



**PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS**

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Kerry B. Harvey
Secretary

Charles A. Vice
Commissioner

MEMORANDUM

TO: Deferred Deposit Licensees

FROM: Charles A. Vice, Commissioner

DATE: Feb. 19, 2021

RE: Accounts Closed Using Electronic Payments That Are Treated as Cash Payments

Effective Feb. 19, 2021, the Department of Financial Institutions issues this guidance regarding the definition of “closed” loans relating to deferred deposit transactions. The Department’s position with regard to accepting certain electronic payments to close a deferred deposit transaction does not alter any provision of KRS Chapter 286.9 or applicable regulations. Licensees must comply with all statutory and regulatory requirements, including the following:

- **Origination.** To originate a deferred deposit transaction, the customer must present a “payment instrument” (i.e. a check, draft, money order or traveler’s check). An electronic payment method cannot be substituted for a hardcopy payment instrument to originate a deferred deposit transaction.
- **Credit payments prohibited.** While certain electronic payment transactions may be considered “cash” for purposes of redemption under KRS 286.9-010(6), the licensee is prohibited from accepting any form of credit, such as a credit card or any other form of credit, to satisfy a deferred deposit transaction.
- **Fee.** The licensee shall not charge any additional fees to the customer for processing an electronic payment.
- **Documentation.** The licensee must retain detailed documentation of any electronic payment transactions that have been accepted as cash for examiner review.

KRS 286.9-010(7) states, in part, that “closed” or “close” includes instances when the customer makes a payment to the licensee of the face amount of the payment instrument in *cash*. Effective Feb. 19, 2021, the Department will consider certain electronic payments as “cash” for purposes of closing a transaction if the licensee takes the following actions:

- Treats the electronic payment as cash;
- Marks the original payment instrument as “paid” and returns it to the customer;
- Considers the deferred deposit transaction obligation to be closed as defined in KRS 286.9-010(7);
- Immediately closes the transaction in the Kentucky Deferred Deposit Database; and
- Does not reopen the transaction for any reason, other than a clerical error made when entering information into the Kentucky Deferred Deposit Database while closing the account. The licensee must provide a detailed explanation of the clerical error to the Department, which will be reviewed at the next examination.
 - A clerical error includes, but is not necessarily limited to, closing the wrong transaction.
 - A clerical error does not include failure of the electronic payment transaction to clear.

This position is premised solely on the parameters set forth in this communication and current interpretations of applicable statutes, and it is limited to the specific question of whether a debit card transaction qualifies as cash for the purpose of redemption of a payment instrument under KRS 286.9-010(6). The position of the Department of Financial Institutions is subject to change upon any alteration of the facts or subsequent development in the law.