

Flexible Credit Act Questions and Answers

1. **Question:** May closed-end loans be made under the Flexible Credit Act?

Answer: No. The Flexible Credit Act defines a flex loan as an open-end credit plan. Specifically, Tenn. Code Ann. § 45-12-102(6) defines a “Flex loan plan” as “a written agreement subject to this chapter between a licensee and a customer establishing an open-end credit plan under which the licensee contemplates repeated noncommercial loans for personal, family, or household purposes, that:

- (A) May be unsecured or secured by personal property;
- (B) May be without fixed maturities or limitation as to the length of term; and
- (C) Are subject to prepayment in whole or in part at any time without penalty;”

In a closed end loan transaction, the borrower cannot alter the number and amount of installments, the maturity date, and/or the credit terms which are in contrast to an open-end credit plan or loan; therefore, closed end loans are not included under the Act.

2. **Question:** May an application for licensure under the Flexible Credit Act be accepted prior to January 1, 2015?

Answer: No. Because the Flexible Credit Act becomes effective on January 1, 2015, and not before, applications for licensure under the Act may not be submitted nor accepted prior to the effective date of the Act. The Act requires that applications for licensure be submitted through the Nationwide Mortgage Licensing System and Registry (“NMLS”); however, the NMLS will not be able to accept and process an application prior to January 1, 2015.

It should be noted though that a “Company Record” in NMLS may be created at any point in time; therefore, it may be advantageous to complete this process even prior to January 1, 2015.

3. **Question:** Will the Department accept audited financial statements for fiscal year-end/calendar year-end 2013 when applying for a flexible credit license beginning January 1, 2015?

Answer: No. The Department is required to follow the clear and unambiguous language of the Flexible Credit Act, and the Act clearly requires that each application for a flexible credit license must be accompanied by an audited financial statement for the immediately preceding fiscal year end. Specifically, the Act states that each application for licensure shall be accompanied by:

An audited financial statement, including, but not limited to, a balance sheet, a statement of income or loss, and a statement of changes in financial position, for the *immediately preceding fiscal year end*, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant.” Tenn. Code Ann. § 45-12-106(a)(2) (*emphasis added*).

4. **Question:** As a start-up company, are audited financial statements required?

Answer: Yes. The Department is required to follow the clear and unambiguous meaning of the Flexible Credit Act, and the Act clearly requires that each application for a flexible credit license must be accompanied by an audited financial statement; however, the Act provides that a newly created entity may submit only a balance sheet and a projected income statement. Based on the language in the Act, the Department requires that financial statements be audited. Specifically, the Act states:

“For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant, accompanied by a projected income statement demonstrating that the applicant will have adequate capital after payment of start-up costs;”

Tenn. Code Ann. § 45-12-106(a)(2).

5. **Question:** Is a physical presence location in Tennessee required to be licensed under the Flexible Credit Act?

Answer: No. The Flexible Credit Act indicates that while a physical presence in Tennessee is not required to be licensed under the Act, if a licensee is not physically located in Tennessee, other requirements apply. Tenn. Code Ann. § 45-12-103(b) states in pertinent part “Any nonresident person seeking a license under this chapter shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders issued by the commissioner, or process affecting a licensee under this chapter, may be served.” Therefore, a physical presence in Tennessee is not required; however, in accordance with Tenn. Code Ann. § 45-12-103(a), a separate license shall be required for each location from which the business of making flex loans is conducted.

6. **Question:** May the net worth required for licensure under another act administered by the Department be used for purposes of satisfying the net worth requirements under the Flexible Credit Act?

Answer: No. The purpose of the net worth requirement under the Flexible Credit Act is to ensure that the company or location (“person”), making flex loans has the financial ability to operate the business in accordance with the requirements set forth in the Act. The licensing requirements under each Act administered by the Department, including net worth requirements, are intended solely for the purpose of obtaining a license under each subject Act, and the net worth requirements under one Act may not be combined with, or substituted for, the net worth requirements under another Act.

7. **Question:** Will TDFI accept fingerprint cards prior to the Flexible Credit Act's effective date, January 1 2015?

Answer: No. Because the Flexible Credit Act becomes effective on January 1, 2015, and not before, applications for licensure under the Act, including submission of fingerprints, may not be submitted nor accepted prior to the effective date of the Act. Tenn. Code Ann. § 45-12-106(b)(1) states, in pertinent part, "The commissioner is authorized to require an applicant for a license to consent to a criminal history records check and to provide *with the application* fingerprints in a form acceptable to the commissioner." (*emphasis added*).