

Chapter DFI-CU 74

INCIDENTAL POWERS ACTIVITY AUTHORITY PARITY WITH FEDERAL CREDIT UNIONS – DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

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DFI-CU 74.01 Purpose. This chapter authorizes a Wisconsin-chartered credit union to engage in certain activities incidental to its business in the same manner that the activities are available to federally-chartered credit unions.

History: CR 05-046: cr. Register January 2006 No. 601, eff. 2-1-06.

DFI-CU 74.02 Definitions. In this section:

(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) “Credit union” has the meaning set forth in s. 186.01 (2), Stats.

(3) “Customer” means a member of a credit union who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

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

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

(6) “Director” means the director of the office of credit unions or an authorized representative of the director.

(7) “Incidental powers activity” means an activity that is necessary or requisite to enable a credit union to effectively carry on the business for which it is incorporated. An activity meets the definition of “incidental powers activity” if it is convenient or useful in carrying out the mission or business of a credit union, is the functional equivalent or logical out-growth of activities that are part of the mission or business of a credit union, and involves risks similar in nature to those already assumed as part of the business of the credit union.

(8) “Loan-related products” mean the products, activities or services a credit union provides to its members in a lending transaction that protect it against credit-related risks or are otherwise incidental to its lending authority. “Loan-related products” include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

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

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DFI-CU 74.03 Debt cancellation contracts and debt suspension agreements. A credit union may provide debt cancellation contracts and debt suspension agreements as an incidental powers activity in the same manner and to the same extent that the products are provided by federally-chartered credit unions.

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DFI-CU 74.04 Prohibited practices. (1) ANTI-TYING. A credit union 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 credit union.

(2) MISREPRESENTATIONS GENERALLY. A credit union 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. A credit union shall not offer debt cancellation contracts or debt suspension agreements that contain any of the following:

(a) Terms giving the credit union 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.

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DFI-CU 74.05 Refunds of fees in the event of termination or repayment of covered loan. (1) REFUNDS. If a debt cancellation contract or debt suspension agreement is terminated, including when the customer prepays the covered loan, the credit union shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a customer a contract that does not provide for a refund only if the credit union also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

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

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DFI-CU 74.06 Method of payment of fees. Except as provided in s. DFI-CU 74.04 (3) (b), a credit union may offer a customer the option of paying the fee for a contract in a single payment, provided the credit union also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If the credit union offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the credit union shall also disclose to the customer, in accordance with s. DFI-CU 74.07, whether and, if so, the time period during which the customer may cancel the agreement and receive a refund.

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DFI-CU 74.07 Disclosures. (1) CONTENT OF SHORT FORM 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 Office of Credit Unions, P.O. Box 14137, Madison, WI 53708-0317 or by downloading it from the Department of Financial Institutions' website, www.wdfi.org.

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

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

(c) *Transactions by telephone.* If the contract is solicited by telephone, the credit union 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 is solicited through written materials such as mail inserts or "take one" applications, the credit union may provide only the short form disclosures in the written materials if the credit union mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the credit union to respond to the solicitation, subject to the requirements of s. DFI-CU 74.08 (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 credit union.

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DFI-CU 74.08 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 credit union shall obtain a customer's written affirmative election to purchase a contract and written acknowledgement of receipt of the disclosures required by s. DFI-CU 74.07 (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-CU 74.07 (2).

(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 credit union 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-CU 74.07, 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 credit union 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 credit union provides only the short form disclosures in the written materials, then the credit union shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by s. DFI-CU 74.07, to the customer within 3 business days, beginning of the first business day after the customer contacts the credit union or otherwise responds to the solicitation. The credit union may not obligate the customer to pay for the contract until after the credit union has received the customer's written acknowledgment of receipt of disclosures unless the credit union does all of the following:

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

(b) Maintains sufficient documentation to show that the credit union 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 credit union 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.*

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DFI-CU 74.09 Safety and soundness. A credit union shall manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with safety and soundness principles. A credit union shall establish and maintain effective risk management and control processes over its debt cancellation contracts and debt suspension agreements. The pro-

cesses 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. A credit union shall 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. The director may limit, restrict or prohibit a credit union from utilizing any incidental power if examination results indicate that the credit union is conducting its business in an unauthorized or unsafe manner or is violating any of the provisions of this chapter.

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