

Buy Here Pay Here Motor Vehicle Dealership Compliance Checklist

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HOW TO USE THIS CHECKLIST

The Wisconsin Department of Financial Institutions, Division of Banking (DOB) wants to help you ensure that your motor vehicle dealership will be operated in compliance with Wisconsin statutes and rules covering sales finance and debt collection activities. To start you off on the right track, we've developed the following checklist you can use to make sure your operations will be compliant before you start conducting business. Established dealerships that offer buy here pay here financing are encouraged to review this checklist both periodically, and when major updates are planned.

This checklist covers common compliance issues the DOB finds in examinations of motor vehicle dealerships that retain retail installment contracts ("buy here pay here" sales). In addition to this checklist, we recommend you review the DOB's *Motor Vehicle Dealership Compliance Checklist*.

*The Wisconsin Consumer Act (WCA) is a state law underlying several of the requirements noted in this checklist. In general, the WCA applies to consumer credit transactions made in Wisconsin for personal, family, or household use, in which the amount financed is \$25,000 or less. WCA requirements included in this checklist are marked with an asterisk.

RETAIL INSTALLMENT CONTRACT

Installment Sales

Whenever we sell a vehicle at retail in which the price is payable in one or more installments over a period of time and in which we take a security interest in the vehicle, we are preparing a written retail installment contract that contains all the agreements of the parties and is signed by us and the buyer.

Contracts used in consumer installment sales must comply with form requirements under the federal Truth in Lending Act, WCA, and [Wis. Stat. s. 218.0142](#). If your company has developed a retail installment contract form and you would like the DOB to review the form for compliance with the WCA, you can email a copy of the form to ConsumerAct@dfi.wi.gov. If you would like to review a sample retail installment contract developed by the DOB, please email a request to DFI_LFS@wi.gov.

Truth in Lending Disclosures

We have software that computes accurate disclosures required by the Truth in Lending Act, including the Annual Percentage Rate (APR) and Finance Charge.

The Finance Charge you disclose on the retail installment contract is the cost of credit to the customer as a dollar amount. It includes any charge imposed as an incident to or as a condition of the extension of credit. It does not include charges payable in a comparable cash sale. The most common example of a finance charge is interest.

The APR is a measure of the cost of credit to the customer expressed as a yearly rate. APR errors can mislead customers about the cost they are paying to obtain credit and will diminish the customer's ability to comparison shop for credit. Correcting APR errors can be costly and time consuming for a dealership. DOB stresses the importance of obtaining software from a reputable vendor with financial services industry experience to calculate accurate Truth in Lending disclosures before beginning a buy here pay here financing program.

Timing and Form of Disclosures
We have procedures in place to provide consumers purchasing a vehicle on installments with disclosures required by the Truth in Lending Act. Our procedures ensure these disclosures are:

1. Included in the retail installment contract.
2. Made clearly and conspicuously in writing.
3. Provided to the customer before the transaction is consummated in a form the customer may keep.

Additional Charges*
Charges that are not included in the cash price or the finance charge are limited to the kinds of additional charges permitted under [Wis. Stat. s. 422.202](#).

Permitted additional charges include official fees and taxes, charges for service contracts including mechanical breakdown, extended warranty, and maintenance service contracts, future service contracts, motor club contracts, insurance policies, and guaranteed asset protection waivers. Late payment charges ([review requirements](#)) and returned item fees ([review requirements](#)) are also permitted.

Contract Copy
We have procedures in place to ensure the customer is provided with a copy of the signed retail installment contract at the time the customer signs the contract.

PAYMENTS & COLLECTIONS

Simple Interest Accounting
If we use a simple interest retail installment contract (common), we have software that accurately calculates interest charges and applies payments to the account.

DOB has cited dealers in exams for not computing interest correctly in simple interest transactions. A common error is subtracting the full amount of each payment received from the *Total of Payments*, ignoring the timing of customer payments. This practice can result in interest overcharges to customers and can be costly and time-consuming for the dealership to correct.

In a simple interest transaction, the opening account balance should be the *Amount Financed* from the retail installment contract. Interest is earned between payments and is calculated by multiplying the outstanding balance of the amount financed by the daily interest rate by the number of days since the previous payment (Interest = principal x rate x time). When a payment is received, it is applied first to interest that has been earned, and the remainder applied to the outstanding balance of the amount financed (principal) and accrued fees.

If you would like to review a simple interest calculator, please email a request to DFI_LFS@wi.gov.

Precomputed Finance Charge
If we use a precomputed retail installment contract (less common), we have procedures for rebating the unearned portion of the finance charge if the customer pays off their account early, in accordance with [Wis. Stat. s. 422.209\(2\)](#).

- Application of Partial Prepayment*
If contracts include the wording set forth in the DOB’s “Application of Partial Prepayment” interpretive opinion letter, our account management system can be programmed to apply a customer’s excess payment to principal only. If the contracts do not include this language, our system is programmed to automatically apply a customer’s excess payment to future installments in the order they are scheduled to come due.

The interpretive opinion letter is found [here](#) on the Department’s website. Please note, customers must have the option to apply excess payments to future installments.

- Debt Collection Practices*
We do not threaten or harass customers, their relatives, or third parties when attempting to collect debts.

Information about prohibited debt collection practices can be found [here](#) on the Department’s website.

- Lien Release
Procedures have been implemented to ensure that following satisfaction of the customer’s debt, we are releasing our security interest in the vehicle and notifying the owner that the release has been provided. For vehicles titled in Wisconsin, the release should be issued within one month of the satisfaction or within 10 days following written demand by the debtor after there is no outstanding obligation.

For information about title processing, please visit the Wisconsin Department of Transportation’s website: <https://wisconsin.gov/Pages/dmv/dlr-agents/dlr-ttl-reg/default.aspx>

FEES & CHARGES

- Late Charges*
Our account management system is programmed to assess late charges in accordance with [Wis. Stat. s. 422.203](#).

The most common late charge errors the DOB cites in exams are:

- a) Late charges not being limited to the lesser of \$10 or 5% of the unpaid installment amount.
- b) *For late charge purposes only*, payments not being applied first to the current installment and then to delinquent installment(s).
- c) Late charges being assessed on the 10th day after a scheduled payment due date rather than on the 11th day.
- d) *For late charge purposes only*, if a payment exceeded the required amount and there were no previous unpaid installments/returned item fees/late charges, the additional amount not being applied to the next payment due (thereby reducing the amount of the late charge on the next installment if the next installment is late). For more information on this topic, refer to the [Application of Partial Prepayment](#) checklist item.
- e) Late charges being assessed on the final installment on accounts where interest was assessed after maturity.

See [Appendix A](#) for sample late charge scenarios.

- Returned Item Fees*
Our account management system is programmed to limit returned item fees to \$15.

Also verify that your account management system is programed to:

- 1) Assess a returned item fee only on a returned check or ACH.
- 2) Assess a returned item fee only when the borrower:
 - a) Does not have an account with the drawee,
 - b) Does not have sufficient funds in their bank account, or
 - c) Does not have sufficient credit with the drawee.

See [Wis. Stat. s. 422.202\(1\)\(d\)](#). For additional information about returned item fees and the “NSF Fees Arising from ACH Transactions”, refer to the interpretive opinion letter found [here](#) on the Department’s website.

Repossession Expenses*
Procedures have been implemented to limit repossession expenses added to the customer’s account to reasonable and bona fide expenses of taking and holding the collateral if paid to persons not related to the creditor, and travel and transportation expenses of the creditor or the creditor’s employees in taking possession of the collateral.

See [Wis. Stat. s. 422.413\(2g\)\(a\)](#) and [\(b\)](#).

Reconditioning Expenses*
Procedures have been implemented limiting the types and amounts of reconditioning expenses that may be added to the customer’s account, in accordance with [Wis. Stat. s. 422.413\(2g\)\(c\)](#). Reconditioning expenses are only posted to the account when the customer’s 15-day [redemption period](#) under [s. 425.208](#) has expired. Only expenses paid to unrelated parties are added. The amount posted to the customer’s account is limited to the greater of item 1 or item 2:

- 1) The sum of:
 - a) Expenses for cleaning and restoring the appearance of the collateral, not to exceed \$100.
 - b) Expenses for repair of damage to the collateral if covered by insurance, not to exceed the lesser of any deductible amount or \$250.
 - c) Expenses for mechanical repairs to the collateral, not to exceed \$200.
- 2) Expenses for any repair to the collateral which increase the selling price of the collateral, not to exceed the amount by which the selling price is increased because of the repairs. The selling price of the collateral before repairs shall be established by any reasonable method, at no cost to the customer.

Please note that if repossessed vehicles are repaired in-house at the dealership’s service center, the cost of repairing and restoring the vehicle cannot be recovered from the customer. Only those expenses paid to unrelated parties, such as a third-party service center or body shop, may be recovered.

Disposition Expenses*
Procedures have been implemented limiting disposition expenses added to the customer’s account to reasonable expenses incurred in the disposition of collateral, in accordance with [Wis. Stat. s. 422.413\(1\)](#).

The most common example of a disposition expense is the seller’s fee charged by an auction.

Default Charges*
Procedures have been implemented limiting charges added to the customer's account as a result of their default to the permitted repossession, reconditioning, and disposition expenses outlined above.

Receipts
Our procedures include placing a copy of the related invoice or receipt in the customer's file whenever a repossession, reconditioning, or disposition expense is posted to the customer's account.

DEFAULT & REPOSSESSION

Notice of Right to Cure Default*
Procedures have been implemented to ensure we issue a notice of customer's right to cure default (RTC) that complies with the provisions of Wis. Stat. ss. [425.103](#), [425.104](#), [425.105](#), and [425.205\(1g\)](#) before action to repossess a vehicle is commenced.

The most common RTC errors the DOB cites in exams are:

- The RTC is mailed before the account is in default due to nonpayment (see [Wis. Stat. s. 425.103\(2\)\(a\)](#)).
- The RTC does not identify the correct amount needed to cure the default. Common errors include adding an additional payment that is not yet due or including accrued NSF fees in the amount needed to cure.
- The RTC does not itemize the due date and unpaid amount of each past due installment.
- The RTC does not provide the customer with enough time to cure the default.
- The RTC does not include all of the statements required by [Wis. Stat. s. 425.205\(1g\)\(a\)](#). These statements must be included on the RTC when a company conducts nonjudicial repossessions.

A sample RTC developed by the DOB is available for download [here](#).

Repossession*
We have procedures in place to ensure the following requirements are met when we repossess a vehicle using the nonjudicial process outlined in [Wis. Stat. s. 425.206\(1\)\(d\)](#):

- (1) A compliant RTC was mailed to the customer at least 16 days prior, and the customer has not cured the default or requested that we proceed in court.
- (2) We have notified local law enforcement about the pending repossession (see [Wis. Stat. s. 425.2065](#)).
- (3) We do not enter a dwelling used by the customer as a residence, including any garage, shed, barn, or other building on the premises, except at the voluntary request of the customer.
- (4) We do not breach the peace.

DOB stresses the importance of maintaining strong procedures and controls to prevent repossession violations. Violations are subject to [Wis. Stat. s. 425.305](#), which provides that the customer's remedy is to retain the vehicle without obligation to pay any amount, and to recover any payments they have previously made to you in the transaction.

Redemption*
It is our policy to hold a vehicle for at least 15 days after repossession to allow the customer an opportunity to redeem.

Under [Wis. Stat. s. 425.208](#), for a period of 15 days after repossession, the customer has the right to recover their vehicle and restore their account to good standing (redeem) by paying all of the following:

- a) The total of all unpaid amounts, without acceleration.
- b) Any performance necessary to cure any default other than nonpayment of amounts due.
- c) Any court related costs and filing/service fees.
- d) [Permitted repossession expenses](#)
- e) A performance deposit equal to 3 installments or 1/3 of the total obligation remaining unpaid, whichever is less.

Once the 15-day redemption period has expired, you may resell or otherwise dispose of the vehicle in a commercially reasonable manner (see the [Disposition](#) checklist item).

Notice of Our Plan to Sell Property
Our repossession procedures include giving a Notice of Our Plan to Sell Property that complies with the requirements of [Wis. Stat. s. 409.614](#).

If you mail this notice within 15 days of repossessing the vehicle, the redemption information contained in the notice should reflect the amounts the customer must pay to redeem under s. 425.208 (refer to the [Redemption](#) checklist item.)

Disposition
After the customer's redemption period has expired, we observe one of the following practices:

1. We dispose of the repossessed vehicle in a commercially reasonable manner and apply all funds we receive from reselling the vehicle to the account of the customer in default. This method is required if the customer has paid 60% or more of the vehicle's cash price.

-Or-

2. We offer to accept the repossessed vehicle in full satisfaction of the obligation it secures (i.e., we offer to waive the customer's remaining debt in exchange for the vehicle). This course of action is available as an option if the customer has paid less than 60% of the cash price.

Application of Disposition Proceeds*
Our account management system has been programmed to apply proceeds from the sale of a repossessed vehicle to the customer's account in the following order, in accordance with [Wis. Stat. s. 422.413\(2r\)](#):

1. Permitted repossession, reconditioning, and disposition expenses.
2. Accrued fees (e.g., late charges or returned item fees, if any), interest, and principal owing.
3. Permitted types of reconditioning expenses to the extent those expenses exceed the statutory limitations on amounts (refer to items 1a-c within the [Reconditioning Expenses](#) checklist item).
4. The satisfaction of indebtedness secured by any subordinate security interest in the collateral, subject to the restrictions set forth in s. [409.615 \(1\) \(c\)](#) and [\(2\)](#).
5. Any remaining surplus must be paid to the customer.

- Explanation of Deficiency
Procedures have been implemented to ensure that an explanation of calculation of deficiency notice is issued to the customer after disposition and before making any other written demand on the customer for payment of the deficiency.

Please see [Wis. Stat. s. 409.616](#) for notice requirements. In cases where the company will not be pursuing collection of a deficiency, a notice of deficiency does not need to be issued unless requested by the customer. In the event the customer is entitled to a surplus of disposition proceeds, an accounting of the surplus must be sent prior to or concurrent with payment of the surplus to the customer.

ADMINISTRATIVE TASKS

- Records
Records are retained for no less than 2 years after consummation of the installment sale or one year after the last payment, whichever is later. All applicable records and information required by [Wis. Admin. Code DFI-Bkg. 76.09](#) are retained.

Refer to [Appendix B](#) for a complete list of records required to be retained under DOB’s Administrative Rules.

- Wisconsin Consumer Act*
We have filed a Wisconsin Consumer Act Registration form.

Information about registration can be found on the Department of Financial Institutions’ [website](#) and the registration form can be found [here](#). After the initial registration, an annual filing is only required if your company held more than \$250,000 in consumer credit accounts receivable on December 31 of the previous year.

- Filing Due Dates
The following filing due dates have been added to our calendar:

| Filing | Due | Notes |
|--|--------|--|
| Dealer Sales Finance Company License Renewal | 12/1 | DOB mails this form on 11/1. In general, DOB only sends this form to dealers who retain more than \$100,000 per year in contracts and leases. |
| Wisconsin Consumer Act Annual Registration | 2/28 | DOB mails this form in January. In general, dealers who hold less than \$250,000 in receivables will not receive or need to file this form. |
| Domestic Corporation/LLC Annual Report (if applicable) | Varies | The Division of Corporate and Consumer Services emails registrants a reminder. This report is due at the end of the quarter in which the company originally organized or incorporated. |
| Foreign Corporation/LLC Annual Report (if applicable) | 3/31 | The Division of Corporate and Consumer Services emails registrants a reminder. |

OTHER MATTERS

- GAP and Credit Insurance*
If we sell guaranteed asset protection waivers and/or credit insurance, we have procedures in place to refund unearned premiums when the policy terminates due to early payoff, voluntary cancellation, or otherwise.

More detailed information is available [here](#) on our Department's website.

- Anti-Discrimination Policy*
We have a detailed, written policy of nondiscrimination in extending consumer credit.

In accordance with the federal Equal Credit Opportunity Act, Regulation B, and [Wis. Admin. Code s. DFI-WCA. 1.85](#), creditors are prohibited from discriminating against applicants on a prohibited basis.

- Notice to Married Applicants
The following notice has been added to our written applications for credit as required by [Wis. Stat. s. 766.56\(2\)\(b\)](#):

NOTICE TO MARRIED APPLICANTS: No provision of a marital property agreement, a unilateral statement under s. 766.59 or a court decree under s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred.

- Notice to Non-Applicant Spouse
Procedures have been implemented to ensure that a non-applicant spouse is mailed a written notice informing them of the extension of credit to the applicant spouse.

[Wis. Stat. s. 766.56\(3\)\(b\)](#) states that the notice requirement may be satisfied by providing a copy of the loan agreement to the non-applicant spouse or by sending the non-applicant spouse a separate writing briefly describing the nature of the credit extended. Please note, the DOB interprets this to mean that the notice must be sent via regular mail, not email.

To comply with the requirements of s. 766.56(3)(b), lenders must ask an applicant what their marital status is, and if married, the name and address of the non-applicant spouse. Many companies include the following language in their credit application or credit agreements.

For Wisconsin Residents Only: You are married unmarried legally separated. If you are married and your spouse is not signing below, the name of your spouse is _____ and your spouse resides at the address shown above or at _____

Appendix A: Sample Late Charge Scenarios

To test your account management system's late charge logic, try running these sample payment scenarios:

Contract Date: 1/1/2023
 First Payment Due Date: 2/15/2023
 Payment Frequency: Monthly
 Payment Amount: \$250.00

| Scenario | Customer Payments | Earliest date a late charge could be assessed | Maximum amount of the late charge | Explanation |
|----------|--|---|-----------------------------------|---|
| A | No payment made | 2/26/23 | \$10.00 | \$250 unpaid x 5% = \$12.50. Because 10.00 < 12.50, late charge is limited to \$10.00. |
| B | \$100 on 2/23/23 | 2/26/23 | \$7.50 | \$150 unpaid x 5% = \$7.50. Because 7.50 < 10.00, charge is limited to \$7.50. |
| C | \$150 on 2/15/23 \$100 on 2/25/23 | N/A | \$0.00 | Customer paid the full installment within 10 days of the scheduled due date. |
| D | \$100 on 2/23/23 \$ 50 on 3/19/23 \$250 on 4/25/23 | 2/26/23 3/26/23 N/A | \$ 7.50 \$10.00 \$ 0.00 | Although the customer is \$350 past due as of 4/25/23, their \$250 payment on 4/25/23 must be applied first to the current installment (due 4/15/23) for late charge purposes. As a result, this installment is paid-in-full, so no late charge may be taken on it. |

Appendix B: Record Retention

DFI-Bkg 76.09 Record Retention

(1) Each motor vehicle sales finance company shall retain the following records in connection with each transaction evidenced by a retail installment contract:

- (a) A copy of each retail installment contract.
- (b) Each credit disclosure statement.
- (c) The name of the assignee to whom each contract is transferred.
- (d) Where credit insurance is sold by the sales finance company or its representative:
 1. A copy of the insurance policy or certificate of insurance.
 2. The policy number.
 3. The date of prepayment, if any.
 4. Refunds of credit insurance premiums separately itemized.
 5. Each notice of prepayment made by an assignee in accordance with s. [DFI-Bkg 76.05](#).
 6. The amount, date and check number of any credit insurance rebates.
- (e) A copy of each notice of right to cure default sent by the licensee.
- (f) Each document evidencing receipt of surrender or voluntary surrender of any vehicle recovered by the licensee.
- (g) Each licensee who disposes of any vehicle recovered by replevin, surrender or voluntary surrender shall retain or record each oral or written bid received, except oral bids at a public sale, as well as the date of sale, the amount received and the identity of the buyer.

(2) Each motor vehicle sales finance company shall in connection with each transaction evidenced by a retail installment contract retained by such sales finance company for a period of more than 30 days, maintain a written record which shall include the following:

(a) Open accounts.

1. Date of the transaction.
2. Account number.
3. Name and address of buyer and seller.
4. Cash price.
5. Down payment.
6. Amount and description of each additional charge.
7. The amount financed.
8. Finance charge expressed in dollars.
9. The total of payments.
10. The first installment due date.
11. The number, amount and periods of payment scheduled to repay the indebtedness.
12. The annual percentage rate.
13. Description and year model of motor vehicle, including whether the vehicle was new or used at the time of sale.
14. Date and amount of each payment.
15. Amount of any delinquency charges collected.
16. Amount of any deferral charges collected.
17. Name of each credit and property insurer.
18. Each insurance certificate or policy number.

(b) Paid accounts. In addition to the information required above the written record shall include:

1. Date account is paid in full.
2. Whether the account balance or any payments were paid from credit insurance proceeds, the amount of such proceeds and, if paid from the proceeds of credit life insurance, the date of the customer's death.
3. The amount of the refund of unearned charges separately itemized.
4. The amount, date and check number of any overpayment or rebate for prepayment.