

(10) VIOLATION. Violation by an agent or insurer of any part of this rule in connection with insurance premium finance transactions will subject the agent or insurer to any applicable penalty including revocation of license.

History: Cr. Register, June, 1970, No. 174, eff. 7-1-70.

Ins 10.02 Maximum service charges and additional charges for insurance premium finance companies, insurers and insurance agents.

(1) SCOPE. This rule applies to insurance premium finance agreements issued by insurance premium finance companies authorized by section 200.50, Wis. Stats., and by insurers and insurance agents operating within the scope of Wis., Adm. Code section Ins 10.01.

(2) MAXIMUM SERVICE CHARGE AND MAXIMUM ADDITIONAL CHARGE.

(a) The maximum service charge may be calculated by applying a finance charge to the amount of principal balance (P) which is to be repaid in "n" substantially equal monthly installments. The finance charge to be used may be calculated from the following formula:

$$\text{Finance Charge} = \$6.00 \times P/100 \times n/12$$

(b) The following schedule shows the maximum service charge, expressed as a finance charge, and the maximum additional charge for selected amounts of principal balance which may be charged by an insurance premium finance company, an insurer or an agent for an indebtedness which is to be repaid in 12 substantially equal monthly installments.

<i>Principal Balance</i>	<i>Service Charge</i>	<i>Additional Charge</i>	<i>Total Service Charge</i>
\$ 50.00	\$ 3.00	\$ 0.00	\$ 3.00
50.01	3.00	6.00	9.00
100.00	6.00	6.00	12.00
100.01	6.00	10.00	16.00
1,000.00	60.00	10.00	70.00

(3) VIOLATIONS. (a) Violations by an insurance premium finance company of any part of this rule will subject it to revocation or suspension of its license or other penalty as provided by section 200.50 (5), Wis. Stats.

(b) Violation by an insurer or an insurance agent of any part of this rule will subject the agent or the insurer to any applicable penalty provided by statute or rule of this office, including revocation of license.

Note. This rule was adopted after careful consideration of section 200.50, Wisconsin Statutes and of the material presented at the hearing February 15, 1971, concerning the proposed rule on this subject. The text of section 200.50 (9), Wis. Stats., which establishes the maximum service charges for premium finance companies is not precise in its description of the method to be used in calculating the maximum service charge. Section 200.50 (9) (b) and (c), Wis. Stats., provides in part that "The service charge shall be a maximum of \$6 per \$100 per year . . ." and "The service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly installments substantially equal in amount for a period of one year." The combined language is similar to section 138.05 (1) (b), Wis. Stats., a part of the statutory chapter on money and rates of interest, which establishes maximum rates of interest and has been interpreted to permit calculation of the maximum charge on an "add-on" or finance charge basis. Section 138.05 (1) (b), Wis. Stats., includes the phrase ". . . disregarding part payment and the date thereof; . . ." and it has been argued that without this descriptive phrase the maximum charge

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must be calculated so as to give effect to partial payments thus resulting in a maximum 6% simple interest charge. However, section 138.05 (1) (a), Wis. Stats., describes the maximum rate of interest and uses the language "At the rate of \$12 per \$100 for one year computed upon the declining principal balance of the loan or forbearance;"

If it had been intended that the maximum service charge of section 200.50 (9), Wis. Stats., was to be on a simple interest basis then it could be argued that language comparable to ". . . computed upon the declining principal balance . . ." should have been included in section 200.50 (9), Wis. Stats. Such language was not included. This comparison of section 200.50 (9), Wis. Stats. with existing statutes establishing rates of interest was not finally determinative.

Section 200.50 (9) (a), Wis. Stats., provides in part that "The service charge shall be computed on the balance of the premiums due (after subtracting the down payment . . .)". This computation is on the balance of the premiums due after subtracting the down payment and denotes the balance as of that point of time—the initial balance. If it had been intended to compute on the declining balance the statute should have spelled out "after subtracting the down payment and any subsequent payment of principal". The express provision for subtracting the down payment without any further express provision for subtracting subsequent payments suggests that one principal balance figure was contemplated on which the rate was to be calculated, and that was the initial one.

Additional argument in favor of interpreting section 200.50 (9), Wis. Stats., to authorize an add-on interest rate assumption is that section 200.50 (9) (c), Wis. Stats., provides for payment ". . . in successive monthly installments substantially equal in amount . . .". If simple interest was intended by this statute, the equality or regularity of payment would be inconsequential as all variations would be adjusted automatically. Where add-on interest is denoted, however, the regularity and equality of payment is important in order to prevent the weighing of payments toward the early part of the repayment period since that would change the effective interest rate.

A further argument in favor of the add-on interest approach is that section 200.50 (9) (d), Wis. Stats., which provides for a refund of credit if the insured prepays his obligation, is very similar to section 138.05 (2) (a), Wis. Stats., which describes the method of calculating the refund in the case of the prepayment of any loan subject to section 138.05 (1) (b), Wis. Stats. It is argued that this language would not be necessary unless an add-on interest type of charge was contemplated by section 200.50 (9), Wis. Stats.

A compelling reason for adopting an add-on interpretation results from the consideration of the economics involved. Since the legal simple interest rate under section 138.05 (1) (a), Wis. Stats., is 12% per annum there would appear to be no reason for creating a special statute authorizing premium finance agreements but allowing a lesser simple interest rate for such transactions when it is probable that there is justification for allowing additional costs because of additional financing and administrative expenses involved in this type of business.

After due consideration of the issues involved, the conclusion is reached that the maximum service charge authorized by section 200.50 (9), Wis. Stats., should be as set out in the rule.

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