

Urgent Wednesday Deadline for Licensed Lenders to Submit Amended Business Plan for Complying with New APR Cap to South Dakota Division of Banking

November 14, 2016

As a follow-up to our [November 11 alert](#), we are aware that the South Dakota Division of Banking (“Division”) has posted a policy statement on its website regarding South Dakota’s new APR cap. The policy statement is referred to by the Division as a Memorandum regarding Initiated Measure 21 (the “Memo”) and was circulated to South Dakota Money Lenders on November 10, 2016. The Memo clarifies that the provisions of Initiated Measure 21 will apply to all loans originated, refinanced, rolled over, renewed, or flipped after November 15, 2016.

Most importantly, the Memo directs all currently licensed South Dakota Money Lenders to indicate in writing to the Division whether they intend to surrender or not renew their South Dakota Money Lender license in light of Initiated Measure 21. Further, the Memo directs current licensees intending to maintain their license to provide a written business plan to the Division, with appropriate documentation, indicating how the lender intends to comply with the provisions of the Initiated Measure 21. The Division requests this information no later than close of business on November 16, 2016.

We are continuing to reach out to the Division regarding the impact of Initiated Measure 21 on sales finance companies. The Memo acknowledges that the initiated measure does not apply to businesses that provide financing for goods and services they sell, which confirms that sellers of goods, such as motor vehicle dealers, do not need to comply with the new APR cap. However, the Memo does not address whether the new APR cap would prohibit licensees from taking assignment of retail installment sales contracts where the all-in APR exceeds 36% per annum. Please reach out to us if you would like to be apprised of any guidance received from the Division on this issue.

A copy of the Memo may be found [here](#).

Please contact us if you have any questions or concerns regarding Initiated Measure 21 or how to comply with the changes to the South Dakota Money Lender law.

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