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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 10-098

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

#### 1. Statutory Authority

a. Section DFI-Bkg 75.02 (intro.) notwithstanding s. 138.14 (1) (k), Stats., to exclude transactions made for business, commercial, or agricultural purchases. 2009 Act 405 does not appear to exclude any types of payday loans based on the purpose of the loan. Section 138.14 (1) (k), Stats., defines a payday loan as a transaction involving an “individual...” loan recipient and a lender that is a “person,” where the latter term is defined by s. 990.01 (26), Stats., to include “all partnerships, associations and bodies politic or corporate.” While the use of “individual” means a human being in accordance with legislative drafting standards, it is possible for an individual to enter into a loan transaction for a business, commercial, or agricultural purpose (e.g., a person who owns a farm or business as a sole proprietor). Accordingly, what statutory authority does the department have to exclude transactions based on the type of transaction when an individual seeks a loan as described by the statute?

b. Is it appropriate for the department to limit the number of checks that a lender may accept under s. DFI-Bkg 75.03 (2) (c) when s. 138.14 (1) (k) 1., Stats., refers to the presentation of “one or more” checks? The statute does not appear to include the five-check limit that is in the rule.

c. In s. DFI-Bkg 75.08 (2), the department notwithstanding s. 138.14 (12) (f), Stats., to permit actions for recovery of an amount greater than the amount of the check or electronic funds transfer. Since s. 138.14 (12) (f), Stats., specifies an action for the amount of the check or the

electronic funds transfer, what is the department's authority for increasing the amount for which a licensee may bring legal action?

## **2. Form, Style and Placement in Administrative Code**

a. The department should provide plain-language examples of the transactions described in s. DFI-Bkg 75.02 (2).

b. In s. DFI-Bkg 75.03 (2) (intro.) and (3) (intro.), the department should clarify whether it applies to loans that have "any" or "all" of the characteristics in the following paragraphs. For example, it appears that "under any of the following circumstances" should be inserted before the colon in sub. (2) (intro.). Also, see s. DFI-Bkg 75.07 (4) (intro.).

c. Given the presence of s. 138.16 (2), Stats., is s. DFI-Bkg 75.03 (2) (d) unnecessary? At the very least, a cross-reference to the statute should be added.

d. In s. DFI-Bkg 75.04 (1), each paragraph should end in a period and the introductory material should be revised in accordance with s. 1.03 (2) (h), Manual.

e. In s. DFI-Bkg 75.07 (1), "24" should replace "twenty-four".

f. What is the department's intent regarding the absence of blank spaces on a repayment agreement under s. DFI-Bkg 75.07 (5) (a) 1.? Does the department intend that no form agreements may be used, or that if a form is used, no space may be left blank?

g. In s. DFI-Bkg 75.09 (1) (b), are there such things as "generally accepted security safeguards"? Should the department be more specific in describing the steps a licensee must take with regard to secure transmission?

h. In s. DFI-Bkg 75.09 (3) (intro.), the department should insert "any of the following occurs" before the colon. [s. 1.03 (2) (h), Manual.]

i. In s. DFI-Bkg 75.09 (5), "shall" should replace "must" and the sentence should be written in the active voice.

## **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Throughout the proposed rule, the department should provide locations for downloading forms that are more precise than the Department of Financial Institutions home page.

b. In s. DFI-Bkg 75.05 (1), does the department intend to refer to "sub. (3)" instead of "subs. (3)" or does it intend to refer to multiple subsections? This comment also applies to s. DFI-Bkg 75.09 (3) (b).

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The department's analysis does not compare this proposed rule with rules in adjacent states. It merely notes that those states regulate payday lenders. A comparison of rules should be added.

b. In s. DFI-Bkg 75.09 (2) (b) 1., a period should be placed at the end of the subdivision.

c. In s. DFI-Bkg 75.09 (3) (b), "determines" should replace "determine".

d. In s. DFI-Bkg 75.09 (7) (b), a period should be placed after "5" in the first statutory citation.