



State of Wisconsin
Department of Financial Institutions

Tony Evers, **Governor**

Cheryll Olson-Collins, **Secretary-Designee**

July 1, 2022

VIA EMAIL

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

RE: Loan Administration Fees Charged by Lenders Licensed Under Wis. Stat. § 138.09

Dear Attorneys [REDACTED] and [REDACTED]:

Thank you for your recent inquiries and communications regarding loan administration fees on consumer loans and the related interplay between the Wisconsin Consumer Act (codified in chapters 421 to 427 of the Wisconsin Statutes) and the licensed lending statute (codified in section 138.09 of the Wisconsin Statutes). Because clarity on these issues will be beneficial for all lenders licensed by the Department under section 138.09 (“licensed lenders”), the Department will publish this response letter on its public website with your names redacted for privacy.

I. Finance Charges Under the Wisconsin Consumer Act

Section 138.09 provides that all “consumer loans”—that is, loans to individuals that are payable in installments or for which a finance charge may be imposed¹—issued by a licensed lender are governed by the Wisconsin Consumer Act, except to the extent the Consumer Act is “inconsistent with” other provisions of section 138.09.² Therefore, an analysis of permissible charges on consumer loans issued by licensed lenders begins with the relevant provisions of the Consumer Act.

The Consumer Act authorizes lenders and borrowers to agree to various charges to be paid “as an incident to or as a condition of the extension of credit.”³ The sum of these charges is known collectively as the “finance charge.”⁴ The Consumer Act defines a finance charge to include:

- (a) Interest, time price differential and any amount payable under a discount or other system of additional charges;
- (b) Service, transaction, activity or carrying charge;
- (c) Loan fee, points, finder’s fee or similar charge;
- (d) Fee for an appraisal, investigation or credit report;
- (e) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any party of that charge in cash, as an addition to the obligation or as a deduction from the proceeds of that obligation;

¹ Wis. Stat. § 421.301(12).

² Wis. Stat. § 138.09(7)(k).

³ Wis. Stat. §§ 421.301(20), 422.201(1).

⁴ Wis. Stat. § 421.301(20).

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- (f) Premium or other charge for guarantee or insurance protecting the creditor against the customer's default or other credit loss;
- (g) Charges or premiums for credit life, accident or health insurance, written in connection with any consumer credit transaction to the extent they are not permitted as additional charges under s. 422.202;
- (h) Charges or premiums for insurance, written in connection with any action against loss of or damage to property or against liability arising out of the ownership or use of property to the extent they are not permitted as additional charges under s. 422.202; and
- (i) Refund anticipation loan fees.⁵

Some of these components may be paid over time (such as interest), while others may be prepaid upon issuance of the loan.⁶ Regardless of whether the components of a finance charge are prepaid or paid over the life of the loan (or some combination of the two), since 1984 the Consumer Act has placed no quantitative maximum limit on the total finance charge.⁷

II. Loan Administration Fees Under Section 138.09

As noted above, the Consumer Act governs consumer loans issued by licensed lenders, but only to the extent the Consumer Act is consistent (or more precisely, not “inconsistent”) with section 138.09.⁸ Moreover, for licensed lenders, the Consumer Act specifies that the finance charge “may not exceed the maximums permitted” in section 138.09.⁹ Therefore, even if a particular component or type of finance charge is authorized by the Consumer Act, it is necessary for a licensed lender to review whether section 138.09 imposes any further restrictions on that type of charge.

In most respects, section 138.09 does not impose greater restrictions on consumer loans than the Consumer Act. For example, section 138.09(7)(bp) authorizes licensed lenders to charge interest without any maximum rate limit—no different than the Consumer Act.

That is not the case, however, when it comes to fees for “loan administration.” Section 138.09 does not define the term “loan administration,” but an analogous provision of chapter 138 defines it to mean:

a lender's processing of a loan and includes review, underwriting and evaluation of the loan application, document processing and preparation and administration of the loan closing, but does not include appraisals, inspections, surveys, credit reports or other activities incidental to loan origination and normally taking place outside the office of the lender or performed by 3rd persons.¹⁰

Because fees for loan administration are paid “as an incident to or as a condition of the extension of credit” and are not excluded from the finance charge under section 422.202, they would be considered a component of a finance charge under the Consumer Act.¹¹

⁵ Wis. Stat. § 421.301(30).

⁶ See Wis. Stat. § 421.301(36) (definition of “prepaid finance charge”).

⁷ Wis. Stat. § 422.201(2)(bn); see also Wisconsin Dep't of Fin. Insts., Interpretive Letter, “Advice Regarding Prepaid Finance Charges” (Jan. 12, 2001).

⁸ Wis. Stat. § 138.09(7)(k).

⁹ Wis. Stat. § 422.201(3).

¹⁰ Wis. Stat. § 138.052(1)(c).

¹¹ Wis. Stat. §§ 421.301(30), 422.202(3)(a).

But unlike interest or several other potential components of a finance charge, section 138.09 places express limits on licensed lenders' ability to charge fees for loan administration. Pursuant to section 138.09(7)(jm), a licensed lender may charge a loan administration fee on a consumer loan only "if all of the following conditions are met:

- a. The loan administration fee does not exceed 2 percent of the principal in the consumer loan, refinancing, or consolidation.
- b. The loan administration fee is charged for a consumer loan that is secured primarily by an interest in real property, in a mobile home, . . . or in a manufactured home"

Loan administration fees on loans that are not secured by real property or a mobile/manufactured home, or which exceed 2 percent of the loan principal, fail to meet those statutory conditions and may not be charged by lenders licensed under section 138.09.

III. Guidance for Licensed Lenders

As reflected in your communications, the issue of loan administration fees has been the source of some confusion in the industry. Some may have mistakenly assumed that because loan administration fees are a type of prepaid finance charge—and because the Consumer Act imposes no quantitative limit on the finance charge—that therefore there is no applicable limitation for licensed lenders charging loan administration fees on consumer loans. The Department may have contributed to this misunderstanding by failing to consistently identify and correct this issue in lender examinations in past years.

Going forward, the Department will seek to reduce confusion and improve legal compliance among lenders by requiring corrective action where it finds that an examined lender is charging loan administration fees that do not satisfy the two conditions of section 138.09(7)(jm). When determining whether a stated fee constitutes a "loan administration fee" within the meaning of section 138.09(7)(jm), the Department will look to the nature of the fee and will apply the above-quoted definition of "loan administration." If the nature of the fee is not self-evident from its written description, the lender should be prepared to provide further details in the examination.

Finally, the Department recognizes that the conditions imposed by section 138.09(7)(jm) are restrictive. In circumstances where a borrower repays a loan early, before the licensed lender has had an opportunity to collect sufficient interest to cover its loan administration costs, the unavailability of loan administration fees may result in an unprofitable loan. While this Department is bound to follow the statutes as written, the Legislature may of course amend them to address these potential concerns of licensed lenders. In fact, the Legislature has considered one such proposal ([1999 Assembly Bill 686](#)), which would have removed the restrictions imposed on loan administration fees under section 138.09(7)(jm) and replaced them with a flat 5 percent cap. While the bill was not enacted and the Department has not recently studied its merits, we mention it as one example of a legislative path for lenders that believe section 138.09(7)(jm) is overly restrictive.

Sincerely,

/s/ Matthew Lynch
Chief Legal Counsel

/s/ Marc Shovers
Assistant Chief Legal Counsel

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