

**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 by this order creates
2 ss. DFI—Bkg 3.08 and DFI—SB 16.04, and ch. DFI—SL 22 relating to debt cancellation
3 contracts and debt suspension agreements.

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

Statute(s) interpreted: ss. 220.04(8), 214.03(1) and 215.02(18), Stats.

Statutory authority: ss. 220.04(8), 214.03(2), 214.715(1)(d), 215.02(18) and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to chs. 214, 215, 220 and 221, the department regulates Wisconsin-chartered savings banks, savings and loan associations, and banks.

Summary of proposed rule: The objective of the rule is to create ss. DFI—Bkg 3.08 and DFI—SB 16.04, and ch. DFI—SL 22 relating to debt cancellation contracts and debt suspension agreements. The purpose of this rule is to authorize Wisconsin-chartered banks, savings banks, and savings and loan associations to provide debt cancellation contracts and debt suspension agreements in the same manner that such products are provided by federally-chartered banks, savings banks, and savings and loan associations. The rule assists Wisconsin-chartered banks, savings banks, and savings and loan associations in remaining competitive with federally chartered banks, savings banks, and savings and loan associations regarding these products. The rule provides definitions; identifies prohibited practices; and sets forth certain requirements regarding fees, disclosures, and safety and soundness practices. The promulgation of this rule has been approved by the Banking Review Board and the Savings Institution Review Board.

Summary of and preliminary comparison with existing or proposed federal regulation: 12 CFR 37, Office of Thrift Supervision Opinion Letter 9/15/93 and Office of Thrift Supervision Opinion Letter 12/18/95 provide federal regulations and guidance similar to the proposed rule.

Comparison with rules in adjacent states: Illinois (Interpretative Letter 94-011), Michigan (Declaratory Ruling 04-053-N), Minnesota (wild card statute) and Iowa (incidental powers statute) all authorize the providing of debt cancellation contracts and debt suspension agreements.

Summary of factual data and analytical methodologies: The department reviewed federal regulations relating to debt cancellation contracts and debt suspension agreements, as well as rules adopted by other states regarding the same.

Analysis and supporting documentation used to determine effect on small business: State-chartered banks, savings banks, and savings and loan associations do not meet the criteria of a small business. The rule has, therefore, no effect 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

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact 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. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments regarding the proposed rule may also be submitted via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451.

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

4 SECTION 1. Section DFI—Bkg 3.08 is created to read:

5 **DFI—Bkg 3.08 Debt cancellation contracts and debt suspension agreements. (1)**

6 DEFINITIONS. In this section:

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

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

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

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

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

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

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

28 (h) “Open-end credit” means consumer credit extended by a bank under a plan in which:

29 1. The bank reasonably contemplates repeated transactions;

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

31 and

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

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

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

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

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

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

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

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

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

59 (4) METHOD OF PAYMENT OF FEES. Except as provided in s. DFI—Bkg 3.08(2)(c)2., a
60 bank may offer a customer the option of paying the fee for a contract in a single payment,
61 provided the bank also offers the customer a *bona fide* option of paying the fee for that contract
62 in monthly or other periodic payments. If the bank offers the customer the option to finance the
63 single payment by adding it to the amount the customer is borrowing, the bank shall also disclose
64 to the customer, in accordance with s. DFI—Bkg 3.08(5), whether and, if so, the time period
65 during which, the customer may cancel the agreement and receive a refund.

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

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

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

- 77 1. That the product is optional.
- 78 2. An explanation of debt suspension agreement.
- 79 3. The amount of fee.

- 80 4. Lump sum payment of fee.
- 81 5. Lump sum payment of fee with no refund.
- 82 6. Refund of fee paid in lump sum.
- 83 7. Use of card or credit line restricted.
- 84 8. Termination of product.
- 85 9. Eligibility requirements, conditions and exclusions.

86 **Note:** Copies of the short and long form, and instructions for using them may be obtained
87 by writing to the Department of Financial Institutions, Division of Banking, P.O. Box
88 7876, Madison, WI 53707-7876 or by downloading it from the department's website,
89 www.wdfi.org. Short form disclosures made in a form that is substantially similar to the
90 disclosures available from the department will satisfy the short form disclosure
91 requirement of this section. Long form disclosures made in a form that is substantially
92 similar to the disclosures available from the department will satisfy the long form
93 disclosure requirements of this section.

94 (c) *Disclosure requirement, and timing and method of disclosures.* 1. 'Short form disclosures.'

95 The bank shall make the short form disclosures orally at the time the bank first solicits the
96 purchase of a contract.

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

100 3. 'Transactions by telephone.' If the contract is solicited by telephone, the bank shall provide
101 the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a

102 copy of the contract to the customer within 3 business days, beginning on the first business day
103 after the telephone solicitation.

104 4. ‘Solicitations using written mail inserts or “take one” applications.’ If the contract is solicited
105 through written materials such as mail inserts or “take one” applications, the bank may provide
106 only the short form disclosures in the written materials if the bank mails the long form
107 disclosures to the customer within 3 business days, beginning on the first business day after the
108 customer contacts the bank to respond to the solicitation, subject to the requirements of s. DFI—
109 Bkg 3.08(6)(c).

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

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

116 2. ‘Meaningful disclosures.’ The disclosures required by this section shall be in a meaningful
117 form.

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

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

128 (6) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGEMENT OF

129 RECEIPT OF DISCLOSURES REQUIRED. (a) *Affirmative election and acknowledgement of*
130 *receipt of disclosures.* Before entering into a contract the bank shall obtain a customer's written
131 affirmative election to purchase a contract and written acknowledgement of receipt of the
132 disclosures required by s. DFI—Bkg 3.08(5)(b). The election and acknowledgement information
133 shall be conspicuous, simple, direct, readily understandable, and designed to call attention to
134 their significance. The election and acknowledgement satisfy these standards if they conform
135 with the requirements in s. DFI—Bkg 3.08(5)(d).

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

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

140 2. Mails the affirmative written election and written acknowledgement, together with the long
141 form disclosures required by s. DFI—Bkg 3.08(5), to the customer within 3 business days after
142 the telephone solicitation, and maintains sufficient documentation to show it made reasonable
143 efforts to obtain the documents from the customer.

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

146 (c) *Solicitations using written mail inserts or “take one” applications.* If the contract is
147 solicited through written materials such as mail inserts or “take one” solicitations and the bank
148 provides only the short form disclosures in the written materials, then the bank shall mail the
149 acknowledgment of receipt of disclosures, together with the long form disclosures required by s.
150 DFI—Bkg 3.08(5) of this chapter, to the customer within 3 business days, beginning of the first
151 business day after the customer contacts the bank or otherwise responds to the solicitation. The
152 bank may not obligate the customer to pay for the contract until after the bank has received the
153 customer’s written acknowledgment of receipt of disclosures unless the bank does all of the
154 following:

- 155 1. Maintains sufficient documentation to show that the bank provided the acknowledgement of
156 receipt of disclosures to the customer as required by this section.
- 157 2. Maintains sufficient documentation to show that the bank made reasonable efforts to obtain
158 from the customer a written acknowledgement of receipt of the long form disclosures.
- 159 3. Permits the customers to cancel the purchase of the contract without penalty within 30 days
160 after the bank has mailed the long form disclosures to the customer.

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

164 **(7) SAFETY AND SOUNDNESS REQUIREMENTS.** A bank shall manage the risks associated
165 with debt cancellation contracts and debt suspension agreements in accordance with safe and
166 sound banking principles. Accordingly, a bank shall establish and maintain effective risk
167 management and control processes over its debt cancellation contracts and debt suspension
168 agreements. Such processes include appropriate recognition and financial reporting of income,

169 expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses
170 associated with the products. A bank shall also assess the adequacy of its internal control and
171 risk mitigation activities in view of the nature and scope of its debt cancellation contract and debt
172 suspension agreement programs.

173 SECTION 2. Section DFI—SB 16.04 is created to read:

174 **DFI—SB 16.04 Debt cancellation contracts and debt suspension agreements. (1)**

175 DEFINITIONS. In this section:

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

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

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

183 (d) “Customer” means an individual who obtains an extension of credit from a savings bank
184 primarily for personal, family or household purposes.

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

189 (f) “Debt suspension agreement” means a loan term or contractual arrangement modifying loan
190 terms under which a savings bank agrees to suspend all or part of a customer’s obligation to
191 repay an extension of credit from that savings bank upon the occurrence of a specified event.

192 The agreement may be separate from or a part of other loan documents. “Debt suspension
193 agreement” does not include loan payment deferral arrangements in which the triggering event is
194 the borrower’s unilateral election to defer repayment or the savings bank’s unilateral decision to
195 allow a deferral of repayment.

196 (g) “Open-end credit” means consumer credit extended by a savings bank under a plan in which:

197 1. The savings bank reasonably contemplates repeated transactions;

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

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

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

204 (i) “Savings bank” has the meaning set forth in s. 214.01(1)(t), Stats.

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

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

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

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

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

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

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

229 **(4) METHOD OF PAYMENT OF FEES.** Except as provided in s. DFI—SB 16.04(2)(c)2., a
230 savings bank may offer a customer the option of paying the fee for a contract in a single
231 payment, provided the savings bank also offers the customer a *bona fide* option of paying the fee
232 for that contract in monthly or other periodic payments. If the savings bank offers the customer
233 the option to finance the single payment by adding it to the amount the customer is borrowing,
234 the savings bank shall also disclose to the customer, in accordance with s. DFI—SB 16.04(5),
235 whether and, if so, the time period during which, the customer may cancel the agreement and
236 receive a refund.

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

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

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

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

257 **Note:** Copies of the short and long form, and instructions for using them may be obtained
258 by writing to the Department of Financial Institutions, Division of Banking, P.O. Box
259 7876, Madison, WI 53707-7876 or by downloading it from the department's website,

260 www.wdfi.org. Short form disclosures made in a form that is substantially similar to the
261 disclosures available from the department will satisfy the short form disclosure
262 requirement of this section. Long form disclosures made in a form that is substantially
263 similar to the disclosures available from the department will satisfy the long form
264 disclosure requirements of this section.

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

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

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

275 4. ‘Solicitations using written mail inserts or “take one” applications.’ If the contract is solicited
276 through written materials such as mail inserts or “take one” applications, the savings bank may
277 provide only the short form disclosures in the written materials if the savings bank mails the long
278 form disclosures to the customer within 3 business days, beginning on the first business day after
279 the customer contacts the savings bank to respond to the solicitation, subject to the requirements
280 of s. DFI—SB 16.04(6)(c).

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

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

287 2. ‘Meaningful disclosures.’ The disclosures required by this section shall be in a meaningful
288 form.

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

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

299 **(6) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGEMENT OF**
300 **RECEIPT OF DISCLOSURES REQUIRED.** (a) *Affirmative election and acknowledgement of*
301 *receipt of disclosures.* Before entering into a contract the savings bank shall obtain a customer’s
302 written affirmative election to purchase a contract and written acknowledgement of receipt of the
303 disclosures required by s. DFI—Bkg 3.08(5)(b). The election and acknowledgement information

304 shall be conspicuous, simple, direct, readily understandable, and designed to call attention to
305 their significance. The election and acknowledgement satisfy these standards if they conform
306 with the requirements in s. DFI—Bkg 3.08(5)(d).

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

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

312 2. Mails the affirmative written election and written acknowledgement, together with the long
313 form disclosures required by s. DFI—SB 16.04(5), to the customer within 3 business days after
314 the telephone solicitation, and maintains sufficient documentation to show it made reasonable
315 efforts to obtain the documents from the customer.

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

318 (c) *Solicitations using written mail inserts or “take one” applications.* If the contract is
319 solicited through written materials such as mail inserts or “take one” solicitations and the savings
320 bank provides only the short form discourses in the written materials, then the savings bank shall
321 mail the acknowledgment of receipt of disclosures, together with the long form disclosures
322 required by s. DFI—SB 16.04(5) of this chapter, to the customer within 3 business days,
323 beginning of the first business day after the customer contacts the savings bank or otherwise
324 responds to the solicitation. The savings bank may not obligate the customer to pay for the
325 contract until after the savings bank has received the customer’s written acknowledgment of
326 receipt of disclosures unless the savings bank does all of the following:

327 1. Maintains sufficient documentation to show that the savings bank provided the
328 acknowledgement of receipt of disclosures to the customer as required by this section.
329 2. Maintains sufficient documentation to show that the savings bank made reasonable efforts to
330 obtain from the customer a written acknowledgement of receipt of the long form disclosures.
331 3. Permits the customers to cancel the purchase of the contract without penalty within 30 days
332 after the savings bank has mailed the long form disclosures to the customer.
333 (d) *Electronic election.* An affirmative election and acknowledgement made electronically shall
334 be in a manner consistent with the requirements of the Electronic Signatures in Global and
335 National Commerce Act, 15 U.S. C. 7001 *et seq.*

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

345 SECTION 3. Chapter DFI—SL 22 is created to read:

346 **DFI—SL 22**

347 **DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS.**

348 **DFI—SL 22.01 Definitions.** In this chapter:

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

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

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

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

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

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

363 (7) “Debt suspension agreement” means a loan term or contractual arrangement modifying loan
364 terms under which an association agrees to suspend all or part of a customer’s obligation to repay
365 an extension of credit from that association upon the occurrence of a specified event. The
366 agreement may be separate from or a part of other loan documents. “Debt suspension
367 agreement” does not include loan payment deferral arrangements in which the triggering event is
368 the borrower’s unilateral election to defer repayment or the association’s unilateral decision to
369 allow a deferral of repayment.

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

371 (a) The association reasonably contemplates repeated transactions;

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

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

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

378 **DFI—SL 22.02 Prohibited Practices. (1) ANTI-TYING.** An association shall not extend
379 credit or alter the terms or conditions of an extension of credit conditioned upon the customer
380 entering into a debt cancellation contract or debt suspension agreement with the association.

381 **(2) MISREPRESENTATIONS GENERALLY.** An association shall not engage in any practice
382 or use any advertisement that is false, misleading or deceptive, or which omits to state material
383 information, or otherwise would cause a reasonable person to reach an erroneous belief with
384 respect to information that may be disclosed under this section.

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

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

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

393 **DFI—SL 22.03 Refunds of fees in the event of termination or prepayment of the covered**
394 **loan. (1) REFUNDS.** If a debt cancellation contract or debt suspension agreement is terminated,

395 including when the customer prepays the covered loan, the association shall refund to the
396 customer any unearned fees paid for the contract unless the contract provides otherwise. An
397 association may offer a customer a contract that does not provide for a refund only if the
398 association also offers that customer a *bona fide* option to purchase a comparable contract that
399 provides for a refund.

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

402 **DFI—SL 22.04 Method of Payment of fees.** Except as provided in s. DFI—SL 22.02(3), an
403 association may offer a customer the option of paying the fee for a contract in a single payment,
404 provided the association also offers the customer a *bona fide* option of paying the fee for that
405 contract in monthly or other periodic payments. If the association offers the customer the option
406 to finance the single payment by adding it to the amount the customer is borrowing, the
407 association shall also disclose to the customer, in accordance with s. DFI—SL 22.05, whether
408 and, if so, the time period during which, the customer may cancel the agreement and receive a
409 refund.

410 **DFI—SL 22.05 Disclosures. (1) CONTENT OF SHORT FORM OF DISCLOSURES.** The
411 short form of disclosures required by this section shall include information relating to any of the
412 following that is appropriate to the product offered:

- 413 (a) That the product is optional.
- 414 (b) Lump sum payment of fee.
- 415 (c) Lump sum payment of fee with no refund.
- 416 (d) Refund of fee paid in lump sum.
- 417 (e) Any additional disclosures.

418 (f) Eligibility requirements, conditions and exclusions.

419 (2) CONTENT OF LONG FORM DISCLOSURES. The long form of disclosures required by
420 this section shall include information relating to any of the following that is appropriate to the
421 product offered:

422 (a) That the product is optional.

423 (b) An explanation of debt suspension agreement.

424 (c) The amount of fee.

425 (d) Lump sum payment of fee.

426 (e) Lump sum payment of fee with no refund.

427 (f) Refund of fee paid in lump sum

428 (g) Use of card or credit line restricted.

429 (h) Termination of product.

430 (i) Eligibility requirements, conditions and exclusions.

431 **Note:** Copies of the short and long form, and instructions for using them may be obtained
432 by writing to the Department of Financial Institutions, Division of Banking, P.O. Box
433 7876, Madison, WI 53707-7876 or by downloading it from the department's website,
434 www.wdfi.org. Short form disclosures made in a form that is substantially similar to the
435 disclosures available from the department will satisfy the short form disclosure
436 requirement of this section. Long form disclosures made in a form that is substantially
437 similar to the disclosures available from the department will satisfy the long form
438 disclosure requirements of this section.

439 (3) DISCLOSURE REQUIREMENT, AND TIMING AND METHOD OF DISCLOSURES. (a)

440 *Short form disclosures.* The association shall make the short form disclosures orally at the time
441 the association first solicits the purchase of a contract.

442 (b) *Long form disclosures.* The association shall make the long form disclosures in writing
443 before the customer completes the purchase of the contract. If the initial solicitation occurs in
444 person, the association shall provide the long form disclosures in writing at that time.

445 (c) *Transactions by telephone.* If the contract is solicited by telephone, the association shall
446 provide the short form disclosures orally and shall mail the long form disclosures, and, if
447 appropriate, a copy of the contract to the customer within 3 business days, beginning on the first
448 business day after the telephone solicitation.

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

455 (e) *Electronic transactions.* Disclosures described in this section provided through electronic
456 media shall be in a manner consistent with the requirements of the Electronic Signatures in
457 Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

458 (4) FORM OF DISCLOSURES (a) *Understandable disclosures.* The disclosures required by this
459 section shall be conspicuous, simple, direct, readily understandable, and designed to call
460 attention to the nature and significance of the information provided.

461 (b) *Meaningful disclosures*. The disclosures required by this section shall be in a meaningful
462 form.

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

469 **(5) ADVERTISEMENTS AND OTHER PROMOTIONAL MATERIAL FOR DEBT**
470 **CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS.** The short form
471 disclosures are required in advertisements and promotional material for contracts unless the
472 advertisements and promotional materials are of a general nature describing or listing the
473 services or products offered by the association.

474 **DFI—SL 22.06 Affirmative Election to purchase and acknowledgement of receipt of**
475 **disclosures required. (1) AFFIRMATIVE ELECTION AND ACKNOWLEDGEMENT OF**
476 **RECEIPT OF DISCLOSURES.** Before entering into a contract the association shall obtain a
477 customer’s written affirmative election to purchase a contract and written acknowledgement of
478 receipt of the disclosures required by s. DFI—SL 22.05(2). The election and acknowledgement
479 information shall be conspicuous, simple, direct, readily understandable, and designed to call
480 attention to their significance. The election and acknowledgement satisfy these standards if they
481 conform with the requirements in s. DFI—SL 22.05(4).

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

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

487 (b) Mails the affirmative written election and written acknowledgement, together with the long
488 form disclosures required by s. DFI—SL 22.05, to the customer within 3 business days after the
489 telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts
490 to obtain the documents from the customer.

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

493 (3) SOLICITATIONS USING WRITTEN MAIL INSERTS OR “TAKE ONE”
494 APPLICATIONS. If the contract is solicited through written materials such as mail inserts or
495 “take one” solicitations and the association provides only the short form disclosures in the written
496 materials, then the association shall mail the acknowledgment of receipt of disclosures, together
497 with the long form disclosures required by s. DFI—SL 22.05 of this chapter, to the customer
498 within 3 business days, beginning of the first business day after the customer contacts the
499 association or otherwise responds to the solicitation. The association may not obligate the
500 customer to pay for the contract until after the association has received the customer’s written
501 acknowledgment of receipt of disclosures unless the association does all of the following:

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

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

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

508 (4) ELECTRONIC ELECTION. An affirmative election and acknowledgement made
509 electronically shall be in a manner consistent with the requirements of the Electronic Signatures
510 in Global and National Commerce Act, 15 U.S. C. 7001 *et seq.*

511 **DFI—SL 22.07 Safety and soundness requirements.** An association shall manage the risks
512 associated with debt cancellation contracts and debt suspension agreements in accordance with
513 safe and sound banking principles. Accordingly, an association shall establish and maintain
514 effective risk management and control processes over its debt cancellation contracts and debt
515 suspension agreements. Such processes include appropriate recognition and financial reporting
516 of income, expenses, assets and liabilities, and appropriate treatment of all expected and
517 unexpected losses associated with the products. An association shall also assess the adequacy of
518 its internal control and risk mitigation activities in view of the nature and scope of its debt
519 cancellation contract and debt suspension agreement programs.

520 **Effective date.** This rule takes effect on April 1, 2006, except for those provisions
521 comparable to the provisions of 12 C.F. R. sec. 37 that are subject to a delayed effective date by
522 the United States Office of the Comptroller of Currency. These provisions shall become
523 effective when the comparable provisions of 12 C.F.R. sec. 37 become effective. The
524 administrator for the division of banking shall issue interpretive letters confirming which
525 provisions of this rule have become effective and the effective date of these provisions.

Dated: _____ Agency: _____
Michael J. Mach, Administrator

Department of Financial Institutions
Division of Banking