



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

October 6, 2017

To: ALL PERSONS ENGAGED IN AN ACTIVITY REGULATED OR LICENSED BY THE PENNSYLVANIA DEPARTMENT OF BANKING AND SECURITIES REGARDLESS OF THE MEANS OF DELIVERY OF SUCH REGULATED FINANCIAL SERVICE.

With constantly evolving technological innovations that impact the financial services sector and how these products and services are offered and delivered to the public, as well as technology focused companies offering financial services via new delivery mechanisms, the Pennsylvania Department of Banking and Securities (Department) reiterates its long-standing position that all persons¹ offering financial services to the consumers of the Commonwealth of Pennsylvania must comply with all legal requirements associated with the offering of those services.

Recent public and industry discourse regarding the delivery of financial services via “Fintech” companies has clouded the regulatory environment concerning the regulation and oversight of the financial services and companies regulated via existing consumer protection and licensure statutes. The notion that a company labels itself as “Fintech” because of the means by which it offers or delivers a financial service does not alter the underlying nature of the transaction or service it is offering.

The Department is reiterating its previous guidance that a regulated financial service activity offered to the consumers of the Commonwealth will be regulated in accordance with the statute governing the offering of that service regardless of the person offering such service or the means by which such service is offered. This position is in accord with all previous guidance offered by the Department. Most recently, the Department issued a Secretary’s letter on September 29, 2015, which reiterated that all persons engaged in the process of creating an instrument for the transmittal of money was engaged in money transmission (as defined in the Act of September 2, 1965 (P.L. 490, No. 249), as amended by Act 129 of 2016, Act of November 3, 2016 (P.L. 1002, No. 129)) and had to comply with the requirements and provisions of the Money Transmission Business Licensing Law regardless of the means or mechanism (or technological platform) in which the transmittal instrument is created.

¹ Person is broadly defined in the various regulatory statutes enforced by the Department and includes individuals, partnerships, limited partnerships, corporations, limited liability companies, business trusts, other associations, trusts, or foundation or natural person.

Other previous guidance that reiterated that the delivery of financial services to the residents and consumers of Pennsylvania had to comply with Pennsylvania law occurred in the “Notice to those Engaging or Considering Engaging in Nonmortgage Consumer Lending to Pennsylvania Residents” published in the Saturday, July 26, 2008 edition of the Pennsylvania Bulletin (38 Pa.B. 3986). In the notice, the Department advised all persons that it was the Department’s position that engaging in nonmortgage consumer lending to Pennsylvania residents by “any means” constituted engaging in such business “in this Commonwealth” as contemplated by the Consumer Discount Company Act (CDCA). Thus, all loans by nondepository entities engaged in nonmortgage lending to Pennsylvania residents in which the charges exceeded 6% simple interest per annum were subject to the CDCA regardless of the mechanism in which the services are delivered to the residents and consumers of the Commonwealth.

The Department through this letter reiterates and reminds all persons of its existing position that all persons that offer financial services that requires licensure must possess the appropriate license and abide by all consumer protections if such services are offered to the residents of Pennsylvania. The Department regulates financial transactions based upon the transaction offered or delivered, not the method of delivery.

Thus, a person that offers a financial service to the residents of Pennsylvania that requires licensure including mortgage brokers, originators and lenders; auto sales finance companies; debt management and debt settlement companies; check cashers; consumer discount companies; credit services and loan brokers; pawnbrokers; money transmitters; or any combination thereof, regardless of whether they designate themselves as a “Fintech” company or any other type of nomenclature, must be licensed in accordance with the appropriate statute and comply with all the provisions of the law under which they are regulated. Compliance is required based upon the activity conducted and not the means in which that activity is conducted.

Questions related to this matter can be addressed to the Department’s Non-Depository Compliance Office at (717) 772-3889 or by submitting an inquiry via the Department’s website at www.dobs.pa.gov.

Sincerely,



Robin L. Wiessmann
Secretary