

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING
ADOPTING RULES**

- 1 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
2 create ch. DFI—Bkg 46, relating to responsible high cost mortgage lending.

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

Statute(s) interpreted: ss. 428.202(2), 428.203(6) and (7), and 428.208, Stats.

Statutory authority: ss. 428.210(1) and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to subch. II, ch. 428, Stats., the department regulates certain high cost mortgage lending.

Summary of proposed rule: The objective of the rule is to respond to the promulgation authority and requirements of 2003 Act 257. The rule provides certain definitions, provides guidelines regarding a customer's ability to repay a covered loan, establishes requirements regarding verification of a borrower's ability to repay a high risk home loan, and sets forth criteria for related disclosure forms.

Summary of and preliminary comparison with existing or proposed federal regulation: 12 CFR 226.32 contains requirements for certain closed-end home mortgages, including disclosures and limitations, and sets forth definitions and criteria for applicability.

Comparison with rules in adjacent states: Michigan and Illinois have comparable regulations; Iowa and Minnesota do not.

Summary of factual data and analytical methodologies: The department reviewed comparable statutes and regulations.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

Agency Contact Persons

For substantive questions on the rule: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 537-7876. For the agency's internal processing of the rule: Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Banking adopts the following:

3 SECTION 1. CHAPTER DFI-BKG 46 is created to read:

4 **CHAPTER DFI-BKG 46**

5 **RESPONSIBLE HIGH COST MORTGAGE LENDING**

6 **DFI-Bkg 46.01 Definitions.** In subch. II of ch. 428 and ch. DFI—Bkg 46:

7 **(1)** “Disclosure” means any of the following:

8 (a) A loan product choice disclosure under s. 428.207(2)(b), Stats.

9 (b) A disclosure to a borrower under s. 428.208, Stats.

10 **(2)** “Interest of the customer” means what is proper and prudent for the customer under the
11 circumstances. Factors to be considered in determining the interest of the customer shall include
12 the terms of the refinanced loan, the borrower's economic and non-economic circumstances, the
13 purpose of the refinanced loan, the cost of the refinanced loan, and any other similar factors.

14 **(3)** “Points and fees” means any of the following:

15 (a) All items required to be disclosed as points and fees under 12 CFR 226.32.

16 (b) The premium of any single premium credit life, credit disability or credit unemployment
17 insurance.

18 **Note:** This paragraph does not authorize the financing of single premiums in a covered
19 loan; instead, this paragraph considers these single premiums solely for the purpose of

20 determining whether a sufficient amount of points and fees are imposed in order to make
21 the transaction a covered loan.

22 (4) "Total loan amount" has the meaning set forth in 12 CFR 226.32 and shall be calculated in
23 accordance with the Federal Reserve Board's Official Staff Commentary to that regulation.

24 **DFI-Bkg 46.02 Ability to repay. (1) GUIDELINES FOR ABILITY TO REPAY BASED**
25 **UPON DEBT-TO-INCOME RATIO.** Acceptable debt-to-income ratio tests include, but are not
26 limited to, any of the following:

27 (a) The debt-to-income ratio of the loan, computed pursuant to 38 CFR 36.4337(d), is 50 percent
28 or less, and the customer has adequate monthly residual income, computed pursuant to 38 CFR
29 36.4337(e).

30 (b) The debt-to-income ratio requirement but not the monthly residual income requirement
31 specified under par. (a) is satisfied, and the lender fully justifies in writing that the applicant is a
32 satisfactory credit risk when considering the compensating factors described in 38 CFR 36.4337
33 (c)(5).

34 (c) The monthly residual income requirement but not the debt-to-income ratio requirement
35 specified under par. (a) is satisfied, and the lender fully justifies in writing that the applicant is a
36 satisfactory credit risk when considering the compensating factors described in 38 CFR 36.4337
37 (c)(5).

38 **(2) VERIFICATION OF ABILITY TO REPAY.** The lender shall verify a borrower's ability to
39 repay a covered loan by all of the following:

40 (a) Having the borrower prepare and submit to the lender a personal income and expense
41 statement.

42 **Note:** Acceptable personal income and expense statements include a Fannie Mae uniform
43 residential loan application, available at www.fanniemae.com, or a Freddie Mac uniform
44 residential loan application, available at www.freddiemac.com.

45 (b) Having the borrower submit to the lender a tax return, pay stub, accounting statement or other
46 similar document.

47 (c) Obtaining the borrower's credit report, if available.

48 **DFI-Bkg 46.03 Disclosure forms (1)** A disclosure form shall be designed to call attention to the
49 nature and significance of the information provided, and shall use a typeface and type size that
50 are easy to read.

51 (2) A disclosure form shall contain an acknowledgment provision. The acknowledgment
52 provision shall indicate that the borrower has read and understood the terms of the disclosure.

53 No disclosure is valid unless a borrower has initialed or signed the acknowledgment provision.

54 At the time the borrower initials or signs the acknowledgment provision, the borrower shall also
55 date the acknowledgment provision.

56 (3) A disclosure shall include the following statement: "A list of adjustment services companies
57 (companies that help consumers budget money) licensed to do business in the state of Wisconsin
58 is available at the Wisconsin Department of Financial Institutions' website, www.wdfi.org."

59 (4) Upon completion of the disclosure, the lender shall provide a copy of the completed
60 disclosure to the borrower.

61 **Effective date.** This rule takes effect February 1, 2005.

Dated: _____

Agency: _____
Administrator