

Clearinghouse Rule 12-034

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 create ch. DFI—Bkg 78 relating to auto title loans.

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

Statutes interpreted

Section 138.16, Stats.

Statutory authority and explanation of statutory authority

The statutory authorities for the rule are the following:

Section 138.16(2), Stats., which states that “[t]he division shall promulgate rules for determining the retail value of a motor vehicle for purposes of this paragraph, including rules specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.”

Related statutes or rules

Section 138.09, Stats.

Plain language analysis

As a result of the passage of 2011 Wisconsin Act 32, a licensed lender that holds the proper certificate of authorization may make title loans. However, no licensed lender may make a title loan to a borrower that results in the borrower having liability for the loan, in principal, of more than 50 percent of the retail value of the motor vehicle used as security for the loan.

The objective is to promulgate a rule for determining the retail value of a motor vehicle, including specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.

Summary of and comparison with existing or proposed federal regulations

DFI is unaware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states

Michigan and Iowa have no title lending rules.

Illinois has rules on title lending; however they do not address determining the retail value of a motor vehicle.

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 title lending laws in states across the country. The department is engaged in outreach with title 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

N/A

Effect on small business

N/A

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. Ch. DFI – Bkg 78 is created to read:

Chapter DFI—Bkg 78 Title Loans

DFI – Bkg 78.01 Scope. This chapter applies to any title loan made pursuant to s. 138.16, stats.

DFI – Bkg 78.02 Definition. In this chapter: (1) “licensed lender” has the meaning set forth in s. 138.16(b), stats.

DFI – Bkg 78.03 Determining retail value of motor vehicle. (1) A licensed lender shall use any of the following nationally recognized vehicle valuation guides to determine the retail value of a motor vehicle at the time of loan origination:

- (a) Black Book.
- (b) NADA.
- (c) Kelley Blue Book.
- (d) Other nationally recognized vehicle valuation guides as approved in writing by the division.

(2) A licensed lender shall take the following vehicle criteria into consideration when it determines the retail value of a motor vehicle at the time of loan origination:

- (a) Location.
- (b) Year, make and model.
- (c) Trim or body type.
- (d) Mileage.
- (e) Engine size.
- (f) Transmission type.
- (g) Options.
- (h) Condition.
- (i) Other criteria used by the nationally recognized vehicle valuation guide when determining the retail value of a motor vehicle.

DFI – Bkg 78.04 Records. Documentation detailing how the retail value of the motor vehicle was determined shall be retained in the customer's file.

Section 2. 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