

CR 10-098**ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING
ADOPTING RULES**

- 1 The Wisconsin Department of Financial Institutions, Division of Banking by this order creates
2 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 form and repayment plan requirements; 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 effect for both the business and consumer.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No written comments were received.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, 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.

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:

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

4 **CHAPTER DFI—BKG 75**

5 **PAYDAY LENDING**

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

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

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

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

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

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

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

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

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

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

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

23 (2) Payable in 6 or more substantially equal monthly installments, or 13 or more
24 substantially equal biweekly installments, where the customer voluntarily authorizes recurring
25 electronic fund transfers from an account at a financial establishment if both of the following
26 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 under any of the following circumstances:

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) Except as provided in sub. (4), no licensee under s. 138.09 shall make a loan of
40 \$1,500 or less under any of the following circumstances:

41 (a) That requires payments be made on any schedule other than substantially equal
42 biweekly installments or substantially equal monthly installments, except as provided in s.
43 138.09(7)(c)2, Stats.

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

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

46 (4) Sub. (3) does not apply to a licensee under s. 138.09, Stats., where all of the
47 following apply:

48 (a) The licensee operates as a pawnbroker as defined in s. DFI-Bkg 77.02(2).

49 (b) The licensee takes possession of the pledge as defined in s. DFI—Bkg 77.02(5).

50 (c) The forfeited pledge satisfies the loan.

51 **DFI-Bkg 75.04 Disclosure requirements.** (1) The disclosures required by s.
52 138.14(9g)(a)1., 2., 4., 5. and 6., Stats., shall be provided to the applicant in a single written
53 document that is in a form prescribed by the division. The form shall be:

54 (a) Signed and dated by the applicant.

55 (b) Signed and dated by a representative of the licensee.

56 (c) On white paper sized 8 ½” x 11” and in Times New Roman font style 12 or greater.

57 (d) Delivered to the customer in the English and Spanish languages, or at the customer’s
58 option, in the English or Spanish language.

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

60 (3) If the applicant is applying for a payday loan via the Internet, the lender’s compliance
61 with par. (c) will be based on how the form is displayed on the lender’s computer, and not based
62 on how the form is displayed on the applicant’s computer.

63 **Note:** A copy of the disclosure form may be downloaded from the department’s website
64 at www.wdfi.org.

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

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

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

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

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

- 79 (a) Gross weekly earnings times 4.33, if the customer is paid weekly.
- 80 (b) Gross two week earnings times 2.16, if the customer is paid every two weeks.
- 81 (c) Gross semi-monthly earnings times 2, if the customer is paid twice a month.
- 82 (d) Gross monthly earnings times 1, if the customer is paid monthly.

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

- 85 (a) A recent official pay stub or official payroll receipt.
- 86 (b) A recent receipt reflecting payment of retirement benefits.
- 87 (c) A recent receipt reflecting payment of government benefits.
- 88 (d) A recent statement from a financial establishment reflecting direct deposit of
89 government benefits.
- 90 (e) Other documentation as approved by the division.

91 (3) The documents set forth in pars. (a) through (d) shall not be dated more than 180
92 days prior to the date on which the payday loan is made.

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

95 **DFI-Bkg 75.07 Form requirements.** (1) The writing evidencing the customer's
96 obligation to pay under a payday loan shall clearly and conspicuously contain the following
97 language:

98 (a) **REPAYMENT PLAN:** If you fail to repay this payday loan in full upon its maturity
99 date, the lender must offer you the opportunity to repay the outstanding balance of the loan in 4
100 equal installments with due dates coinciding with your pay period schedule. There is no cost to
101 you for entering into the repayment plan, and the lender may not charge any interest on the
102 outstanding balance while you are participating in the repayment plan. Customer's initials or
103 signature: _____.

104 (b) You may rescind this payday loan by returning to the lender the proceeds of the
105 payday loan before the close of business on the next day of business after the loan is made, or, if
106 the place of business where the loan is made is open 24-hours, before 5 p.m. on the next day of
107 business after the loan is made.

108 (c) You may not repay a payday loan with the proceeds of another payday loan more
109 than once.

110 (d) A lender may present a customer's check for payment no more than once. For each
111 customer authorization to initiate an electronic fund transfer from the customer's account, a
112 lender may initiate an electronic fund transfer no more than once. The only charge that a lender
113 may impose for dishonor of a customer's check or denial of the lender's instruction to execute an
114 electronic fund transfer is a charge that does not exceed \$15.

115 (e) If a person makes a payday loan to a customer in violation of s. 138.14, Stats., the
116 customer may bring an action against the person for damages of \$250 or the amount of the

117 payday loan, whichever is greater, plus costs, and notwithstanding s. 814.04(1), Stats.,
118 reasonable attorney fees.

119 (2) The language required by par. (1)(a) shall be placed immediately above the Notice to
120 Customer required by s. 422.303(3), Stats., and shall be separately signed or initialed by the
121 customer before the payday loan is made.

122 (3) The writing evidencing the customer's obligation to pay shall be delivered to the
123 customer in the English and Spanish languages, or at the customer's option, in the English or
124 Spanish language.

125 **DFI-Bkg 75.08 Repayment plan.**

126 (1) REPAYMENT PLAN OFFER. (a) If the customer fails to repay the subsequent
127 loan referred to in s. 138.14(12)(a), Stats., the offer of the repayment plan required by s.
128 138.14(11g), Stats., shall be hand-delivered, mailed or e-mailed to the customer when the
129 licensee receives notice of insufficient funds in the customer's account or within 10 days after
130 the maturity date of the loan. The offer of repayment plan shall be in a single written document
131 that is in a form prescribed by the division. The licensee may deposit the customer's check or
132 initiate the authorized electronic fund transfer within the 10 day period. The form shall:

133 1. Be on white paper sized 8 ½" x 11" and in Times New Roman font style 12 or
134 greater.

135 2. Identify the name, address, and telephone number of the licensee.

136 3. Identify the name, address, telephone number, and unique identification number of the
137 customer.

138 4. Contain an explanation of the repayment plan being offered.

139 5. State the date the offer is made and the date by which the customer must accept the
140 offer.

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

143 (c) If the offer is e-mailed to the customer, the lender's compliance with subd. (a)1. will
144 be based on how the offer is displayed on the lender's computer, and not based on how the offer
145 is displayed on the customer's computer.

146 Note: A copy of the repayment plan offer form may be downloaded from the
147 department's website at www.wdfi.org.

148 **(2) REPAYMENT PLAN AGREEMENT.** (a) The repayment plan agreement shall
149 be in writing and shall do all of the following:

150 1. Contain no blank spaces.

151 2. Be signed and dated by the customer and a representative of the licensee.

152 3. Identify the name, address, and telephone number of the licensee.

153 4. Identify the name, address, telephone number, and unique identification number of the
154 customer.

155 5. State the date the repayment plan was made, the loan number, and the outstanding
156 balance.

157 6. State the payment amounts and due dates.

158 7. Contain a summary of action that could be taken against the customer if the customer
159 does not make the required repayment plan installment payments when due.

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

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

163 (3) ACCEPTANCE OF PLAN. No licensee is required to honor a repayment plan offer
164 under sub. (2) that is not accepted by the customer and received by the licensee within 10 days of
165 the date the offer is hand-delivered, mailed or e-mailed to the customer.

166 (4) REQUIREMENTS OF REPAYMENT PLAN. The repayment plan under s.
167 138.14(11g), Stats., shall meet all of the following requirements:

168 (a) The first payment shall not be due earlier than the customer's next pay day following
169 the date the offer is made.

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

173 (c) If the customer's income is not received on a consistent, regular cycle, the pay period
174 schedule shall be considered every two weeks and the first payment shall be due two weeks
175 following the date the offer is made.

176 **DFI-Bkg 75.09 General matters.**

177 (1) The effective date of a payday loan cannot be prior to the date the loan is signed by
178 the customer.

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

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

183 **DFI-Bkg 75.10 Database. (1) SECURE TRANSMISSION.**

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

186 (b) In order to maintain the confidentiality and security of the information transmitted to
187 the database, a licensee shall maintain generally accepted security safeguards to maintain the
188 confidentiality and security of information transmitted to the database. The licensee shall install,
189 maintain and regularly update malware protection, antivirus and antispymware software, and a
190 firewall.

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

194 **(2) CUSTOMER ELIGIBILITY.**

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

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

- 200 1. Inform the applicant of the applicant's ineligibility.
- 201 2. Provide the applicant with the reason for the ineligibility determination given by the
202 database.
- 203 3. Instruct the applicant to contact the database provider if the applicant wants more
204 specific information regarding the reason for ineligibility.
- 205 4. Provide the applicant with the telephone number of the database provider.

206 (3) DATABASE UPDATES. (a) A licensee shall input all information requested by the
207 database into the database when any of the following occur:

- 208 1. A payday loan is consummated.
- 209 2. A payday loan is repaid with the proceeds of a subsequent payday loan.
- 210 3. A customer elects to enter into a repayment plan under s. 138.14(11g), Stats.
- 211 4. A customer's payday loan is paid in full.
- 212 5. A customer elects to rescind his or her payday loan.
- 213 6. A customer makes a payment on his or her payday loan.
- 214 7. The licensee presents a check for payment or initiates an electronic fund transfer.
- 215 8. A customer's check is dishonored or electronic fund transfer is denied.
- 216 9. The licensee assesses a service charge for a dishonored check or denied electronic
217 funds transfer.
- 218 10. The licensee collects a service charge for a dishonored check or denied electronic
219 funds transfer.
- 220 11. The licensee determines a payday loan is in default.
- 221 12. The licensee obtains a judgment against the customer.
- 222 13. A customer satisfies a judgment.
- 223 14. The licensee collects any court costs or attorney's fees from a customer.
- 224 15. The licensee charges off a payday loan as uncollectible.
- 225 16. The division or the database provider determines additional information needs to be
226 submitted to the database.

227 (b) Except as set forth in sub. (4), information shall be entered into the database on the
228 day the licensee becomes aware of the information.

229 (c) If a licensee becomes aware of any changes or errors in the information previously
230 verified or transmitted by the licensee to the database, the licensee shall immediately update or
231 correct the database.

232 (4) ALTERNATE PROCESS. (a) If at the time a licensee receives a loan application
233 the licensee is unable to access the database via the Internet due to technical difficulties
234 occurring with the database, the licensee shall use the database provider's alternate process to
235 obtain applicant eligibility information from the database.

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

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

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

248 (5) RECORD RETENTION. Data shall be retained on the database until the database
249 provider receives written approval from the department to archive, delete, or destroy specific
250 information.

251 (6) TRANSACTION FEE. By December 1 of each year the division shall determine and
252 post on its website the amount of the database transaction fee that will be in effect for each
253 payday loan made during the following calendar year.

254 (7) CEASING LOAN ORIGINATIONS.

255 (a) The plan required by s. 138.14(14)(o), Stats., shall be received by the division at least
256 10 business days before a licensee stops originating payday loans.

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

259 (8) IMPLEMENTATION AFTER JANUARY 1, 2011. In the event the database is not
260 implemented or is not fully operational by January 1, 2011, the licensee shall have 60 days from
261 the date the database is deemed fully operational by the division to enter all required information
262 onto the database for all loans originated on or after January 1, 2011.

263 **Effective date.** This rule shall take effect as provided in s. 227.22(2), (intro.), Stats.

Dated: _____

Agency: _____

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