Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Lutheran Office for Public Policy in Wisconsin TESTIMONY October 25, 2010
Clearinghouse Rule 10-098 relating to payday lending legislation

Mr. Chair and Members of the committee, thank you for the opportunity to testify on Clearinghouse Rule 10-098 regarding Payday lending.

My name is Amy Johnson and I am the Director of the Lutheran Office for Public Policy in Wisconsin. We are a ministry of advocacy for the Evangelical Lutheran Church in America, the ELCA.

As advocates on behalf of those struggling with poverty and battling hunger, we became engaged in the legislative effort to pass meaningful reform of the Pay Day lending industry in Wisconsin. We worked throughout the legislative process and were willing to negotiate along the way to ensure Wisconsin would finally enact oversight of the payday lending industry. We did not work to pass a bill that would allow short term, high interest lenders to continue business as usual.

The Lutheran Office for Public Policy in Wisconsin is one of a network of 20 ELCA state public policy offices around the country. Many of my colleagues in other states have worked to reform payday loans in their state legislatures. For many, this has been a several year process, not because a bill fails to pass, but once a law is enacted, the industry reinvents itself to operate under a new category and continue their abusive practices.

The state lawmakers soon wake up to the new methods of industry lenders and must again take up legislation that targets the new twist with the hope to preempt any further tricks. I can't imagine that our elected officials want to go through the drill more than once to accomplish the goal of enacting true reform. Especially if it gives merit to the argument that an interest rate cap of 36% is the only way to really regulate the industry.

But, this is in fact what we are facing with this debate over the proposed rule. For these reasons, we strongly support s. 75.03(3), which will regulate non-payday lenders who issue loans under $1,500.

s.75.03 (3) will prevent payday loan operators from simply switching gears and offering loans under a different section thereby circumventing the law. Without this provision, payday lenders could simply tweak their business practices and issue loans that would not be subject to the key provisions specified in the legislation. Key provisions such as limiting the total liability to 35% of gross monthly income; prohibiting interest from being charged after default; requiring installment plans in 4 equal payments; and prohibiting rollovers (a particularly abusive practice).

If s.75.03(3) lands on the chopping block we will have put forth regulations that completely ignore legislative intent to enact meaningful reform of this industry. We will have caved to the industry and left those being crushed by multiplying payday loans out in the cold. We will have done a disservice to the people of Wisconsin by ignoring legislative intent and put into place hollow oversight by a department with its hands tied.

As this process to evaluate the proposed rule unfolds, I ask you to remember the work that you did this session to pass real reform, and I ask you to consider the consequences of removing s.75.03(3) on your constituents.

Thank you,
Amy M. Johnson
Director, Lutheran Office for Public Policy in Wisconsin

Testimony

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

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To: Members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

Date: October 25, 2010

Re: Clearinghouse Rule 10-098

Chairperson Wirch and Members of the Committee, thank you for the opportunity to provide testimony on Clearinghouse Rule 10-098. My name is Tony Gibart and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide organization that represents local domestic abuse victim service providers and survivors. WCADV has consistently advocated for strong regulation of the payday and short-term lending industry because victims of domestic violence tend to be caught in difficult financial situations when trying to leave abusive homes and the industry's predatory tactics leave victims further indebted and economically tied to abusers. WCADV strongly supports DFI's proposed rule because it will ensure the intent of 09 Wisconsin Act 405 is preserved and that predatory lenders will not skirt that act's reasonable and modest consumer protections.

Predatory lending re-victimizes survivors of domestic violence and prevents them from gaining the financial security they need to live free from violence.

When a victim attempts to leave an abuser short-term loans can be an enticing option. However, the experiences of survivors and the practices of the short-term loan industry demonstrate that these loans are designed to keep borrowers perpetually indebted to lenders. Many survivors who are hoping to start a new life get caught in this endless cycle of borrowing and re-borrowing.

One woman who sought services from WCADV's member program, Christine Ann Domestic Abuse Services, in Neenah (I will call her Nancy) told me how she turned to payday loans when going through a divorce with her abuser. Nancy found herself being forced to take out loans from different payday lenders to pay just the interest on the others. Nancy was part of the industry pattern; the finance charges and interest were so exorbitant that she was never able to pay down the principle. Nancy explained how the bill collectors used harassing tactics, calling her work, her family members and friends with demands for money. They even went so far as to show up at her house to intimidate her. Being subjected to this kind of intimidation would be unpleasant for anyone, but for victims of domestic abuse, who are likely dealing with similar behaviors from abusers, the psychological toll can be overwhelming.

Even more troubling than the psychological impact, payday lending prevents victims from gaining the financial independence and stability they need to be free of abusers. Quite clearly, the industry is designed to keep victims in a state of financial dependence and instability. When victims are not able to

engaging in practices that would enable them to avoid the regulations contained in Act 405 and clarifies that payday lenders may not engage in auto-title lending, as that practice is made illegal in another statute section.

Conclusion

DFI-BKG 75 is necessary to fulfill the promise the Legislature made to consumers and citizens when it acted to reduce abusive lending practices in Wisconsin. If these rules are not promulgated, the stories of people like Nancy and the many others who spoke out about predatory lending will multiple. Indeed, the Legislature will be forced to confront the issue again but only after more people will have become trapped in never-ending debt and reasonable efforts at compromise and moderate regulation will have been unnecessarily squandered. Thank you for the opportunity to speak to this issue.

State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor** Lorrie Keating Heinemann, **Secretary**

Lorrie Keating Heinemann, Secretary
Department of Financial Institutions

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
October 25, 2010

Chairperson Wirch, committee members, thank you for the opportunity for the Department of Financial Institutions (DFI) to submit testimony on our rule on Act 405, relating to payday lending.

In drafting Rule DFI-Bkg 75, our Banking Division gave deliberate thought and consideration to the comments put forth by all interested parties. The resulting rule protects consumers while allowing the industry to continue to offer loans. The rule also provides clarity and allows the Division to effectively implement the provisions of s. 138.14.

The Committee's passage of the rule will ensure implementation in January, 2011. The decision not to pass the rule will have a negative impact on businesses and could eliminate the consumer protections afforded by s. 138.14. Numerous credit transactions would be considered payday loans if you do not pass this rule. All types of businesses dealing with credit and using electronic fund transfer payments are impacted without this rule.

For example, a loan secured by a person's home made after January 1, 2011, would be considered a payday loan under s. 138.14, if the customer makes their monthly payment via electronic funds transfers. Also, by being licensed under s. 138.09, a lender could avoid licensing under s. 138.14 by making a loan that looks like a payday loan except that the loan would not be secured by a check or an electronic fund transfer authorization. Our rule will fix these unintended consequences of the Act.

It is important to note that the volume of payday loans in Wisconsin has gone from $11.2 million in 1996 to $600 million in 2009. The average loan amount has gone from $140 to $419 during the same period. It appears that the loans that were intended to be for emergency purposes have ended up being a frequent source of credit. It is time that we implement these new consumer protections to ensure that this high cost of credit does not continue as a primary source of credit for consumers.

The rule includes many consumer protections, such as requiring that the loan agreements have disclosures regarding the repayment plan options, the 24 hour right to rescind the loans and the limit of one rollover per loan.

Our Department has developed these rules in a transparent manner and we invited input from both the industry and consumers. We met with many different stakeholders before and during the drafting of the rule and carefully considered all suggestions that were brought to our attention. While drafting the rule the Department focused on what the intention of the legislation was while addressing any unintended consequences. We encourage you to pass this rule so the law can be fully implemented on the first of the year and business can continue on without further regulatory burdens.

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October 25, 2010

Senator Robert W. Wirch
State of Wisconsin
Senate District 22
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: Comments on DFI Rules DFI–Bkg 75 relating to payday lending

Dear Senator Wirch:

The Wisconsin Financial Services Association ("WFSA") represents lenders licensed under Wisconsin Statute § 138.09 entitled "Licensed Lenders." WFSA licensed lender members do not make what normally has been designated "payday" loans, and object to the proposed new payday loan Regulations ("Regulations") that purport to regulate and eliminate traditional § 138.09 licensed loans (non-payday loans) without statutory authority.

In particular, the WFSA:

(1) objects to DFI–Bkg § 75.03(3) because that section attempts to impose regulations on Wis. Stat. § 138.09 licensed loans without statutory authority. There is no grant of authority to DFI to issue this regulation, and it should be eliminated.

(2) objects to DFI–Bkg. § 75.02(2) to the extent that it arbitrarily limits voluntary EFT authorizations only to monthly installment loans, and then only to loans that are six months or longer. A *voluntary* EFT authorization should be permitted to any customer who desires to use modern electronic payment systems as long as such EFT authorization is not required.

(3) objects to DFI–Bkg. § 73.03(1)(d) because it arbitrarily prohibits a borrower from using his or her motor vehicle as collateral to secure a loan from a new § 138.14 licensee.

In submitting this testimony, the WFSA would like to emphasize that its members are not payday lenders as that term has generally been understood in the public and press. They are installment lenders that do not make short term two week payday loans. Without statutory authority, the Regulations attempt to prohibit § 138.09 licensed loans that do not fall under the statutory coverage of the new "payday loan" Act (the "Act").

The WFSA objects to the following proposed regulations:

1. DFI–Bkg 75.03(3) Prohibited Practices – § 138.09 licensees.

Proposed Regulation DFI–Bkg 75.03(3) purports to restrict loans made by § 138.09 licensees. There is no express or implied statutory grounds for this proposed Regulation, and Bkg 75.03(3) (Lines 38–43) should be eliminated from the final Regulation.

No Express Statutory Authority to Issue DFI–Bkg 70.03(3). The Act does not grant any express authority to DFI to issue regulations governing § 138.09 licensees. It only grants authority to issue regulations "necessary for the administration of [§ 138.14]." (See § 138.14(8)(b). The ability of a state agency to issue substantive regulations must be expressly granted by statute. Numerous Wisconsin cases have confirmed this requirement. See, e.g. *Elroy-Kendall-Wilton Schools v Coop. Educ. Serv.* 102 Wis.2d 274, 278. (1975) ("An agency or board created by the legislature has only those powers which are expressly conferred or which are necessarily implied from the statutes under which it operates."); *Racine Fire and Police Comm. v Stanfield.* 70 Wis.2d 395 (1975); *Wisconsin Environmental Decade, Inc v PSC,* 69 Wis.2d 1 (1975.

No "implied" authority to issue DFI–Bkg. 70.03(3). Where no express authority is given in the statute to issue regulations, a state administrative agency is only granted the limited power to "interpret" statutory provisions pursuant to § 227.11. Case law confirms that "[A]ny reasonable doubt of the existence of an implied power of an administrative agency should be resolved against the exercise of such authority." *State v ILHR Dept,* 77 Wis.2d 126, 136 (1977). Proposed DFI–Bkg 75.03(3) is not necessary to "interpret" any provision of § 138.09, and cannot be justified on that basis.

DFI–Bkg 70.03(3) Conflicts with Existing Statutory Rights. Wis. Stat. § 227.10(2) states that "No agency may promulgate a rule which conflicts with state law." DFI–Bkg 75.03(3) directly conflicts with the current statutory rights granted to licensees under § 138.09. Specifically, § 138.09(a) does not place any restrictions on loans under $1,500. It does not (a) require equal *monthly* installments for such loans as provided on Lines 40–41, (b) prohibit a licensee from making an open-end credit plan (line 42), or (c) require that a loan exceed 90 days (line 43). These types of loans have been made, or have been available to be offered by licensed

lenders under § 138.09, since at least 1974 when that section was amended along with passage of the Wisconsin Consumer Act.

DFI–Bkg 70.03(3) is Consumer Unfriendly. On a practical basis, proposed DFI–Bkg 75.03(3) is very consumer unfriendly in that it can require consumers to pay more finance charges than necessary. For example, the Regulation requires monthly installments when shorter periods of repayment, such as by-weekly, will amortize a loan faster and result less finance charges.

Proposed DFI–Bkg 75.03(3) of the Regulations is beyond the power and statutory authority of the DFI to promulgate rules under § 138.14, and it is prohibited by § 227.10(2). The Regulation should be deleted from the final rule.

2. DFI–Bkg 75.02(2) Transactions Not Covered – should include all voluntarily authorized EFT payments.

Proposed Regulation DFI–Bkg 75.02(2), correctly recognizes that a loan transaction is not a "payday loan" as defined in § 138.14(1) (k) where the customer *voluntarily* authorizes loan repayment through recurring EFT debits. WFSA supports this regulation because Consumers are ever more frequently using EFT authorized debits to make timely payments, avoid delinquency charges, and positively build their credit record histories.

However, DFI–Bkg 75.02(2) contains two arbitrary restrictions on a customer's right to choose payment by voluntary EFT authorizations, namely: 1) for loans under six months; and 2) for all loans, whatever the length, where the repayment interval is shorter or longer than a month.

There is no statutory basis, or logical rationale, for these arbitrary distinctions. All loans containing the notices set forth in DFI–Bkg 75.02(2)(a) and (b) should be treated the same. This convenience should not be denied to borrowers who desire installment loans of less than six months, or to pay on a bi-weekly basis.

Regulation DFI–Bkg 75.02(2) should be amended to remove the phrase "payable in six or more substantially equal monthly installments" on Line 23. Any EFT authorization should be permitted where it is voluntary and complies with the requirements of subsections (a) and (b) of DFI–Bkg 75.02(2).

3. DFI–Bkg 73.03(2)(d). Prohibited Practices – motor vehicle security interest limitation.

Proposed DFI–Bkg 75.03(2)(d) (Line 37) provides that "No licensee shall make a payday loan: . . . (d) that is, or is to be, secured by an interest in a motor vehicle." This prohibition should be eliminated from the final rule.

There is no restriction under the statutory language of new § 138.14 restricting the ability of a licensee thereunder to take a security interest in any collateral whatsoever, including a motor vehicle. Such a rule is beyond the scope of the authority granted under § 138.14(8)(b), which only permits rules "necessary for the administration of" § 138.14.

Section 138.16 of the Act (as partially vetoed by the Governor), which is separate from payday loans governed under § 138.14, § 138.09 licensees from taking a security interest in motor vehicles. This will prevent creditworthy and often long term good customers of § 138.09 licensed lenders from being able to use their motor vehicle as collateral to obtain extra money or to refinance an existing auto loan. Often times a motor vehicle is the one valuable asset the customer has to offer as collateral to obtain a needed loan. WFSA members have a long track record of being fair and reasonable in making loans secured by motor vehicles desired by their customers.

WFSA licensed lenders may desire to continue to service their customers by obtaining a § 138.14 loan license and offering their customers the ability to obtain a short term loan secured by a motor vehicle. In such a case, the § 138.14 provisions that protects that customer without using his or her motor vehicle as collateral, should be sufficient to protect that same customer who is willing to pledge the motor vehicle, often to obtain a lower rate.

There is no reason, or statutory basis, for DFI–Bkg 75.03(2)(d) and it should be eliminated from the final Regulation.

Very truly yours,

Thomas Moore, President

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LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

FROM: Bob Andersen
Stacia Conneely

RE: Clearinghouse Rule 10-098, relating top Payday Lending

Date: October 25, 2010

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

We were in support of the recently enacted legislation on payday lending which requires the creation of these administrative rules. We also testified in favor of the rules at the recent administrative hearing on the rules.

We appear in favor of the rules at this hearing. We are concerned about the objections that people in the industry have had about the rules, including the two matters that we address here.

1. Deletion of Proposed Bkg 75.03 (3)

The big complaint of the lenders is that s. 75.03(3) limits what a licensee under s. 138.09 can do with a loan under $1500 – it cannot be an open end credit plan, it cannot be less than 90 days, and it cannot require payments on a schedule for other than substantially equal monthly installments. These are not lenders under s. 138.14 (payday loans) These are lenders under s. 138.09 (non payday loans). Non payday loans are loans where collection will not be by presentment of a check or electronic funds transfer. Collection will be by conventional methods (small claims action).

The objection of the lenders is that the new legislation does not apply to s. 138.09, but applies only to s. 138.14. They say there is no statutory authority for s. 75.03 (3).

DFI created s. 75.03 (3) to prevent payday loan operators from circumventing the new law by simply issuing loans under s. 138.09. If lenders were able to circumvent the law, they would not be bound by the following restrictions of the new law, because these would not be payday loans:

- Limiting total liability to 35% of monthly gross income or $1500, whichever is less
- Prohibiting interest being charged after default
- Requiring installment payment plans in 4 equal installments
- Limiting rollovers to one
- Requiring notice of right to rescind
- Requiring compliance with disclosure requirements, including the total amount of all fees and costs and the annual percentage rate and the service charges
- Providing for the private right of action for any violation by a customer for a minimum of $250 in damages, plus reasonable attorney fees and the cost of the action

Without this rule provision, these same lenders can charge people 500% interest, require payments every two weeks, etc.

The result would be that we would be back to the same fix we were in before the legislation was enacted. Lenders could issue short term loans for small amounts of money and charge exorbitant interest rates.

So, s. 75.03 (3) is in perfect keeping with the purpose and intent of the legislation -- which is to regulate short term loans for small amounts.

Now, of course, lenders who proceed under the authority of s. 138.09 will be forced to go through small claims court to collect – instead of by presentment of checks or electronic funds transfers. But, the reality is that all that lenders need to do is to intimidate people into paying the debts and people will do so, without lenders having to proceed through court. You can imagine the letters that will threaten people with added court costs if they don't pay.

So, any argument by lenders that there are sufficient limitations or protections on lenders who issue short term loans under s. 138.09 is a hollow argument. Without s. 75.03(3) there just are no protections left for customers.

2. Deletion of Bkg 75.03(2)(d)

The same argument applies to another section which lenders want to delete – s. 75.03 (2)(d). This section prohibits a payday loan operator from issuing an auto title loan. The operators claim that the legislation only prohibits lenders licensed under s. 138.09 (non payday loans) from issuing auto title loans. They claim it does not prohibit lenders licensed under s. 138.14 (payday loans) from issuing auto title loans.

The same response to this argument applies. The purpose and intent of this legislation was clearly to prohibit auto title loans – as has been done in several other states. That purpose and intent was achieved by gubernatorial veto. Of course, actions by the governor are part of

legislative intent, because legislation cannot be enacted without gubernatorial action. The governor's action is part of the process in the enactment of legislation.

Without s. 75.03(2)(d), the purpose and intent of this legislation would be defeated.

STATE REPRESENTATIVE
GORDON HINTZ

WISCONSIN STATE ASSEMBLY

54th DISTRICT

TESTIMONY October 25, 2010
Clearinghouse Rule 10-098 relating to payday lending legislation

Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Dear Chairman Wirch and committee members,

Thank you for the opportunity to submit testimony today regarding Clearinghouse Rule 10-098 relating to payday lending regulations in Wisconsin. As many of you know, I have worked long and hard to make payday lending reform a reality in the State of Wisconsin. From the beginning, the legislature worked to provide meaningful and necessary protections *on behalf of consumers* who currently pay more than $150 million annually in abusive fees and charges. Today I am asking you to stand by that commitment to vulnerable consumers and avoid making changes to the proposed rule requested by the payday lending industry.

I took on this legislation because I was tired of hearing stories from constituents about how their lives had been devastated by their doing business with the unregulated payday lending industry that has proliferated in our state. Most borrowers are lower income individuals who are lent more money than they can reasonably pay back, and find themselves in an endless debt trap. These are people who would normally spend all of their disposable income in our economy, but are instead spending their income on interest and fees going primarily to out-of-state lenders.

The Wisconsin State Assembly's position has always been to protect Wisconsin's consumers from the most abusive payday lending practices. This was evidenced by the assembly vote on AB 447 and the final version, SB 530 that passed 72 to 25 in the assembly and was signed into law by Governor Doyle as Wisconsin Act 405. I am extremely proud of the work the Assembly and Senate did to ensure that Wisconsin will not longer be the "Wild, Wild West" for payday lenders. But we find today that our great achievement is again under attack by the payday lending industry.

You have before you Clearinghouse rule 10-098 which has already gone through a lengthy and thorough process in the Department of Financial Institutions. Their final version of the rule that is before you is reflective of the legislative intent. It is a good, strong and appropriate rule. The payday lending industry is taking one more crack at watering our laws down, and I ask you to once more stand strong and make your decision on what will best protect your constituents by allowing this rule through unaltered and unopposed. The consumer groups and their legal teams, including the Wisconsin Coalition Against Domestic Violence (WCADV), Legal Aid Society of Milwaukee Inc. and Legal Action of Wisconsin, Inc., have looked closely at this rule and signed off on it as appropriate and best for Wisconsin's consumers.

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E-mail: rep.hintz@legis.wi.gov ◆ Printed on recycled paper. ♻

I understand that the payday industry has been pressuring legislators and asking that s. 75.03(3) be deleted from the rule. It is interesting that this rule was referred not to the committee that addresses payday lending reform legislation up to this point, but rather to a committee that has previously never dealt with this issue until today.

Make no mistake about it, the payday lenders are asking you to remove s. 75.03(3) because they want you to insert a loophole that they can exploit. They want you today to help them continue making unregulated payday loans under a different guise. This is the technique that has been used in other states and they now think they can slip this by your committee. The payday industry has lots of resources and loads of experience in finding loopholes in order to continue to extract hundreds of millions of dollars from our most vulnerable citizens.

In making your decision regarding Clearinghouse Rule 10-098, ask yourself who you are making the decision on behalf of: Wisconsin's consumers or the national predatory payday lending industry? Please stand up to the special interests one more time and do not alter or delete s. 75.03(3).

Thank you for your consideration and please do not fall into the payday lenders trap today,

Sincerely,

Gordon Hintz