



Oregon
Kate Brown, Governor

Department of Consumer and Business Services

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January 12, 2018

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Nancy Nathanson, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Department of Consumer and Business Services (DCBS) requests the following items be addressed in the February 2018 Legislative Session.

DCBS requests ratification of fees to support three programs administered by the Division of Financial Regulation (DFR): fees for mortgage loan servicers, fees for the regulation of first-party debt buyers, and fees for the regulation of pharmacy benefit managers.

Agency Action

SB 98 (2017 Or Laws ch 636) – Mortgage Loan Servicers

The Mortgage Loan Servicers Practices Act, signed into law on Aug. 2, 2017, requires that mortgage servicers obtain a license to service loans, engage in loss mitigation activities, or hold mortgage servicing rights. The act requires entities to apply for and receive a license from DCBS by Jan. 1, 2018. The act also directs the director of DCBS to promulgate rules establishing the requirements for obtaining a license, including establishing fees. The act exempted certain entities from the licensing provisions, including government agencies that originate and service mortgages, such as the Oregon Department of Veterans Affairs, consumer finance companies, depository institutions that originate and service loans on their behalf or on behalf of others, and entities that service fewer than 5,000 loans that it did not originate or does not own.

Because of timing issues between the act's operative date and the national licensing database used to track and issue licenses, DCBS filed a series of temporary administrative rules (OAR 441-890-0005 specifies fees) on Oct. 23, 2017. Even still, DCBS undertook a robust stakeholder review process before issuing the temporary rule. In the course of the rulemaking advisory committee convened to consider rules, DCBS did not receive any objections to the

proposed licensing fee. The DFR administrative charges were originally approved by rule amendment on Oct. 18, 2017, with an effective date of Oct. 23, 2017. The feedback from the administrative rules advisory committee has been supportive.

The proposed fees are as follows:

- Mortgage servicer application fee: \$960
- Mortgage servicer branch application fee: \$330
- Mortgage servicer renewal fee: \$480
- Mortgage servicer branch renewal fee: \$165
- Mortgage servicer hourly examination fee: \$75

Fees collected will be 100 percent other fund revenue derived from application, renewal, and examination costs. The revenue supports one permanent full-time financial examiner to complete this body of work.

House Bill 2356 (2017 Or Laws ch 625) – Regulation of Debt Buyers

Oregon regulates the practice of third-party debt collection in two ways: Substantive regulation occurs through the Unlawful Trade Practices Act (UTPA), enforced by the Department of Justice, and licensing occurs via business registration through DCBS. Absent from that bifurcated regulatory scheme is treatment of first-party debt buyers, who typically purchase portfolios of uncollectible debt to collect on their own behalf. Because debt buyers own the debt at the time they attempt to collect, until the enactment of HB 2356, they were not subject to the UTPA unlawful collection practices provisions or registration as a collection agency.

HB 2356 established a statutory definition of a “debt buyer” and established a regulatory structure housed within DCBS. The legislation established minimum requirements for the legal pleadings related to collection of bought debt, including documenting a debt’s chain of ownership, and required debt buyers to establish procedures for receiving and resolving consumer complaints, complying with state and federal laws related to their collection activities, preventing the sale of debt to unlicensed debt buyers, and protecting the accuracy and privacy of consumer information. HB 2356 granted DCBS authority to set licensing fees by administrative rule.

The proposed fees are as follows:

- Debt buyer application fee: \$450
- Debt buyer renewal fee: \$450
- Debt buyer hourly examination fee: \$75

In the course of the rulemaking in collaboration with our advisory committee, DCBS explored establishing a tiered approach to fees, in order to lessen fiscal impacts on small businesses. However, in the end, a single fee was established at a rate that did not raise objections from associations that represented small businesses on the committee. Fees were set at an amount to sufficiently fund the administration of the program.

Fees collected will be 100 percent other fund revenue derived from application, renewal, and examination costs. The revenue supports one permanent full-time financial examiner to complete this body of work.

DCBS filed temporary administrative rules (OAR 441-820-0070 and 441-820-0140 specify fees) on Oct. 27, 2017. The DFR administrative charges were originally approved by rule amendment on Oct. 27, 2017, with an effective date of Oct. 27, 2017. Stakeholders did not raise objections to the proposed fees.

House Bill 2388 (2017 Or Laws ch 73) – Pharmacy Benefit Managers

Pharmacy benefit managers (PBMs) are third-party administrators of prescription drug programs for health insurers or self-insured employers. Existing law requires PBMs to register with DCBS and annually renew their registration in order to conduct business in the state, as well as giving DCBS authority to regulate specific practices within the industry.

In the 2016 short session, the Legislative Assembly attached a budget note to Senate Bill 5701, directing DCBS to study what rules would be necessary to enforce the PBM program. The budget note also directed DCBS to determine what legislative changes would be necessary to carry out the results of the report. On the basis of the report, the Legislative Assembly enacted HB 2388 (2017 Or Laws ch 73). The bill extends DCBS enforcement authority on PBMs through suspension, denial, or revoking licensure. In addition, it allows DCBS to establish a statutory registration fee structure that reflects actual program costs and prescribe by rule a procedure by which a pharmacy or an entity acting on behalf of the pharmacy deals with complaints. Additionally, the bill removed the \$50 cap on registration fees for PBMs; instead, DCBS was to calculate the cost of carrying out the PBM program.

DCBS filed proposed administrative rules (836-200-0411 specifies fees) on Oct. 23, 2017. DFR permanently adopted fees Dec. 28, 2017, with an effective date of Jan. 1, 2018. Fees were set in an amount to sufficiently fund the administration of the program and stakeholders did not raise objections to the proposed fees.

The proposed fees are as follows:

- Pharmacy benefit manager application fee: \$1,100
- Pharmacy benefit manager renewal fee: \$1,100

Fees collected will be 100 percent other fund revenue derived from application and renewal costs. The revenue will allow DCBS the authority to take enforcement action on PBMs through suspension, denial, or revoking licensure.

Action Requested

DCBS respectfully requests that the Interim Joint Ways and Means Committee approve the fee ratifications of the Division of Financial Regulation listed below:

SB 98 – Mortgage Loan Servicers specified in OAR 441-890-0030.

HB 2356 – Regulation of Debt Buyers related to Oregon administrative rules 441-820-0070 and 441-820-0140.

HB 2388 – Pharmacy Benefit Managers related to Oregon administrative rules 836-200-0411.

Legislation Affected

Chapter 636, 2017 Oregon Laws (SB 98)

Chapter 625, 2017 Oregon Laws (HB 2356)

Chapter 73, 2017 Oregon Laws (HB 2388)

Sincerely,

A handwritten signature in black ink that reads "C. Smith". The signature is written in a cursive, slightly slanted style.

Cameron Smith, Acting Director

cc:

Matt Stayner, Legislative Fiscal Office

Patrick Heather, DAS, Chief Financial Office

Carolina Marquette, DCBS CFO