

# Motor Vehicle Dealership Compliance Checklist

## Contents

HOW TO USE THIS CHECKLIST.....	2
GAP AND CREDIT INSURANCE.....	2
Lender Policies .....	2
Refunds .....	2
Logs .....	2
CREDIT AGREEMENTS .....	3
Installment Sales .....	3
Truth in Lending Disclosures .....	3
Timing and Form of Disclosures .....	3
E-Contracting .....	3
Late Charges* .....	3
NSF Fees* .....	3
Disclosure of Additional Charges* .....	4
Contract Copy .....	4
Downpayments.....	4
Deferred Downpayments.....	4
Side Loans Prohibited.....	5
PURCHASE CONTRACT DISCLOSURES .....	5
Credit-Related Charges .....	5
Finance Section .....	5
ADMINISTRATIVE TASKS .....	6
Record Retention .....	6
Wisconsin Consumer Act* .....	6
Licensing.....	6
OTHER MATTERS.....	6
Lease Buyouts .....	6
Anti-Discrimination Policy* .....	7
Conditional Delivery Agreements Prohibited .....	7
Notice to Married Applicants.....	7

## HOW TO USE THIS CHECKLIST

The Wisconsin Department of Financial Institutions, Division of Banking (DOB) wants to help you ensure that your Wisconsin motor vehicle dealership will be operated in compliance with Wisconsin statutes and rules covering sales financing and consumer leasing 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 are encouraged to review this checklist periodically and when major updates are planned.

This checklist covers compliance issues the DOB finds in examinations and complaint investigations of motor vehicle dealerships that originate installment contracts or leases, but do not retain or service those contracts. If your dealership retains contracts, be sure that you also review the *Buy Here Pay Here 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.

## GAP AND CREDIT INSURANCE

**If our dealership markets Guaranteed Asset Protection waivers or credit insurance in consumer credit transactions, we observe the following procedures:**

- Lender Policies  
**We have a complete understanding of how each of the finance companies we have sold contracts to handles refunds following termination of GAP and credit insurance policies.**

Finance companies can either directly refund the customer or instruct the seller (you) to refund the customer when a GAP waiver terminates due to early account payoff, repossession, or otherwise. Dealers that sell GAP must understand how each lender it has sold contracts to handles policy terminations (direct refund or dealer notification) and how the lender notifies the dealership of terminations.

- Refunds  
**We have procedures in place to ensure we are making refunds of unearned GAP and insurance charges in a timely manner when notified by the finance company that a GAP or credit insurance policy has terminated. DOB generally considers a refund to be timely if it is made within 60 days of the policy termination date.**

- Logs  
**We maintain logs of all our GAP and credit insurance sales and refund transactions. Our log is in a form comparable to the logs created by DOB.**

Sample logs are available for download on the Department's website [here](#).

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

## CREDIT AGREEMENTS

- 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 purpose installment sales must comply with form requirements under the federal Truth in Lending Act, Wisconsin Consumer Act, and [Wis. Stat. s. 218.0142](#). If you would like to review a sample retail installment sales contract developed by the DOB, please email a request to [DFI\\_LFS@wi.gov](mailto:DFI_LFS@wi.gov).

- Truth in Lending Disclosures**  
**We maintain controls to ensure that complete and accurate Truth in Lending disclosures, including the Annual Percentage Rate and Finance Charge, are given to the customer in retail installment sales made for personal, family, or household purposes.**

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

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

- E-Contracting**  
**We have procedures in place to meet the above-noted timing and form requirements under the Truth in Lending and Consumer Leasing Acts in transactions where we present the contract to the customer using electronic media. In addition, our closing process requires the customer to sign an E-Sign Consent form before we present them with the credit agreement for their electronic signature.**

Please refer to the Electronic Signatures in Global and National Commerce Act ([E-Sign Act](#)) for details about the Act's requirements.

- Late Charges\***  
**We have procedures in place to limit the late charge disclosed on retail installment contracts and consumer leases to no more than \$10 or 5% of the unpaid amount of the installment, whichever is less.**

- NSF Fees\***  
**We have procedures in place to limit the amount of the returned item or "NSF" fee disclosed on retail installment contracts and consumer leases to no more than \$15 for each check presented for payment to a creditor which is returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in their account, or does not have sufficient credit with the drawee.**

Disclosure of Additional Charges\*

**We have procedures in place to ensure that charges for all products and services included in installment sales and consumer leases are being itemized on the contract.**

DOB has found cases where a service fee or lease acquisition fee was included in a consumer lease but was not conspicuously disclosed to the customer on the lease agreement or otherwise. If the lease contracts your dealership uses do not include a designated area to itemize these charges, a supplemental form should be used to conspicuously disclose the charges to the customer. The supplemental form(s) should be presented to the customer for their review and signature before the lease agreement is signed. A motor vehicle lease order can be used to disclose the service fee, and a worksheet that itemizes components of the capitalized cost can be used to disclose a capitalized lease acquisition fee.

Contract Copy

**We have procedures in place to ensure the customer is provided with a copy of the signed retail installment contract or lease agreement at the time the customer signs the contract.**

Downpayments

**We have policies to ensure contracts are completed to accurately reflect the amount the customer has paid down on a vehicle purchase, or the amount the customer pays at lease signing or delivery.**

Except for the allowance on a trade-in vehicle, any credit or contribution towards the downpayment or amount due at lease signing that was provided by the *dealership* should be itemized and disclosed as a dealer contribution on the installment contract or lease agreement.

Deferred Downpayments

**It is our policy to not accept deferred downpayments unless the deferral is properly disclosed on the retail installment contract.**

*Deferred Downpayments* refer to any portion of cash the customer agrees to pay down on the purchase that the dealership collects after the customer has consummated the retail installment contract.

*Example:* A customer agrees to pay \$2,000 down on a purchase. They bring \$1,500 cash to close and provide a post-dated check to the dealership for the remaining \$500.

- If the dealership agrees to accept and deposit the check at a later date, the amount and due date of the deferred portion must be disclosed in writing on the retail installment contract. To be treated as part of the downpayment, the deferred portion must be payable no later than the second regularly scheduled installment due date, must be subtracted in arriving at the amount financed, and may not be subject to a finance charge.
- If the dealership does not agree to accept the post-dated check, the retail installment contract must be revised to reflect the amount the customer actually paid down (i.e., \$1,500).

*Caution:* DOB is aware of few retail installment contract forms and forms printing programs designed to properly document deferred downpayments. If you are considering accepting a deferred downpayment and intend to

transfer the installment contract to another finance company, you should disclose the deferred downpayment to the company that will be acquiring the contract, and confirm they are still willing to accept the contract.

- Side Loans Prohibited  
**We have policies prohibiting the use of agreements separate from the retail installment contract (e.g., side-loans or verbal arrangements) to defer or finance a portion of the downpayment, or to finance charges for credit-related products such as GAP or credit insurance.**

This [DOB guidance document](#) discusses why side-loans for downpayments are not allowed.

## PURCHASE CONTRACT DISCLOSURES

- Credit-Related Charges  
**We have procedures in place to ensure that charges relating to the credit transaction are not disclosed on the purchase contract. These include finance charges (interest), credit insurance premiums, and charges for GAP.**

GAP, credit insurance, and finance charges are all components of the credit transaction, not the vehicle purchase agreement. You must provide the customer with certain disclosures, typically included on the retail installment contract, relating to these kinds of charges before binding the customer to pay them. A dealer that discloses credit-related charges on the purchase contract risks binding the customer before providing required disclosures.

- Finance Section  
**We have procedures in place to ensure the finance section of the purchase contract is completed to accurately reflect how the amount due on delivery or balance to finance will be paid:**

- If the customer is paying the balance due on delivery in cash (other than borrowed funds), the contract should be completed to indicate **This is a cash transaction**.
- If financing is provided through the dealership, the contract must be completed to indicate **This is a finance transaction**. The contract should also indicate how the credit terms are provided to the customer:
  - If you obtain the customer's signature on the purchase contract before providing them complete credit disclosures required by the Truth in Lending Act, indicate "Acceptable to You."
  - If you have provided complete credit disclosures required by the Truth-in-Lending Act to the customer before obtaining their signature on the purchase contract, you can indicate this on the purchase contract, and attach a copy of the disclosures provided (e.g., a completed and unsigned copy of the retail installment contract) to the purchase contract.

- If the customer arranges financing directly with their bank, credit union, or another lender, indicate, “This transaction is subject to financing being arranged through a creditor of your choice.”

DOB commonly observes dealers not completing the finance section correctly and itemizing charges for GAP on purchase contracts. Purchase contract disclosure requirements are regulated by the Department of Transportation under [Wis. Admin. Code s. Trans. 139.05](#).

## ADMINISTRATIVE TASKS

### Record Retention

**Our Policies and Procedures manual includes the following record retention guidelines.**

[Wis. Stat. s. 218.0116\(5\)](#) provides that the licensor may inspect the pertinent books, records, letters, and contracts of the licensee. The company must maintain records that will allow the division to determine whether the company is complying with [Wis. Stat. sections 218.0101 through 218.0163](#) and other applicable statutes and rules. In general, records relating to the sale or lease should be retained for a minimum of five years after the date of sale or lease.

### 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](#). Dealers that retain consumer credit transactions (i.e., buy here pay here) may need to complete an annual registration filing depending on the volume of contracts they hold.

### Licensing

**Information Only**

Your motor vehicle dealer license includes a limited license to operate as a sales finance company. This limited license permits your dealership to originate retail installment contracts and consumer leases. It also permits your dealership to retain contracts it has originated. To be properly licensed with DOB, you will complete the *DFI Fees* section of the retail dealer license application or license renewal application to indicate the types of financing activities (if any) your dealership engages in and pay the corresponding licensing fee to DOB.

## OTHER MATTERS

### Lease Buyouts

**When facilitating a lease buyout, it is our policy to honor the purchase option price the customer is entitled to under the terms of their lease agreement.**

The vehicle’s sale price (including any service fee) should be no higher than the purchase option price (including any purchase option fee) that you obtain from the lease account servicer.



### Anti-Discrimination Policy\*

**We have a detailed, written policy of nondiscrimination in extending consumer credit.**

All dealers that originate consumer credit transactions are required to have a written credit policy in accordance with [Wis. Admin. Code s. DFI-WCA 1.85\(3\)](#). If your dealership assigns contracts to finance companies that allow you discretion in setting interest rates in the credit agreements they acquire (i.e., reserve markup), procedures should be implemented to prevent discriminatory rate markups made on a prohibited basis.



### Conditional Delivery Agreements Prohibited

**We have policies prohibiting the use of “conditional delivery” or “spot delivery” agreements in connection with installment sales contracts.**

This [DOB guidance document](#) discusses conditional delivery agreements and why they are not allowed.



### 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.

**Note:** A motor vehicle dealership should develop and maintain a compliance management program that is commensurate with the scale and complexity of the dealership’s operations. Many of the dealership industry regulations your company must follow are not covered in the checklist. This checklist is one resource your dealership can use to enhance its compliance program. While the DOB strives to keep resources like this checklist current, your company should continuously monitor changes to law, regulation, and guidance to keep its compliance program up to date.