

Sales Finance Company 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 Wisconsin sales finance company will be operated in compliance with Wisconsin statutes and rules. 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. This checklist covers common compliance issues the DOB finds in examinations of sales finance companies. Established sales finance companies are encouraged to review this checklist periodically and when major updates are planned.

*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.

ADMINISTRATIVE TASKS

Place a checkmark in the box after completing each of the noted items.

- Wisconsin Consumer Act*
A Wisconsin Consumer Act Registration form has been filed.

Information about registration can be found on the Department of Financial Institutions' [website](#) and the registration form can be found [here](#).

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

Filing	Due	Notes
Sales Finance Company License Renewal	12/31	The license is renewed through the Nationwide Multistate Licensing System & Registry (NMLS).
Financial Statements	90 days after fiscal year-end	A fiscal year-end balance sheet and income statement prepared in accordance with US GAAP must be uploaded to NMLS.
Wisconsin Consumer Act Annual Registration	2/28	The Bureau of Consumer Affairs mails this form in January.
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.

License Changes
We have procedures in place to keep current and accurate information on file with the division and the NMLS. If our company information changes in any material respect, we will amend our NMLS company filing no more than 10 days after the change.

See [Wis. Admin. Code s. DFI-Bkg 76.15](#). Material changes include:

- Appointment of a new key officer
- Ownership change
- Legal name change
- Adding or removing trade names
- Change in the company's principal address or mailing address
- Change in MU1 Contact Employees
- Change in MU1 Disclosure Question answers and/or Disclosure Explanations

Be sure to review the amendment checklist by visiting <https://mortgage.nationwidelicencingsystem.org/slr/sitepages/checklist-compiler.aspx> and selecting Amendment/WI/Company/Sales Finance Company License.

Net Worth & Working Capital
Procedures have been implemented to monitor our tangible net worth and working capital.

Important considerations:

- Sales finance companies must demonstrate the requisite character, general fitness, and financial responsibility to maintain a license. For the division to find that a sales finance company is financially responsible, the company must maintain tangible net worth of at least \$10,000 and positive working capital.
- When calculating the tangible net worth, the DOB starts with the total equity disclosed on the balance sheet and then subtracts intangible assets; receivables from officers, stockholders, and other related parties; employee advances; receivables over 120 days past due and any other assets of questionable value.
- All financial statements submitted to the DOB must be prepared according to generally accepted accounting principles on an accrual basis.

Electronic Surety Bond
A reminder has been set to pay the annual premium on our Wisconsin sales finance company electronic surety bond.

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 A](#) for a complete list of records required to be retained under DOB's Administrative Rules.

APPLICATIONS & CREDIT AGREEMENTS

- 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 _____

- Notice of Assignment
Procedures have been implemented to ensure that a notice of assignment is mailed or delivered to the customer within 30 days of acquiring a retail installment contract or a consumer lease. A copy of the contract or statement of the contract particulars is mailed along with the notice.

If a copy of the contract itself is not included in the notice of assignment mailing, the accompanying statement of contract particulars should include the following elements to meet the requirements of Wis. Stat. ss. [218.0142\(6\)\(a\)](#) and [422.409](#):

- Include your company's name and address
- Identify the customer
- Identify the transaction
- Identify the collateral
- Identify the assignor (dealership)
- Identify the rights that have been assigned
- Identify the number and due dates or periods of payments due under the contract
- Identify the total of payments due under the contract
- Identify the amount of the finance charge due under the contract

Many companies provide the required notice and contract details within a new customer "welcome letter."

- Notice to Customer*
Every writing evidencing the customer’s obligation to pay in an installment sale (e.g., the contract and any subsequent amendments) includes the “Notice to Customer” as required by [Wis. Stat. s. 422.303\(3\)](#) and that notice is located immediately above or adjacent to the customer’s signature.

NOTICE TO CUSTOMER

- A. DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.
- B. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- C. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- D. YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

Note: If your company acquires consumer leases, a *notice to lessee* is required under [Wis. Stat. s. 429.203\(2m\)](#).

- Additional Charges*
Any additional charges we intend to assess Wisconsin customers are permitted by [Wis. Stat. s. 422.202](#).
- Fees for expediting a customer’s payment (sometimes called “convenience fees”) are not a permitted additional charge under s. 422.202. The Department approved the charging of these fees by state-chartered depository institutions. The approval letter is available [here](#) on the Department’s website. The approval does not extend to nondepository sales finance companies.

PAYMENTS & COLLECTIONS

- Application of Partial Prepayment*
If the contracts we acquire 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.

- Calling References*
Our collection policy notifies our employees that calling a debtor’s references is prohibited if the debtor’s contact information is already known.

This practice is prohibited under [Chapter 427](#) of the Wisconsin Statutes. Please refer to the April 13, 2020 Interpretive Opinion document titled “Calls to a Debtor’s Friends, Family, and Other Third Parties” that is found [here](#) on the Department’s website. More information about debt collection practices is available [here](#) on the Department’s website.

PAID ACCOUNTS

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>

GAP Refunds

Procedures have been implemented to ensure we are promptly making or causing to be made an appropriate refund of unearned Guaranteed Asset Protection (GAP) charges upon prepayment in full of accounts with GAP, and termination of GAP waivers for reasons other than prepayment. If we do not directly credit or refund the customer, we are promptly notifying the originating dealership in writing of the termination and instructing them to issue a refund of any unearned charges to the customer.

Early payoff is one of the events that will cause an active GAP waiver to terminate. Under [Wis. Stat. s. 218.0148\(4\)](#), other terminating events include voluntary cancellation by the borrower, expiration of any redemption period following repossession, total physical damage loss or unrecovered theft, and any other terminating events specified in the GAP agreement.

Direct Refund Option

If we directly credit or refund customers for unearned GAP charges following termination, we observe the following procedures:

- 1) If the waiver terminates within 30 days of sale, the customer receives either a full refund of the enrollment charge, or a full credit of the enrollment charge plus the amount of applicable finance charges.
- 2) If the waiver terminates more than 30 days after sale, the unearned portion of the GAP term is determined from the actual termination date to scheduled expiration, and the refund is calculated accordingly using a method no less favorable to the customer than the monthly rule of 78s.
- 3) No charge for processing the cancellation is assessed to the customer or deducted from the refund.
- 4) The refund is issued to the customer no more than 60 days after the day the waiver terminated.

Notification Option

If we notify and instruct dealers to refund customers for unearned GAP charges following termination, we have procedures to ensure written notifications are issued promptly, and the correct termination date is reported on the notice.

When a sales finance company does not directly refund its customers for unearned GAP charges following prepayment, DOB recommends issuing two documents to dealerships your company acquires contracts from. An individual payoff notice should be issued to the originating dealer promptly following early payoff or termination.

In addition, DOB recommends sending a monthly report listing all accounts originated by the dealership that were prepaid in full during the past month.

- Credit Insurance Refunds
Procedures have been implemented to ensure we are promptly making or causing to be made appropriate refunds of unearned credit insurance premiums following prepayment in full of accounts with credit life and/or accident and sickness insurance, and termination of insurance for reasons other than prepayment. If our company sold the insurance, we credit or refund the customer for any unearned premiums. If the insurance policy was sold by the originating dealership, we notify the dealership in writing of the termination, and instruct them to issue a refund of any unearned premiums to the customer.

See [Wis. Admin. Code s. DFI-Bkg 76.05](#) and [Wis. Stat. s. 424.205](#).

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 B](#) for sample late charge scenarios.

- Returned Item Fees*
Our account management system is programed 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.

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.

Appendix A: 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.

Appendix B: 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.

Note: A sales finance company should develop and maintain a compliance management program that is commensurate with the scale and complexity of the company's operations. Many of the regulations your company must follow are not covered in this checklist. This checklist is one resource your company 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 management program up to date.