

Chapter DFI-SL 22

DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

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Note: This chapter 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 chapter have become effective and the effective date of these provisions.

DFI-SL 22.01 Definitions. In this chapter:

(1) “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.

(2) “Association” has the meaning set forth in s. 215.01 (1), Stats.

(3) “Closed-end credit” means consumer credit other than open-end credit as defined in this section.

(4) “Contract” means a debt cancellation contract or a debt suspension agreement.

(5) “Customer” means an individual who obtains an extension of credit from an association primarily for personal, family or household purposes.

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

(7) “Debt suspension agreement” means a loan term or contractual arrangement modifying loan terms under which an association agrees to suspend all or part of a customer’s obligation to repay an extension of credit from that association 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 association’s unilateral decision to allow a deferral of repayment.

(8) “Open-end credit” means consumer credit extended by an association under a plan in which:

(a) The association reasonably contemplates repeated transactions;

(b) The association may impose a finance charge from time to time on an outstanding unpaid balance; and

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

(9) “Residential mortgage loan” means a loan secured by 1-4 family, residential real property.

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

DFI-SL 22.02 Prohibited practices. (1) ANTI-TYING.

An association 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 association.

(2) MISREPRESENTATIONS GENERALLY. An association 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.

(3) PROHIBITED CONTRACT TERMS. An association shall not offer debt cancellation contracts or debt suspension agreements that contain any of the following:

(a) Terms giving the association 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.

(b) 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.

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

DFI-SL 22.03 Refunds of fees in the event of termination or prepayment of the covered loan. (1) REFUNDS.

If a debt cancellation contract or debt suspension agreement is terminated, including when the customer prepays the covered loan, the association shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. An association may offer a customer a contract that does not provide for a refund only if the association also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

(2) THE METHOD OF CALCULATING REFUND. The association shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

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

DFI-SL 22.04 Method of payment of fees. Except as provided in s. DFI-SL 22.02 (3), an association may offer a customer the option of paying the fee for a contract in a single payment, provided the association also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If the association offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the association shall also disclose to the

customer, in accordance with s. DFI-SL 22.05, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

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

DFI-SL 22.05 Disclosures. (1) **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:

- (a) That the product is optional.
- (b) Lump sum payment of fee.
- (c) Lump sum payment of fee with no refund.
- (d) Refund of fee paid in lump sum.
- (e) Any additional disclosures.
- (f) Eligibility requirements, conditions and exclusions.

(2) **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:

- (a) That the product is optional.
- (b) An explanation of debt suspension agreement.
- (c) The amount of fee.
- (d) Lump sum payment of fee.
- (e) Lump sum payment of fee with no refund.
- (f) Refund of fee paid in lump sum
- (g) Use of card or credit line restricted.
- (h) Termination of product.
- (i) 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.

(3) **DISCLOSURE REQUIREMENT, AND TIMING AND METHOD OF DISCLOSURES.** (a) *Short form disclosures.* The association shall make the short form disclosures orally at the time the association first solicits the purchase of a contract.

(b) *Long form disclosures.* The association 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 association shall provide the long form disclosures in writing at that time.

(c) *Transactions by telephone.* If the contract is solicited by telephone, the association 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.

(d) *Solicitations using written mail inserts or "take one" applications.* If the contract solicited through written materials such as mail inserts or "take one" applications, the association may provide only the short form disclosures in the written materials if the association mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the association to respond to the solicitation, subject to the requirements of s. DFI-SL 22.06 (3).

(e) *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.*

(4) **FORM OF DISCLOSURES.** (a) *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.

(b) *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.

(5) **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 association.

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DFI-SL 22.06 Affirmative election to purchase and acknowledgement of receipt of disclosures required.

(1) **AFFIRMATIVE ELECTION AND ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURES.** Before entering into a contract the association shall obtain a customer's written affirmative election to purchase a contract and written acknowledgement of receipt of the disclosures required by s. DFI-SL 22.05 (2). 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 s. DFI-SL 22.05 (4).

(2) **TELEPHONE SOLICITATIONS.** If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the association does all of the following:

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

(b) Mails the affirmative written election and written acknowledgement, together with the long form disclosures required by s. DFI-SL 22.05, 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.

(c) Permits the customer to cancel the purchase of the contract without penalty within 30 days after the association has mailed the loan form disclosures to the customer.

(3) **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 association provides only the short form disclosures in the written materials, then the association shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by s. DFI-SL 22.05 of this chapter, to the customer within 3 business days, beginning of the first business day after the customer contacts the association or otherwise responds to the solicitation. The association may not obligate the customer to pay for the contract until after the association has received the customer's written acknowledgment of receipt of disclosures unless the association does all of the following:

(a) Maintains sufficient documentation to show that the association provided the acknowledgement of receipt of disclosures to the customer as required by this section.

(b) Maintains sufficient documentation to show that the association made reasonable efforts to obtain from the customer a written acknowledgement of receipt of the long form disclosures.

(c) Permits the customers to cancel the purchase of the contract without penalty within 30 days after the association has mailed the long form disclosures to the customer.

(4) 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.*

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

DFI-SL 22.07 Safety and soundness requirements.

An association shall manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance

with safe and sound banking principles. Accordingly, an association 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. An association 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.

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