

Clearinghouse Rule 12-035

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS DIVISION OF BANKING TO ADOPT RULES

The Department of Financial Institutions, Division of Banking proposes an order to amend ss. DFI—Bkg 75.01(3), 75.02(intro), 75.03(3) and (3)(c), 75.05(4), 75.06(2), 75.07(a), 75.08(4) and (4)(b), and 75.09(3)(a)3.; create ss. 75.01(9), 75.03(5), (6) and (7), 75.06(5) and 75.08(d); repeal ss. 75.02(1) and (2), and 75.10(6); and repeal and recreate s. 75.08(1) relating to payday lending.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statutes interpreted

Section 138.14, Stats.

Statutory authority and explanation of statutory authority

The statutory authorities for the rule are the following:

Section 138.14(8)(b), Stats., which states that “[t]he division may promulgate such rules as it considers necessary for the administration of this section, including rules establishing database transaction fees under sub. (14)(h) and other fees considered reasonable and necessary by the division,” and

Section 138.14(14)(h), Stats., which states that “[t]he division shall, by order or rule, specify a database transaction fee of no more than \$1 that the database provider shall charge to licensees to cover the costs of developing and implementing the database, and accessing the database to verify that a customer does not have any payday loans with the licensee or others that in combination with a new transaction will create a violation of this section.”

Related statutes or rules

Section 138.09, Stats.

Plain language analysis

As a result of the passage of 2011 Wisconsin Act 32, changes to the existing payday lending rule are necessary to address conflicts that may exist between the current law and the existing rule.

A further objective is to provide clarity and direction for lenders making payday loans, as well as create clear guidance for the Department of Financial Institutions (“DFI”), which is charged with enforcing s. 138.14, Stats.

Summary of and comparison with existing or proposed federal regulations

DFI is aware that the Consumer Financial Protection Bureau intends to focus some of its resources on payday lending, but is unaware of any currently proposed regulation or rule.

Comparison with rules in adjacent states

An internet-based search of payday lending regulations for the states of Illinois, Iowa, Michigan and Minnesota found the following:

All four states now regulate payday lending.

Illinois has an extensive number of payday lending rules including rules covering topics such as: loan terms, a certified database method of verification and gross monthly income verification.

Iowa has no applicable rules at this time.

Michigan has a limited number of payday lending rules. An internet search of rules for Michigan finds their rules focus on definitions in regards to a database.

Minnesota has a limited number of rules regarding licensed regulated lenders, which may include payday lenders. Their rules cover the following topics: licensed office, maximum loan applies to multiple offices, licensees to be responsible for acts of assignees, management and control, transferred accounts, and computing date and time.

Summary of factual data and analytical methodologies

In developing these rules, the department reviewed payday lending laws in states across the country. The department is engaged in outreach with payday lenders and consumer organizations to gather input. Because the department regulates licensed financial services for the state, the division could rely on extensive staff expertise and experience in drafting regulations for these entities.

Analysis and supporting documents used to determine effect on small business

The division anticipates that any economic impact of implementing the rule would be minimal. The rule provides clarity to the payday lending industry with clear definitions and requirements which now must be made as the result of 2011 Wisconsin Act 32. Overall the requirements of this rule are straight-forward for ease in compliance.

Effect on small business

The proposed rule may require payday lenders to make minor changes to websites and/or forms. The agency's experience in making similar changes to DFI's website or forms indicates that the cost of making such changes is minimal.

Agency contact person

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Place where comments are to be submitted and deadline for submission

Comment may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. DFI-Bkg 75.01(3) is amended to read:

DFI-Bkg 75.01(3) “Default” has the meaning given in s. 425.103(2), Stats., if the loan has not reached its maturity date or the customer does not enter into a repayment plan under s. 138.14(11g)(a), Stats.

SECTION 2. DFI-Bkg 75.01(9) is created to read:

DFI-Bkg 75.01(9) “Subsequent payday loan” or “subsequent loan,” except when used in s. 138.14(9m), Stats., means any loan where its proceeds are used, in whole or in part, to repay a previous payday loan, and includes any loan made within 24 hours after the customer pays off a previous payday loan in full.

SECTION 3. DFI-Bkg 75.02 (intro) is amended to read:

DFI-Bkg 75.02(intro) Transactions not covered. Notwithstanding s. 138.14(1)(k), Stats., a payday loan does not include a transaction that is ~~any of the following:~~ made for a business, commercial or agricultural purpose.

SECTION 4. DFI-Bkg 75.02(1) and (2) are repealed.

SECTION 5. DFI-Bkg 75.03(3) and (3)(c) are amended to read:

75.03(3) Except as provided in subs. (4) and (5), no licensee under s. 138.09 shall make a loan of \$1,500 or less under any of the following circumstances:

75.03(3)(c) That has a term of ~~less than~~ 90 days or less.

SECTION 6. DFI-Bkg 75.03(5), (6) and (7) are created to read:

DFI-Bkg 75.03 (5) Sub. (3) does not apply to title loans, as defined in s. 138.16(1)(c), Stats., made by a licensee under s. 138.09, Stats., who holds the certificate required under s. 138.16(1m), Stats.

DFI-Bkg 75.03(6) No licensee under s. 138.09, Stats., shall originate a loan subject to s. 138.09, Stats., at the same time, or within the 24 hour period before or after, the licensee originates a payday loan with the same customer.

DFI-Bkg 75.03 (7) No licensee under s. 138.09, Stats., shall originate a loan subject to s. 138.09, Stats., at the same time, or within the 24 hour period before or after, a payday loan made by the licensee with the same customer is paid in full.

SECTION 7. DFI-Bkg 75.05(4) is amended to read:

DFI-Bkg 75.05(4) If the customer has entered into a repayment plan under s. 138.14(11g)(a), Stats., default occurs when the customer fails to pay on or before the 10th day after its scheduled due date all or any part of a scheduled installment, or 41 days after the original maturity date of the payday loan, whichever is later.

SECTION 8. DFI-Bkg 75.06(2) is amended to read:

DFI-Bkg 75.06(2) ~~Prior~~ Except as provided in sub. (5), prior to making a payday loan, the licensee shall obtain from the customer a copy of any of the following to verify the gross monthly income of the customer:

SECTION 9. DFI-Bkg 75.06(5) is created to read:

DFI-Bkg 75.06 (5) If the licensee is using the customer's consumer report as its method of income verification, the licensee shall, prior to making a payday loan, obtain the customer's gross monthly income figure in writing from the customer and maintain such writing in the customer's file.

SECTION 10. DFI-Bkg 75.07(a) is amended to read:

DFI-Bkg 75.07 (a) REPAYMENT PLAN: If you fail to repay this payday loan in full upon its maturity date, and you have not been offered a repayment plan within the 12 month period prior to the maturity date of your loan, the lender must offer you the opportunity to repay the outstanding balance of the loan in 4 equal installments with due dates coinciding with your pay period schedule. There is no cost to you for entering into the repayment plan, and the lender may not charge any interest on the outstanding balance while you are participating in the repayment plan. Customer's initials or signature: _____.

SECTION 11. DFI-Bkg 75.08(1) is repealed and recreated to read:

DFI-Bkg 75.08(1) REPAYMENT PLAN OFFER. (a) The offer of the repayment plan required by s. 138.14(11g)(a) Stats., shall be hand-delivered, mailed or e-mailed to the customer in a single written document that is in a form prescribed by the division, and except as set forth in sub. (b), delivered on or before the 10th day after the maturity date of the loan.

(b) If a customer's check has been presented, or electronic fund transfer authorization initiated, on or before the 10th day after the maturity date of the loan, but the lender has not yet been notified that the customer's check or electronic fund transfer authorization has not cleared the customer's financial institution, the lender shall make the offer when the notification is received.

(c) The repayment plan offer form shall:

1. Be on white paper sized 8 ½" x 11" and in Times New Roman font style 12 or greater.
2. Identify the name, address, and telephone number of the licensee.
3. Identify the name, address, telephone number, and unique identification number of the customer.
4. Contain an explanation of the repayment plan being offered.
5. State the date the offer is made and the date by which the customer must accept the offer.

(d) The licensee shall retain in the customer's file a copy of the repayment plan form provided to the customer.

(e) If the offer is emailed to the customer, the lender's compliance with par. (a) 1. will be based on how the offer is displayed on the lender's computer, and not based on how the offer is displayed on the customer's computer.

SECTION 12. DFI-Bkg 75.08(4) and (4)(b) are amended to read:

DFI-Bkg 75.08(4) REQUIREMENTS OF REPAYMENT PLAN. The repayment plan under s. 138.14(11g)(a), Stats., shall meet all of the following requirements:

DFI-Bkg 75.08(4)(b) ~~The~~ Except as provided in par. (d), the due date of the 4 equal installments shall coincide with the customer's pay period schedule, as verified by the

customer's pay stub, payroll receipt, ~~or~~ receipt of government or retirement benefits, or other documentation that identifies the frequency of the pay cycle.

SECTION 13. DFI-Bkg 75.08(4)(d) is created to read:

DFI-Bkg 75.08(4)(d) If documentation to verify the customer's pay period schedule is not available, the pay period schedule shall be considered to be once a month and the first payment shall be due one month following the date the offer is made.

SECTION 14. DFI-Bkg 75.09(3)(a)3. is amended to read:

DFI-Bkg 75.10(3)(a)3. A customer elects to enter into a repayment plan under s. 138.14(11g)(a), Stats.

SECTION 15. DFI-Bkg 75.10(6) is repealed.

SECTION 16. DFI-Bkg 75.10(7) and (8) are renumbered 75.10(6) and (7).

SECTION 17. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2), Stats.

Wisconsin Department of Financial Institutions
Division of Banking

Date: _____, 201_

By: _____
Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking