

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Debbie Morgan
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: November 21, 2019

RE: Filed Permanent Regulations: Department of Commerce Community and Economic Development
Department of Commerce, Community, and Economic Development Regulation re:
Division of Banking and Securities: Deferred Deposit Advance (3 AAC 11.010 - .990)

Attorney General File:	2019200601
Regulation Filed:	11/21/2019
Effective Date:	12/21/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Tracy Reno

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF COMMERCE, COMMUNITY
AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

Appendix J


The attached 15 pages of regulations, dealing with deferred deposit advances 3 AAC 11 are adopted and certified to be a correct copy of the regulation changes that the Division of Banking and Securities adopts under the authority of AS 06.50.600 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Division of Banking and Securities paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: November 6, 2019

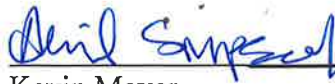


Patrice Walsh, Director
Division of Banking and Securities

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on November 21st, 2019, at 10:24 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for 

Kevin Meyer
Lieutenant Governor

Effective: December 21, 2019.

Register: 232, January 2020.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



Kevin Meyer
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**KEVIN MEYER
LIEUTENANT GOVERNOR**

The authority citation for 3 AAC 01.210 is changed to read:

Authority: AS 06.05.005 AS 06.15.010 [AS 06.30.030]
 [AS 06.05.015(11)] AS 06.20.340 **AS 06.50.550**
 AS 06.05.075 [AS 06.30.025]

The authority citation for 3 AAC 01.220 is changed to read:

Authority: AS 06.05.005 AS 06.15.010 [AS 06.30.030]
 [AS 06.05.015(11)] AS 06.20.340 **AS 06.50.550**
 AS 06.05.075 [AS 06.30.025]

3 AAC 11.010 is repealed and readopted to read:

3 AAC 11.010. Deferred deposit advances applications. (a) To apply for a deferred deposit license under AS 06.50.010, an applicant must submit a separate application to the department through the registry for each physical location, Internet website, and software application through which the applicant conducts business. In addition to the information required under AS 06.50.030, the application must contain

- (1) a complete Form MU1;
- (2) a complete Form MU2 for each control person and office manager;
- (3) the applicant’s current business license issued under AS 43.70;
- (4) for an applicant that is a corporation, a limited liability company, a

partnership, or another entity,

- (A) a brief description of the structure or organization of the applicant,

including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(B) documentation of the business organization and authorization required under (b) through (e) of this section; and

(C) a copy of the current filing, with the department division overseeing corporations, that designates the registered agent in the state;

(5) a copy of the business name registration form for the legal name of the applicant, submitted to and stamped "received" by the department division overseeing corporations;

(6) if the applicant is applying for the use of one or more other trade names on the Form MU1, a copy of the business name registration form for each other trade name, submitted to and stamped "received" by the department division overseeing corporations;

(7) satisfactory proof that the person holds at least \$25,000 in cash assets for each location engaging in deferred deposit activity;

(8) proposed and current instruments that are related to advance transactions for the purpose of investigating compliance with AS 06.50, other state law, and federal law requirements, including

(A) the advance agreement;

(B) the disclosure statements required under AS 06.50 and under Federal law;

(C) the maximum advance terms and fees;

(D) the required fee notice and descriptions of where the notice will be posted in each location; and

(E) other documents used in the regular course of business;

(9) a fully executed bond as required under AS 06.50.040, to be submitted electronically through the registry;

(10) a written summary of the applicant and each control person's personal history, on a form prescribed by the registry, to demonstrate the qualifications required under AS 06.50.020(a)(2) and authorization for the registry and the department to obtain information related to administrative, civil, or criminal findings by a governmental jurisdiction; and

(11) other information the department reasonably requires with respect to the applicant.

(b) If the applicant is a corporation, in addition to the requirements in (a) of this section, the applicant must submit through the registry a certified copy of

(1) complete and current articles of incorporation and bylaws, and a certificate of good standing issued by the domestic state; and

(2) if the corporation is not organized in this state, the corporation's certificate of authority to transact business in this state.

(c) If the applicant is a limited liability company, in addition to the requirements in (a) of this section, the applicant must submit through the registry a certified copy of

(1) complete and current articles of organization and operating agreement, and a certificate of good standing issued by the domestic state; and

(2) the limited liability company's certificate of registration in this state, required before transacting business in this state, if the limited liability company is not organized in this state.

(d) If the applicant is a limited partnership, in addition to the requirements in (a) of this section, the applicant must submit through the registry a certified copy of

(1) the complete and current certificate of limited partnership and the partnership agreement, and a certificate of good standing issued by the domestic state; and

(2) the limited partnership's certificate of registration in this state, required before transacting business in this state, if the limited partnership is not organized in this state.

(e) If the applicant is a limited liability partnership, in addition to the requirements in (a) of this section, the applicant must submit through the registry a certified copy of

(1) the complete and current certificate of qualification and the partnership agreement, and a certificate of good standing issued by the domestic state; and

(2) the limited liability partnership's statement of foreign qualification required before transacting business in this state, if the limited liability partnership is not organized in this state,

(f) If the answer to any of the disclosure questions on the Form MU1 or Form MU2 is "yes," the applicant must provide complete details in writing of each event or proceeding, including, as applicable, the name and location of the court, the docket or case number, the status and summary of the event or proceeding, and a copy of an applicable charge, order, or consent agreement submitted through the registry.

(g) To obtain and maintain a license under AS 06.50 a person must comply with all requirements of the registry, including the payment of fees assessed by the registry.

(h) An applicant must pay in full reasonable investigation expenses incurred by the department when processing and reviewing an initial or renewal license application to do business under AS 06.50 before the department will approve a license.

(i) The first installment of the fee required under 3 AAC 11.020 must be paid at the time of application through the registry. (Eff. 1/1/2005, Register 172; am 12/21/2019, Register 232)

Authority:	AS 06.01.010	AS 06.50.080	AS 06.50.500
	AS 06.50.020	AS 06.50.330	AS 06.50.510
	AS 06.50.030	AS 06.50.400	AS 06.50.600
	AS 06.50.040	AS 06.50.410	AS 06.50.610
	AS 06.50.050	AS 06.50.460	

3 AAC 11.020 is repealed and readopted to read:

3 AAC 11.020. Fee for initial or renewed license. (a) The nonrefundable fee for an initial or biennial renewed license to do business under AS 06.50 is \$3,000, which must be paid to the department through the registry in two annual installments of \$1,500.

(b) Nothing in this section relieves an applicant from the obligation to pay processing or other fees that the registry sets for services that the registry provides. (Eff. 1/1/2005, Register 172; am 12/21/2019, Register 232)

Authority:	AS 06.50.030	AS 06.50.600	AS 44.33.020
	AS 06.50.080		

3 AAC 11.030 is repealed:

3 AAC 11.030. Duration of license. Repealed. (Eff. 1/1/2005, Register 172; repealed 12/21/2019, Register 232)

3 AAC 11.040 is amended to read:

3 AAC 11.040. License [TIME FOR] renewal application. A licensee seeking to renew a deferred deposit advance license must make the request to the department through the registry. A licensee seeking to renew a license must submit the renewal application, bond, and **first installment of the fee required under 3 AAC 11.020** to the department so that the department receives the renewal application, bond, and **annual fee installment** no later than November 1 of the year in which the license is due to expire. (Eff. 1/1/2005, Register 172; am 12/21/2019, Register 232)

Authority: AS 06.50.020 AS 06.50.080 AS 06.50.600
AS 06.50.030

3 AAC 11.050 is amended to read:

3 AAC 11.050. Reports to the department. In addition to the information required under AS 06.50.310(b)(1) – (10), **reports submitted** [AN ANNUAL REPORT] to the department, **through the registry,** must include the

- (1) total number of advance recipients offered a payment plan under AS 06.50.550(a)(2);
- (2) average length of the payment plans entered into under AS 06.50.550(a)(2);
- (3) total number of advance recipients whose payment obligations were assigned to third parties for collection; [AND]
- (4) total number of advance recipients against whom the licensee initiated a court action under AS 06.50.550(b);
- (5) completed reports of financial condition of the licensee on the form prescribed by the department; and**

(6) any other information the department reasonably requires with respect to the licensee under AS 06.50.550(b). (Eff. 1/1/2005, Register 172; am 12/21/2019, Register 232)

Authority: AS 06.50.300 AS 06.50.310 AS 06.50.600

3 AAC 11.060 is amended to read:

3 AAC 11.060. Posted notice of license. In addition to posting the information required under [IN] AS 06.50.500, the licensee must post notice that license information may be found through the registry’s consumer access Internet website [ITS CURRENT LICENSE, OR A COPY OF THE SAME SIZE AND LEGIBILITY,] in each business location, including each licensed Internet website and software application, so that the notice [LICENSE OR COPY] is clear and conspicuous to the consumer [AN ADVANCE RECIPIENT OR A POTENTIAL ADVANCE RECIPIENT]. (Eff. 1/1/2005, Register 172; am 12/21/2019, Register 232)

Authority: AS 06.50.500 AS 06.50.600

3 AAC 11 is amended by adding new sections to read:

3 AAC 11.080. Right to challenge information entered into the registry by the department. (a) A person required to be licensed under this chapter may challenge information pertaining to the person that is entered into the registry by the department. The challenge must be limited to the factual accuracy of the information pertaining to the person's record as entered into the registry by the department. The requested relief must be limited to correction of the information entered into the registry by the department pertaining to the person's record. The

challenge must be in writing, must set out the specific information being challenged, and must include supporting evidence. A person may not submit a challenge under this section for the purpose of protesting disciplinary action taken against the person by the department or to appeal the underlying reasons for the disciplinary action.

(b) The department will review all information submitted by a person to support a challenge and will determine the merits of the challenge. The department will issue a written determination and send a copy of the determination to the last known address of the person making the challenge by certified mail, return receipt requested. If the department determines that the information entered into the registry by the department is factually incorrect, the department will take prompt steps to correct the information submitted. The department will not grant relief other than correction of the information entered into the registry by the department.

(c) The department's determination is the final decision on a challenge under this section, unless the person making the challenge files a written request for a hearing under AS 44.64.030 not later than 30 days after receipt of the department's determination. (Eff. 12/21/2019,

Register 232)

Authority:	AS 06.50.010	AS 06.50.030	AS 44.33.020
	AS 06.50.020	AS 06.50.600	

3 AAC 11.090. Surety bond required. (a) An applicant for a deferred deposit advance license under AS 06.50 must file with the department a bond as required under AS 06.50.040 with at least one surety. The bond must be executed by the applicant and by a surety company authorized to conduct a surety business in the state. The bond must be submitted as required under 3 AAC 11.010(a)(9).

(b) The bond must run to the benefit of the department, the Department of Law, or another person with a claim for relief because of a violation of AS 06.50 or this chapter by a licensee.

(c) The bond must provide that

(1) the surety shall pay the amount ordered by a court or the department to a designated beneficiary listed in (b) of this section if the licensee is found in violation of AS 06.50 or this chapter, up to the full amount of the bond, not later than 14 days after receipt of the final order;

(2) the surety shall make a pro rata payment to each claimant if the amount claimed under (1) of this subsection exceeds the amount of the bond;

(3) the surety shall provide written notice of an action against a bond or a final order issued against a bond by regular or electronic mail not later than 10 days after receipt;

(4) immediately upon making a payment under (1) or (2) of this subsection, the surety shall provide written notice of the payment to the department by regular or electronic mail; and

(5) the surety shall provide the department written notice by regular or electronic mail that a bond will be cancelled not later than 10 days before cancellation.

(d) If a licensee receives notice of an action that could result in recovery against a bond, the licensee must provide the department with written notice by regular or electronic mail not later than 10 days after receipt .

(e) A licensee must ensure that the full amount of a required bond is in effect continuously while the licensee is licensed and for a three-year period after the department revokes or otherwise terminates a license. If a surety makes a payment under a bond, the licensee

must immediately file a new bond with the department. Failure to maintain a surety bond at the level required in this section is grounds for immediate suspension of the deferred deposit advance license under AS 06.50.300.

(f) If the department receives notice of a final order of a court under (c) of this section or submits a final order of the department to the surety under (c) of this section, the department may require the deferred deposit advance licensee to file a new bond. If a new bond is required, the licensee must file a new bond in the required amount not later than 30 days after receiving notice from the department.

(f) Upon receipt of a notice of cancellation from a surety, the department will notify the deferred deposit advance licensee listed as the principal on the bond through the registry. The notice will inform the licensee of the effective date of the cancellation of the bond, that the deferred deposit advance license will be suspended under AS 06.50.300 on the effective date of cancellation, and that the licensee may retain the license if the licensee furnishes the department with an equivalent bond before the effective date of the cancellation.

(g) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. (Eff. 12/21/2019, Register 232)

Authority: AS 06.50.010 AS 06.50.300 AS 06.50.600
AS 06.50.040 AS 06.50.310

3 AAC 11.100. Department notifications. The department may use the registry as an agent for posting notice to a licensee or applicant regarding a deficiency, an application or license status change, or a request for additional information. The registry serves as the primary license record. (Eff. 12/21/2019, Register 232)

Authority: AS 06.50.010 AS 06.50.300 AS 06.50.600
AS 06.50.020 AS 06.50.310

3 AAC 11.110. Advance notice of change. (a) A licensee shall file a written report through an advance change notice in the registry at least 15 days prior to the occurrence of:

- (1) a material change to the license ownership;
- (2) a change in control person or office manager listed in Form MU2 of the licensee's application;
- (3) a change of the licensee's business name as issued on the licensee's business license under AS 43.70 or on the business name registration form, including other trade names;—
- (4) a change in the business location listed on the licensee's application.

(b) If a licensee files an advance change notice in the registry, the department may require the licensee to submit information necessary to determine if the licensee must submit a new application. If the department determines that the change requires a new application, a licensee must complete a new application under 3 AAC 11.010. If the department grants a new license, a new surety bond would be required under 3 AAC 11.090 and an annual fee installment would be required under 3 AAC 11.020.

(c) The licensee must submit a \$300 payment for the department's investigative expenses when the licensee submits an advance change notice to the registry. The licensee must pay additional reasonable investigation expenses incurred by the department in the course of its investigation. (Eff. 12/21/2019, Register 232)

Authority: AS 06.50.200 AS 06.50.220 AS 06.50.600
AS 06.50.210 AS 06.50.310

3 AAC 11.120 Prohibited practices in debt collection. In addition to other provisions in 3 AAC 01 that apply to this title, the regulations regarding debt collection activities under 3 AAC 01.210 – 3 AAC 01.220 apply to the provisions of this chapter. (Eff. 12/21/2019, Register 232)

Authority: AS 06.50.550 AS 06.50.600 AS 45.50.471

3 AAC 11.300 Late filing civil penalty. A licensee must pay a late filing civil penalty of \$25 per day for each day that a report required under AS 06.50.310 and 3 AAC 11.050 is late. (Eff. 12/21/2019, Register 232)

Authority: AS 06.01.035

3 AAC 11.400 Abandoned applications. (a) An application is considered abandoned if the department does not receive any response from the applicant or licensee for 60 days after the department assigns a notice of deficiency to the record of the applicant or licensee in the registry.

(b) An abandoned application is denied without prejudice and all fees are forfeited. (Eff. 12/21/2019, Register 232)

Authority: AS 06.50.030 AS 06.50.600

3 AAC 11.500 Termination of operations. A licensee terminating deferred deposit advance operations must

(1) provide electronic notice to the department through the registry of a decision to cease operations or the cessation of operations not later than seven days after that decision or cessation; and

(2) submit a completed request for surrender; and

(3) submit reports as required under 3 AAC 11.050 through the date of termination of operations.

Authority: AS 06.50.210 AS 06.50.600 AS 44.33.020

3 AAC 11.600. Authority to conduct examinations and investigations. When the department conducts an investigation under AS 06.50.330,

(1) the licensee shall provide the department unrestricted access to the licensee's place of business, accounts, and records, including electronic records and records stored outside of the licensee's place of business to examine and make copies as necessary;

(2) the department may retain accountants, professionals, or specialists as examiners, auditors, or investigators, to conduct or assist in conducting an investigation or examination; and

(3) the applicant must pay reasonable examination and investigation fees in accordance with AS 06.01.010 and any expenses required under 3 AAC 11 for each representative of the department who is reasonably necessary to conduct the investigation or examination. (Eff. 12/21/2019, Register 232)

Authority: AS 06.01.010 AS 06.50.600

3 AAC 11.700. Reimbursement of expenses. When the department conducts an investigation or examination under AS 06.50.330, the applicant shall pay the fees and actual expenses of required travel, including transportation, lodging, and per diem expense not to exceed the per diem allowance for employees of the state under AS 39.20.110. (Eff. 12/21/2019, Register 232)

Authority: AS 06.01.010 AS 06.50.600

3 AAC 11.990. Definitions. In this chapter, unless the context requires otherwise,

(1) "control person" means a key individual described in the deferred deposit advance license application form of the registry NMLS who directly or indirectly exercises control over the applicant. A member, partner, director, senior officer, or owner of 10 percent or more of the equity of the applicant for a or deferred deposit advance licensee;

(2) "department" means the Department of Commerce, Community, and Economic Development;

(3) "Form MU1" means the uniform company application developed and used by the registry;

(4) "Form MU2" means the uniform individual statement and consent form developed and used by the registry;

(5) "office manager" means an individual who is in charge of and responsible for the business operations of an office of a deferred deposit advance licensee;

(6) "other trade name" means a name other than the legal name of a business entity;

(7) “registry” means the Nationwide Multistate Licensing System and Registry (NMLS), a licensing system owned and operated by the State Regulatory Registry, LLC, for the licensing and registration of persons in the mortgage and other financial services industries;

(7) “report of condition” means a quarterly report as required by the registry. (Eff.

12 / 21 / 2019 , Register 232)

Authority: AS 06.50.600