OFFICE OF FINANCIAL INSTITUTIONS

OFI BULLETIN

BL-10-2003
December 29, 2003
(B,T,CU)

TO: THE CHIEF EXECUTIVE OFFICER/MANAGER

SUBJECT: DEBT CANCELLATION CONTRACTS (DCCs) AND DEBT SUSPENSION AGREEMENTS (DSAs)

In a case involving a national bank, the Eighth Circuit Court of Appeals ruled that DCCs were banking products and not part of the "business of insurance." In addition, the Louisiana Department of Insurance issued Opinion #93-17 dated October 25, 1993, that similarly ruled that DCCs were not insurance products. Therefore, it is the opinion of this office that state-chartered banks are authorized to offer these products as part of their incidental powers under LSA-R.S. 6:242. State-chartered savings associations, savings banks, and credit unions possess the same authority pursuant to LSA-R.S. 6:731(H), LSA-R.S. 6:1138(B), and LSA-R.S. 6:644, respectively.

However, these products contain inherent risks that must be monitored very closely through a measurement system that effectively controls the risks. While this Office has not formalized a policy, the following federal regulations and opinions provide an acceptable framework of "best practices" with respect to the sale of such products.

Banks

- OCC Bulletin 2002-40 dated September 24, 2002

Thrifts

- OTS Regulatory Bulletin RB 32-17 dated January 14, 2000
- OTS Opinions of Counsel Letters dated December 18, 1995, and September 15, 1993

Credit Unions

- NCUA Letter No. 03-FCU-06 dated May 2003 with Debt Cancellation/Suspension Program Questionnaire
- NCUA Legal Opinion Letters dated December 23, 2002, and September 12, 1997

State-chartered institutions that plan to sell DCCs and DSAs should become familiar with the federal regulations/opinions and formally adopt the standards contained therein. In addition, institutions are expected to comply with the following practices in order to avoid problems in this regard:

- Charges for such products should be **reasonable**. The charges for comparable coverage should not exceed the maximum charges allowed for traditional credit-related insurance products, such as credit life or accident and health insurance, as provided for in LSA-R.S. 9:3542.

- An institution should not "pile on" coverage by suggesting amounts that far exceed the amount of the loan balance or by selling several types of similar coverage to the same borrower.

- An institution should closely **evaluate** the risk involved in selling these types of products and consider obtaining insurance, establish reasonable reserves, or a combination thereof to cover its loss exposure.

- When insurance is obtained, the institution should **verify** that the insurance company is properly licensed to do business in Louisiana and **review** the financial condition of the insurance company initially and at least annually thereafter. The institution is ultimately responsible if the insurance company is unable to pay a legitimate claim.

Examiners will review compliance with the above practices at future examinations. Management must maintain adequate documentation that demonstrates its understanding, deliberation, and decisions regarding these products. Any risks that are not adequately identified or controlled and that could adversely affect the safety and soundness of the institution will be summarized in the Report of Examination and reflected in the appropriate CAMELS component(s).

This bulletin will also be posted on OFI's website at www.ofi.state.la.us. If you have any questions, please contact your assigned Review Examiner at 225/925-4660.

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