

Report From Agency

Clearinghouse Rule 12 - 035

REPORT TO THE LEGISLATURE

Pursuant to s. 227.19(2), Stats.

I. Basis and Purpose of the Proposed Rules

As a result of 2011 Wisconsin Act 32, changes to the existing payday lending rules are necessary to address conflicts with current law. The proposed rules also provide greater clarity to the industry and for the Department of Financial Institutions relating to lenders who are licensed under both ss. 138.09 and 138.14, Stats.

II. Summary of the Proposed Rules

The rule amends some statutory references to reflect the changes made by 2011 Wisconsin Act 32. It also defines subsequent loans to include any loan made within 24 hours after a customer pays off a previous payday loan. Also, the existing rule excludes, in certain cases, transactions of 6 months or more from the definition of a payday loan, whereas the definition of "payday loan" now only includes transactions with terms of 90 days or less.

The proposed rule also makes changes to the repayment plan offer process in order to conform to the statutes.

The proposed rule changes bring DFI-Bkg 75 into compliance with the statutes.

III. Compliance with s. 227.116, Stats.

The proposed rule does not establish a permit, and is in compliance with s. 227.116, Stats.

IV. Department of Administration report, pursuant to s. 227.137(6), Stats.

The estimated cost of implementation and compliance will be less than \$20,000,000, no report is required under s. 227.137(6), Stats.

V. Energy impact report and analysis, pursuant to s. 227.117(2) and (3), Stats.

The proposed rule will have no impact on energy availability, s. 227.117(2), Stats., is not applicable.

VI. Small Business Regulatory Review Board report, pursuant to s. 227.14(2g), Stats. And Regulatory Flexibility Analysis, pursuant to s. 227.114, Stats.

DFI anticipates that the rules will have minimal impact on small businesses, and therefore, ss. 227.14(2g) and 227.114, Stats., are not applicable.

VII. List of persons who appeared or registered for or against the rule at the hearing

A public hearing was held on October 1, 2012, and one person attended:

1. Tom Moore, Wisconsin Financial Services Association, speaking for information only.

VIII. Summary of public comments to the proposed rule

Public comments on the proposed rule were accepted through October 16, 2012, and two comments were received (copies of these comments are being submitted with this report):

1. Wisconsin Financial Services Association (WFSA) Comment Summary
 - a. WFSA submitted comments to oppose those sections of the proposed rule that restrict loans made by lenders who are licensed under s. 138.09, Stats. (138.09 lenders). Specifically, the WFSA commented that DFI exceeded statutory authority in including restrictions on some loans made by 138.09 lenders in this proposed rule.
2. Community Financial Services Association of America (CFSA) Comment Summary
 - a. CFSA submitted comments after publication of the scope statement, for consideration as the rule was being drafted. CFSA proposed a definition for the term “subsequent loan” which was narrower than DFI’s proposed definition.
 - b. CFSA also requested certain changes to be made to the repayment plan offering process, specifically wanting individual customers to be required to appear in person to request a payment plan on or before the due date of a loan.
 - c. CFSA also commented that DFI exceeded statutory authority in including restrictions on some loans made by 138.09 lenders in this proposed rule.

IX. Department’s response to public comments

After thoroughly considering the public comments submitted, DFI responds as follows:

1. Response to WFSA
 - a. WFSA’s comments relate to the sections of the rule creating DFI-Bkg 75.03(6) and (7). These sections apply only to those lenders who are licensed under both ss. 138.09 and 138.14, Stats. (dual licensees), and who are attempting to issue both a 138.09 loan and a 138.14 loan to the same customer, at the same time, or within 24 hours of each other.
 - b. Pursuant to s. 138.14(12)(b), Stats., the amount of a payday loan is limited to the lesser of either \$1,500.00 or 35% of a customer’s gross monthly income. However, dual licensees can make both a 138.14 payday loan and a 138.09 loan to the same customer, at the same time, to avoid the limits under s. 138.14(12)(b), Stats.
 - c. While the Department considers this practice to be a violation of DFI-Bkg 75.03(1), which prohibits a licensee from attempting to evade or undermine the

purpose and intent of s. 138.14, Stats., this section of the proposed rule is an attempt to provide clear language to the industry that this practice is a violation.

- d. These sections of the proposed rule prohibit only dual licenses from originating a 138.09 loan at the same time, or within a 24 hour period before or after the dual licensee originates a 138.14 payday loan with the same customer. The proposed rule does not apply generally to all 138.09 licensees, and is limited to the specific situation in which a dual licensee is attempting to originate both 138.14 payday loan and a 138.09 loan to the same customer, at the same time or within 24 hours of each other -- which DFI views as a violation of s. 138.14(12)(b), Stats.

2. Response to CFSA

- a. The definition of subsequent loan is critical because the statute permits a customer to repay a 138.14 payday loan with the proceeds of a subsequent 138.14 payday loan, but does not allow the subsequent 138.14 payday loan to be repaid with the proceeds of another 138.14 payday loan (there is a one rollover limit in statute). Pursuant to s. 138.14(12)(a), Stats., the repayment of a subsequent loan and the origination of a new payday loan made within a 24 hour period is proof of a violation of the statute. For these reasons, DFI opted to include in the definition of “subsequent loan” any loan made within 24 hours of when the customer pays off a previous loan in full.
- b. The CFSA’s suggested repayment plan changes were carefully considered while this proposed rule was being drafted. The CFSA commented that the rules should require a customer to appear, in person, at or before the due date of their 138.14 payday loan in order to request a repayment plan from the lender. Including such a requirement in the rule would be in violation of s. 138.14(11g)(a), Stats., which requires a lender to make a repayment plan offer only after the end of the loan term. Further, requiring a borrower to appear in person at a lender would not always be possible, as some licensed lenders in Wisconsin are internet-based, and do not have physical presences in Wisconsin.
- c. The Department’s response to WFSA’s comments also applies to the portion of CFSA’s comments related to 138.09 lenders.

X. Modifications made in the proposed rule as a result of public comments or testimony received

For the reasons noted above, no changes were made to the proposed rule as a result of public comments received.

XI. Department’s response to the Rules Clearinghouse report

The suggestions of the Rules Clearinghouse were adopted in full.