations," promoted pre-paid debit cards, offered sham auto title loans, "rented" a charter of an out-of-state bank or entered into other business arrangements designed to avoid usury laws. In Arizona, consumer loans are capped at a 36% annual interest rate plus those finance charges and fees authorized by law. A.R.S. §§6-632, 6-635. The Arizona Department of Financial Institutions licenses and regulates consumer lenders, who are authorized to provide loans to consumers of $10,000 or less.

The consumer lending statutes also apply to "any person who seeks to avoid [their] application by any device, subterfuge or pretense." A.R.S. §6-603(B). As Arizona's Attorney General, I will not tolerate subterfuge of the law. To that end, I have launched "Operation Sunset" to educate consumers and to enforce the sunset of payday lending in Arizona. The Operation Sunset Enforcement Team consists of lawyers, investigators, paralegals and other staff with expertise in both financial institution and consumer fraud laws. As you may know, the Arizona Consumer Fraud Act ("the Act") prohibits deceptive advertising and sales practices. A.R.S. § 44-1521, *et seq.*[1] Under the Act, advertising is considered deceptive if it has a tendency and capacity to mislead the least sophisticated consumer, even though a truthful interpretation is also possible. *Madsen v. Western American Mortgage Co.*, 143 Ariz. 614, 618, 694 P.2d 1228,

[1] It is an "unlawful practice" to use "any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise." A.R.S. § 44-1522(A).

1232 (App. 1985). My Office is authorized to file a civil lawsuit to enforce the Consumer Fraud Act, and if a court finds that a person has violated the Act, it may issue an injunction and order restitution to all consumers who were victims of unlawful conduct. The court also may impose civil penalties of up to $10,000 for each willful violation of the Act and order a violator to pay the State's attorney fees and investigative costs.

My office will review and analyze all relevant information before drawing a conclusion as to whether illegal payday lending activity has occurred after the sunset of the law, and certain issues will raise red flags. We have received reports that payday lenders are telling consumers they "must" come in and convert their payday loans to auto title loans. Such transactions will be carefully scrutinized by my Enforcement Team. Another area of concern relates to payday lenders who may seek to maximize their profits despite the impending sunset of the law. If a payday lender cannot reasonably expect a payday loan transaction to conclude before the termination of deferred present licensing program on July 1, the lender enters into the transaction at its peril.

We will also be watching for business models or arrangements that, as seen in other states, perpetuate payday lending practices in another guise. When evaluating complaints that a post July 1 business transaction is really a payday loan, I will look at the substance of the transaction, not its name. And if I determine that illegal lending activity is occurring after July 1, 2010, enforcement will be swift and aggressive.

I ask for your support in our effort to ensure compliance with Arizona law and request that you report any suspected violations to my office. Thank you for your cooperation.

Sincerely,

Terry Goddard
Attorney General