



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

**Debt Cancellation Contracts
and
Debt Suspension Agreements**

(1) **AUTHORIZATION.** The administrator of the Wisconsin Consumer Act authorizes a depository institution to enter into debt cancellation contracts and debt suspension agreements and charge a fee therefor, in connection with the extensions of credit that it makes. For purposes of the Wisconsin Consumer Act such fees are permitted additional charges and are not finance charges. Such contracts are not insurance. This authorization does not cover credit sales or leases.

(2) **DEFINITIONS.** In this opinion:

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

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

(d) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a depository institution agrees to suspend all or part of a customer's obligation to repay an extension of credit from that depository institution 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 depository institution's unilateral decision to allow a deferral of repayment.

(e) "Depository institution" means a bank as defined in s. 220.01(1), Wis. Stats., a savings bank as defined in s. 214.01(1)(t), an association as defined in s. 215.01(1), or a credit union as defined in s. 186.01(2).

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

(3) **PROHIBITED PRACTICES.** (a) *Anti-tying.* A depository institution 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 depository institution.

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(b) *Misrepresentations generally.* A depository institution 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 opinion.

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

1. Terms giving the depository institution 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.

(4) 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 depository institution shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A depository institution may offer a customer a contract that does not provide for a refund only if the depository institution also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

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

(5) METHOD OF PAYMENT OF FEES. Except as provided in section (3)(c)2., a depository institution may offer a customer the option of paying the fee for a contract in a single payment, provided the depository institution also offers the customer a bona fide option of paying the fee for that contract in monthly or other periodic payments. If the depository institution offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the depository institution shall also disclose to the customer, in accordance with section (6), whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

(6) DISCLOSURES. (a) *Content of short form of disclosures.* The short form of disclosures required by this opinion must include information described in appendix A to this opinion that is appropriate to the product offered. Short form disclosures made in a form that is substantially similar to the disclosures in appendix A will satisfy the short form disclosure requirements of this opinion. The disclosures required by this opinion 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 opinion must include information described in appendix B to this opinion that is appropriate to the product offered. Long form disclosures made in a form that is substantially similar to the disclosures in appendix B will satisfy the long form disclosure requirements of this opinion. The disclosures required by this opinion 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.

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

2. *Long form disclosures.* The depository institution 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 depository institution shall provide the long form disclosures in writing at that time.

3. *Transactions by telephone.* If the contract is solicited by telephone, the depository institution 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 depository institution may provide only the short form disclosures in the written materials if the depository institution mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the depository institution to respond to the solicitation, subject to the requirements of section (7)(c).

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

(d) Form of disclosures 1. *Understandable disclosures.* The disclosures required by this opinion 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 opinion shall be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include: 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 depository institution.

(7) **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 depository institution shall obtain a customer's written affirmative election to purchase a contract and written acknowledgement of receipt of the disclosures required by section (6)(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 section (6)(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 depository institution 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 section (6), 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 depository institution 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 depository institution provides only the short form disclosures in the written materials, then the depository institution shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by section (6), to the customer within 3 business days, beginning of the first business day after the customer contacts the depository institution or otherwise responds to the solicitation. The depository institution may not obligate the customer to pay for the contract until after the depository institution has received the customer's written acknowledgment of receipt of disclosures unless the depository institution does all of the following:

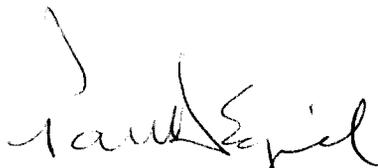
1. Maintains sufficient documentation to show that the depository institution provided the acknowledgment of receipt of disclosures to the customer as required by this opinion.
2. Maintains sufficient documentation to show that the depository institution made reasonable efforts to obtain from the customer 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 depository institution 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 U.S. C. 7001 et seq.

Effective Date. This opinion takes effect on April 1, 2006, except for those provisions comparable to the provisions of 12 C.F. R. 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 C.F.R. sec. 37 become effective. The administrator shall issue interpretive letters confirming which provisions of this rule have become effective and the effective date of these provisions. For credit unions this opinion takes effect on February 1, 2006. In regard to depository institutions, this opinion supersedes prior gap approvals.

This opinion is granted under our authority found in s. 426.104(4), Wis. Stats.

A handwritten signature in cursive script, appearing to read "Paul D. Egide", written over a horizontal line.

Paul D. Egide, Director
Office of Consumer Affairs

Appendix A

Short Form Disclosures

- This product is optional

Your purchase of [PRODUCT NAME] is optional. Whether or not you purchase [PRODUCT NAME] will not affect your application for credit or the terms of any existing credit agreement you have with us.

- Lump sum payment of fee

[Applicable if a creditor offers the option to pay the fee in a single payment]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose to pay the fee in a single lump sum or in [monthly/quarterly] payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of [PRODUCT NAME].

- Lump sum payment of fee with no refund

[Applicable if a creditor offers the option to pay the fee in a single payment for a no-refund DCC]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose [PRODUCT NAME] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ.

- Refund of fee paid in lump sum

[Applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

[Either:] (1) You may cancel [PRODUCT NAME] at any time and receive a refund; or (2) You may cancel [PRODUCT NAME] within ____ days and receive a full refund; or (3) If you cancel [PRODUCT NAME] you will not receive a refund.

- Additional disclosures

We will give you additional information before you are required to pay for [PRODUCT NAME]. [If applicable]: This information will include a copy of the contract containing the terms of [PRODUCT NAME].

- Eligibility requirements, conditions, and exclusions

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either:] You should carefully read our additional information for a full explanation of the terms of [PRODUCT NAME] or You should carefully read the contract for a full explanation of the terms of [PRODUCT NAME].

Appendix B

Long Form Disclosures

- This product is optional

Your purchase of [PRODUCT NAME] is optional. Whether or not you purchase [PRODUCT NAME] will not affect your application for credit or the terms of any existing credit agreement you have with us.

- Explanation of debt suspension agreement

[Applicable if the contract has a debt suspension feature]

If [PRODUCT NAME] is activated, your duty to pay the loan principal and interest to us is only suspended. You must fully repay the loan after the period of suspension has expired. [If applicable]: This includes interest accumulated during the period of suspension.

- Amount of fee

[For closed-end credit]: The total fee for [PRODUCT NAME] is _____.

[For open-end credit, either:] (1) The monthly fee for [PRODUCT NAME] is based on your account balance each month multiplied by the unit-cost, which is _____; or (2) The formula used to compute the fee is _____.

- Lump sum payment of fee

[Applicable if a creditor offers the option to pay the fee in a single payment]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose to pay the fee in a single lump sum or in [monthly/quarterly] payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of [PRODUCT NAME].

- Lump sum payment of fee with no refund

[Applicable if a creditor offers the option to pay the fee in a single payment for a no-refund DCC]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You have the option to purchase [PRODUCT NAME] that includes a refund of the unearned portion of the fee if you terminate the contract or prepay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.

- Refund of fee paid in lump sum

[Applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed]

[Prohibited where the debt subject to the contract is a residential mortgage loan]

[Either:] (1) You may cancel [PRODUCT NAME] at any time and receive a refund; or (2) You may cancel [PRODUCT NAME] within _____ days and receive a full refund; or (3) If you cancel [PRODUCT NAME] you will not receive a refund.

- Use of card or credit line restricted

[Applicable if the contract restricts use of card or credit line when customer activates protection]

If [PRODUCT NAME] is activated, you will be unable to incur additional charges on the credit card or use the credit line.

- Termination of [PRODUCT NAME]

[Either]: (1) You have no right to cancel [PRODUCT NAME]; or (2) You have the right to cancel [PRODUCT NAME] in the following circumstances: _____.

[And either]: (1) We have no right to cancel [PRODUCT NAME]; or (2) We have the right to cancel [PRODUCT NAME] in the following circumstances: _____.

- Eligibility requirements, conditions, and exclusions

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either]: (1) The following is a summary of the eligibility requirements, conditions, and exclusions. [The creditor provides a summary of any eligibility requirements, conditions, and exclusions]; or (2) You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraphs _____ of the [PRODUCT NAME] agreement