

441-730-0000

Statutory Authority; Purpose

(1) OAR 441-730-0000 to 441-730-0320 are adopted pursuant to the rulemaking authority granted the Director by ORS 725.320, 725.505, and 725.625.

(2) The purpose of the rules is to provide revised consumer finance rules. The rules are considered necessary to assure the proper conduct of the business regulated, to enforce the Consumer Finance Act and to protect the public.

Stat. Auth.: ORS 725.320, 725.505, and 725.625

Stats. Implemented: ORS Chapter 725

441-730-0010

Definitions

(1) "Annual Percentage Rate" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and ORS 725.345(3), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Consumer Finance Licensee" means a person issued a license under ORS 725.140 to make loans described in OAR 441-730-0015(1).

(5) "Deferral charges" means the additional charge assessed by a Consumer Finance licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(6) "Extension" has the same meaning as "renewal" defined in section (15) of this rule.

(7) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the borrower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(8) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(9) "License" means a Consumer Finance license or a Short-Term Personal Loan license issued under ORS 725.140.

(10) "Licensee" means a person licensed as a Consumer Finance licensee or a Short-Term Personal Loan licensee.

(11) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(12) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

(a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;

(b) A financial statement that includes income, assets and debts;

(c) Publicly available information concerning the borrower, that may include the borrower's credit report;

(d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

- (13) "Periodic Payments" means loan repayments scheduled for monthly or more frequent periods of time.
- (14) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.
- (15) "Renewal" of a loan means granting a borrower the right to postpone repayment of a Short-Term Personal Loan for a fee.
- (16) "Roll-over" has the same meaning as "renewal" defined in section (15) of this rule.
- (17) "Same day transaction" means a Short-Term Personal Loan made on the same day that a previous Short-Term Personal loan is paid-off and will be treated as a "renewal" defined in section (15) of this rule.
- (18) "Short-Term Personal Loan" means:
- (a) A Payday Loan as defined in ORS 725.600;
 - (b) A Title Loan as defined in ORS 725.600; or
 - (c) Any other loan made by a person in the business of making Short-Term personal loans designated by rule or order of the director.
- (19) "Short-term personal loan licensee" means a person issued a license under ORS 725.140 who engages in the business of making payday loans or title loans as defined in ORS 725.600. Stat. Auth.: ORS 725.505 and 725.625
Stats. Implemented: ORS 725.110, 725.140, 725.340, 725.360, 725.600, Chapter 725

441-730-0015

Consumer Finance and Short-Term Personal Loan Licenses

- (1) The license issued pursuant to ORS 725.140 to a lender who makes loans secured by personal property, real property or unsecured loans which typically have periodic payments with terms longer than 60 days shall be a Consumer Finance License. Of the total number of loans made by a consumer finance licensee under its consumer finance license during each calendar year commencing January 1, 2007:
- (a) 90% or more of the loans must have a term of at least six months;
 - (b) Loan underwriting must be documented in the borrower's file for 90% or more of the loans. The documented loan underwriting remains valid, at the option of the licensee, for any loan made within 12 months of the initial date of a previous consumer finance loan to that borrower; and
 - (c) Other than loans made pursuant to ORS 725.345 or 725.347 or that are secured by real estate or interests in farming implements or future farm crops, 90% or more of the loans must be structured to be repaid in fully amortized and substantially equal periodic payments. For purposes of this subsection, a loan will be considered to have substantially equal periodic payments:
 - (A) Notwithstanding that the first regularly scheduled periodic payment is larger due to any additional interest that accrues because the first regularly scheduled periodic payment is more than 30 days after the date of the loan;
 - (B) Notwithstanding that the final regularly scheduled periodic payment is larger, as long as the final payment is not more than one and one-half times the amount of the regularly scheduled periodic payment immediately preceding the final payment; and
 - (C) In the case of adjustable rate loans, as long as the periodic payments resulting from each interest rate adjustment meet the requirements of this subsection (c).

(2) A consumer finance licensee shall not disguise any loan as an open-ended loan authorized under ORS 725.345 or 725.347 as a device or subterfuge to evade the requirements and prohibitions of this rule.

(3)(a) If a consumer finance licensee makes a loan under the consumer finance license secured by an interest in a borrower's vehicle, the licensee may not retain possession of the title to the vehicle unless the licensee is recorded as a lien-holder on the title or has made application or taken other commercially reasonable steps to be added as a security interest holder of a vehicle.

(b) A consumer finance licensee may not require a borrower, as a condition of making a loan under its consumer finance license, to provide a postdated check or debit authorization for one or more future payments. However, if permitted by the lender and solely at the discretion of the borrower, one or more postdated checks or debit authorizations may be delivered to a consumer finance licensee to facilitate timely future payments. Payments made by postdated check or debit authorization will be presumed to be solely at the discretion of the borrower, if, within the calendar year:

(A) No more than 10% of the consumer finance lender's borrowers are using postdated checks or debit authorizations; and

(B) Each borrower makes no more than half of required payments on a loan, or six payments, whichever is less, using postdated checks or debit authorizations.

(4) The license issued pursuant to ORS 725.140 to a lender who makes Payday loans or Title loans shall be a Short-Term Personal Loan license. A Short-Term Personal Loan lender is limited to making payday loans or title loans or both under the short-term personal loan license, as stated on the license.

(5) A person is permitted to apply for, hold, and make appropriate loans under either a consumer finance license or a short-term personal loan license, or both licenses.

(6) No license shall be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the secretary of state.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.110, 725.140(1), 725.330, Chapter 725

441-730-0025

Consumer Finance License Applications

(1) For purposes of the investigation described in ORS 725.140(1), an applicant for a consumer finance license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant, and attach:

(a) Information concerning relevant experience:

(A) Employment history for the past five years of at least one executive officer, director, managing partner, or other manager to be employed by the applicant, demonstrating verifiable recent experience in traditional lending, including but not limited to, experience obtained in the banking, consumer finance, or mortgage lending industries. For purposes of this paragraph, "recent" means no less than three years out of the five years immediately preceding the date of application. Short term lending experience alone is not a sufficient substitute for the required experience.

(B) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the three out of five years traditional lending experience. Factors that the director may consider include relevance of the education, or the number, complexity and types of transactions handled in the substituted business experience.

Short term lending experience alone is not a sufficient substitute for the required experience. In-office, on the job training will not qualify as extensive training.

(C) The name of the proposed manager of the licensed location, and if this individual is not the experienced person described in paragraph (A) of this section, the employment history of this initial manager for the five years immediately preceding the date of the application.

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge and any other business activities the licensee will engage in at the location;

(D) The process by which the applicant will determine that loans to be made comply with requirements in OAR 441-730-0015(1); and

(E) Funding sources for the loans, including third-party financial institutions.

(2) For purposes of ORS 725.140 and this rule, the date of filing an application is the date the application is complete. An application shall be deemed complete when:

(a) All required fees have been paid;

(b) All documents required to be submitted by this rule have been submitted and are materially complete, including a completed application form and completed business plan; and

(c) Documents required to be submitted by this rule have been submitted.

(3) An application for licensing is deemed abandoned if:

(a) One or more documents as part of an application have been on file with the director for a minimum of 90 days;

(b) The application is not deemed complete as described in section (2) of this rule; and

(c) The applicant has failed to respond to the director's written warning of abandonment by providing all documents or information necessary to make the application complete within 30 calendar days of the date of warning.

(4) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.120 and 725.140

441-730-0050

Notes and Agreements Must Comply with ORS 725

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee shall be so worded that they comply with all provisions of ORS Chapter 725 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulations and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS Chapter 725.

(3) No later than within thirty days of beginning use in Oregon of any new form of note or agreement, or a form or agreement that has been amended in a material way, the licensee must submit the new or materially amended form or agreement to the director.

Stat. Auth.: ORS 725.505, 725.625

Stats. Implemented: ORS 725.120, 725.320

441-730-0080

Qualifications of Person in Charge of Licensed Office

(1) A short-term personal loan licensee shall not place any person in charge of a licensed office unless the person has a thorough understanding of ORS Chapter 725 and these rules.

(2) A consumer finance licensee must place the experienced person as described in OAR 441-730-0025(1) in its licensed office.

(3) Notwithstanding section (2) of this rule, if the consumer finance licensee holds a license for more than one location or if the experienced person described in OAR 441-730-0025(1) is employed outside of Oregon, the licensee may place a qualified person with no less than one year's traditional lending experience in charge of each licensed office provided the experienced person described in OAR 441-730-0025(1) supervises the lending operations of each location.

(4) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the one year of relevant lending experience required in section (3) of this rule.

(5) Unless a licensee requires all loan underwriting decisions be forwarded to an experienced person at another location or uses a formalized grading system, a licensee must employ or place a qualified person as described in this rule at each licensed office to be in charge of and oversee the lending operations of the office. A licensee must notify the director within 30 days of the termination of employment of the qualified person.

Stat. Auth.: ORS 725.505, 725.625

Stats. Implemented: ORS 725.140, 725.310, 725.330 and Chapter 725

441-730-0120

Account Record to Be Maintained for Each Loan

(1) A separate individual account record shall be maintained by the licensee for each loan made to any borrower. The record shall show:

(a) The loan number;

(b) The date of the loan;

(c) The name and address of the borrower;

(d) A brief description of the security, if any;

(e) The agreed interest rate or rates and the amount of each charge, if any;

(f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.

(g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan shall show, for each loan payment received:

(a) The amount, if any, applied to interest;

(b) The date to which the interest is paid;

(c) If payment is insufficient to pay interest to date, the dollar amount short;

(d) The amount applied to principal, if any; and

(e) The unpaid principal balance of the loan, if any.

(3) The account record for a precomputed-interest loan may comply with section (2) of this rule or it shall show, for each loan payment received:

- (a) The amount of the payment applied to installments, identifying which installments;
- (b) The amount applied to any default charges; and
- (c) The unpaid balance of the loan and charges, if any.
- (4) When a licensee makes advances to perform covenants, the account record shall specify:
 - (a) The amount of the advance which is added to the principal of the loan.
 - (b) A brief description of what the advance is paying; and,
 - (c) When the advance is to purchase insurance coverage, the type and extent of coverage.
- (5) The account record for a Short-Term Personal Loan shall show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.
- (6) All entries to the account record made by the licensee must be accurate and entered on the day the transaction occurred. However, a licensee may establish a reasonable time of day after which payments received that day will be posted on the following business day. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: ORS 725.320 & ORS 725.505

Stats. Implemented: ORS 725.330

441-730-0255

Payoff Information to be Furnished to Borrower Upon Request

- (1) When a borrower requests the payoff information on a loan and specifies a payoff date, the lender shall promptly, but in no case later than three business days, provide the requested information.
- (2) When a borrower requests payoff information on a loan but fails to specify a payoff date, the lender shall promptly, but in no case later than three business days, provide:
 - (a) The balance due on the date of the request plus the amount of daily interest, if any, that continues to accrue; or
 - (b) The balance that will be due on a specific future date, not more than 10 days from the date of the request.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.360

441-730-0320

Report of Licensee

Licensees are required to file their annual reports by June 30 of each year. The report shall cover operations for the period of the previous calendar year. For purposes of this rule, “operations for the period of the previous calendar year” includes any of the following that has not previously been brought to the attention of the director in writing:

- (1) A new qualified person or office manager;
- (2) A new experienced person;
- (3) Material changes in business plan; or,
- (4) Any criminal conviction entered against any person named in the application.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.190