

# Wisconsin Legislature Creates New Law Aimed at Protecting Lenders Against Claims Based Upon a Breach of Promise to Lend

Borrowers and lenders routinely engage in discussions to set the parameters of a new financing transaction or an amendment to an existing credit facility prior to preparing and signing the definitive legal documents that will govern the transaction. In addition, lenders often use unsigned term sheets to memorialize these discussions. When a proposed financing or modification does not successfully close as a borrower has anticipated, the lender may face a claim that it promised to make a loan or other financial accommodation, despite the lender's efforts to prevent misunderstandings throughout the process.

To address this situation, Wisconsin legislature recently created section 241.02(3) of the Wisconsin Statutes, which took effect December 18, 2015. The new law prohibits actions against financial institutions and their affiliates in connection with offers, promises, agreements or commitments to do any of the following: (1) lend money, (2) grant or extend credit or make any other financial accommodation, and (3) renew, extend, modify or permit a delay in repayment or performance of a loan, extension of credit or other financial accommodation, unless the offer, promise, agreement or commitment (a) is in writing, (b) sets forth the relevant terms and conditions, (c) is signed by an authorized representative of the financial institution or its affiliate, as applicable, and (d) is delivered to the borrower. As used in the statute, the term "financial institution" is defined to mean any state or federally chartered bank, savings bank, savings and loan association or credit union, or any farm credit institution organized under the laws of the United States. This new law is not applicable to offers, promises, agreements or commitments made in connection with the issuance or use of a credit card or to credit transactions that are subject to the Wisconsin Consumer Act.

This law was enacted to help protect lenders against claims by borrowers of a breach of a promise or commitment to extend credit or modify the terms of an existing credit facility when those terms have not been reduced to a writing that has been signed by the lender. It is important to note, however, that the law does not prohibit a borrower from bringing a claim based on fraudulent representation under Wisconsin Statutes section 100.18 or a claim for fraudulent

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misrepresentation under common law; therefore, while the new law reduces the risk to a lender of a borrower bringing a claim, it does not completely eliminate that risk. Lenders should continue to use caution in discussions with borrowers to avoid misunderstandings, if at all possible. Lenders should also have procedures in place to assure that conversations with borrowers are appropriately documented in the event a claim of fraudulent representation or fraudulent misrepresentation is later brought against the lender. Please call or e-mail [John Wink](#) if you would like to discuss this e-alert.

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