



**OLA**  
Online Lenders Alliance

## Best Practices for Licensing in the Lending Industry


Francis L. Doorley  
Partner, Mayer Brown

Joseph J. Reilly  
Partner, Troutman Pepper

Paula M. Vigo Marqués  
Associate, Blank Rome

# COMPLIANCE UNIVERSITY

1



# COMPLIANCE UNIVERSITY

**OLA**  
Online Lenders Alliance

- I. Consequences of Unlicensed Activity**
- II. Types of Activities that May Trigger Licensing**
- III. “True Lender” Issues and Licensing**
- IV. License Application Requirements**
- V. Regulatory Oversight and Exams**

2



## Consequences of Unlicensed Activity

- Ceasing activity
- Fines, penalties, and consumer relief
- Non-public settlements versus public enforcement actions/consent orders

3



## Types of Activities that May Trigger Licensing

- Consumer lending
- Lead generation/consumer acquisition
- Loan brokering
- Debt collection
- Loan servicing
- Acquisition and sale of loans and/or receivables

4



## Consumer Lending

- Loan amount thresholds
- Finance charge thresholds
  - License required regardless of finance charge
  - License required to impose any finance charge
  - License triggered by specific percentages
- Relationship with state usury laws
- Alternatives to licensing: bank partnership

5



## Lead Generation/Consumer Acquisition

- Generating consumer interest in a product or service and connecting consumers to relevant financial service providers
- Considerations:
  - Type of personal information collected
  - Compensation structure – per-click, per-application, per-approval
- Where lead generation activities are regulated, most states license the activity under the broker or lender license frameworks

6



## Loan Brokering

- “Credit Services Organization” (CSO) Laws**
  - 3-day right to cancel
  - “Pass through” issue
- Brokering laws**
  - Borrower / Consumer-pay
    - Contract terms and disclosures
    - Advance pay prohibitions
  - Lender pay

7



## Debt Collection / Loan Servicing

- “For another” – in line with FDCPA**
- Only delinquent claims?**
  - Claims when they *become* delinquent
  - Exclusion where claim was current when “obtained,” in line with FDCPA
  - All claims
- Other Exemptions**
  - “Out-of-state” collectors – some requiring reciprocity, some not
  - Collecting for an affiliate

8



## Acquisition and Sale of Credit Assets

- Whole loans vs. receivables
- Considerations:
  - Purchaser vs. seller—few licenses required to sell
  - Licensing considerations for purchaser:
    - What asset are you buying? What license, if any, do you need?
    - Who will service and collect? Who has the rights to service?
    - Are the assets performing or delinquent?
- Alternatives to licensing: use of trust structure with national bank trustee

9



## “True lender” Issues and Licensing

“If a loan exceeds the rate permitted by Section 15-5-5 [36%], a person or entity is a lender subject to the requirements of this Act notwithstanding the fact that the person or entity purports to act as an agent, service provider, or in another capacity for another entity that is exempt from this Act, if, among other things:

- (1) the person or entity holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or
- (2) the person or entity markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or first right of refusal to purchase loans, receivables, or interests in the loans; or
- (3) the totality of the circumstances indicate that the person or entity is the lender and the transaction is structured to evade the requirements of this Act.”

III. Stat. § 15-5-19(b).

10



## License Application Requirements

- General NMLS application process requires applicants to complete a Form MU1 – what are common requirements?
  - General company information and formation documents
  - Organizational and management chart, including audit functions
  - Name of affiliates, identities of direct owners, and executive officers
  - Financial statements, bank letter, and surety bonds
  - Sample consumer disclosures
  - Disclosure questions (civil, criminal, and regulatory matters)

11



## License Application Requirements

- In addition to company information, individuals deemed “control persons” must submit a Form MU2:
  - Personal information, education history, employment history
  - Some states require personal financial statements
  - Background check & credit report authorizations
  - Disclosure questions (civil, criminal, and regulatory matters)

12



## Regulatory Oversight and Exams

- When will you be examined?
  - Examinations are a fact of life for licensed entities—regulators have authority to examine licensees on periodic or ad hoc basis
  - Timing/frequency can vary by state (*i.e.* every 2 years, annual, ad hoc basis)
  - Regulators can and often will examine if there is a history of complaints, allegations of unfair, deceptive, or abusive practices, bad press, etc. involving the licensee
- What does an examination involve?
  - During course of examination, regulators may conduct interviews, perform transaction testing, conduct file reviews on sample of complete loan files, and review P&Ps or other internal documentation, among other items

13



## Regulatory Oversight and Exams

- What topics might your exam cover?
  - “Core” compliance obligations—required disclosures, record retention, rate/fee limitations, etc.
    - Some state licensing laws incorporate federal laws such as TILA or FDCPA by reference—examiners can essentially cite state law violations for violations of federal law
  - Compliance management—complaint handling, policies and procedures, control environment, regulatory change management etc.
  - UDAP/UDAAP
  - Fair lending/fair servicing/anti-discrimination
  - Cybersecurity

14



## Regulatory Oversight and Exams

- ❑ What happens next?
  - ❑ Regulators typically communicate findings in exit interview with management, with formal written report provided at a later date
  - ❑ MRAs/supervisory recommendations
  - ❑ MOUs/referrals for enforcement
- ❑ Practical Tips:
  - ❑ Be organized and able to completely and accurately respond to regulators' requests
  - ❑ Ensure anyone communicating with regulators is prepared, knowledgeable, and able to explain your business and P&Ps, etc. to regulator
  - ❑ Seek support from outside counsel as necessary—before, during, and after examination
  - ❑ Remember that exam materials are typically considered confidential supervisory examination

15



## Questions?

16