



NOTICE OF ADOPTION

COMMISSION RULE PDL-001 *Payday Loans Licensing and Ongoing Obligations*

AND

COMMISSION RULE PDL-002 *Fees*

Introduction

On 27 July 2015, the Financial and Consumer Services Commission (Commission) approved Financial and Consumer Services Commission Rule PDL-001 *Payday Loans Licensing and Ongoing Obligations* (Rule PDL-001) and Rule PDL-002 *Fees* (Rule PDL-002).

Rule PDL-001 *Payday Loans Licensing and Ongoing Obligations* and Rule PDL-002 *Fees* will come into effect on **1 January 2018**, pursuant to section 8 of New Brunswick Regulation 2014-18 under the *Financial and Consumer Services Commission Act* (O.C. 2010-440), a rule comes into force on the day the rule is published electronically by the Commission as required under paragraph 37.468(1)(a) of the *Cost of Credit Disclosure and Payday Loans Act*, or on such later date as is specified in the rule.

Background

On 18 December 2014, the Commission approved publication for comment Rule PDL-001 and Rule PDL-002 which was published electronically on the Commission web site on 30 January 2015 and in the February 11, 2015 edition of The Royal Gazette. The 60-day consultation period ended on 31 March 2015.

There were 6 comment letters submitted during the comment period. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in **Appendix A** and a summary of their comments, together with our responses are contained in **Appendix B**. We have made some changes to the materials and those changes are reflected in Rule PDL-001 in and in Rule PDL-002. As those changes are not material, we are not publishing for a further comment period.

On 15 October 2015, the Minister of Justice consented to the making of Rule PDL-001 and Rule PDL-002.

Substance and Purpose of Rule PDL-001 and Rule PDL-002

The purpose of Rule PDL-001 and Rule PDL-002 is to provide the regulatory framework to support the *Cost of Credit Disclosures and Payday Loans Act* (the Act). The Act imposes standards of practice and enhanced disclosure obligations on licence holders. The licensing and ongoing obligations rule

establishes the specific requirements which are set out in the Act, while the fees rule establishes the regulatory fees for applicants and licence holders.

Questions

If you have any questions, please refer them to:

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Contents of Annexes

Appendix A:	List of Commenters
Appendix B:	Summary of Comments and FCNB Responses

APPENDIX A

LIST OF COMMENTERS

1. Canadian Payday Loan Association - Hon. Stan Keyes
2. Credit Counselling Services of Atlantic Canada – John Eisner
3. The Saint John Human Development Council – Randy Hatfield
4. New Brunswick Common Front for Social Justice Inc. - Jean-Claude Basque
5. Ron Naugler
6. Gail Wylie

APPENDIX B - SUMMARY OF COMMENTS AND FCNB RESPONSES

AS OF 30 JUNE 2015

Comments on proposed <i>Payday Loans Licensing and Ongoing Obligations</i> (the Proposed Licensing Rule)		
<u>General Comments on Licensing Rule</u>		
<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
General Comments	Commenter indicated that the proposed legislation attempts to deal with many loop holes and practices in the industry, but further indicated that several assumptions need to be considered: the literacy level of the borrower; the financial literacy level; the borrower’s state of mind to consider alternatives and evaluate the terms of the loan; awareness of alternatives; financial ability; and willingness to report infractions. They caution that the legislation will be expensive to monitor, investigate and enforce. This commenter suggested working with financial institutions and non-government organizations to develop alternatives on financial literacy, on volunteers that can clarify alternatives and affordability.	We thank the commenter for their submission. Part of FCNB’s mandate centers around educating consumers about the financial market place. We intend to have resources available on our website and in print form for consumers. We also regularly offer information sessions throughout the province for those interested in learning about financial matters.
	Commenter indicated one of their biggest concerns to be competition from unlicensed lenders.	The legislation addresses unlicensed activity by providing the borrower with the ability to cancel a payday loan with an unlicensed lender at any time – as set out under subsection 37.29(3) of the Act.
Support for regulations	Commenter provided their support for the decision to licence and regulate the payday loan industry, both those physically in the province and internet based. Commenter noted the obligation to regulate the industry on behalf of consumers, and the opportunity that exists to take advantage of the experience of other provinces.	The FCNB thanks the commenters for their support.
<u>Legislative Suggestions</u>		

<p><u>Review of Industry</u></p>	<p>Commenters suggested a minimum three year review of the legislation that permits the public to have a say in what is happening in the industry.</p> <p>Commenter suggested a review every two years.</p>	<p>We note for the commenters that FCNB has authority under the Act to make recommendations at any time to government on matters respecting payday loans.</p> <p>Staff at FCNB stay apprised of what is happening in the industry. We are involved with regulators across the country and are always interested in hearing views from concerned citizens.</p>
<p><u>Physical Location</u></p>	<p>Commenters suggested internet payday lenders be required to have a physical location in the province where borrowers can meet with a representative of the company to discuss issues.</p>	<p>We thank the commenters for their suggestions; however, we feel that the legislation provides an effective level of consumer protection with respect to internet lenders. Consumers' rights and lender disclosure requirements have been drafted to ensure that an effective level of regulation and compliance requirements are in place for both physical and internet based lenders.</p>
<p><u>Payment plan option</u></p>	<p>Commenter suggested that to reduce rollovers, borrowers be permitted to pay in equal installments, with no extra fees or interest calculated into the payment plan.</p> <p>Another commenter suggested an extended payment plan for borrowers that would be triggered by a period of repeat borrowing, similar to British Columbia legislation.</p>	<p>We thank the commenters for their suggestion. We are aware of the legislative requirement currently in place in British Columbia. We have flagged this approach for consideration in the future. We will continue to monitor the regulatory environment for amendments by all jurisdictions and may consider this approach in future development.</p>
<p><u>Cooling off period</u></p>	<p>Commenter suggested there be a 10 day cooling off period between loans.</p>	<p>We thank the commenter for their submission. However, we believe that the Act protects the consumer by prohibiting concurrent loans and rollovers.</p>
<p><u>Insurance</u></p>	<p>Commenter suggested that optional insurance be adequately disclosed for its total impact on the cost of the loan.</p>	<p>The disclosure of optional insurance fees is captured under paragraph 8(2)(j) and</p>

		8(3)(a)(b) & (c) of the proposed rule.
<u>Enforcement & Administrative Penalties</u>	Commenter supported strong investigations and enforcement powers and suggested that fines be imposed that reflect the high income earned by payday lenders.	We thank the commenter for their submission. We would like to note that investigation and inspection powers are captured under sections 37.451 through 37.458, as well as section 53 of the Act. Also, sections 37.463 and 37.464 of the Act outline authority for the Tribunal to impose administrative penalties.
<u>Financial Literacy</u>	Commenter suggested that, like Manitoba, New Brunswick should impose administrative fines and use them to fund Financial Literacy.	The <i>Financial and Consumer Services Commission Act</i> stipulates that amounts received by the Commission from administrative penalties under financial and consumer services legislation shall be used only for endeavours or activities that enhance or may enhance the financial market place or consumer protection.
<u>DIVISION C – LICENSING</u>		
<u>Section 1 - Definitions</u>	Commenter suggested that the maximum total cost of credit should include all administrative fees.	Administrative fees are captured under the definition of total cost of credit and can also be found under paragraphs: 6(2)(a); 8(2)(h); and subparagraph 8(2)(i) and (vii).
<u>Section 4 – Licence criteria</u>	Commenter supported the requirement that each director, officer, partner, or sole proprietor be named in the application.	We agree and note that this requirement is set out in the subsection 4(2) of the proposed rule. We thank the commenter for their support.
<u>Subsection 4(2)</u>	Commenter recommended the following change: “4(2) For the purpose of section 37.2 of the Act, each director, officer, partner or sole proprietor of the applicant must indicate on the application that <i>the proprietor in the case of a sole proprietorship, any partner in the case of partnership and any director or officer in the case of a corporation</i> none of the individuals involved with the applicant organization.” in order to clarify that information on all company employees, suppliers, agents and subcontractors, is not required.	It was never our intention to require information on all employees working for the licensee. This suggested wording does mirror our intention and provides clarity. We thank the commenter and have amended the rule based on the suggested wording.

<u>Paragraph 4(2)(a)</u>	Commenter requested that only indictable offences be disclosed by directors, officers, partners or sole proprietors upon application for a licence.	We thank the commenter for their suggestion, however, this provision relates to the suitability of the lender to engage in business in New Brunswick. We feel that limiting the offences to only indictable offences would limit our ability to adequately assess suitability of the applicants.
Paragraph 6(2)(d) – Further information or documents required	Commenter noted an error in paragraph 6(2)(d) which referenced subsection 27(6).	We thank the commenter for noting this error. The correct reference is subsection 25(6) and we have amended the rule accordingly.
<u>DIVISION D – OBLIGATIONS & PROHIBITIONS</u>		
<u>Section 8 – Payday loan agreements</u>	Commenter supported the information required within the payday loan agreement. They felt the information was extensive and detailed and that it will provide consumers with full disclosure for the term of the loan.	We agree and thank the commenter for their support.
<u>Paragraph 8(2)(a)</u>	Commenter recommended a time stamp be required on each payday loan agreement.	We agree. This disclosure requirement is captured under paragraph 8(2)(a) of the rule.
<u>Paragraph 8(2)(i)</u>	Commenter supported the disclosure of information required within the rule when consumers are issued a cash card as part of their payday loan agreement.	We thank the commenter for their support.
<u>Paragraph 8(3)(c)</u>	Commenter requested clarification on what constitutes an “optional service”	Optional services are defined under subsection 1(1) of the <i>Cost of Credit Disclosure and Payday Loans Act</i> .
	Commenter suggested adding the following wording: “If any optional services are provided by the payday lender <i>in connection with the payday loan transaction</i> ” To ensure that optional services offered with another product are accidentally captured by the legislation.	We thank the commenter for their suggestion. However, this has already been addressed under the definition of optional services.
<u>Paragraph 8(3)(e)</u>	Commenter supported the requirement that borrowers be able to prepay without charge or penalty.	We agree and thank the commenter for their support.
<u>Subsection 8(4)</u>	Commenter supported the complaint disclosure requirement be included on the payday loan agreement, and that information be posted on the Commission’s website.	We agree and thank the commenter for their support.
<u>Paragraph 11(1)(a) – Copy of internet payday loan agreement</u>	Commenter suggested the addition of the following: “by sending the payday loan agreement to the email <i>or other electronic</i> address the borrower provided...” This would allow for changing technology.	We thank the commenter for this suggestion. We have amended the rule based on the suggestion.

<u>Section 12 – Cancellation form requirements</u>	Commenters supported the 48 hour cancellation requirement.	We agree and thank the commenter for their support.
<u>Section 15 – Information to be posted</u>	Commenter supported the display/disclosure of the Annual Percentage Rate on signage and on websites.	We agree and thank the commenter for their support.
	Commenter supported the signage requirement. They further suggested signage advising of professional budgeting assistance, as well as not-for-profit credit counselling brochures at store front locations and links on websites.	We thank the commenter for their suggestion. Director approval of educational materials is provided for under paragraph 5(d) of the rule.
<u>Section 19 – Prohibited practices</u>	Commenter supported the prohibited practices, but suggested that payday lenders be prohibited from contacting the borrower’s employer as may compromise employment and that a paystub should be sufficient to confirm income.	Lenders are specifically prohibited from contacting the employer for collection purposes under section 37.39 of the Act. However, we believe that borrowers who may not have paystub information available should not be prohibited from authorizing the lender to contact their employer.
<u>Sections 20 & 21 – Prohibitions on repayment</u>	Commenter supported the provisions on repayment through pre-authorized debit.	We agree and thank the commenter for their support.
<u>Paragraph 20(1)(d)</u>	Commenter had concerns over the requirement to wait until the first banking day after the next payday to obtain repayment. They suggested that without careful management of funds, if the borrower is even \$2.00 short on the payment amount the day after pay day, their loan payment may be dishonoured and they may be faced with a default fee from the lender and NSF charges from their bank. They felt this provision would have a significant impact on industry and didn’t feel the purpose of the provision was clear. To ensure prompt repayment of the payday loan they recommended no restriction prohibiting repayment until the day after payday.	We agree and have amended the rule accordingly.
<u>Paragraph 22(4)(d) – Provision of information</u>	Commenter suggested the addition of the term “indictable” to the Criminal Code offence notification provision, similar to the application requirement suggestion under subsection 4(2).	We thank the commenter for their suggestion, however, this provision relates to the suitability of the lender to engage in business in New Brunswick. We feel that limiting the offences to only indictable offences would limit our ability to adequately assess suitability of the applicants.
<u>Section 23 – Annual filing requirements</u>	Commenter supported the request for information from payday lenders, specifically the request for information on repeat loan customers.	We agree and thank the commenter for their support.
	Commenter suggested a more robust data collection regime, similar to Nova Scotia, to conduct a proper analysis	FCNB is part of a national data collection

	of repeat loans.	group working with other provinces. We are looking at what information can and should be collected. Amendments may be recommended at a future time as a result of this initiative.
<u>Subsection 24(2) – Minimum Working Capital</u>	Commenter felt that the requirement of audited financial statements was excessive, expensive and should be removed. They state that the Director has the discretion to audit and inspect all records, and that no other jurisdiction requires financials prepared by an independent auditor. They felt that the cost of audited financial statements could exceed the cost of all profits earned by the lender in New Brunswick and that the requirement created an obstacle and disincentive to licence.	We thank the commenter for their submission. While other provinces have bonding or other security requirements, we will require audited financial statements in order to adequately access working capital. It is our understanding that the size of the business determines the cost of having their financials audited.
<u>Subsection 27(1) – Payout of balances on cash cards</u>	Commenter requested the addition of the following: “Pursuant to paragraph 37.44(2)(a) of the Act, the borrower is entitled to be paid in cash for any credit remaining <i>in respect of a payday loan</i> 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.”	We thank the commenter for their suggestion; however cash cards issued outside of a payday loan agreement are not within the ambit of the legislation.

Comments on proposed <i>Payday Loans Fees</i> (the Proposed Fee Rule)	
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<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
<u>PART 2 – FEES FOR THE APPLICATION FOR THE ISSUANCE OR RENEWAL OF A LICENCE</u>		
<u>Subsection 2(2)</u>	<p>Commenter recommended an annual licence fee of \$5,500 per location, with a portion of the fee used to promote community based financial literacy initiatives.</p> <p>Commenter supported the annual licence fees, but recommended a portion of the fee be set aside for delivery of community based awareness and financial literacy programs.</p>	We thank the commenter for their suggestion. However, licence fees are set out on a cost recovery basis. Paragraph 5(d) of the rule outlines the Directors discretion to require payday lenders to provide education materials. Furthermore, administrative

		penalties imposed against payday lenders will be used towards educational services and materials.
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