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Clearinghouse Rule 10-098

**PROPOSED ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
3 create ch. DFI—Bkg 75, relating to payday lending.

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

Statute(s) interpreted: ss. 138.10(2m), 138.14(8)(b) and 138.14(14)(g), Stats.

Statutory authority: ss. 138.10(2m), 138.14(8)(b), 138.14(14)(g), and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to 2009 Wisconsin Act 405, the department is to enact rules regarding payday lending reforms.

Summary of proposed rule: The objective of the rule is to create ch. DFI—Bkg 75. The purpose of the rule is to establish clear standards and requirements for payday lenders; notice and other protections to payday lending customers; and database requirements for the secure entry, retention and transmission of customer information. The rule provides definitions; identifies transactions not deemed payday loans; lists prohibited practices; sets forth loan disclosure requirements; sets forth fees and interest, and addresses defaults; sets forth the calculations to be used to determine income; provides details on repayments and repayment plans; and provides for a database and the secure transmission of information regarding payday loans.

Summary of and preliminary comparison with existing or proposed federal regulation: none.

Comparison with rules in adjacent states: Illinois, Michigan, Minnesota and Iowa all now regulate payday lending.

Summary of factual data and analytical methodologies: In developing these rules, the department extensively reviewed payday lending laws in states across the country. The department also received input from payday lenders and consumer organizations. Because the department regulates licensed financial services for the state, the division could also rely on extensive staff expertise and experience in drafting regulations for these entities. The department is also experienced with payday loans and payday lending practices because the department licenses these lenders.

Analysis and supporting documentation used to determine effect on small business: The mandates addressed by the rule are the result of and set forth in 2009 Wisconsin Act 405, and not by the rule. The rule does provide substantial clarity to the payday lending industry on the types

of loans covered, and notice as to what practices are prohibited. The rule provides the industry with clear and itemized requirements for disclosures and repayment plans, and standard calculations for income determination. The rule provides for the safe and secure transmission of data, and the required information to be entered into the database. Permissible fees and interest are addressed, as well as default matters. Overall the information required by the rule should be readily available to payday lenders in the normal course of business. Standardizing requirements for disclosures, repayments and calculations provides both ease of transaction for the lenders and certainty for their practices. The fees, interest and default provisions likewise provide the same, and are *de minimis* in comparison with the overall operational costs and income of these entities. Overall the requirements of the rule are straight-forward for ease in compliance. The rule itself therefore does not have a significant economic impact on small business and should have a beneficial affect for both the business and consumer.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency’s internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution’s website, www.wdfi.org. Written comments must be received by the conclusion of the department’s hearing regarding the proposed rule.

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Banking adopts the following:

4 SECTION 1. Ch. DFI—75 is created to read:

5 **CHAPTER DFI—BKG 75**

6 **PAYDAY LENDING**

7 **DFI-Bkg 75.01 Definitions.** In this chapter and s. 138.14, Stats.:

8 (1) “At the end of the loan term” has the same meaning as “maturity date,” as defined in
9 s. 138.14(1)(j), Stats.

10 (2) “Database transaction fee” means the fee the database provider shall charge licensees
11 for each payday loan made by the licensee.

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

15 (4) “Department” means the department of financial institutions.

16 (5) “Division” means the division of banking.

17 (6) “Electronic fund transfer” has the meaning given in 12 C.F.R. s. 205.3(b).

18 (7) “Makes” in s. 138.14(4)(c), Stats., means originates or services.

19 (8) “Percentage per year of interest charged” in s. 138.14(13)(b), Stats., means the
20 annual percentage rate charged for the payday loan.

21 **DFI-Bkg 75.02 Transactions not covered.** Notwithstanding s. 138.14(1)(k), Stats., a
22 payday loan does not include a transaction that is any of the following:

23 (1) Made for a business, commercial or agricultural purpose.

24 (2) Payable in 12 or more substantially equal monthly installments where the customer
25 voluntarily authorizes recurring electronic fund transfers from an account at a financial
26 establishment if both of the following conditions are met:

27 (a) The authorization for the electronic fund transfers is not required by the creditor and
28 that fact is clearly and conspicuously disclosed in writing to the customer.

29 (b) The authorization for electronic fund transfers can be revoked and that fact is clearly
30 and conspicuously disclosed in writing to the customer.

31 **DFI-Bkg 75.03 Prohibited practices.** (1) A licensee shall not engage in conduct that is
32 an attempt to evade or undermine the purpose and intent of s. 138.14, Stats.

33 (2) No licensee shall make a payday loan:

34 (a) That requires a payment that is more than twice as large as the average of all other
35 scheduled payments.

36 (b) Pursuant to an open-end credit plan.

37 (c) Where the lender accepts, and agrees to hold, more than 5 of a customer's checks.

38 (d) That is, or is to be, secured by an interest in a motor vehicle.

39 (3) No licensee under s. 138.09 shall make a loan of \$1,500 or less:

40 (a) That requires payments be made on any schedule other than substantially equal
41 monthly installments, except as provided in s. 138.09(7)(c)2, Stats.

42 (b) Pursuant to an open-end credit plan.

43 (c) That has a term of less than 90 days.

44 **DFI-Bkg 75.04 Disclosure requirements.** (1) The disclosures required by s.
45 138.14(9g)(a)1., 2., 4., 5. and 6., Stats., shall be provided to the applicant in a single written
46 document that is on a form prescribed by the division. The form shall be:

47 (a) Signed and dated by the applicant;

48 (b) Signed and dated by a representative of the licensee;

49 (c) On white paper sized 8 ½" x 11" and in Times New Roman font style 12 or greater;

50 and

51 (d) Delivered to the customer in the English and Spanish languages.

52 (2) The licensee shall retain a copy of each signed disclosure form in the customer's file.

53 **Note:** A copy of the disclosure form may be downloaded from the department's website
54 at www.wdfi.org.

55 **DFI-Bkg 75.05 Interest, fees and default.** (1) Except as set forth in subs. (3), the
56 interest permitted under s. 138.14(10)(a), Stats., and the fee permitted under s. 138.14(10)(b)2.,
57 Stats., are the only amounts that may be charged a customer on a payday loan.

58 (2) No licensee may charge the customer a fee to cash the proceeds check from a payday
59 loan.

60 (3) Notwithstanding s. 138.14(10), Stats., if a money judgment is awarded by the court, a
61 customer may be charged the costs and fees awarded by the court and the interest permitted
62 under s. 814.04(4), Stats.

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

67 **DFI-Bkg 75.06 Gross Monthly Income.** (1) The gross monthly income calculation
68 required under s. 138.14(12)(b), Stats., shall be calculated by multiplying the amount of the:

- 69 (a) Gross weekly earnings times 4.33, if the customer is paid weekly.
- 70 (b) Gross two week earnings times 2.16, if the customer is paid every two weeks.
- 71 (c) Gross semi-monthly earnings times 2, if the customer is paid twice a month.
- 72 (d) Gross monthly earnings times 1, if the customer is paid monthly.

73 (2) Prior to making a payday loan, the licensee shall obtain from the customer a copy of
74 any of the following to verify the gross monthly income of the customer:

- 75 (a) The customer's most recent official pay stub or official payroll receipt.
- 76 (b) The customer's most recent receipt reflecting payment of retirement benefits.
- 77 (c) The customer's most recent receipt reflecting payment of government benefits.

78 (d) The customer's most recent statement from a financial establishment reflecting direct
79 deposit of government benefits.

80 (e) Other documentation as approved by the division.

81 (3) The documents set forth in pars. (a) through (d) shall not be dated more than 35 days
82 prior to the date on which the payday loan is made.

83 (4) Documentation verifying the customer's income and setting forth the licensee's
84 calculation of the gross monthly income shall be retained in the customer's file.

85 **DFI-Bkg 75.07 Repayment plan. (1) NOTICE POSTED.** A licensee shall
86 prominently post a notice, in at least twenty four point boldface type, informing customers that if
87 they are unable to repay a payday loan on or before its maturity date, they shall be eligible to
88 repay the outstanding balance of the transaction in 4 equal installments with due dates that
89 coincide with the customer's pay period schedule. The notice shall be posted where the licensee
90 makes payday loans, or if conducting business via the Internet, on the licensee's Website so that
91 the notice is easily viewed by a consumer prior to accepting the terms of any payday loan
92 agreement.

93 (2) NOTICE IN AGREEMENT. Every writing evidencing the customer's obligation to
94 pay under a payday loan shall clearly and conspicuously contain, immediately above the Notice
95 to Customer required by s. 422.303(3), Stats., the following language:

96 **REPAYMENT PLAN**

97 If you fail to repay this payday loan in full on or before its maturity date, the lender must offer
98 you the opportunity to repay the outstanding balance of the loan in 4 equal installments with due
99 dates coinciding with your pay period schedule. There is no cost to you for entering into the

100 repayment plan, and the lender may not charge any interest on the outstanding balance while you
101 are participating in the repayment plan.

102 (3) WAIVING RIGHT TO REPAYMENT PLAN. Before a payday loan may be repaid
103 with the proceeds of a subsequent payday loan under s. 138.14(12)(a), Stats., the customer shall
104 sign a statement acknowledging that the customer has waived the right to enter into a repayment
105 plan that would allow the customer the opportunity to repay the outstanding balance of the loan
106 in 4 equal installments with no additional interest charges.

107 (4) REPAYMENT PLAN OFFER. (a) The offer of the repayment plan required by s.
108 138.14(11g), Stats., shall be provided to the customer in a single written document that is on a
109 form prescribed by the division. The form shall:

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

118 (b) The licensee shall retain in the customer’s file a copy of the repayment plan form
119 sent to the customer.

120 Note: A copy of the repayment plan offer form may be downloaded from the
121 department’s website at www.wdfl.org.

122 **(5) REPAYMENT PLAN AGREEMENT.** (a) The repayment plan agreement shall be in
123 writing and shall do all of the following:

- 124 1. Contain no blank spaces.
- 125 2. Be signed and dated by the customer and a representative of the licensee.
- 126 3. Identify the name, address, and telephone number of the licensee.
- 127 4. Identify the name, address, telephone number, and unique identification number of the
128 customer.
- 129 5. State the date the repayment plan was made, the loan number, and the outstanding
130 balance.
- 131 6. State the payment amounts and due dates.
- 132 7. Contain a summary of action that could be taken against the customer if the customer
133 does not make the required repayment plan installment payments when due.

134 (b) The licensee shall furnish the customer a copy of the signed agreement.

135 (c) The licensee shall retain a copy of the repayment plan agreement in the customer's
136 file.

137 **(6) ACCEPTANCE OF PLAN.** No licensee is required to honor an offer for a
138 repayment plan under s. 138.14(11g), Stats., that is not accepted by the customer and received by
139 the licensee within 10 days of the date the offer is made.

140 **(7) REQUIREMENTS OF REPAYMENT PLAN.** The repayment plan under s.
141 138.14(11g), Stats., shall meet all of the following requirements:

142 (a) The first payment shall not be due earlier than the customer's next pay day following
143 the maturity date of the loan.

144 (b) The due date of the 4 equal installments shall coincide with the customer's pay
145 period schedule, as verified by the customer's pay stub, payroll receipt, or receipt of government
146 or retirement benefits that identifies the frequency of the pay cycle.

147 (c) If the customer's income is not received on a consistent, regular cycle, the pay period
148 schedule shall be considered every two weeks and the first payment shall be due two weeks
149 following the maturity date of the loan.

150 **DFI-Bkg 75.08 General matters.**

151 (1) No subsequent payday loan made under s. 138.14(12)(a), Stats., shall be made more
152 than 10 days after the maturity date of the initial payday loan.

153 (2) Notwithstanding s. 138.14(12)(f), Stats., a licensee is not prohibited from bringing an
154 action to collect the total outstanding balance due on a payday loan, including the service charge
155 permitted under s. 138.14(10)(b)2.

156 (3) All times referenced in s. 138.14 are for the Central Time Zone.

157 **DFI-Bkg 75.09 Database. (1) SECURE TRANSMISSION.**

158 (a) Except as otherwise provided in s. 138.14, Stats., a licensee shall transmit all
159 information to the database via the Internet.

160 (b) In order to maintain the confidentiality and security of the information transmitted to
161 the database, a licensee shall maintain generally accepted security safeguards to maintain the
162 confidentiality and security of information transmitted to the database. The licensee shall install,
163 maintain and regularly update malware protection, antivirus and antispymware software, and a
164 firewall.

165 (c) A licensee shall not transmit information to the database using publicly accessible
166 computers, computers that are not under the licensee's control, unsecured wireless connections,
167 Wi-Fi connections, or other connections that are not secure.

168 (2) CUSTOMER ELIGIBILITY.

169 (a) If the database advises the licensee that an applicant is eligible for a payday loan, the
170 licensee shall record a transaction identification number, generated by the database, on the
171 applicant's loan document before entering into the payday loan.

172 (b) If the database advises the licensee that an applicant is ineligible for a payday loan,
173 the licensee shall do all of the following:

- 174 1. Inform the applicant of the applicant's ineligibility;
- 175 2. Provide the applicant with the reason for the ineligibility determination given by the
176 database.
- 177 3. Instruct the applicant to contact the database provider if the applicant wants more
178 specific information regarding the reason for ineligibility.
- 179 4. Provide the applicant with the telephone number of the database provider.

180 (3) DATABASE UPDATES. (a) A licensee shall input all information requested by the
181 database into the database when:

- 182 1. A payday loan is consummated.
- 183 2. A payday loan is repaid with the proceeds of a subsequent payday loan.
- 184 3. A customer elects to enter into a repayment plan under s. 138.14(11g), Stats.
- 185 4. A customer's payday loan is paid in full.
- 186 5. A customer elects to rescind his or her payday loan.
- 187 6. A customer makes a payment on his or her payday loan.

- 188 7. The licensee presents a check for payment or initiates an electronic fund transfer.
- 189 8. A customer's check is dishonored or electronic fund transfer is denied.
- 190 9. The licensee assesses a service charge for a dishonored check or denied electronic
191 funds transfer.
- 192 10. The licensee collects a service charge for a dishonored check or denied electronic
193 funds transfer.
- 194 11. The licensee determines a payday loan is in default.
- 195 12. The licensee obtains a judgment against the customer.
- 196 13. A customer satisfies a judgment.
- 197 14. The licensee collects any court costs or attorney's fees from a customer.
- 198 15. The licensee charges off a payday loan as uncollectible.
- 199 16. The division or the database provider determine additional information needs to be
200 submitted to the database.
- 201 (b) Except as set forth in subs. (4), information shall be entered into the database on the
202 day the licensee becomes aware of the information.
- 203 (c) If a licensee becomes aware of any changes or errors in the information previously
204 verified or transmitted by the licensee to the database, the licensee shall immediately update or
205 correct the database.
- 206 **(4) ALTERNATE PROCESS.** (a) If at the time a licensee receives a loan application
207 the licensee is unable to access the database via the Internet due to technical difficulties
208 occurring with the database, the licensee shall use the database provider's alternate process to
209 obtain applicant eligibility information from the database.

210 (b) If a licensee makes a payday loan based on applicant eligibility information obtained
211 from the database provider's alternate process, the licensee shall transmit to the database any
212 remaining required information no later than 11:59 p.m. on the next business day following the
213 date the database becomes accessible to the licensee via the Internet.

214 (c) If a licensee is required to transmit to the database information regarding a payday
215 loan that has already been made but the licensee is unable to access the database via the Internet
216 due to technical difficulties occurring with the database, the licensee shall transmit to the
217 database the required information no later than 11:59 p.m. on the date that the database becomes
218 accessible to the licensee via the Internet.

219 (d) Anytime a licensee is unable to access the database via the Internet due to technical
220 difficulties occurring with the database, the licensee shall document in its records the technical
221 problems it experienced and the date and time that it sought to access the database.

222 (5) RECORD RETENTION. Data must be retained on the database until the database
223 provider receives written approval from the department to archive, delete, or destroy specific
224 information.

225 (6) TRANSACTION FEE. By December 1 of each year the division shall determine and
226 post on its website the amount of the database transaction fee that will be in effect during the
227 following calendar year.

228 (7) CEASING LOAN ORIGINATIONS.

229 (a) The plan required by s. 138.14(14)(o), Stats., shall be received by the division at least
230 10 business days before a licensee stops originating payday loans.

231 (b) The provisions of s. 138.14(14)(d)5, Stats., do not apply if a licensee is updating the
232 database in accordance with a plan approved by the division under s. 138.14(14)(o), Stats.

233 (8) IMPLEMENTATION AFTER JANUARY 1, 2011. In the event the database is not
234 implemented or is not fully operational by January 1, 2011, the licensee shall have 30 days from
235 the date the database is deemed fully operational by the division to enter all required information
236 onto the database for all loans originated on or after January 1, 2011.

237 **Effective date.** This rule shall take effect on January 1, 2011.

Dated: _____ Agency: _____
