



## ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

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### **REGULATORY AND CONSUMER ALERT**

**CL/CO-13-01**

**DATE:** February 7, 2013

**TO:** Consumers; Financial Institutions and Enterprises  
Conducting Business in Arizona

**FROM:** Robert D. Charlton, Assistant Superintendent

**RE:** **Unlicensed Consumer Lending Transactions**

The purpose of this Alert is to bring to the attention of consumers as well as financial institutions and enterprises conducting business in Arizona the licensing requirements for consumer lenders.

The law allowing payday loans by deferred presentment companies (also known as “payday lenders”) in Arizona expired on June 30, 2010. Beginning July 1, 2010, any consumer lender (including former payday lenders) issuing consumer lender loans must be licensed in compliance with A.R.S. §§ 6-601 *et seq.* As a general rule, a consumer loan rate of 36% per annum applies to consumer loans in the amount of \$1,000 or less, and may not be exceeded. *See* A.R.S. § 6-632.

The Department has received complaints indicating that Arizona consumers are offered online payday loans or consumer loans by companies that are not licensed by the Department, some of which are located in other states or claim to be owned by Indian tribes, and that charge Arizona consumers an interest rate well in excess of that permitted under Arizona law. These companies are not in compliance with Arizona law. Note that pursuant to A.R.S. § 6-613(B), any consumer lender loan that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void. This means that the unlicensed person making consumer lender loans has no right to collect, receive or retain any principal, finance charges or other fees in connection with that consumer lender loan.

Note that persons registered with the Department as Advance Fee Loan Brokers pursuant to A.R.S. §§ 6-1301 *et seq.* are not exempt from the licensing requirements for consumer lenders if they advertise to make or procure, solicit or hold themselves out to make or procure, or make or procure consumer lender loans to consumers in this state.

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A.R.S. § 6-603(A): Unless exempt under section 6-602, a person, whether located in this state or in another state, shall not engage in the business of a consumer lender without first being licensed as a consumer lender by the superintendent.

A.R.S. § 6-601(5): "Consumer lender" means a person that advertises to make or procure, solicits or holds itself out to make or procure, or makes or procures consumer lender loans to consumers in this state. A.R.S. § 6-601(6): "Consumer lender loans" means consumer loans, consumer revolving loans and home equity revolving loans.

A.R.S. § 6-601(7): "Consumer loan" means the direct closed end loan of money in an amount of ten thousand dollars or less that is subject to a finance charge. For the purpose of determining whether a consumer loan is ten thousand dollars or less only the principal amount of the loan shall be considered and not any finance charges or other fees allowed pursuant to section 6-635.

A.R.S. § 6-601(9): "Consumer revolving loan" means an open end revolving loan that is established pursuant to an agreement with an agreed on credit limit that does not exceed ten thousand dollars, that the consumer may pay in full at any time but has the privilege of paying in installments and that contemplates or provides that advances may be obtained from time to time by the consumer, through checks, drafts, items, credit access devices, orders for the payment of money, evidences of debt or similar means, whether or not negotiable.

A.R.S. § 6-613(B): Any consumer lender loan that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void, and the person making that consumer lender loan has no right to collect, receive or retain any principal, finance charges or other fees in connection with that consumer lender loan.

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To find out if the consumer lender is licensed in Arizona, please refer to the list of licensees published on the Department's website at [http://www.azdfi.gov/Lists/CL\\_List.HTML](http://www.azdfi.gov/Lists/CL_List.HTML)

To file a complaint against an unlicensed consumer lender engaging in transactions with Arizona consumers, please go to [http://www.azdfi.gov/Info/Forms/Complaint\\_form.pdf](http://www.azdfi.gov/Info/Forms/Complaint_form.pdf) or send mail to: Arizona Department of Financial Institutions, 2910 N. 44th Street, Suite 310, Phoenix, AZ 85018.

To file a complaint against a tribal-run payday lender, you may also contact the Federal Trade Commission at <http://www.ftc.gov/ftc/contact.shtm> and the Consumer Financial Protection Bureau <http://www.consumerfinance.gov/complaint/>.

For questions regarding this Regulatory Alert, please contact the Arizona Department of Financial Institutions, Financial Services Division, at (602) 771-2777.