



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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| 2003 Wisconsin Act 257 [2003 Assembly Bill 792] | Regulation of Certain High-Cost Loans |
| 2003 Acts: www.legis.state.wi.us/2003/data/acts/ | Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm |

Act 257 creates several prohibitions and requirements applicable to certain high-cost, or “covered” loans. The Act defines “covered loan” as a consumer transaction that involves real property located in this state, that is secured by the consumer’s principal dwelling, and in which either: (1) the annual percentage rate at consummation will exceed, by more than 8% for first-lien loans or by more than 10% for subordinate-lien loans, the yield on specified U.S. Treasury securities; or (2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of 6% of the total loan amount or \$400.

The Act defines “lender” as a person who originates a covered loan and to whom the covered loan is initially payable. “Lender” does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

PROHIBITIONS AND REQUIREMENTS

Significant provisions of the Act include the following:

1. With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments.
2. No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in specific cases such as default, fraud, or material misrepresentation by the consumer.
3. With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

4. No lender may make a covered loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the consumer's default.
5. No lender may make a covered loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.
6. No lender may make covered loans to consumers who have collateral but who, considering their current and expected income, current obligations, and employment status, would be unable at the time of application to make the scheduled payments under the loans.
7. With certain exceptions, no lender, assignee, or servicer of a covered loan may make a covered loan that refinances an existing covered loan that the lender made to the same consumer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer.
8. Except under specific conditions, no lender may pay proceeds of a covered loan to a person who is under contract to make home improvements.
9. No lender may knowingly contract with any person who is engaged in work as a mortgage banker or mortgage broker but who has not obtained the registration required by law.
10. No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.
11. No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.
12. No lender may finance credit insurance. Generally speaking, credit insurance insures the debtor against certain events such as unemployment, disability, and death. The insurance is for an amount sufficient to pay the debtor's debt, with the creditor as the beneficiary.
13. No lender may knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first 10 years of that low-rate loan, unless the current holder of the loan consents in writing.
14. With certain exceptions, the Act allows a consumer to prepay a covered loan at any time without penalty if the payment is made in the context of refinancing the covered loan and if the covered loan is held by the refinancing lender. Permissible prepayment penalties are limited to the first 36 months after the loan is consummated, and the lender must offer the borrower the option of a loan product that does not have a prepayment penalty.

ADMINISTRATIONS AND ENFORCEMENT

The Act allows the Department of Financial Institutions (DFI) to promulgate rules, perform investigations, and issue orders to administer and enforce the provisions of the Act. With certain exceptions, if DFI finds that a violation has been established, DFI may issue an order specifying any of the following: (1) that the person must cease and desist from the violation or practice, and make restitution for any actual damages suffered; (2) that the person forfeit not more than \$1,000 per violation

or, if the person willfully or knowingly violated the Act, not less than \$1,000 nor more than \$10,000 per violation; (3) that the person pay DFI the costs of its investigation; (4) that the person's license, registration, or certification be suspended, revoked, or not renewed; (5) that any individual responsible for the violation be removed from working in any capacity related to the violation or related to activities regulated by DFI; and (6) any additional conditions that DFI considers reasonable.

It is a defense to any alleged violation if the person alleged to have committed the violation establishes that the person acted in good faith while committing the violation and that, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by DFI, the person notified the affected consumer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance or changed the terms of the loan in a manner beneficial to the consumer so that the loan is no longer a covered loan.

Effective Date: The effective date of 2003 Wisconsin Act 257 is February 1, 2005. The Act applies to loans for which an application is received on February 1, 2005.

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