GUIDANCE

Please note that subsequent legal cases and legislation can affect the validity of past guidance documents. Guidance documents are valid at the time they are published, based on the law and facts at that given time. In 2024, the following guidance documents remain valid.

Current Guidance – General

CML 2019-1...............Advertising

CML 2019-2...............Use of Fictitious Names

CML 2020-1...............Historical Usury Rates for First Mortgage Loans

CML 2022-1...............Kansas Uniform Consumer Credit Code (UCCC) Working Remotely

CML 2024-01.............Manufactured Home Loans Guidance

Current Guidance – Money Transmitter

MT 2014-1 ....Virtual Currency

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Date: August 23, 2019; **Updated:** March 5, 2025

CML Guidance 2019-1
Advertising

Information Required in Advertising

KMBA. Licensees and registrants soliciting or advertising mortgage business directed at Kansas residents must include the name and license number/unique identifier of the licensee on record with the OSBC per K.S.A. 9-2208 (c) and (e).

CSO. Similarly, credit service organizations must include the name and license number used on record with the OSBC for solicitations and advertisements per K.S.A. 50-1120 (d) and (f).

U3C. A licensee subject to the Uniform Consumer Credit Code may only conduct business under the name given in the license per K.S.A. 16a-2-302(4).

EWA. Kansas law does not prescribe requirements for earned wage access names.

KMTA. Kansas law does not prescribe requirements for money transmitter names.

Limits on Name Under the Banking Code. A provision of the Kansas banking code, K.S.A. 9-2011, states:

> It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that the individual, firm or corporation is engaged in the **banking business or trust business** without first having obtained authority from the commissioner. Any such individual or member of any such firm or officer of any such corporation violating this section, upon conviction shall be guilty of a class A, nonperson misdemeanor.

Use of the words “trust company” or “bank” (or any derivative such as banc, banque) may constitute advertising to the general public that such person is engaged in the banking business. Such advertising makes it appear that the person has obtained authority from the OSBC and it is in fact a bank/trust company subject to banking law and supervision. Such an assertion is deceptive and confusing to the public.[1]

The OSBC must review corporation names and doing business as names on a case-by-case

[1] Exceptions are businesses that are clearly not financial institutions such as “Blood Bank.”

basis to determine whether the particular use of the words in the name could be construed to mean the entity is lawfully engaged in the business of banking. Factors to be considered in deciding whether the use of the words “bank,” “trust,” or “trust company” are appropriate: 1. type of service provided, 2. level of sophistication of the parties interacted with, and 3. the amount of contact the business has with the public. When a corporation offers financial services, the opportunity for confusion is substantial and the OSBC will likely not permit these words in the corporation or doing business as name.

Retention of Advertising Records

KMBA. Licensees shall maintain a record of all solicitations or advertisements for a period of 36 months in accordance with K.S.A. 9-2208(c). Such advertising does not include business cards or promotional items.

CSO. Each licensee must maintain a record of all solicitations or advertisements for a period of 36 months, not including business cards or promotional items per K.S.A. 50-1120(d).

U3C. K.S.A. 16a-2-304 outlines the requirements for record retention under the U3C. Generally, records must be maintained in order for the administrator to determine compliance with the law. Under K.A.R. 75-6-38—a regulation implementing the U3C’s record retention—each licensee or consumer credit filer shall retain copies of advertisements or solicitations whether printed or internet/electronic.

EWA. Each registrant shall maintain and preserve complete and adequate business records for a period of three years, per K.S.A. 9-2409.

KMTA. The commissioner has discretion to require any person under the Act to maintain such documents and records as necessary to verify compliance with law. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who fails to keep and maintain sufficient records to permit an audit or to show compliance with the law per K.S.A. 9-559(b).

False and Misleading Advertisement

KMBA. An individual engaging solely in loan processing or underwriting cannot represent to the public that such individual can or will perform any activities of a loan originator. This prohibition includes advertising, communicating, or using business cards, stationery, brochures, signs, rate lists or other promotional items per K.S.A.9-2201(ll). No KMBA solicitation or advertisement can contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas, per K.S.A. 9-2208(d). No person who is required to be licensed or registered under the KMBA can solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting per K.S.A. 9-2212(n).

CSO. No CSO solicitation or advertisement shall contain false, misleading or deceptive

information per K.S.A. 50-1120(e).

U3C. Under K.S.A.16a-3-208,

no person shall make, directly or indirectly, a false, misleading or deceptive advertisement regarding loans or the availability of loans.

EWA. Under K.S.A. 9-2410, the commissioner may deny, suspend, revoke or refuse to renew a registration if the registrant has engaged in any deceptive business practice.

KMTA. The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if: it engages in fraud, intentional misrepresentation or gross negligence per K.S.A. 9-590(a)(3).

Regulation Z

In addition to state law restrictions on advertising solicitations, Regulation Z, 12 C.F.R. 1026, requires that certain disclosures be provided in advertisements. Licensees should refer to Regulation Z for specific advertising requirements applicable to the loan products they offer. Features common to many of the advertisements we have reviewed include statements regarding terms of repayment or specifying the amount of a payment. Such statements trigger additional disclosures that must be made pursuant to Regulation Z. The OSBC expects all licensees to familiarize themselves with Regulation Z's advertising provisions and to seek legal counsel when necessary to ensure compliance. Licensees should not rely on marketing companies offering form solicitations for compliance with either state or federal law.

Internet Communications and Social Media

Any website or internet post, as well as social media, e.g., Facebook, X, Instagram, and any form of electronic promotion is considered advertising subject to this Regulatory Mailing. Internet advertisements that lead directly to websites containing required disclosures shall be deemed compliant.

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Laura Kelly, Governor

CML Guidance 2019-2
Use of Fictitious Names
October 24, 2019

The purpose of this memorandum is to clarify the opinion of this office regarding a licensee's use of fictitious names, also referred to as trade names, or dba (doing business as) names in loan contracts and other documents. Our office routinely receives questions from regulated entities as to the proper use of these names.

While a document that references only the fictitious name of a licensee may be valid and enforceable by either party to the transaction, the use of an alternative name could lead to confusion for consumers. It is recommended that licensees use their full legal name in all documents prepared or used by a licensee when entering into transactions with Kansas consumers. It is acceptable to add a fictitious name that is properly noted on the entity’s license in legal documents when the legal name is also used. A licensee may use just the fictitious name that is listed on the license without the official legal name so long as the use is not intended to cause confusion or deceit to the public.

Assume the legal name of a licensee is “XYZ Financial Group” but with a dba of “XYZ Mortgage.” The company has properly noted both names on the license. The best practice is for all loan documents to include the official legal name “XYZ Financial Group.” The company may also include the company's dba “XYZ Mortgage” with the legal name, or alone if the dba does not cause confusion or deception to the public.

Should you have any questions or concerns please contact the Office of the State Bank Commissioner, Consumer and Mortgage Lending Division, at 785-296-2266.

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CML Guidance 2020-1
Historical Usury Rates for First Mortgage Loans
March 18, 2020

Usury Rate for First Mortgage Loans Prior to July 1, 2013

Prior to July 1, 2013, Kansas law defined a floating usury cap in K.S.A. 16-207(b) for interest rates on first mortgage loans.[1] This subsection also required the Secretary of State to periodically publish notice of this maximum interest rate. Effective July 1, 2013, that subsection was repealed. The floating cap was removed, and the secretary of state was no longer required to publish notice of the maximum interest rate. On and after July 1, 2013, all first mortgage loans are subject to K.S.A. 16-207(a), which continues to provide a general usury cap of 15% per annum, unless otherwise specifically authorized by other provisions of law.

This guidance document contains the historical text of 16-207(b) prior to July 1, 2013, and the relevant historical rates as published by the Secretary of State from January 1993 up to June 2013. This historical data remains relevant for first mortgage loans entered into prior to July 1, 2013.

Historical Text of K.S.A. 16-207(b)

Prior to July 1, 2013, K.S.A. 16-207(b) stated:

> The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1 ½ percentage points above the yield of thirty-year fixed rate conventional home

[1] In this guidance document, “first mortgage loans” refers to consumer, first-lien, fixed-rate, real-estate mortgage loans and contracts for deed to real estate.

mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

Chart of Historical Usury Rates for First Mortgage Loans

See the following page for a chart of maximum interest rates for first mortgage loans as published by the Secretary of State from January 1993 through June 2013.

Historical Kansas Usury Rates for First Mortgage Loans from January 1993 to June 2013

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
January	4.42%	5.02%	6.11%	6.47%	6.30%	7.41%	7.57%	7.56%	7.13%	7.20%	7.07%
February	4.60%	4.93%	6.09%	6.33%	6.51%	7.04%	7.72%	7.57%	6.97%	7.15%	7.16%
March	4.59%	4.96%	6.16%	6.25%	6.53%	7.36%	7.48%	7.58%	7.07%	6.95%	6.98%
April	4.60%	5.11%	6.16%	6.37%	5.92%	7.16%	7.55%	7.82%	7.42%	6.91%	7.02%
May	4.43%	4.90%	6.01%	6.36%	6.09%	7.42%	7.58%	7.96%	7.13%	7.50%	6.94%
June	4.93%	4.74%	5.85%	6.12%	6.53%	7.59%	7.79%	8.05%	7.01%	7.72%	6.38%
July	NA	4.49%	5.87%	5.74%	6.58%	7.72%	8.07%	8.22%	6.99%	7.61%	6.62%
August	NA	4.30%	5.77%	5.58%	6.57%	7.82%	8.06%	7.97%	7.16%	7.46%	7.48%
September	NA	4.32%	5.30%	5.37%	6.47%	7.68%	7.83%	7.78%	7.12%	7.13%	7.58%
October	NA	4.10%	5.03%	5.57%	6.21%	7.40%	7.70%	7.58%	7.31%	7.09%	7.02%
November	NA	4.34%	5.18%	5.46%	6.33%	7.93%	7.59%	7.63%	7.63%	7.02%	7.33%
December	NA	4.25%	5.12%	5.69%	5.96%	6.87%	7.31%	7.47%	7.64%	7.15%	7.28%

	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993
January	8.64%	8.78%	9.71%	8.29%	8.75%	9.54%	8.74%	10.95%	8.76%	9.62%
February	8.36%	8.50%	10.09%	8.21%	8.60%	9.54%	8.65%	10.66%	8.47%	9.20%
March	7.91%	8.48%	9.73%	8.67%	8.64%	9.55%	9.21%	10.15%	8.95%	8.97%
April	8.59%	8.51%	9.88%	8.63%	8.69%	9.87%	9.59%	10.22%	9.78%	8.99%
May	8.21%	8.71%	9.87%	8.62%	8.55%	9.79%	9.80%	10.06%	10.17%	8.98%
June	8.10%	8.63%	10.08%	8.97%	8.57%	9.64%	10.01%	9.40%	10.24%	9.06%
July	8.05%	8.78%	9.70%	9.24%	8.56%	9.44%	9.80%	9.42%	10.32%	8.65%
August	7.93%	8.42%	9.70%	9.55%	8.56%	9.05%	9.88%	9.52%	10.12%	8.64%
September	7.51%	8.30%	9.51%	9.69%	8.31%	9.21%	9.94%	9.38%	10.17%	8.31%
October	7.24%	8.02%	9.34%	9.44%	8.01%	9.03%	9.78%	9.39%	10.50%	8.38%
November	7.24%	7.62%	9.35%	9.43%	8.09%	8.94%	9.44%	9.18%	10.68%	8.34%
December	7.43%	8.23%	9.06%	9.56%	8.24%	8.91%	9.22%	8.93%	10.97%	8.79%

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Date: May 5, 2022; **Updated:** March 5, 2025

CML Guidance 2022-1
Kansas Uniform Consumer Credit Code (UCCC)
Working Remotely

The Office of the State Bank Commissioner, Consumer and Mortgage Lending Division (hereinafter "OSBC"), recognizes the ongoing business need for employees of Supervised Loan Licensees and Consumer Credit Filers to work remotely. The OSBC has determined that the question of remote offices[1] for work done pursuant to the UCCC remains a relevant question. Accordingly, the OSBC is establishing guidance regarding remote work.

Place of Business

The Administrator may set by regulation whether a license is required for each place of business for a Supervised Loan Licensee or whether a master license can be obtained for all of the licensee's places of business. The OSBC has established through K.A.R. 75-6-30(a) that a license is required for each place of business.

K.A.R. 75-6-30(b) defines "place of business" as the location where an applicant or licensee regularly performs the following: making a supervised loan, making any loan for personal, family or household purpose to a consumer, or accepting payments on loans. K.S.A. 16a-2-302(4) says:

> A licensee may conduct the business of making loans for personal, family or household purposes ***only at or from any place of business for which the licensee holds a license*** and not under any other name than that in the license.

The use of the phrase "at or from" implies that the business activity need not occur physically "at" the location but rather could be done elsewhere and considered done "from" the location.
For employees or independent contractors working remotely, the official main or branch location serves as the customer-facing location where the work is done "from" and therefore as the place of business. The worker's remote office is not the place of business from the customer's perspective. For example, the address provided to the customer in contact information for the company should be the official place of business, not the remote office address. Similarly, the company's employees or independent contractors should not meet with the public at a personal

[1] Remote office means a location other than the principal place of business or a branch office where a company's employee or independent contractor is authorized by such company to engage in consumer credit activity.

residence. If a company treats any location as an official, customer-facing place of business, then such a location would require a license.

Fee for Business Locations

K.S.A. 16a-6-203(1) requires a Consumer Credit Filer to pay to the Administrator an annual fee for each business location. As discussed above, a proper remote office does not count as a place of business under the UCCC. Similarly, it does not count as a “business location” under this statute and no additional fee will be incurred.

Location of Records

Records must remain accessible to the Administrator regardless of any remote work. Offices and places of business must also remain accessible to the Administrator. K.S.A 16a-6-104(1)(i) requires the Administrator to have free and reasonable access to the offices, places of business and records of the Supervised Loan Licensee or Consumer Credit Filer.

K.S.A. 16a-2-304(1) says that records do not need to be kept in the place of business so long as the Administrator is given free access to the records wherever located. Every Supervised Loan Licensee, assignee, servicer, and Consumer Credit Filer must provide the Administrator with the name, address, telephone number, contact person, and any other reasonable information regarding the location and availability of current records of a consumer credit transaction. K.S.A. 16a-2-304(4) allows the records to be retained in electronic form. K.S.A. 16a-6-106(7) says if the records are located outside of Kansas, the records should either be made available to the Administrator at a convenient location within this state or the Administrator may examine the records at the place where they are maintained.

Management of Remote Work

Supervised Loan Licensees and Consumer Credit Filers are responsible and liable for the conduct of their employees and independent contractors under the UCCC, whether they work in the company’s places of business or remotely. The company should have written policies and procedures for working at a remote office and should supervise and enforce such policies and procedures.

Information Security

Supervised Loan Licensees and Consumer Credit Filers should be mindful of the OSBC best practices offered for remote workers, as security of information will always be a necessary component of remote work.[2] Best practices include, but are not limited to, the following:

[2] See K.S.A. 16a-2-304(2) requiring establishment, maintenance, and enforcement of written policies and procedures regarding security of records, reasonably designed to prevent the misuse of consumer personal and financial information, and K.S.A. 16a-2-304(4)(b) requiring reasonable safeguards to protect records from loss, alteration, or destruction.

- The company should maintain computer systems and consumer information in accordance with the company's information technology security plan and all state and federal laws.
- The company's employees or independent contractors should take reasonable precautions to protect confidential information in accordance with state and federal laws.
- Any device used to engage in consumer credit activity should have appropriate security, encryption and device management controls to ensure the security and confidentiality of consumer information.
  - Computers and devices that are utilized for remote work should include at-rest encryption.
  - Connectivity to the main office or sensitive systems should be encrypted in transit by use of a virtual private network (VPN) or similar technology.
- Steps should be taken to minimize the remote use of paper records with confidential information and proper destruction/disposal of paper documents must be employed.
- The company should regularly review and certify that the employees or independent contractors engaged in consumer credit activity at remote offices meet these standards.

Supervised Loan Licensees and Consumer Credit Filers will be responsible and liable for any breaches of security and should consult their Information Technology Department or other technology or security expert to ensure that their records are secure and safe.

Conclusion

Employees or independent contractors of Supervised Loan Licensees and Consumer Credit Filers under the UCCC may conduct their work from a remote office. Kansas law requires that the Supervised Loan Licensee conduct business "at or from" a licensed place of business. To work "from" a place of business, it must be the official customer-facing location; the employee need not be physically "at" the location. Remote work practices should not interfere with the OSBC's ability to access and examine records, offices, and places of business. Each company remains responsible and liable for its employees and independent contractors, whether they work in the company's places of business or remotely, including for any breaches of information security. Aside from remote offices, places of business of a Supervised Loan Licensee should continue to hold a license, and places of business of a Consumer Credit Filer should continue to be reported annually.

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CML Guidance 2024-01
Manufactured Housing Guidance Document
December 17, 2024

Effective January 2, 2025

Manufactured Home Loans in the Kansas Mortgage Business Act and K.S.A. 16-207-Purpose

Upon passage of 2024 Senate Substitute for 2023 HB2247 into law effective January 1, 2025, the Office of the State Bank Commissioner (OSBC) releases this guidance document to clarify the OSBC's policy on the treatment of consumer credit transactions secured by manufactured homes, occupied by the owner(s) for residential purposes, and regarding certain repealed statutes under the Kansas Uniform Consumer Credit Code (UCCC). Effective January 1, 2025, the financing for manufactured homes is governed by the Kansas Mortgage Business Act (KMBA) at K.S.A. 9-2201 *et seq.* and the Contracts and Promises statutes at K.S.A. 16-207.

Consumer Loans and Consumer Credit Sales for Manufactured Homes Removed from the UCCC

The UCCC statutes governing financing for consumer credit transactions secured by real estate, mortgages, and manufactured homes have been removed from the UCCC. The KMBA and/or K.S.A. 16-207 now govern these transactions by default. Lenders in a credit transaction secured by a manufactured home may still "opt into" the UCCC by agreement with the borrowers.[1] However, lenders may choose not to "opt in" due to the UCCC's prepaid finance charge limitations. The KMBA and K.S.A. 16-207 permit higher prepaid finance charges in manufactured home loans.

Loans Secured by Manufactured Homes Incorporated in the KMBA and K.S.A. 16-207

The KMBA defines a "mortgage loan."[2] 15 U.S.C. 1602 further defines a "dwelling" as a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. For purposes of the KMBA, a manufactured home would qualify as a residential structure or mobile home. The OSBC recognizes that construction standards differ between

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[1] *See* K.S.A. 16a-1-109.

[2] *See* K.S.A. 9-2201(z).

mobile homes and manufactured homes, but both may be primary dwellings and are treated the same. Certain loans secured by a manufactured home, including chattel loans, are governed by the KMBA.[3]

Subordinate Lien Mortgage Loans, Including Subordinate Lien Chattel Loans

A mortgage loan secured by either a subordinate lien mortgage or subordinate lien security interest in a manufactured home, is a covered transaction.[4] K.S.A. 9-2228(a) places an 18% per annum periodic finance charge limit on covered transactions. K.S.A. 9-2228(d) limits prepaid finance charges up to 8% of the amount financed, provided aggregate prepaid finance charges payable to the lender or related persons do not exceed 5% of the amount financed.[5] For instances of refinancing, K.S.A. 9-2228(f) permits a prepaid finance charge of not more than 5% of the additional amount financed of a covered transaction if within 12 months after the original loan a mortgage company refinances such covered transaction.[6] For these types of subordinate mortgage loans, K.S.A. 9-2230 allows the imposition of late fees when appropriate. K.S.A. 9-2229(a) allows additional charges to include some closing costs, late fees, charges for other benefits and certain service charges.[7]

First Lien Mortgage Loans, High Loan-to-Value Ratio, Not Government-Guaranteed

A loan secured by a first mortgage or equivalent security interest in real estate, including a manufactured home attached to real estate, with a loan-to-value (LTV) ratio greater than 100% and not guaranteed by a government program is a covered transaction.[8] K.S.A. 16-207(a) limits interest receivable to 15% per annum for such loans, while the prepaid finance charges remain limited by K.S.A. 9-2228(d) in addition to the periodic finance charges.[9] For instances of refinancing, K.S.A. 9-2228(f) permits a prepaid finance charge of not more than 5% of the additional amount financed of a covered transaction if within 12 months after the original loan a mortgage company refinances such covered transaction.[10] For these types of first mortgage loans, K.S.A. 9-2230 allows the imposition of late fees when appropriate. K.S.A. 9-2229(a) allows additional charges to include some closing costs, late fees, charges for other benefits and certain service charges.

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[3] Transactions referred to as "chattel loans" are only secured by the manufactured home and not the underlying land. Contrary to typical residential real estate loans, chattel loan security instruments are not recorded at the applicable county register of deeds.
[4] *See* K.S.A. 9-2201(m).
[5] *See* K.S.A. 9-2228(d).
[6] *See* K.S.A. 9-2228(f) and (g).
[7] *See* K.S.A. 9-2229(a).
[8] *See* K.S.A. 9-2201(m).
[9] *See* K.S.A. 9-2228(b).
[10] *See* K.S.A. 9-2228(f) and (g).

First Lien Mortgage Loans, Loan-to-Value Ratio of 100% or Less, and First Lien Chattel Loans

A loan secured by a first mortgage or equivalent security interest in a dwelling either attached or not attached to real estate with an LTV ratio less than or equal to 100% is not a covered transaction.[11] Further, chattel loans are not appraised as real estate; thus, calculating an LTV ratio for a chattel loan is not applicable under current law. Therefore, K.S.A. 16-207(a) governs the interest receivable allowed for such loans, including chattel loans, limiting interest charges to 15% per annum. The prepaid finance charges for such loans are included in the applicable annual percentage rate (APR) as defined by K.S.A. 9-2201(m) and federal law since no specific state statute is on point. Furthermore, K.S.A. 16-207(b) restricts prepayment penalties beyond six months from the loan date. Finally, K.S.A. 16-207(c) allows for collecting actual government filing fees, closing costs, and reasonable expenses, including late fees, when appropriate.

Disclaimer to Readers to Independently Review Relevant Law

This guidance document discusses the basic features of typical loans and is not intended to cover every variation in manufactured home loans. For example, certain manufactured home loans are covered transactions, as applied by K.S.A. 9-2231, where the APR exceeds the code mortgage rate.[12] The OSBC encourages each manufactured home lender to thoroughly review the Kansas Mortgage Business Act, K.S.A. 16-207 *et seq.*, and applicable state and federal laws to assess the compliance of specific business models. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify, or retract its interpretation at any time. Issued December 17, 2024; Effective January 2, 2025.

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[11] *See* K.S.A. 9-2201(m) and (z).

[12] Applying the loan-to-value ratio calculation to chattel loans is impractical, as there is no real estate appraised. Thus, chattel loans are covered transactions only when the APR exceeds the code mortgage rate, currently 12%, for purposes of applying K.S.A. 9-2231.

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CML Guidance MT 2014-01
Cryptocurrency Guidance Document
Date: June 6, 2014, Updated May 18, 2021 and January 2, 2025.

Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmission Act-Purpose

The purpose of this guidance document is to clarify the applicability of the Kansas Money Transmission Act (KMTA) to persons[1] or entities engaging in the use and/or transmission of virtual currencies.[2] This guidance document provides the policy of the Office of the State Bank Commissioner (OSBC) regarding the regulatory treatment of virtual currencies pursuant to the statutory definitions of the KMTA.

Types of Virtual Currency

In broad terms, a virtual currency is an electronic medium of exchange typically used to purchase goods and services from certain merchants or to exchange for other currencies, either virtual or sovereign.[3] Although some central bank digital currencies exist, this medium of exchange continues to be in the experimental phase and not yet ubiquitous on the world stage.[4] As such, virtual currencies exist outside established financial institution systems.[5] There are many different virtual currency structures, and it is

[1] This guidance document was originally issued under the Kansas Money Transmitter Act, K.S.A. 9-508 *et seq*., which was repealed and replaced with the Kansas Money Transmission Act, K.S.A. 9-555 *et seq*. on January 1, 2025. This guidance has been reviewed and determined to still be applicable under the new law.

[2] Much of this document is modeled after guidance issued by the Texas Department of Banking in Supervisory Memorandum 1037 and is adapted for use in Kansas.

[3] As used in this document, sovereign currency refers to government-issued currency with legal tender status in the country of issuance, such as U.S. Dollars or Euros. This includes both government-issued fiat currency and commodity-backed currency that is designated as legal tender. An example of a commodity-backed currency is the U.S. Dollar prior to 1971 when an individual could trade gold for U.S. Dollars for an established fixed price.

[4] In 2020, the Central Bank of the Bahamas launched the Sand Dollar making the first digital currency issued by a central government. In the same year, China became the first major government to issue a central bank digital currency pegged to the renminbi or Yuan. Many have followed suit since (https://cbdctracker.org).

[5] In 2021, El Salvador became the first government that has adopted a virtual currency as legal tender when it adopted Bitcoin as legal tender.

not easy to classify all of them, but for purposes of this document, they can generally be divided into two basic types: centralized and decentralized.

Centralized virtual currencies are created and issued by a specified source. They rely on an entity with some form of authority or control over the currency. Typically, the authority behind a centralized virtual currency is also the creator. Centralized virtual currencies can be further divided into subclassifications that quickly become too complex to apply a universal policy. Some can be purchased with sovereign currency but cannot be exchanged back to sovereign currency; some can be converted back to sovereign currency; some are used only for purchase of goods and services from a closed universe of merchants, while others may have a theoretically open universe of merchants. Some centralized virtual currencies are backed by the issuer with sovereign currency or precious metals, and therefore derive intrinsic value.

In contrast, decentralized virtual currencies are not created or issued by a particular person or entity, have no administrator, and have no central repository. The two best known decentralized virtual currencies are Bitcoin and Ethereum. Transfers of cryptocurrency are made directly from wallet to wallet without any intermediary because users' wallets act as the connection points of the cryptocurrency's peer-to-peer network.[6] Transmissions of sovereign currencies must be made through one or more intermediaries such as a financial institution or money transmitter.

One important characteristic of decentralized cryptocurrency is its lack of intrinsic value.[7] In most instances, a unit of cryptocurrency does not represent a claim on a commodity and is not convertible by law. And unlike fiat currencies, there is no governmental authority or central bank establishing its value through law or regulation other than the exceptions previously mentioned.[8] Its value is only what a buyer is willing to pay for it. Most cryptocurrencies are traded on third party exchange sites, where the exchange rates with sovereign currencies are determined by averaging the transactions that occur. Some experts consider cryptocurrency to be a new asset class that is neither currency nor commodity, but possessing characteristics of both, as well as characteristics of neither.

Application of Kansas Money Transmission Act to Virtual Currency

Currency Exchange

The act of two-party currency exchange itself is not covered by the KMTA regardless of whether it is sovereign currency being exchanged or virtual currency. The OSBC does not regulate these exchanges. However, the presence of a third party involved in a currency exchange transaction will likely subject the transaction to the KMTA as "money transmission."

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[6] A "wallet" refers to a digital program or physical device that stores your private keys. The private keys are the passwords that give you access to your cryptocurrency allowing you to send and receive your digital assets.

[7] The term cryptocurrency is used interchangeably with virtual currency in this guidance document.

[8] Fiat currency is government-issued legal tender, such as the U.S. Dollar. It has no intrinsic value and does not represent a claim on a commodity; its value is established by law.

Money Transmission

Whether or not a Kansas money transmission license is required for an entity to engage in the transmission of cryptocurrency (either centralized or decentralized) turns on the question of whether cryptocurrency is considered "money" or "monetary value" under the KMTA. Money transmission is defined in statute and means any of the following "(i) Selling or issuing payment instruments to a person located in Kansas; (ii) selling or issuing stored value to a person located in Kansas; (iii) receiving money for transmission from a person located in Kansas; or (iv) payroll processing services."[9] Money means "a medium of exchange that is authorized or adopted by the United States or a foreign government."[10] Although a few governments have authorized or adopted cryptocurrency as part of their currency, cryptocurrency is not "money" for the purposes of the KMTA.

Monetary value is defined in statute as "a medium of exchange, whether or not redeemable in money."[11] Medium of exchange is not defined by statute, but Black's Law Dictionary defines "medium of exchange" as "anything generally accepted as payment in a transaction and recognized as a standard of value." Cryptocurrencies are not generally accepted as payment in the current economy. While there may be a few retailers who are accepting cryptocurrencies, it is not generally accepted throughout the entire economy and does not even approach the extent to which U.S. Dollars (or other sovereign currencies) are accepted. Also, decentralized cryptocurrency does not have a recognized standard of value. There is no set value for a single unit of cryptocurrency. As stated above, the value of a unit of cryptocurrency is only what a buyer is willing to pay for it and what a seller is willing to accept in order to part with it. There is no intrinsic or set value for a unit of decentralized cryptocurrency.

Therefore, cryptocurrencies are not covered by the KMTA because they are not considered "money" or "monetary value." Since the KMTA does not apply to transmission of decentralized cryptocurrencies, an entity engaged solely in the transmission of such currency would not be required to obtain a license in the State of Kansas. However, a cryptocurrency transaction may be considered money transmission depending on how such a transaction is organized should the transmission of virtual currency include the involvement of sovereign currency in a transaction.

To provide further guidance, the regulatory treatments of some common types of transactions involving cryptocurrency are as follows:

- Exchange of cryptocurrency for sovereign currency between two parties is not money transmission under the KMTA. This is essentially a sale of goods between two parties. The seller gives units of cryptocurrency to the buyer, who pays the seller directly with sovereign currency. The seller does not receive the sovereign currency with the intent to transmit to another entity.

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[9] K.S.A. 9-555(18).
[10] K.S.A. 9-555(16).
[11] K.S.A. 9-508(17).

- Exchange of one cryptocurrency for another cryptocurrency is not money transmission. Regardless of how many parties are involved, since cryptocurrency is not considered "money" under the KMTA, no money transmission occurs.

- Transfer of cryptocurrency by itself is not money transmission. Because cryptocurrency is not money or monetary value, the receipt of it with the intent to transmit it to another entity is not money transmission. This includes intermediaries who receive cryptocurrency for transfer to a third party, and entities that, akin to depositories, hold cryptocurrencies on behalf of customers.

- Exchange of cryptocurrency for sovereign currency through a third-party exchanger is generally considered money transmission. For example, most Bitcoin exchange sites facilitate exchanges by acting as an escrow-like intermediary. In a typical transaction, the buyer of cryptocurrency sends sovereign currency to the exchanger who holds the funds until it determines that the terms of the sale have been satisfied before remitting the funds to the seller. Irrespective of its handling of the cryptocurrency, the exchanger conducts money transmission by receiving the buyer's sovereign currency in exchange for a promise to make it available to the seller.

Exchange of cryptocurrency for sovereign currency through an automated machine may or may not be money transmission depending on the facts and circumstances of its operation and the flow of funds between the operator of the automated machine and the customer. For example, several companies have begun selling automated machines commonly called "Bitcoin ATMs" that facilitate contemporaneous exchanges of bitcoins for sovereign currency. Most such machines currently available act as an intermediary between a buyer and a seller when operating in their default mode, typically connecting through one of the established exchange sites. When a customer buys or sells bitcoins through a machine configured in this way, the operator of the machine receives the buyer's sovereign currency with the intent to transfer it to the seller. This would be considered money transmission under the KMTA and would require licensure. However, at least some Bitcoin ATMs can be configured to conduct transactions only between the customer and the operator or owner of the machine, with no third parties involved. If the machine never involves a third party, and only facilitates a sale or purchase of bitcoins by the machine's operator directly with the customer, there is no money transmission because at no time is sovereign money received by the owner or operator of the machine with the intent to transfer it to another entity.

Additional Issues with Virtual Currency

- A cryptocurrency business that conducts money transmission, as outlined above, must comply with all applicable licensing, reporting, net worth, and other relevant requirements of the Kansas Money Transmission Act under K.S.A 9-555 *et seq*.

- Any entity engaged in money transmission must comply with the permissible investment requirements of K.S.A 9-588 and as listed in K.S.A. 9-589. For purposes of allowed permissible investments, no virtual currency has been approved for use under this section by the Commissioner. Therefore, if a licensed money transmitter is seeking to comply with the permissible investment requirement, it must have adequate U.S. currency or other approved investments to cover its outstanding payment instruments.

- For any entity intending to obtain licensing as a money transmitter, the OSBC will require any applicant who regularly handles virtual currencies in the course of its activities to submit a current third-party security audit of all relevant computer and information systems. Because of the increased risk that Kansas customers may face when using the services of a money transmitter involved with virtual currencies, it is incumbent upon any license applicant to demonstrate that all of a customer's sovereign and virtual currencies are secure while controlled by the transmitter.

Disclaimer to Readers to Independently Review Relevant Law

This guidance was issued to interpret state law and does not modify federal money service business registration and reporting requirements with the Financial Crimes Enforcement Network. Thus, any person engaged in cryptocurrency transmission may have federal registration and reporting requirements even for transactions that are exempt in Kansas.

This guidance document was originally issued on June 6, 2014, pursuant to K.S.A. 77-438. The Licensing Department has determined this guidance document has answered most virtual currency licensing questions since its issuance. However, this guidance document is only intended as general guidance. Any person engaged in virtual currency transmission may request that the Licensing Department determine if their business model requires a license by submitting the following: a business plan, a diagram showing how sovereign/fiat currency and/or virtual currency flows between persons, and a copy of any applicable contract.

The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify, or retract its interpretation at any time. Issued June 6, 2014; updated May 18, 2021, and January 2, 2025.