

SUBJECT: Consumer Approval Transactions

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INTRODUCTION

This release applies to all Wisconsin credit unions.

EXECUTIVE SUMMARY

Whenever a consumer loan is closed somewhere other than the credit union's regular place of business, the transaction must be reviewed to see if it is a "consumer approval transaction" subject to Wis. Stat. Chapter 423.

Consumer approval transactions are subject to a three business day right to cancel on the part of the consumer. The credit union is required to give the borrower a notice of the right to cancel. This is aside from the federal right of rescission and Notice of Right to Cancel discussed in *ii Release B036*.

WHEN IS A LOAN A CONSUMER APPROVAL TRANSACTION?

Although most consumer approval transactions involve credit sales, they can also include consumer loans. The three required elements are:

- 1) The loan is subject to the **Wisconsin Consumer Act**;
- 2) The transaction is initiated by face-to-face solicitation away from a regular place of business of the credit union OR by **mail or telephone solicitation directed to the particular customer**; and
- 3) The transaction is consummated away from a regular place of business of the credit union.

Exceptions: Loans conducted and consummated entirely by mail and loans made to finance the sale of goods at auction for an agricultural purpose are not counted as consumer approval transactions.

As for the first element, most credit union loans are consumer loans: made to individuals for personal, family, household or agricultural purposes in an amount of \$25,000 (**increased to \$50,000 as of Jan. 1, 2027**) or less and not secured by a first mortgage or equivalent security interest.

The second element is surprisingly easily met. If the credit union has advertised the type of loan in question in any newsletter, statement, or other item directly mailed to the member, the Administrator of the Consumer Act, deems this element to be met.

The third element, consummation away from a regular place of business of the credit union, is not typically met. However, if, for whatever reason, the credit union decides or agrees to close the loan elsewhere, this requirement is met.

In any case where the credit union agrees to close the loan at a home, dealership, restaurant, or hospital, the loan officer should review the transaction to see if the other two elements are also met.

Of course, the burdens and risks of compliance with Chapter 423 can be easily avoided by following a policy of never closing a loan outside of the credit union office.

THE RIGHT TO CANCEL

The right to cancel available under Chapter 423 should not be confused with the Truth in Lending right to cancel discussed in *ii Release B036*. The two rights arise in different contexts and use different notices.

When a loan is subject to Chapter 423, the consumer has a right to cancel the transaction up until midnight of the third business day after the credit union has given proper notice of right to cancel.

A business day is defined, for purposes of the Wisconsin Consumer Act, as any calendar day, except Saturday and Sunday, and except the following business holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving and Christmas.

The notice of right to cancel must:

1. Be provided to the customer in duplicate.
2. Be printed or typed in capital and lowercase letters of not less than 12-point boldface type.
3. Bear the conspicuous caption: CUSTOMER RIGHT TO CANCEL.
4. Read as follows:

You may cancel this agreement by mailing a written notice to (insert name and mailing address of credit union) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records.

The League does not plan to supply a pre-printed form because instances requiring the notice should be rare. However, a mockup of the form is provided in Exhibit A of this release. If the credit union photo copies the Exhibit, be sure to provide the consumer with two copies to keep, and require a third copy to be signed for the credit union's files.

The notice of right to cancel may not be given until Truth in Lending disclosures are given and the loan documents are signed. The notice is then given, commencing the three day cancellation period.

The borrower may exercise the right to cancel in any written form. If mailed, the cancellation need only be postmarked, not received, by midnight of the third business day.

CONSEQUENCES OF CANCELLATION

If the borrower cancels, the credit union must refund any payments already made and void the transaction, including any security interest created as a result of it and any finance charges. This must be done within 10 days of cancellation.

It is not until the credit union voids the transaction, returns all payments, and cancels the security interest that the borrower must return loan proceeds already received.

If the credit union fails to give a valid notice when required, the right to cancel still exists. It goes on indefinitely until three days after the credit union does give a proper notice.

WAIVER

The statute has a provision whereby a consumer may waive the right to cancel a consumer approval transaction, but only under very limited circumstances. The requirements are:

- (a) The customer has determined that a delay of 3 business days in performance of the merchant's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which he is responsible;
- (b) The customer furnishes the merchant with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission. The use of printed forms for this purpose is prohibited;
- (c) The merchant in good faith makes a substantial beginning of performance of the contract before the customer gives notice of cancellation; and

- (d) In the case of goods, the goods cannot be returned to the merchant in substantially as good condition as when received by the customer.

CREDIT SALES

This release is phrased in terms of loans, but it applies to all types of consumer transactions, such as leases, credit sales, and even non-credit sales to consumers.

PENALTIES

Each violation of the Consumer Approval Transaction law may result in liability in an amount equal to the greater of (1) twice the amount of the finance charge, but not less than \$100 or greater than \$1,000, or (2) actual damages.

Again, if the credit union only closes loans at its office, there is no need to further monitor for compliance with this law.



League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

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EXHIBIT A: MODEL FORM CUSTOMER'S RIGHT TO CANCEL

CUSTOMER'S RIGHT TO CANCEL

(Provide the customer with 2 completed copies of the form and retain signed original for the credit union's files.)

You may cancel this agreement by mailing a written notice to _____

_____ Credit Union,

at _____.

_____, Wisconsin _____ before midnight of the

third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate copy of this page is provided by the seller for your records.

I acknowledge receipt of two completed copies of this form.

X _____

Date _____

Form distribution: 2 copies to member/customer, 1 to credit union.