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DATE: October 3, 2018

TO: Richard Blackwell
Policy Manager
Division of Financial Regulation

FROM: Joanna L. Tucker Davis, Senior Assistant Attorney General
Business Activities Section

SUBJECT: Payday Lending Statute

You have asked for advice as to the interpretation of ORS 725A.064(7) and whether it prohibits "stacking" of payday loans such that a payday lender could not make multiple loans to a single consumer. The short answer is that it does not appear to prohibit multiple loans to a single consumer, so long as the loans are made within the mandated timeframes.

ORS 725A.064(7) provides that a "payday loan lender may not * * * (7) Make a new payday loan to a consumer within seven days of the date on which a previous payday loan expires." You have asked whether this language prohibits "stacking" of payday loans such that a payday loan lender could not make multiple loans to a single consumer. Your question is one of statutory construction, and as such we apply the template set forth by the Oregon Supreme Court in *PGE v. Bureau of Labor & Industries*, 317 Or 606-12, 859 P2d 1143 (1993), modified by the Oregon Supreme Court in *State v. Gaines*, 346 Or. 160, 171-172 (2009). A three-step method is used: 1. Examine the text and context of the statute. 2: Examine legislative history; 3: If after the first two steps the legislature's intent is ambiguous, general maxims of statutory construction are used to clarify the intent. *Id.*

In terms of text, nothing in the specific language of ORS 725A.064 or elsewhere in chapter 725A prohibits multiple loans to the same consumer – it simply prohibits new loans within seven days of the date on which a previous loan expires. In terms of context, nothing in ORS 725A.064 or related statutes prohibit a payday loan lender from offering more than one loan to a consumer.[1] We follow the directive of the legislature itself to "ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Here, to interpret this language as prohibiting

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[1] ORS 725A.064, in its entirety, provides:

> **725A.064 Prohibited conduct for payday loan lender.** A payday loan lender may not:
> (1) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, excluding a one-time origination fee for a new loan.
> (2) Charge during the term of a new payday loan, including all renewals of the loan, more than one origination fee of $10 per $100 of the loan amount or $30, whichever is less.
> (3) Make or renew a payday loan for a term of less than 31 days.
> (4) Charge a consumer a fee or interest other than a fee or interest described in subsection (1) or (2) of this section or in ORS 725A.060 (1)(c) or (d).
> (5) Include in a payday loan contract:
> (a) A hold-harmless clause;
> (b) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;
> (c) A provision in which the consumer agrees not to assert against the lender or a holder in due course a claim or defense arising out of the contract; or
> (d) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property the consumer holds, owns or is due, unless the waiver or limitation applies only to property that is subject to a security interest executed in connection with the loan.
> (6) Renew an existing payday loan more than two times.
> (7) Make a new payday loan to a consumer within seven days of the date on which a previous payday loan expires.

loans other than those made within seven days of the expiration date of a previous payday loan would be to insert language that has been omitted in this statute.[2]

As for legislative history, the language in ORS 725A.064(7) was part of a bill, SB 1105, that was passed in the 2006 Special Session. The prohibition on making a new payday loan to a consumer within seven days of the day that a previous payday loan expired was part of the bill as introduced, replacing language that prohibited the making of a new loan on the same day as previous loan expired, if the previous loan had been renewed three times. There were no changes in this particular provision from its introduction to its enactment. A review of the legislative history of this bill revealed no information that is helpful to this discussion.

In sum, a review of the text and context appear to show that the legislature did not intend to prohibit multiple loans by payday loan lenders with the language in ORS 725A.064(7) , but only to prohibit loans within seven days on the date on which a previous loan expires.[3]

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[2] Please note that ORS 725A.064 also has additional restrictions on payday loans, including caps on interest, fees, length of loans, clauses in contracts and amount of renewals.

[3] This interpretation is consistent with the position taken by the then Department of Financial and Corporate Securities at the time the law was enacted. In a June 20, 2007 email to an owner of a payday loan lender business, Patricia Locnikar, Policy Analyst, stated:

> Yes, a borrower can get an additional loan, on any day other than the 6 days before the current due date of an existing loan, the due date of the existing loan, or the 6 days after the due date of the existing loan. [The bill language is "within 7 days of the day that a previous payday loan expires."] The additional loan will be its own separate loan, with an origination fee, maximum interest of 36% and a 31 day term. In your example of a borrower with a $300 loan due August 5, the additional loan of $200 can be made on any day other than July 30 through August 11. If the additional loan is made July 20, due August 20, as per your example, new loans by any lender would then also be prohibited during the period of August 14 through August 26.