Chapter DFI−Bkg 3

PARITY WITH NATIONAL BANKS

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Note: Chapter Bkg 3 was renumbered Chapter DFI−Bkg 3 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498, eff. 7−1−97.

DFI−Bkg 3.001 Definition. In this chapter:

(1) "Depository institutions" means state or national banks, state or federal savings banks, state or federal savings and loan associations, or state or federal credit unions.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DFI−Bkg 3.01 Bank−owned banks, lending and depository authority. (1) A bank−owned bank organized under s. 221.1202, Stats., may provide banking and bank related services to or for all of the following:

(a) Subsidiaries or organizations owned by depository institutions;

(b) Directors, officers or employees of depository institutions, including any subsidiary or organization owned by a depository institution;

(c) Depository institution trade associations; and

(d) Depository institutions or their holding companies.

(2) A bank−owned bank organized under s. 221.1202, Stats., may provide correspondent banking services at the request of other depository institutions or their holding companies.

History: Cr. Register, September, 1982, No. 321, eff. 10−1−82; am. (intro.), (2) and (3), cr. (4), Register, February, 1994, No. 458, eff. 3−1−94; renum. 3.01 to be (1) and am. (1) (intro.) and (d), cr. (2), Register, March, 1996, No. 483, eff. 4−1−96; corrections in (1) (intro.) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550.

DFI−Bkg 3.02 Bank−owned banks, limitations on lending and depository authority. The total loans made and deposits received of a bank−owned bank pursuant to s. DFI−Bkg 3.01 may not exceed the following:

(1) The total loans made to all entities and individuals described in s. DFI−Bkg 3.01 may not exceed 10% of the total assets of the bank.

(2) The total deposits received from all individuals and entities described in s. DFI−Bkg 3.01 may not exceed 10% of the total liabilities of the bank.

History: Cr. Register, September, 1982, No. 321, eff. 10−1−82.

DFI−Bkg 3.03 Use of data processing equipment and furnishing of data processing service. As part of its banking business and incidental thereto, a bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data. In addition, incidental to its banking business, a bank may:

(1) Market a by−product (such as program or output) of a data processing activity described in this rule; and

(2) Market excess time on its data processing equipment so long as the only involvement by the bank is furnishing the facility and necessary operating personnel.

History: Cr. Register, September, 1982, No. 321, eff. 10−1−82.

DFI−Bkg 3.04 Operations through subsidiaries. (1) GENERAL. With the prior approval of the administrator of the division of banking, a bank may engage in activities which are a part of the business of banking or incidental to the business of banking by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80% of the voting stock of the subsidiary must be owned by the parent bank. No bank may commence any such activity unless the type, place and manner in which the activity is conducted has been approved by the administrator of the division of banking in writing or the administrator of the division of banking does not take written objection to the bank's completed application within 30 business days after it has been filed under this section.

(2) ACTIVITIES PERMITTED. An operating subsidiary may perform any business function which is a part of the business of banking or incidental to the business of banking. For example, an operating subsidiary may, among other things, issue credit cards, service mortgages, lease property or operate a credit bureau.

(3) TRANSACTIONS WITH PARENT BANK. Transactions between the parent bank and the operating subsidiaries are subject to the limitations contained in s. 221.0320, Stats., unless the subsidiary engages solely in furnishing services to or in performing services for a parent bank.

(4) APPLICABILITY OF BANKING LAWS. All provisions of the banking laws and rules applicable to the operations of the parent bank shall be equally applicable to the operations of its operating subsidiaries.

(5) CONSOLIDATION OF FIGURES. Unless otherwise provided by banking laws or regulations, pertinent book figures of the parent bank and its operating subsidiaries, except agricultural credit corporations, shall be consolidated for the purpose of applying applicable statutory limitations, including but not limited to s. 221.0319, 221.0320, 221.0324 or 221.0328, Stats.

(6) EXAMINATION AND SUPERVISION. Each operating subsidiary shall be subject to examination and supervision by the administrator of the division of banking in the same manner and to the same extent as the parent bank. If, upon examination, the administrator of the division of banking ascertains that the subsidiary is created or operated in violation of the banking law or regulation or that the manner of operation is detrimental to the business of the parent bank and its depositors, the administrator of the division of banking may order the bank to dispose of all or part of the subsidiary upon such terms as the administrator of the division of banking may deem proper.

(7) REPORT OF DISPOSITION OF OPERATING SUBSIDIARY. Prior to disposition of an operating subsidiary, the parent bank shall inform the administrator of the division of banking by letter of the terms of the transaction.

History: Cr. Register, January, 1983, No. 325, eff. 2−1−83; am. (1), Register, December, 1987, No. 384, eff. 1−1−88; corrections in (3) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550,

DFI−Bkg 3.05 Leasing of personal property. (1) GENERAL AUTHORITY. (a) A bank may engage in lease financing transactions by complying with this subsection and either sub. (2) relating to leases on a net lease basis or sub. (3) relating to leases on a net, full−payout lease basis.

(b) A bank may enter into a lease financing transaction only if it can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

1. Rentals;

2. Estimated tax benefits; and

3. The estimated residual value of the property, at the expiration of the term of the lease.

(c) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

1. The servicing, repair or maintenance of the leased property during the lease term;

2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value;

3. The loan of replacement or substitute property while the leased property is being serviced;

4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

5. The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

(d) If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may:

1. As the owner and lessor under a net lease or a net, full−payout lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

2. As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease.

(e) The limitations contained in par. (c) do not prohibit a bank from:

1. Including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in par. (d); or

2. Arranging for any of the services listed in par. (c) to be provided by a third party to a lessee, at the expense of the lessee, with respect to property leased by the lessee.

(f) A bank may acquire specific property to be leased only after the bank has entered into either:

1. A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

2. A legally binding written commitment to lease the property on terms which comply with the provisions of this subsection and either sub. (2) or (3).

(g) At the expiration of the lease, including any renewal or extensions with the same lessee, or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re−leased in conformance with this subsection and either sub. (2) or (3), as soon as practicable, but in no event later than 2 years from the expiration of the lease. Property which the bank retains in anticipation of re−lease must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(h) On the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short−term bridge or interim lease is permissible if it otherwise conforms with the net lease requirements of par. (c). Such leases need not comply with sub. (2) or (3) and may be used pending the sale of off−lease property, or its re−lease as a conforming long−term financing transaction.

(i) Where a bank enters into leases pursuant to both subs. (2) and (3), the bank must segregate the records it maintains with respect to each type of lease.

(j) Nothing in this section shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 USC 1667 et. seq., or the Wisconsin Consumer Act, chs. 421 to 427, Stats.

(k) Leases permissible under this section are subject to the limitations on obligations under s. 221.0320, Stats.

(2) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET LEASE BASIS. (a) Subject to the limitations of this subsection and sub. (1), and provided that the aggregate book value of all tangible personal property held for lease under this subsection does not exceed 10% of the consolidated assets of the bank, a bank may:

1. Invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture for lease financing transactions on a net lease basis; or

2. Become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease.

(b) Lease financing transactions entered into under this subsection shall have an initial lease term of not less than 90 days. However, such period shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that at its inception such lease complied with the provisions of this subsection and sub. (1).

(3) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET, FULL−PAYOUT LEASE BASIS. (a) Subject to the limitations of this subsection and sub. (1), and provided the lease is a net, full−payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or

2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

3. Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return on a net, full−payout lease shall not exceed 25% of the original cost of the property to the lessor. The amount of any estimated value guaranteed by a manufacturer, lessee or a third party which is not an affiliate of the bank may exceed 25% of the original cost of the property where the bank has determined, and can provide, full supporting documentation that the guarantor has the resources to meet the guarantee.

(c) Calculations of estimated residual value of net, full−payout leases of personal property to federal, state or local government entities may be based on reasonably anticipated future transactions or renewals.

(d) In all net, full−payout leases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full−payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

Note: In operating under this rule it is anticipated that banks will estimate the total cost of financing the property over the term of the lease to reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of each lessor and lessee involved in the transaction and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met

the test for recovering the cost financing if the bank's yield from the lease is equivalent to what the yield would be on a similar loan. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full−payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

History: Cr. Register, July, 1983, No. 331, eff. 8−1−83; r. and recr. (1), (2) and (3), r. (4) and (5), Register, March, 1996, No. 483, eff. 4−1−96; correction in (1) (k) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550.

DFI−Bkg 3.06 Purchase of shares of investment companies. (1) AUTHORITY. A bank may purchase for its own account shares of investment companies registered with the securities and exchange commission or a privately offered fund sponsored by an affiliated commercial bank if the investment company shares meet the following requirements:

(a) The bank has an equitable and equal proportionate undivided interest in the underlying assets of the investment company,

(b) The bank is shielded from personal liability for acts or obligations of the investment company, and

(c) The portfolio of each fund consists solely of investment securities which are eligible for purchase by banks pursuant to ch. 219, Stats., ss. 220.04 (6) (d), 221.0301 (5), 221.0320 (3), (6), and (8) (b), Stats.

(2) GOVERNMENT SECURITIES. Banks may purchase and hold investment company shares without limitation if the portfolio of the fund consists entirely of investments in government securities in which a bank could invest directly without limitation.

(3) MUNICIPAL SECURITIES. Shares of investment companies whose portfolios contain investments which are subject to limitation under s. 221.0320 (3), Stats., may be held in an amount not to exceed 25% of the capital and surplus of the bank. In addition, a bank's pro rata share of any security held in the portfolio of one or more investment companies whose shares are held by the bank may not, in aggregate or in combination with the bank's direct holdings of the security, exceed the limitations of s. 221.0320 (3), Stats.

(4) OTHER SECURITIES. Shares of investment companies whose portfolios contain investments other than government securities or municipal securities, may be held in an amount not to exceed 20% of the capital stock and surplus of the bank. In addition, a bank's pro rata share of any security held in the portfolio of one or more investment company whose shares are held by the bank may not, in aggregate or in combination with the bank's direct holdings of the security, exceed the investment limitations for the security as provided for in s. 221.0320 (4) to (6), Stats., and other relevant statutes and regulations.

(5) FUTURES, FORWARDS, OPTIONS, REPURCHASE AGREEMENTS AND SECURITIES LENDING. Certain investment companies use futures, forward placement and options contracts as well as repurchase agreements and securities lending arrangements as part of their portfolio management strategy. A bank may purchase and hold the shares of such investment companies if these instruments are used in a manner that would be considered acceptable for use in a bank's own investment portfolio.

(6) REVIEW OF INVESTMENT PORTFOLIOS. The bank shall review the investment portfolio of each investment company in which it holds shares on a quarterly basis to make certain that the composition of each portfolio meets the requirements of this section.

(7) ACCOUNTING. The bank shall follow the instructions approved by the administrator of the division of banking for use by the banks for the preparation of reports of condition and income to account for investments made in shares of investment companies.

(8) APPROVAL OF BOARD OF DIRECTORS. The bank's investment policy, as formally approved by its board of directors, shall specifically provide for investments made under this section. Prior approval of the board must be obtained for initial investments in specific investment companies and recorded in the board's minutes. Procedures, standards and controls for implementation of such investments must be established.

History: Cr. Register, March, 1985, No. 351, eff. 4−1−85; r. and recr. Register, January, 1988, No. 385, eff. 2−1−88; corrections in (1) (c), (3) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550.

DFI−Bkg 3.07 Procedure for chartering a savings and loan as a bank. (1) A savings and loan association may be converted into a state chartered bank in compliance with 12 USC 1815 (d) (2) (G), with the approval of the administrator of the division of banking.

(2) A savings and loan association seeking to convert into a state chartered bank shall pay the administrator of the division of banking a fee of $2,000 plus the actual costs incurred by the administrator of the division of banking in investigating the proposed reorganization.

(3) The stockholders or members of the savings and loan association shall make, execute and acknowledge articles of organization as required by ch. 221, Stats., and set forth the written consent of the stockholders or members.

(4) Upon the filing of the articles as provided by ch. 221, Stats., and upon the approval of the administrator of the division of banking, the savings and loan association shall be deemed to be converted and thereupon all assets, real and personal, of the converted savings and loan association shall be vested in and become the property of the new bank, subject to all the liabilities of the savings and loan association not converted.

History: Cr. Register, July, 1990, No. 415, eff. 8−1−90.

DFI−Bkg 3.08 Debt cancellation contracts and debt suspension agreements. (1) DEFINITIONS. In this section:

(a) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(b) "Bank" has the meaning set forth in s. 220.01 (1), Stats.

(c) "Closed−end credit" means consumer credit other than open−end credit as defined in this section.

(d) "Contract" means a debt cancellation contract or a debt suspension agreement.

(e) "Customer" means an individual who obtains an extension of credit from a bank primarily for personal, family or household purposes.

(f) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents.

(g) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. "Debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the bank's unilateral decision to allow a deferral of repayment.

(h) "Open−end credit" means consumer credit extended by a bank under a plan in which:

1. The bank reasonably contemplates repeated transactions;

2. The bank may impose a finance charge from time to time on an outstanding unpaid balance; and

3. The amount of credit that may be extended to the customer during the term of the plan, up to any limit set by the bank, is generally made available to the extent that any outstanding balance is repaid.

(i) "Residential mortgage loan" means a loan secured by 1−4 family, residential real property.

(2) PROHIBITED PRACTICES. (a) *Anti−tying.* A bank shall not extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the bank.

(b) *Misrepresentations generally.* A bank shall not engage in any practice or use any advertisement that is false, misleading or deceptive, or which omits to state material information, or otherwise would cause a reasonable person to reach an erroneous belief with respect to information that may be disclosed under this section.

(c) *Prohibited contract terms.* A bank shall not offer debt cancellation contracts or debt suspension agreements that contain any of the following:

1. Terms giving the bank the right unilaterally to modify the contract unless the modification is favorable to the customer and is made without additional charge to the customer, or the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.

2. Terms requiring a lump sum, single payment for the contract payable at the outset of the contract, where the debt subject to the contract is a residential mortgage loan.

(3) REFUNDS OF FEES IN THE EVENT OF TERMINATION OR PREPAYMENT OF THE COVERED LOAN. (a) *Refunds.* If a debt cancellation contract or debt suspension agreement is terminated, including when the customer prepays the covered loan, the bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

(b) *Method of calculating refund.* The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

(4) METHOD OF PAYMENT OF FEES. Except as provided in sub. (2) (c) 2., a bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If the bank offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the bank shall also disclose to the customer, in accordance with sub. (5), whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

(5) DISCLOSURES. (a) *Content of short form of disclosures.* The short form of disclosures required by this section shall include information relating to any of the following that is appropriate to the product offered:

1. That the product is optional.
2. Lump sum payment of fee.
3. Lump sum payment of fee with no refund.
4. Refund of fee paid in lump sum.
5. Any additional disclosures.
6. Eligibility requirements, conditions and exclusions.

(b) *Content of long form disclosures.* The long form of disclosures required by this section shall include information relating to any of the following that is appropriate to the product offered:

1. That the product is optional.
2. An explanation of debt suspension agreement.
3. The amount of fee.
4. Lump sum payment of fee.
5. Lump sum payment of fee with no refund.
6. Refund of fee paid in lump sum.
7. Use of card or credit line restricted.
8. Termination of product.
9. Eligibility requirements, conditions and exclusions.

Note: Copies of the short and long form, and instructions for using them may be obtained by writing to the Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707−7876 or by downloading it from the department's website, www.wdfi.org. Short form disclosures made in a form that is substantially similar to the disclosures available from the department will satisfy the short form disclosure requirement of this section. Long form disclosures made in a form that is substantially similar to the disclosures available from the department will satisfy the long form disclosure requirements of this section.

(c) *Disclosure requirement, and timing and method of disclosures.* 1. 'Short form disclosures.' The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

2. 'Long form disclosures.' The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the bank shall provide the long form disclosures in writing at that time.

3. 'Transactions by telephone.' If the contract is solicited by telephone, the bank shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

4. 'Solicitations using written mail inserts or "take one" applications.' If the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the short form disclosures in the written materials if the bank mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the bank to respond to the solicitation, subject to the requirements of sub. (6) (c).

5. 'Electronic transactions.' Disclosures described in this section provided through electronic media shall be in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 *et seq*.

(d) *Form of disclosures.* 1. 'Understandable disclosures.' The disclosures required by this section shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

2. 'Meaningful disclosures.' The disclosures required by this section shall be in a meaningful form.

Note: The following are examples of means that call attention to the nature and significance of the information provided in the disclosure: a plain language heading to call attention to the disclosures; typeface and type size that are easy to read; wide margins and ample line spacing; boldface or italics for key words; and distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(e) *Advertisements and other promotional material for debt cancellation contracts and debt suspension agreements.* The short form disclosures are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

(6) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURES REQUIRED. (a) *Affirmative election and acknowledgement of receipt of disclosures.* Before entering into a contract the bank shall obtain a customer's written affirmative election to purchase a contract and written acknowledgement of receipt of the disclosures required by sub. (5) (b). The election and acknowledgement information shall be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The election and acknowledgement satisfy these standards if they conform with the requirements in sub. (5) (d).

(b) *Telephone solicitations.* If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the bank does all of the following:

1. Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract.

2. Mails the affirmative written election and written acknowledgement, together with the long form disclosures required by sub. (5), to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer.

3. Permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the loan form disclosures to the customer.

(c) *Solicitations using written mail inserts or "take one" applications.* If the contract is solicited through written materials such as mail inserts or "take one" solicitations and the bank provides only the short form discourses in the written materials, then the bank shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by sub. (5), to the customer within 3 business days, beginning of the first business day after the customer contacts the bank or otherwise responds to the solicitation. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank does all of the following:

1. Maintains sufficient documentation to show that the bank provided the acknowledgement of receipt of disclosures to the customer as required by this section.

2. Maintains sufficient documentation to show that the bank made reasonable efforts to obtain from the customer a written acknowledgement of receipt of the long form disclosures.

3. Permits the customers to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

(d) *Electronic election.* An affirmative election and acknowledgement made electronically shall be in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 *et seq*.

(7) SAFETY AND SOUNDNESS REQUIREMENTS. A bank shall manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with safe and sound banking principles. Accordingly, a bank shall establish and maintain effective risk management and control processes over its debt cancellation contracts and debt suspension agreements. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A bank shall also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation contract and debt suspension agreement programs.

Note: This section takes effect on April 1, 2006, except for those provisions comparable to the provisions of 12 CFR sec. 37 that are subject to a delayed effective date by the United States Office of the Comptroller of Currency. These provisions shall become effective when the comparable provisions of 12 CFR sec. 37 become effective. The administrator for the division of banking shall issue interpretive letters confirming which provisions of this section have become effective and the effective date of these provisions.

History: CR 05−045: cr. Register January 2006 No. 601, eff. 4−1−06.