The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

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1. Introduction

Debt Cancellation Contracts (DCCs) and related products like Debt Suspension Agreements (DSAs) are products sold in connection with a consumer loan and which promise to provide some debt relief to the consumer if certain events occur. The events triggering the benefit under the DCCs/DSAs are typically events that impair the borrower's income or place a financial burden on the borrower. DCCs/DSAs are part of the group of debt protection products that include credit insurance and which promise, among other things, to preserve the borrower's credit rating in adverse circumstances.

Over the past three years, lenders have shifted their debt protection product offerings from credit insurance to DCCs/DSAs, most notably in connection with credit cards. The majority of major credit card issuers, including Citicorp, Discover (Sears), Bank of America, Fleet Bank, Advanta, Bank One, Chase, MBNA, Providian and private label card issuers like Target, have replaced credit card credit insurance with credit card DCCs/DSAs

This report will examine both credit insurance and DCCs/DSAs to help explain how DCCs/DSAs are a substitute for credit insurance and why lenders have moved away from credit insurance to DCCs/DSAs. We will also examine the impact DCCs/DSAs on credit insurance regulation and on consumers who purchase debt protection products. We also review regulatory activity related to DCCS/DSAS and conclude with a set of recommendations for regulatory oversight of DCC.

2. Credit Insurance versus DCCs/DSAs

DCCs/DSAs are part of the group of debt protection products that include credit insurance and which promise, among other things, to preserve the borrower's credit rating in adverse circumstances. A complete understanding of DCCs/DSAs requires an understanding of how DCCs/DSAs compare and relate to credit insurance.

2.1 Credit Insurance

Credit insurance refers to a group of insurance coverages sold in connection with a loan, credit agreement or credit card account. Credit insurance generally makes payments for the consumer *to the lender* for a specific loan or credit agreement in particular circumstances. Credit insurance *protects the lender's loan* in the event something happens to impair the consumer's ability to pay. The common types of credit insurance sold include:

- *Credit Life*, which pays off the consumer's remaining debt on a specific loan or credit card account if the borrower dies during the term of the coverage.
- *Credit Accident and Health, also known as Credit Disability,* which makes monthly payments on a specific loan or credit card account if the borrower becomes disabled during the term of coverage.
- *Credit Involuntary Unemployment*, which makes monthly payments, often limited in number, on a specific loan or credit card account if the borrower becomes involuntarily unemployed during the term of coverage.
- *Credit Leave of Absence*, which makes a limited number of monthly payments on a specific loan or credit card if the borrower takes an unpaid family leave from work for specific reasons, including care for a newborn or care for a seriously ill family member.
- *Credit Property*, which pays to repair or replace personal property purchased with the loan or credit proceeds and/or serving as collateral for the credit if the property is lost or damaged. Unlike the first four credit insurance coverages, credit property insurance is not directly related to an event affecting a consumer's ability to pay his or her debt.

There are three parties to a credit insurance agreement – the borrower, the lender and the credit insurer. The credit insurer sells a group policy to the lender who, in turn, sells credit insurance in connection with individual loans or credit cards to borrowers. The lender typically issues an insurance certificate for the group policy to the borrower. In exchange for specified premium payments, the credit insurer agrees to make the borrower's payments to the lender on behalf of the borrower when a covered event occurs. A covered event is the death, disability, involuntary unemployment or leave of absence specified in the credit insurance policy. Appendix 1 contains an example of a credit insurance certificate.

2.2 Debt Cancellation Contracts and Debt Suspension Agreements

There are two parties to DCC/DSA products – the borrower and the lender. The DCC/DSA is an amendment or addition to the loan agreement between the lender and the borrower. The DCC/DSA loan agreement amendment states that, for a fee, the lender will waive certain payments, charges and/or fees when certain covered events occur. The covered events include death, disability, involuntary unemployment, leave of absence and/or other events specified in the DCCS/DSAS agreement. Unlike credit insurance, no payment is made on behalf of the consumer when a covered event triggers a DCC/DSA benefit. Rather, the lender "cancels" or "suspends" a payment, charge and/or fee. Appendix 2 contains an example of a DCC agreement provided to a consumer.

Although there are technically two parties to a DCC/DSA, lenders offering a DCC/DSA product typically rely on credit insurers for administration of the program. The DCC agreement in Appendix 2 cites American Bankers – the largest credit insurer in the country – as the Plan Administrator. In addition, lenders typically purchase an insurance policy – a contractual liability policy – from a credit insurer to cover the cost of any DCC/DSA program benefits. Therefore, in practice, a DCC/DSA program is administered almost identically to a credit insurance program – the credit insurer administers the program, markets the program to borrowers and pays benefits on behalf of the consumer to the lender while the lender reaps large revenues for providing a list of borrowers to the credit insurer.

2.3 Credit Insurance and DCCs Can Be Functional Equivalents

To a consumer, DCCs and credit insurance are very similar – or even identical – products. For example, a credit card credit insurance program containing credit life, credit disability and credit involuntary unemployment coverages provides the identical benefits for a consumer as a DCC program for death, disability and involuntary unemployment. We will show later in the report how lenders have modified the triggering events (and, consequently, the benefits) from credit insurance when moving to a DCC/DSA program – with very unfavorable results for consumers. But, in this example, the benefits under the two programs are identical from the consumer's perspective – in the event of the death, the entire outstanding debt is eliminated and in the event of qualifying disability or involuntary unemployment, the minimum monthly payment is eliminated.

Table 1
Comparison of Credit Insurance and DCC Benefits

Event	Credit Insurance	DCC
Death	Outstanding Debt Paid Off	Outstanding Debt Canceled
Disability	Minimum Monthly Payment Made	Minimum Monthly Payment and Related Fees Canceled
Involuntary Unemployment	Minimum Monthly Payment Made	Minimum Monthly Payment and Related Fees Canceled

Another important similarity between credit insurance and DCCS/DSAS is the methods of payment. Both products are offered with a monthly payment method in some circumstances and with a single payment method in others. With the single payment method, the premium (credit insurance) or fee (DDC/DSA) is added to the underlying loan and financed. Generally, credit insurance or DCCs/DSAs sold in connection with open-end or revolving loans, such as credit cards, utilize a monthly payment method with the premium or fee based on the average or period-ending outstanding loan balance. Generally, credit insurance or DCCs/DSAs sold in connection with closed-end or installment loans utilize the financed single premium / financed single fee payment method.[1]

[1] There are important exceptions. Credit unions have historically sold monthly payment ("monthly outstanding balance) credit insurance in connection with installment loans because these products are far more favorable to consumers than financed single premium ('single premium) products.

The table below compares the terminology used for credit insurance and DCCs/DSAs:

Table 2
Comparison of Credit Insurance and DCC/DSA Terminology

Credit Insurance	Debt Cancellation/Debt Suspension
benefit	protection, feature
claim	activate protection
contingency	protected event
coverage	protection, feature
credit	debt
Creditor	bank, creditor
insurance	protection
insurer	bank, creditor
Insured	protected cardholder, debtor
life insurance	death protection
paid	canceled, waived
Pay	cancel, waive
policy	agreement, addendum, contract
premium	fee
premium rate	fee rate

2.4 Differences between Credit Insurance and DCCs/DSAs

There are significant differences between credit insurance and DCCs/DSAs, the most important of which is the nature of regulatory oversight of the two products. Credit insurance is an insurance product and, consequently, is regulated primarily by state insurance regulators.[2] The national Comptroller of the Currency, credit union regulator,

[2] The Center for Economic Justice has published two national reports on state credit insurance regulation in collaboration with Consumers Union (1999) and the Consumer Federation of America (2001). In addition, CEJ has published a number of state-specific credit insurance analyses. See www.cej-online.org.
There are a few instances of federal regulation related to credit insurance. For example, regulations implementing the federal Truth in Lending Act provide requirements for calculation of the Annual Percentage Rate (APR). If the offer of credit insurance offered in connection with a loan meets certain requirements, then the cost of credit insurance does not have to be included in the APR calculation. If the credit insurance offer does not meet these requirements, then the cost of credit insurance must be included in the APR. As a result of Regulation Z, virtually all credit insurance sold meets these disclosure requirements.
A second example of federal regulatory action affecting credit insurance relates to financed single premium credit insurance sold in connection with real-estate secured loans. Recent changes to HOEPA regulations require that the costs of single premium credit insurance be included in the APR calculation for these types of loans. These regulatory changes, along with other actions by secondary lenders Fannie Mae and Freddie Mac and advocacy by fair housing and fair lending organizations, led to the virtual elimination of financed single premium credit insurance sold in connection with real estate secured loans and its replacement with monthly pay products.

and thrift regulator have all determined that DCCS/DSAS are a banking product and, consequently, are not subject to the state insurance regulation. The decisions by federal banking regulators about regulatory jurisdiction over DCCS/DSAS have developed over a lengthy period of time and reflect strong disagreements between these federal regulators and state insurance regulators. We discuss the history of DCCS/DSAS regulatory decisions in Section 5.

The differences in regulatory jurisdiction over credit insurance and DCCs/DSAs result in major differences in the scope and nature of regulatory oversight for the products and consumer protections for potential purchasers of the products. We discuss these important differences in Section 6.

Another difference between credit insurance and DCCS/DSAS is the number of parties involved. As stated above, credit insurance involves three parties – borrower, lender and insurer. Since the provision of benefits under the credit insurance policy requires the insurer to pay the lender under certain circumstances, there is a need to ensure that the insurer maintains the ability to pay. Stated differently, there is a regulatory interest in the solvency of the credit insurer. With DCC, there is no payment of benefits to the lender. Rather, the benefits for the consumer under the DCCs/DSAs are a cancellation of certain payments and/or interest charges. Although federal regulators certainly have an interest in the solvency of lenders, there is no need for solvency to provide the DCCs/DSAs benefit. A lender could be insolvent and still be able to cancel or waive a fee[3].

There are important benefit differences between credit insurance and DCCs/DSAs. The DSA benefit is a debt suspension – the consumer can skip a payment and not accrue additional interest charges or late fees. Unlike credit insurance, which makes the monthly payment on behalf of the consumer, and therefore pays down some of the loan principal, a DSA does not reduce the amount owed by the consumer. In addition, some credit insurance products provide a monthly benefit greater than the minimum monthly payment due on a loan. For example, instead of the minimum monthly payment which may be only 1.8% or 2.0% of the outstanding balance, some credit unemployment policies provide a monthly payment of 3% or more of the monthly payment.

[3] DCCs/DSAs are typically amendments to loan agreements. If a DCC/DSA were a separate agreement from the underlying loan agreement, a consumer may not receive the benefits of the DCC/DSA agreement if the lender became insolvent.

3. Market Structure and Regulatory Oversight

Credit insurance is characterized by reverse competition – a market structure in which market forces cannot be relied upon to protect consumers from overcharges by insurers. This market structure leads to, in theory, strict regulatory oversight of credit insurance by state insurance regulators. In this section, we examine the market structure for credit insurance and DCCs/DSAs and the regulatory structures for each set of products.

3.1 Reverse Competition in Credit Insurance Markets

One of the principal responsibilities of state insurance regulators is monitoring the financial condition of insurance companies to ensure that insurers are able to pay the benefits under the insurance contracts for which consumers have paid premiums to the insurers. Consequently, state insurance regulators will monitor the financial condition of credit insurers as they would insurers offering other products. However, state regulatory oversight of credit insurance has typically been, at least in theory[4], far more extensive for credit insurance than for other types of products, such as life, auto or homeowners insurance. The reason for the more extensive regulatory structures for credit insurance arises from the reverse-competitive market structure of credit insurance.

A useful description of credit insurance markets is found in NY State Insurance Department Regulation 27A (11NYCCR 185).

> 185.0(b) In the marketing of credit insurance, the inferior bargaining position of the debtor creates a "captive market" in which, without appropriate regulation of such insurance, the creditor can dictate the choice of coverages, premium rates, insurer and agent, with such undesirable consequences as: excessive coverage (both as to amount and duration); excessive charges (including payment for nonessential items concealed as unidentifiable extra charges under the heading of insurance); failure to inform debtors of the existence and character of their credit insurance and the charges therefore, and consequent avoidance of the protection provided the debtor by such coverage.
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> (c) In the absence of regulation, premium rates and compensation for credit insurance tend to be set at levels determined by the rate of return desired by the creditor in the form of dividends or retrospective rate refunds, commissions, fee or other allowances, instead of on the basis of reasonable cost. Such "reverse competition," unless properly controlled, results in insurance charges to debtors that are unreasonably high in relation to the benefits provided to them.

[4] See CEJ national reports for state failures in credit insurance regulation

In a normally competitive market, competition for the consumer's business leads to lower prices and reasonable profits. In a reverse competitive market, the credit insurer, who requires a lender to produce credit insurance sales, competes for the lender's business. This competition typically takes the form of offering higher commissioners and compensation and additional services to the lender. Consequently, competition to sell credit insurance policies drives **up** the price of credit insurance. In a reverse competitive market, the consumer is unable to exert market pressure leading to lower prices or reasonable profits.

The National Association of Insurance Commissioners (NAIC) recently adopted a model law regarding the regulation of credit property insurance in an effort to promote more effective and more uniform regulation of the product across the states. One of the purposes of the model is to:

> *Address the problems arising from reverse competition in credit insurance markets.*

The model law defines reverse competition:

> "Reverse competition" means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise. In a reverse competitive market, powerful market forces work to the disadvantage of the consumer.

3.2 Regulatory Oversight of Credit Insurance

The reverse competitive nature of credit insurance markets requires stringent regulatory oversight of products, sales practices and prices (rates) to ensure that consumers are treated fairly in the sales and claim process and that benefits provided under the credit insurance policy are reasonable in relation to the premiums charged. Towards this end, every state requires prior approval of credit insurance policies to ensure unreasonable restrictions on eligibility and coverage are not included. Many states have also established loss ratio standards as the measure of reasonable benefits in relation to premium. The loss ratio standards for credit life and credit disability range from 40% to 70% with the vast majority of states using loss ratio standards in the 50% to 60% range. The NAIC model regulations for credit insurance specify a 60% loss ratio

standard – meaning that claims paid on behalf of consumers to lenders should be at least 60% of the premiums earned by insurers from the related policies.

There is substantial variation among states in the regulatory requirements for credit insurance, most notably in the states' implementation of the rate standard – that benefits must be reasonable in relation to premium. There is also variation among states in the degree to which policy forms (product filings) are reviewed. Some states routinely approve product filings, while other states challenge the same filings as having unfair or misleading provisions.

The degree of variation among states creates a challenge for national lenders to offer a product across states. For example, if a lender wanted to offer a credit insurance package of life, disability, involuntary unemployment and leave of absence, some of the regulatory hurdles would include:

- Filing and approval of a group insurance policy, insurance certificates and application forms for each coverage for each jurisdiction. A national lender operating in 50 states and the District of Columbia would have to make 204 filings – four filings each in 51 jurisdictions. While the filings will be similar and identical across many states, differing state requirements mean that all of the filings will have some state-specific issues. It is important to point out that an insurer wishing to file and gain approval for this package of coverages will have to use two different types of insurance companies. Insurance companies that write life and health insurance are not permitted to write property and casualty coverages. The filings for credit involuntary unemployment and credit leave of absence must be submitted by a property casualty insurance company.

- Filing and approval of rates for each coverage for each jurisdiction. For credit life and credit disability, most credit insurers will file for the maximum permissible rate – the so-called *prima facie* rate – which an insurer can use without any justification. However, if the lender's particular credit insurance clientele exhibits much higher than average losses, the insurer can and will file for a higher rate – so-called upward deviations. For involuntary unemployment and leave of absence, the rate filings must include an actuarial analysis and justification for the proposed rate. Even after initial approval of rates, the lender and the insurer must monitor the states for changes in the *prima facie* rates, which will necessitate changes in the both the rates charged in those states and changes in the product disclosures.

- Licensing of agents in each jurisdiction. Although many states have simplified the licensing of agents selling only credit insurance, the lender and the insurer must identify and comply with agent licensing requirements in the states.

3.3 Market Structure for DCCs/DSAs

The market structures of credit insurance and DCCS/DSAS products are, to some extent, different. Because the sale of DCCs/DSAs involves two parties, one principal structure of reverse competitive markets – the seller competing for sales to a producer and not directly selling to the ultimate buyer – is missing. Other characteristics of the markets in which credit insurance and DCCs/DSAs are sold are similar, including:

- The credit insurance or DCCs/DSAs is a side issue to the major transaction. The major transaction is the underlying loan or credit for which the consumer is applying.

- An absence of choice for the consumer. The lender selects the coverage or package of coverages to offer and the consumer has only the choice to accept or not accept the package of coverages. Although a few states require credit insurers to offer individual coverages, a consumer who wants to purchase, say, credit disability, must purchase the package of life, disability, involuntary unemployment, etc., even if he or she is ineligible for benefits under the other coverages.

- Limited product information and consumer misperceptions. Typical disclosures for both credit insurance and DCCs/DSAs identify the events that trigger benefits, some eligibility requirements and rates. There is never any information about, for example, the likelihood of a particular event occurring on average. Consumers typically have misperceptions about their likelihood of encountering a triggering event, such as disability or involuntary unemployment.

The absence of the credit insurer from DCC/DSA markets[5] does not eliminate the reverse competition. The inferior bargaining position of the borrower, the fact that the DCC/DSA purchase is tangential to the principal transaction, the ability of the lender to dictate terms and fees and the unique ability of the lender to access the business are all elements of a reverse-competitive market. Although the market structure for DCCs/DSAs is not the classic three-party reverse competition market structure, consumers of DCCs/DSAs products do not have market power sufficient to force lenders to offer DCCs/DSAs products at reasonable rates. As we show below in Section 7, the market results for DCCs/DSAs products – both the relationship of benefits to fees and the nature of coverages and exclusions – vividly document the absence of consumer power in the DCCs/DSAs markets.

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[5] In practice, a number of lenders will secure a group insurance policy to insure their DCC and DSA exposure.

3.4 Regulatory Oversight of DCCs/DSAs

DCCs/DSAs are regulated by both federal and state agencies. DCCs/DSAs offered by national banks, savings and loan associations and credit unions are subject to the regulatory oversight of the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the National Credit Union Administration, respectively. DCCs/DSAs offered by state banks, state savings and loan associations and state credit unions are subject to the regulatory oversight of state banking and credit union regulators. We discuss the regulatory oversight of DCCs/DSAs in more detail in Section 6, but the most salient points include:

- The OCC has taken the lead among federal agencies on both establishing DCCs/DSAs as a banking product and establishing the federal regulatory framework for DCCs.
- The OCC's recently-promulgated DCCs/DSAs regulation provides no regulation of the fee amount that can be charged for DCCs/DSAs and few requirements for minimum product standards.
- Most states, even those who continue to believe that DCCs/DSAs are insurance products and should be subject to the same type of regulatory oversight as credit insurance, have adopted the same state requirements for DCCs/DSAs as those created for national banking institutions to avoid putting state-charted institutions at a competitive disadvantage. The development of DCCs/DSAs regulatory structures is a graphic example of regulatory arbitrage – a race to the lowest common denominator of consumer protection.

4. History of DCCs/DSAs and the Fight over Regulatory Jurisdiction

In 2002, the Comptroller of the Currency (OCC) promulgated a regulation governing the sale of DCCs/DSAs by national banks. The 2002 OCC rule culminates a long fight between state insurance regulators and federal banking regulators regarding the regulation of DCCs/DSAs. The fight started in the early 1960's. This section reviews the history and development of regulation of DCCs/DSAs.

4.1 Initial Rulings by the OCC and Opposition by State Insurance Regulators

In a December 1963 issue of The National Banking Review, the OCC discussed DCCs as a legal activity of a national bank. In response to a letter of inquiry on DCCs, the OCC issued a letter on March 10, 1964 stating that that a national bank has the right to issue DCCs on loans issued through the bank. Appendix 3 contains a copy of that letter. Comptroller of the Currency James J. Saxon stated:

> The use of debt cancellation contracts, the imposition of an additional charge and the establishment of reserves as protection against losses arising out of such contracts is a lawful exercise of the posers of a National Bank. The exercise of such powers is necessary to and is part of the business of banking. Such activities may not therefore, properly be considered as engaging in the business of insurance.

On March 26, 1964, the OCC issued another letter to a national bank stating that the March 10, 1964 ruling was also applicable to installment loans as well as to any other obligation owing to a national bank.

Later in 1964, the National Association of Insurance Commissioners (NAIC) issued a resolution in opposition to the OCC's ruling on DCCs stating that DCCs constitute the business of insurance and, therefore, are subject to state insurance regulation. The NAIC resolution stated that, under the OCC's ruling, the public would be "of the protection of such state laws and regulations with respect to credit life insurance." Appendix 4 contains a copy of the NAIC resolution and a legal memorandum prepared by the Life Insurance Association of America examining whether DCCs constitute the business of insurance.

On August 26, 1971, the OCC promulgated 12 C.F.R. 7.7495 permitting national banks to enter debt cancellation agreements, charge a fee for the agreement, and set up reserves to cover liabilities. In 1972, the OCC issued letters permitting national banks to offer debt cancellation agreements for theft, loss, and destruction of collateral. On March 26, 1984, the OCC issued Interpretive Letter No. 283, which provided:

- National banks may sell credit life and disability insurance, as an agent for the insurer.
- The sale of credit life and disability insurance is directly related to a bank's express lending authority because it protects the bank's ability to recover the value of its loan and, therefore, is under the scope of incidental powers.
- The bank is prohibited by statute 12 U.S.C. § 1972(1) from conditioning any extension of credit on the borrower's purchase of credit insurance from the bank or one of its subsidiaries.

4.2 The *First National Bank of Eastern Arkansas* Litigation

Although the OCC had ruled for years that national banks could sell DCCs, the question of the effect of state regulation of credit insurance on those agreements had not been litigated. In 1987, First National Bank of Eastern Arkansas began offering debt cancellation agreements as an alternative to credit insurance. Initially, the Arkansas insurance department stated that it did not object to the practice. However, given the risk of losing their credit insurance business, credit insurers urged the Arkansas Department

of Insurance to change its position. The Department reversed itself and ruled that debt cancellation agreements were an "identical alternative to credit insurance," were subject to regulation, and the sale of any such agreements would result in litigation by the Department against the bank. In response, First National Bank of Eastern Arkansas sued the state insurance department in 1989 seeking a declaration that the Department had no regulatory authority over the bank in its sale of the debt cancellation agreements. The District Court ruled in favor of the bank, concluding that the agreements were not credit insurance and were an incidental power of national banks. The Eighth Circuit Court of Appeals upheld the lower court ruling in 1990.

In response to the *First National Bank of Eastern Arkansas* ruling, the NAIC Credit Insurance Committee discussed the consumer protection problems with unregulated DCCs compared to credit insurance. The chair of the Credit Insurance Committee, Missouri Director of Insurance Lewis Melahn, requested a meeting with the OCC to better understand the OCC's positions on regulation of DCCs. In an August 24, 1992 letter, the OCC declined to meet with insurance regulators. Appendix 5 provides a copy of the OCC letter and the minutes of the Credit Insurance Committee's discussion of DCCs.

4.3 The OCC Expands Its Rulings

Perhaps emboldened by the *First National Bank of Eastern Arkansas* rulings, the OCC moved to expand the powers of federal banks in this area over the following years. On January 1, 1994, OCC Interpretive Letter No. 640 stated that national banks may offer debt cancellation agreements that cancel debt in the event of disability or unemployment, in addition to agreements that cancel debt upon death. In 1996, the OCC expanded its rule to include agreements that cancel debt in the event of disability, in addition to agreements that cancel debt upon death, by deleting 12 C.F.R. 7.7495 and creating 12 C.F.R. 7.1013, which provides that "national banks may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of the borrower."

On April 3, 1998, OCC Interpretive Letter No. 827 stated that a bank could enter a debt suspension agreement. Under such an agreement, the bank could freeze the credit card holder's account for a set period of time for involuntary unemployment, disability, family leave, or hospitalization. The agreement could also provide for the cancellation of the debt upon death.

On June 30, 1998, the OCC issued a letter to a national bank stating that the bank could offer debt cancellation agreements for death, disability or involuntary unemployment on retail loan products and could purchase a liability policy from one of its insurance subsidiaries to cover any losses. On that same date, the OCC issued another letter to a national bank stating that the bank could offer debt deferment agreements that would freeze the credit card holder's account for a set period of time for involuntary unemployment, disability, family leave, or hospitalization.

4.4 Gramm-Leach Bliley Act

In 1999, Congress passed a comprehensive overhaul of national banking, Gramm-Leach-Bliley Act, Public Law 106-102 (GLBA). GLBA has several provisions that arguably affect the regulation of DCCs/DSAs by national banks. By the time of passage of GLBA, most state insurance departments had conceded the fight over whether DCCs/DSAs could be regulated as insurance products. The Texas Department of Insurance (TDI) continued to press the fight. Appendix 6 is copy of a letter issued by the TDI in May 1999 arguing that DCCs were subject to some state insurance regulation. The banking industry quickly responded with an alternative legal brief and rebuttal to TDI, a copy of which is provided in Appendix 7. As discussed below, both opponents and proponents of state regulation of DCCS/DSAS by national banks argue that GLBA supports their cause. However, until the courts rule otherwise, most observers believe that GLBA does not permit state regulation of DCCS/DSAS by national banks.

4.5 OCC DCC/DSA Rulemaking

In 2001, the OCC initiated a rulemaking proceeding to establish regulations for DCCs/DSAs. The rulemaking was welcomed by banks who sought specific guidelines for the sale of DCCs/DSAs. By this time, the NAIC and state insurance regulators had largely given up the fight for jurisdiction over DCCs/DSAs issued by national banks, thrifts or credit unions and submitted comments asking the OCC to create regulatory parity between credit insurance and DCCs/DSAs. The regulators and consumer organizations argued that, since the two products were functional equivalents, less regulatory oversight of DCCs/DSAs would cause a migration from credit insurance to DCCs/DSAs by lenders with troubling results for consumers. Appendix 8 is a copy of the comments submitted by the Center for Economic Justice and the Consumer Federation of America. The OCC issued its rulemaking decision in August 2002.

5. Current Status of States' Authority over Debt Cancellation Contracts and Debt Suspension Agreements

The recent DCC/DSA rule promulgated by the OCC became effective June 16, 2003.[6] The final regulation is found in Appendix 9. The OCC summarized the significant features for the rule as follows:

- It codifies the OCC's longstanding position that DCCs and DSAs are permissible banking products.
- It establishes important safeguards to protect against consumer confusion and areas of potential customer abuse. In particular, the final rule prohibits national banks from offering lump sum, single premium DCCs or DSAs in connection with residential mortgage loans.
- The rule provides for standardized disclosures of key information in connection with the offer and sale of DCCs and DSAs. The disclosure requirements are structured to accommodate widely used methods of marketing DCCs and DSAs, including telephone solicitations, mail inserts, and so-called "take one" applications.
- To the extent feasible, the rules apply consumer protections modelled on the framework of consumer protections that Congress directed the OCC (and the other Federal banking agencies) to apply to banks' insurance sales. National banks are familiar with these insurance sales requirements, which are contained in part 14 of the OCC's regulations, and the approach taken in the final rule enables banks to harmonize their policies, procedures, and employee training programs across the two product lines.
- The rule addresses safety and soundness considerations presented by DCCs and DSAs by requiring national banks to manage the risks associated with these products according to safe and sound banking principles, including appropriate recognition and financial reporting of income, expenses, assets, and liabilities associated with DCCs and DSAs, adequate internal controls, and risk mitigation measures.

In promulgating this rule, the OCC rejected recommendations by state insurance regulators and consumer organizations to establish minimum benefit standards. The OCC explain its decisions as follows:

[6] The Comptroller delayed indefinitely implementation of certain provisions in the DCC regulation. The notice of this action and request for comments on the issue are found in Appendix 10. The comments of CEJ and Consumer Federation of America in response to the action and notice are found in Appendix 11.

> For several reasons, we decline to depart from the basic regulatory approach we proposed, although the final rule does contain enhanced consumer protection features beyond those contained in the proposal. First, as the Taylor court explained, DCCs and DSAs are distinct from credit insurance as a matter of law. Moreover, we see no evidence that the market for DCCs and DSAs suffers from the same flaws as the commenters assert prevail in the credit insurance market. Issuers of DCCs and DSAs do not compete to enlist independent, third-party sellers to place their product. Instead, every national bank that issues DCCs or DSAs is its own seller because these products are provided in conjunction with loans that the bank itself makes. Commenters provided no evidence of impairment in the market for DCCs and DSAs, but instead relied on concerns regarding distortions and abuses in the credit insurance market. Thus, we cannot conclude that the strongest reason given by the commenters in support of fee regulation -- dysfunction in the market that disclosures are inadequate to overcome --is present in the market for DCCs and DSAs. Moreover, as the rule's express prohibition on tying makes clear, the choice of purchasing the product is left exclusively to the customer. We have concluded, therefore, that a regulatory approach that includes price controls as a primary component is not warranted.

The OCC also rejected recommendations by consumer organizations to prohibit single fee products:

> In the absence of evidence that the abuses identified by the commenters are occurring in the DCC or DSA market, we have declined to adopt an across-the-board prohibition on lump sum fees. We remain concerned, however, that abuses similar to those occurring in the credit insurance market not develop with respect to DCCs or DSAs provided in connection with home mortgage loans. To guard against that result, the final rule prohibits a national bank from requiring a customer to pay the fee for a DCC or DSA in a single payment, payable at the outset of the contract, if the debt that is the subject of the contract is a residential mortgage loan. The rule permits single payment contracts in the case of all other consumer loans, but requires banks that offer the option of paying the fee in a single payment to also offer the bona fide option of paying for that contract in periodic payments. In such cases, the bank must also make certain disclosures related to the fee.
>
> We continue to believe that the approach that best balances encouraging banks to provide a viable choice of products for consumers with discouraging unfair practices is to require banks to offer both options so that a customer can choose between a lower total fee or the availability of a refund. In our view, the potential for unfairness in a no-refund product lies principally in the fact that the customer may be induced to pay "up front" for coverage that he or she never receives because the loan is prepaid. This result is substantially mitigated if the consumer has the option of DCC or DSA coverage on a "pay as you go" basis. Accordingly, the final rule retains this provision (as renumbered) with one substantive change.

> The text of the final rule requires that a bank that offers a no-refund DCC or DSA must also offer the customer a bona fide option to purchase a comparable contract that provides for a refund. The option to purchase is bona fide if the refund product is not deliberately structured in such a way, including pricing of the product, as to deter a customer from selecting that option.

Despite this explanation, the OCC announced on June 14, 2003 – two days before the effective date of the rule – an indefinite delay in the implementation of the single fee provisions for certain types of sellers:

> The Office of the Comptroller of the Currency (OCC) has determined to delay the date when compliance is required with certain provisions of the final rule governing debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) in order to allow the OCC to consider issues that have recently been brought to our attention concerning the application of the DCC/DSA rule in the context of closed-end consumer loan transactions where DCCs and DSAs are offered through unaffiliated, non-exclusive agents. The delay of the compliance date applies only to the extent and to the types of transactions described in this document. In all other circumstances, national banks are required to comply with the DCC/DSA rule as of June 16, 2003, which is the date on which the rule takes effect. The OCC also is inviting comment on issues raised by national banks related to the sale of DCCs and DSAs in connection with closed-end consumer loans offered through such non-exclusive agency relationships.
>
> In addition, the rule requires a national bank that offers a customer the option to pay the fee for a DCC or DSA in a single payment also to offer that customer a bona fide option to pay the fee on a periodic basis ("periodic payment option"). The final rule takes effect on June 16, 2003.
>
> The OCC recently has received information that the periodic payment option requirement may present unique issues, of which the OCC was previously unaware, in connection with DCCs and DSAs offered by national banks through unaffiliated, non-exclusive agents, with respect to certain types of consumer purchase transactions, most notably car loans made available through automobile dealers.

> Accordingly, we have determined that it is appropriate to delay the mandatory compliance date for the periodic payment option in the case of transactions where unaffiliated, non-exclusive agents of a national bank offer that bank's DCC or DSA in connection with closed-end consumer credit, until the OCC has an opportunity to further evaluate the feasibility of approaches to providing appropriate customer protections in connection with that type of transaction. Because the availability of the periodic payment option also triggers certain disclosures, we also are delaying the time for compliance with certain other provisions in the DCC/DSA final rule that are linked to the requirement to offer a periodic payment option, including the requirement to provide the long form disclosures.

5.1 Impact of OCC Rule on State Jurisdiction over DCC/DSAs

The regulations by the Office of the Comptroller of the Currency (OCC) deprive the states of authority to regulate the sale by national banks of Debt Cancellation Contracts (DCCs) and Debt Suspension Agreements (DSAs). The regulation provides:

> Scope. This part applies to debt cancellation contracts and debt suspension agreements entered into by national banks in connection with extensions of credit they make. National banks' debt cancellation contracts and debt suspension agreements are governed by this part and applicable Federal law and regulations, ***and not by … State law***.

12 C.F.R. 7.31 (c) (emphasis added). The OCC expressly rejected the Texas Insurance Commissioner's position that states retain the power to regulate DCCs and DSAs by national banks as "insurance." In the Summary of Comments for the final rule making, the OCC stated:

> Many commenters sought clarification about the regulatory framework that governs DCCs and DSAs. They urged the OCC to clarify that DCCs and DSAs offered by national banks are not subject to regulation under State insurance law. One commenter, however, asserted that DCCs and DSAs are "authorized" insurance products under the Gramm-Leach-Bliley Act (GLBA) and that States have express authority to regulate them as insurance, subject only to the preemption standards set forth in section 104 of the GLBA.

> As is described in the Background section of this preamble discussion, DCCs and DSAs are banking products authorized under 12 U.S.C. 24(Seventh). This final rule, together with any other applicable requirements of Federal law and regulations, are intended to constitute the entire framework for uniform national standards for DCCs and DSAs offered by national banks. Accordingly, the final rule states that DCCs and DSAs are regulated pursuant to Federal standards, including part 37, and not State law.

For national banks, therefore, federal law preempts the state's ability to regulate the transaction, barring a lawsuit to overturn the OCC's position. DCCs and DSAs are used by a variety of lenders, however. This section addresses the extent to which states retain regulatory authority over DCCs and DSAs by different types of lenders.

5.1.1 National Banks

The OCC's regulation applies to national banks. 12 C.F.R. § 37.2 (b). Thus, unless the OCC's determination is overruled by a court, the regulation preempts any state regulation of DCCs and DSAs sold by national banks.

The argument against preemption is that the Gramm-Leach-Bliley Act, Public Law 106-102 (GLBA) allows states to regulate DCCs and DSAs. GLBA affirms the right of national banks to sell DCCs and DSAs as "authorized products." "Authorized products" are defined to be products which the OCC as of January 1, 1999, "had determined in writing that national banks may provide as principal." GLBA § 302(b). Since the OCC, prior to the grandfather date, has ruled that national banks have the power under the National Bank Act to underwrite DCCs (12 C.F.R. § 7.1013) and DSAs (OCC Interpretative Letter No. 827) and since these determinations have not been overturned by a court of competent jurisdiction, they qualify as "authorized products", and may be sold by national banks.

The issue, however, is whether the sale of the products by national banks can be regulated by the states. Although GLBA allows national banks to sell DCCs and DSAs, it also expressly reserves the right of states to regulate insurance:

> No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law . . . .

GLBA § 104(b). Thus, the OCC's regulation preempts state laws if DCCs and DCAs are not "insurance," but not if the products constitute "insurance." Historically the decisions by courts and federal agencies were that DCCs and DSAs are not insurance. *See, e.g.*, *First National Bank of Eastern Arkansas v. Taylor*, 907 F.2d 775, 780 (8th Cir. 1990), *cert. denied*, 498 U.S. 972 (1990) (holding that DCCs are not insurance). The Texas Insurance Commissioner, however, has made a well-reasoned argument that DCCs and DSAs are "insurance" under GLBA. Until a court accepts those arguments, though, the states will not be able to regulate the sale DCCs and DSAs by national banks.

5.1.2 National Credit Unions

The National Credit Union Administration (NCUA) expressly permits national credit unions to sell DCCs and DSAs:

> The categories of activities in this section are preapproved as incidental to carrying on your business under Sec. 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list. …
>
> (g) Loan-related products. Loan-related products are the products, activities or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

12 C.F.R. 721.3 (g). However, unlike the OCC, the NCUA has not preempted state regulation of those sales. Instead, the NCUA has expressly made those sales subject to state law:

> You must comply with any applicable NCUA regulations, policies, and legal opinions, as well as applicable state and federal law, if an activity authorized under this part is otherwise regulated or conditioned.

12 C.F.R. 721.5. Thus, states are not preempted from regulating the sale of these products by national credit unions.

In a recent Bulletin, NCUA took the position that these products are not insurance:

> At least one court has established that a debt cancellation agreement is not an insurance product regulated by state insurance regulators. It is, in fact, a two-party contract between the lender and its borrower, outside the purview of insurance laws.

May 2003 Letter No. 03-FCU-06, found at http://www.ncua.gov/ref/letters/2003/03-FCU-06.pdf. However, whether or not the products are insurance, their rule expressly makes national credit unions subject to whatever laws the states pass, whether they are insurance laws or not. And the determination of whether those credit unions are subject to state insurance laws is up to the state. The definition of "insurance" under federal laws, which is an issue under federal preemption issues, is not relevant here because this is not a preemption issue.

5.1.3 National Savings & Loans

The Office of Thrift Supervision (OTS) regulates national savings and savings and loan associations. The OTS has ruled that national savings and loan associations may sell DCCs:

> Institutions may directly provide debt cancellation contracts on originated loans, subject to certain safeguards. Debt cancellation typically provides for the repayment of a loan in the event of the borrower's death or disability, with exceptions for late payments, late charges, loans in default and deaths due to suicide.

Office of Thrift Supervision January 2000 Regulatory Handbook 217.5, found at http://www.ots.treas.gov/docs/74040.pdf. *See also*, OTS Letter dated December 18, 1995, found at http://www.ots.treas.gov/docs/56521.pdf. We found no rule preempting state laws from regulating the sale of DCCs and DSAs by national savings and loan associations. Therefore, states maintain the power to regulate those sales.

5.1.4 State Banks, Credit Unions, and Savings & Loans

Federal regulations regarding DCCs and DSAs do not apply to state-chartered banks, credit unions, and savings and loans. Thus, there is no preemption of the states' right to regulate their sales of DCCs and DSAs.

Many states, however, have "parity" statutes that give the state-chartered institution the same rights as its federally-chartered counterpart. For instance, Texas' constitution provides:

> A state bank created by virtue of the power granted by this section, notwithstanding any other provision of this section, has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State.

TEX. CONST. ART. § 16 (c). Approximately 40 states have similar parity provisions in their laws. Thus, for instance, a state-chartered bank in one of those states could argue that it has the right to sell DCCs and DSAs free of any state regulation because national banks have that right.

While the resolution of that argument is outside the scope of this report, it is also not relevant to the question of state's power. States can change their parity statutes if they choose to do so. The issue is whether federal law preempts their power to regulate the sale of DCCs and DSAs by state-chartered institutions. Clearly it does not, for the applicable federal rules do not apply to state-chartered institutions. Thus, although a state may need to amend its parity statute, it retains the power to regulate the sale of DCCs and DSAs by state-chartered institutions.

5.1.5 Installment Sales Contracts and Other Lenders

For similar reasons, the OCC ruling does not prohibit states from regulating the sale of DCCs and DSAs by other lenders, including installment sales contracts. The OCC ruling only applies to national banks. Federal preemption of state law is not favored and a party asserting preemption "must overcome the presumption against finding pre-emption of state law in areas traditionally regulated by the States." *California v. ARC Am. Corp.,* 490 U.S. 93, 101 (1989). States have traditionally had regulatory authority over installment sales contracts, small consumer loans, pay day loans and other transactions that could be the subject of a DCC or DSA. Nothing in the OCC regulation even attempts to extend the preemption doctrine to these other lenders and sellers.

The determination of whether the states retain regulatory authority over DCCs and DSAs by lenders other than national banks does *not* depend on whether the product is insurance. Historically, the debate over states' ability to regulate DCCs and DSAs sold by national banks did depend on whether the products were "insurance." *See*, *First National Bank of Eastern Arkansas v. Taylor*, 907 F.2d 775, 780 (8th Cir. 1990), *cert. denied*, 498 U.S. 972 (1990). That analysis was necessary in the preemption determination because federal law expressly left to the state the regulation of insurance. Even if the products are not insurance, however, states maintain regulatory authority over them in the absence of a federal law preempting the states' regulatory powers. Since no federal statute regulates these products in installment sales contracts and other transactions outside the purview of the OCC, states retain the authority to regulate these transactions.

6. Why Lenders Move from Credit Insurance to DCCs/DSAs

Lenders have moved from credit insurance to DCCs/DSAs because DCCs/DSAs are not subject to state regulation, which leads to the following advantages compared to credit insurance:

- No oversight or limitations on fees charged
- Few limitations on product design and benefit provisions – no restrictions on bundling, flexibility in product design
- Ability to use one product nationally
- No agent licensing requirements
- No form or rate filing requirements
- No premium taxes

The bottom line for lenders is that DCC/DSA programs are far less expensive to develop and deploy, are not subject to any oversight or limitations on pricing and are not subject to any oversight or requirements for benefits. In theory, lenders should be able to offer greater benefits per dollar of fee paid for DCC/DSA than the benefits consumers received per dollar of credit insurance premium because of substantial reduction in administrative costs. These cost reductions arise from developing and using one product and one form countrywide instead of having to file and obtain approval for hundreds of rate and form filings and keeping current on rate changes in any one of 51 jurisdictions. Other cost reductions arise from the absence of any agent licensing requirements and premium tax. If the market for DCCs/DSAs were competitive, the great reduction in administrative costs for DCCs/DSAs would flow to consumers as greater benefits. However, because, DCC/DSA markets are not competitive, the benefits to consumers as a percentage of fees paid has shrunk dramatically for DCCs/DSAs in comparison to credit insurance.

7. DCCS/DSAS Products Today: Lack of Regulatory Protections Causes Poor Value for Consumers

DCCS/DSAS products are defined by the type of benefit, types of events covered, eligibility for coverage and the types of payment methods.

7.1 Types of Benefits

Debt Cancellation: For lump sum benefit programs, such as death, the entire outstanding loan amount is cancelled. The amount of the benefit is equal to the amount of the outstanding loan balance. For monthly benefit programs, the requirement to make the monthly payment is canceled. The amount of the benefit is equal to the monthly payment – the amount of principal reduction in the required monthly payment plus the loan interest for the month. Benefits under a debt cancellation program are generally equivalent to those under a credit insurance program with the same triggering events.

Under a debt cancellation program, the consumer's debt is either eliminated (lump sum benefit) or is reduced (by the principal portion in the monthly payment).

Debt Suspension / Debt Deferment / Debt Freeze: For monthly benefit programs, the requirement to make a monthly payment is canceled and the interest for the month is canceled. Stated differently, a consumer can skip a payment without incurring any new interest charges or any penalty fees. The amount of the benefit is equal to the loan interest for the month. Under a debt suspension program, the amount of the consumer's debt neither decreases nor increases.

Payment Holiday: For monthly benefit programs, the requirement to make a monthly payment is canceled. The consumer's debt continues to accrue interest during the covered month, but no penalty fees are assessed. There is no monetary value to payment holiday benefit. Under a payment holiday program, the consumer's debt increases.

7.2 Types of Events Covered

Death – includes death from any cause with exception of certain pre-existing conditions.

Accidental Death – includes only death from certain accidental events. The incidence of accidental death is a small fraction of the normal death benefit. State insurance regulators have never permitted credit life policies to be limited to accidental death events only.

Dismemberment – includes the loss of specified body parts.

Disability – includes total or partial disability, permanent or temporary disability.

Involuntary Unemployment – includes certain types of involuntary unemployment, such as a layoff or firing or, in some instances, a strike.

Family Leave of Absence – includes an official leave of absence from a job for specified events, such as childbirth or illness of immediate family member.

Divorce – includes the filing of, or completion of, a divorce.

Life Events – includes marriage, divorce, childbirth, adoption, new home purchase, moving to a new home or entering college or graduate school for the first time.

Hospitalization – includes admission and stay in a hospital for at least one night with admission and care directed by a physician.

Military Service – includes being called to active duty in military reserve or guard unit for at least 31 consecutive days.

Disaster Relief – includes direct impact by a declared federal disaster and suffering a loss of at least $500 or missing at least 5 consecutive days of work.

GAP – provides coverage for the difference between the amount owed on a loan and the actual cash value of the collateral pledged in support for the loan. GAP is typically sold by auto dealers to cover the difference between the amount remaining on a loan and the amount an insurance company will pay for a totaled vehicle under the personal auto policy. The gap that GAP covers arises because of the increased term of auto loans over the past decade, which results in vehicles depreciating faster than the principal is paid off on an auto loan.

Appendix 12 provides a table of various DCC/DSA programs. Appendix 13 contains copies of DCC/DSA offers and/initial disclosures.

7.3 Types of Eligibility

Single versus joint – coverage is provided for either the borrower or the borrower and spouse. When joint coverage is provided, benefits occur when either the borrower or spouse encounters a triggering event.

Age restrictions – consumers over a certain age are ineligible for certain benefits in some DCCs/DSAs programs.

Employment Restrictions – full time employment prior to and at the time of program initiation is a typical requirement for disability, involuntary unemployment and leave of absence benefits. Self-employed borrowers are typically ineligible for these three benefits.

Use of Card Restrictions – many monthly benefit DCCs/DSAs programs and most debt suspension programs freeze credit card use if a borrower is receiving any benefits under the DCCs/DSAs program. A borrower who, for example, encounters disability or unemployment and who is enrolled in a DCCs/DSAs program must choose between the benefits under the program and the ability to continue using the credit card.

7.4 Types of Payment Methods

Monthly Pay – typically used for open-end credit, such as credit cards. The monthly fee is typically based on the amount of the outstanding loan or debt balance. A few monthly fee programs are offered in connection with closed-end (installment) loans. Given the great flexibility in designing benefit packages, lenders can structure DCCs/DSAs programs so the likelihood of covered event does not fluctuate dramatically over the period of the installment loan. Stated differently, there is no reason why monthly pay DCCs/DSAs products could not be offered in connection with installment loans.

Single Fee – typically used for installment loans and typically added to the loan amount and financed.

7.5 Current DCCS/DSAS Programs Offered By Lenders

Lenders' use of DCCs/DSAs has grown dramatically in the past three years, particularly in connection with credit cards. Since 1999, most major credit card issuers – Citicorp, Discover (Sears), Bank of America, Fleet Bank, Advanta, Bank One, Chase, MBNA, Providian and private label card issuers like Target, have replaced their credit insurance packages with DCCs/DSAs programs. American Express continues to sell credit insurance. Several lenders have switched to DCCs/DSAs for installment loans, most prominently Bank of America, but penetration in the installment loan market remains small compared to that in the credit card market.

Appendix 12, a summary of the DCC/DSA programs offered by major lenders, shows that DCCs/DSAs programs have evolved into a set of benefits that differ significantly from the coverages provided under the credit insurance program. For example, the death coverage has largely been replaced with an accidental death benefit. The expected claims for accidental death coverage are a very small fraction – perhaps 5% -- of the expected claims for the traditional death coverage. Further, the debt cancellation benefit that is equivalent to the payment benefits provided under credit insurance policies have largely been replaced with debt suspension products. Debt suspension provides a far smaller benefit level than debt cancellation or credit insurance.

7.6 Value to Consumers

Consumers receive far fewer benefits in relation to the fees charged for DCCs than under credit insurance – and consumer organizations have long criticized credit insurance as providing a poor value to consumers!

The expected loss ratio for a credit insurance package is in the range of 40% to 60%. In practice, the actual loss ratios – the ratio of claims paid on behalf of consumers to premiums paid by consumers for the policies in question – are lower. Although the countrywide average loss ratio for credit life and credit disability has generally been in 42% to 46% range, the addition of credit unemployment and credit property brings the

overall average down. Actual loss ratios by state for credit life and credit disability in the 1998-2000 period ranged from 30% to 69%. When credit unemployment and credit property are added, the range of state loss ratios was 25% to 61%. Some improvement in the low credit unemployment and credit property loss ratios has occurred due to higher unemployment and some action by state regulators to improve benefits and/or lower rates.

In contrast, the expected "loss ratio" for the debt suspension agreements offered by credit card issuers is generally in the 3% to 5% range. Actual ratios of benefits in relation to fees paid by consumers are likely even lower because of the restriction on card use if a borrower is receiving a benefit. Many consumers will likely forego the debt suspension benefit once they recognize they will lose the use of the card if the do so. Given that benefits are triggered by events that impair a borrower's income, it is during these times that the borrower is in greater need of borrowing capacity. When faced with the choice of a modest benefit or the loss of use of a credit card, we believe many consumers who paid for benefits and who are eligible for benefits will forego the benefits.

Appendix 9, the comment letter of CEJ and CFA to the OCC on proposed DCC/DSA rules, contains a comparative analysis of benefits to costs of credit insurance and a Citicorp DSA program offered at the time. The credit insurance package included credit life, credit disability and credit involuntary unemployment. The DSA package included disability and unemployment. The table below compares costs and expected benefits under the two programs. The cost of the DSA program is almost 80% higher than the credit insurance program but the expected DSA benefits are only one-seventh of those from the credit insurance program. Even assuming that the lender incurs some administrative costs in the DSA program that the lender does not incur with the credit insurance program, the DSA profit is over 80% of a higher monthly fee.

Table 3
Comparison of 2001 Citicorp DSA program to Texas Credit Insurance Program

	2001 Citicorp DSA	2001 TX Credit Insurance
Cost per $100 Outstanding Balance	$.690	$.386
Monthly Fee, $2,000 Balance	$13.80	$7.72
Expected Monthly Benefits, $2,000 Balance	$0.56	$3.86
Expected Benefits, % of Fee	4.1%	50.0%
Expected Monthly Revenue to Lender, $2,000 Balance	$13.24	$2.32
Expected Revenue to Lender, % of Fee	95.9%	30%

The table below provides estimates of the percentage of expected benefits to fees paid for several of the DCC/DSA programs summarized in Appendix 12. As stated elsewhere, we believe that even these tiny benefit levels are likely overstated because of the common restriction on credit card use if a consumer activates DCC/DSA program benefits. The Fleet Credit Protector program has a significantly higher benefit ratio than the other programs (although "higher" is clearly relative given the low values of all programs) because it is one of the few programs that still offers a death benefit. Most of the other programs have either eliminated the death benefit completely or switched to an accidental death benefit, which provides only a small percentage of the benefits of a "regular" death benefit.

Table 4
Estimated Benefits as a Percentage of Fees for Various DCC/DSA Programs

Program	Ratio of Expected Benefits to Fees Paid
Fleet Card Credit Protector	11%
Citicorp Card Credit Protection	3%
Bank of America Cardholder Security Plan	2%
Discover Card AccountGuard	2%
Bank One First Protect	3%
Chase Card Payment Protection Plan	2%

7.7 Aggregate Dollar Impact on Consumers

From 1995 to 2000, credit card credit insurance premiums grew to about $2 billion annually. Appendix 14 reviews the annual written premiums, paid losses and loss ratios for monthly outstanding balance credit life, credit disability and credit involuntary unemployment sold in connection with open-end loans. The highest loss ratios – highest benefit to premiums paid for consumers – came from credit life where about 60% of the premium was returned as a benefit. The ratios for credit disability were about 45% and the ratios for involuntary unemployment ranged from 6% to 15%, depending upon unemployment rates. Most current DCC/DSA credit card programs have eliminated the coverage providing the greatest value to the consumer – the death benefit. Aggregate loss ratios for all coverages combined were about 40%.

The table below shows our estimates of the aggregate dollar impact of credit card lenders' movement from credit insurance to DCC/DSAs. We estimate, conservatively, that consumers will lose over 80% of the benefits they received under credit insurance – around $700 million annually. We also estimate that overall costs to consumers – just for credit card debt protection – will increase at least 25%. As lenders replace installment loan credit insurance with DCCs/DSAs, the cost to consumers – in increased fees and reduced benefits – will grow.

Table 5
What the Shift from Credit Insurance to DCC/DSA Means
For Credit Card Consumers

	Credit Insurance	DCC/DSA
Premiums / Fees Annually	$2,000,000,000	$2,500,000,000
Benefit Ratios	40%	5%
Benefit Dollars	$800,000,000	$125,000,000
Estimate Increase in Costs		25.0%
Estimate Decrease in Benefits		-84.4%
Decrease in Benefits, Constant Fees		$700,000,000

8. How to Effectively Regulate DCCs/DSAs: Eliminating Abuses While Relying on Market Forces

The current OCC DCC/DSA rule does not adequately protect consumers from market abuses in the sale of the products. We suggest the following changes are necessary to effectively regulate DCCs/DSAs for consumer protection.

8.1 Minimum Ratio of Consumer Benefits to Consumer Costs

Why should there be a required minimum benefit level and a required minimum ratio of benefits to fees paid? Because the DCC/DSS market is not sufficiently competitive to enable consumers to exert market pressure on lenders to ensure reasonable benefits or reasonable benefits in relation to fees paid. We need to examine two markets – revolving loans (credit cards) and installment loans.

Credit card: There is an absence of information to enable a consumer to make an informed decision. Consumers have no idea how likely they are to encounter one of the covered events. For example, very few, if any consumers, will know that there is a huge difference in a benefit for death versus a benefit for accidental death. To illustrate, credit life insurance covers death from any cause, including suicide after a waiting period. Most credit card DCC/DSA programs have limited the coverage to accidental death. The frequency of accidental death is a small fraction of the frequency of the regular death benefit – so much so that one actuary helping lenders design the DCC products calls it a virtual no-cost give away. Consumers will typically make decisions regarding DCCs/DSAs based on incorrect assumptions about the likelihood of an event happening to them.

Many DCC/DSA programs include a provision that prohibits the consumer from using the credit card if he or she is receiving any benefit under the program. So, if a consumer becomes unemployed, the consumer must stop using the card to charge purchases in order to receive the benefit – which in most cases is only a deferral of payment. Most consumers who have lost a job will likely have a greater need to use credit – a need greater than any benefit of deferring the past balance.

Installment Loan: There are the same problems with credit card-based DCCs and DSAs plus the problems associated with unfair and deceptive sales practices of some lenders. There are the same opportunities for unfair and deceptive sales practices with DCC /DSAs sold in connection with installment loans as is the case with credit insurance sold in connection with installment loans.

The bottom line – as demonstrated by current market results for DCCs/DSAs – is that consumers are often purchasing products with very few, if any benefits and the value of the benefits compared to the fees paid is miniscule. These results simply would not occur in a truly competitive market.

We recommend a requirement for a minimum ratio of benefits to fees. The lender will keep track of this ratio and if the ratio of benefits to fees collected drops below 60%, the lender must rebate fees for the period in an amount sufficient to achieve the 60% benefit ratio. Practically, lenders will plan on benefits that exceed 60% by a few percentage points to ensure no rebates are required. The minimum benefit ratio requirement must be accompanied by a date reporting requirement to allow the public to monitor product benefit levels.

Why is 60% reasonable? State insurance regulators have determined that a 60% minimum loss ratio for the major credit insurance coverages – life, disability, unemployment and property. Lenders and retailers offering DCCs/DSAs have much lower costs to design and deliver the product because:

- One national product instead of multiple products in 51 jurisdictions
- No agent licensing requirements as with credit insurance
- No product filing and approval requirements as with credit insurance, which requires a form and rate filing for each coverage (covered event) in each state
- No maintenance of state-specific rates, rules – one product with one description
- No insurance regulatory filings, such as statutory annual statements
- No insurance premium tax

Further, the minimum benefit ratio should start at 60% and increase with the cost of the product:

Cost		Min. Ratio
up to	$0.500	60.0%
$0.501	$0.749	62.5%
$0.750	$0.999	65.0%
$1.000	$1.249	67.5%
$1.250	$1.499	70.0%
$1.500	$1.749	72.5%
$1.750	$1.999	75.0%
$2.000	or greater	77.5%

It should be noted that there is no need to adjust these percentages because of inflation in lender expenses. Any inflation in lender expenses will likely be met by an increase in the average amount of the loan balance. Consequently, over time, lenders will get more expense dollars even with a constant rate and benefit ratio.

Compared to credit insurance, cost of developing and delivering the product is considerably less. If state insurance regulators have determined that a 60% minimum is reasonable for credit insurance, and costs are considerably lower for DCCs/DSAs, then a 60% minimum ratio of benefits to fees is certainly reasonable for DCCs/DSAs.

8.2 Prohibit financed debt cancellation / debt suspension products

There is no longer a need for single fee, financed debt cancellation products. The origins of single premium credit insurance were in an era of short-term loans, low-interest rates and no automated loan systems. Lenders can easily create DCC programs with benefit exposure that does not dramatically change over the duration of the loan and, therefore, are amenable to monthly payments based on outstanding balances. There is an opportunity – and a need – not to recreate the problems with single premium credit insurance. There is simply no need for financed single fee DCCs/DSAs – other than excessive profitability for lenders and auto dealers – because current technology and flexibility in product design allow the development of monthly benefit / monthly fee products for use with installment as well as revolving loans.

8.3 Improved Disclosures to Consumers

Disclosures should include information on the number of times any benefit is provided (benefits for any of the covered events) under the DCC/DSA program per 1,000 loans / accounts and the number of times a benefit a benefit is paid because of each of the specific covered events) per 1,000 loans / accounts. For example, with the Citigroup Credit Protector Program, the disclosure would be:

Outstanding Balance Canceled
A benefits for long term disability per 1,000 accounts in 12 months
B benefits for accidental death per 1,000 accounts in 12 months

Minimum Due Canceled
D benefits for life events per 1,000 accounts in 12 months

Balance Deferred (24 month maximum)
X benefits for job loss per 1,000 accounts in 12 months
Y benefits for short term disability per 1,000 accounts in 12 months

Balance Deferred (3 month maximum)
R benefits for family leave per 1,000 accounts in 12 months
M benefits for natural disaster per 1,000 accounts in 12 months

Balance Deferred (1 month)
H benefits for hospitalization per 1,000 accounts in 12 months

Balance Deferred (No limit)
G benefits for military call to duty per 1,000 accounts in 12 months

Total
Z benefits for any covered event per 1,000 accounts in 12 months

8.4 Data Reporting / Public Access

There is a need for the public to learn the level of fees and benefits for various types of products to enable groups like the Center for Economic Justice, the Consumer Federation of America and Consumers Union, as well as financial advisers, to analyze the DCC/DSA products and identify the best values. There is a need for public disclosure to enable fair lending groups to evaluate the availability and affordability of these products on consumer groups for whom the products would be most useful. There is a need to make this information public to make the markets for the products more competitive by empowering consumers with better information. The information to be reported – number and amount of fees collected broken out by DCC/DSA product package and number and amount of benefits provided broken out by covered event – is not trade secret information. There are literally only a few actuaries and product administrators who are helping lenders and retailers design the products. Any lender or retailer can accurately judge the cost of any set of benefits by consulting with one of these actuaries or product administrators. The only people who don't know how much benefit is provided and how frequently those benefits are provided are the consumers purchasing the product.

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 1

Sample Credit Insurance Certificate

Central States Indemnity Co. of Omaha
A Berkshire Hathaway Company

Dear Insured Accountholder:

Here is your Certificate of Insurance for the Group Credit Insurance Program. Briefly, this insurance program provides the following benefits:

1. **LIFE INSURANCE:** If you should die, your unpaid account balance is paid in full up to the maximum amount shown on your Certificate.

2. **DISABILITY INSURANCE:** If you become totally disabled for more than 30 continuous days, this insurance program will make your minimum monthly payment. Payment will continue until the disability ends or the account is paid in full up to the maximum amount of insurance shown on your Certificate, whichever occurs first.

3. **INVOLUNTARY UNEMPLOYMENT INSURANCE:** If you become involuntarily unemployed for more than 30 continuous days, this insurance program will make your minimum monthly payment.

Benefits are subject to certain exclusions and waiting periods, so review your certificate carefully.

Coverage under this program terminates when you reach the Insurance Termination Age shown on your certificate.

Please remember that the maximum benefit payable is the balance of your account at time of loss, or the maximum benefit per account shown on your certificate, if less. Charges made to your account after your loss (purchases, interest or finance charges, etc.) will not be covered by your insurance.

KEEP THIS CERTIFICATE IN A SAFE PLACE ALONG WITH YOUR OTHER IMPORTANT PAPERS. It replaces any previous Group Credit Insurance on your account.

If you have any questions about your coverage or if you need to file a claim, please call us toll-free at:

CENTRAL STATES CREDIT INSURANCE CENTER
1-800-445-6500

When filing a claim, please provide the insurance representative with the following information:

1. Personal information including your name, address, telephone number and date of birth
2. Your insured account number
3. The nature of your loss and a brief description of how it occurred
4. The date of your loss

Thank you for enrolling in our Group Credit Insurance Program.

Sincerely,

Central States Indemnity Co. of Omaha

Print Form No. 50947

1212 N. 96th Street • Omaha, Nebraska 68114-2274 • Phone: (402) 397-1111
Mailing Address: P.O. Box 34350 • Omaha, Nebraska 68134-0350

9368

CERTIFICATE OF INSURANCE - CENTRAL STATES HEALTH & LIFE CO.
SCHEDULE OF INSURANCE

EFFECTIVE DATE: JANUARY 13, 2000

ACCOUNT NUMBER:
4017 3526 0513 6637

INSURED CREDITOR\POLICYHOLDER:
PEOPLE'S BANK, CONNECTICUT

GROUP MASTER POLICY NUMBER: 012737

INSURANCE TERMINATION AGE:
71

BIRTHDATE:
AUGUST 01, 1953

INSURED CARDHOLDER:

DAVID E BIRNBAUM
3304 GILBERT ST

AUSTIN, TX 78703-2102

TYPE OF COVERAGE:
SINGLE

CO-CARDHOLDER:
NONE-DESIGNATED

CO-CARDHOLDER BIRTHDATE:
N/A

MAXIMUM AMOUNT OF INSURANCE: $10,000

THIS AMOUNT SHALL NOT EXCEED $50,000

MAXIMUM MONTHLY INSURANCE BENEFIT: $300.00

PREMIUM RATES:
THE TOTAL RATE OF MONTHLY INSURANCE CHARGE IS $ 00.00227 ($0.227 PER $100) OF MONTHLY OUTSTANDING BALANCE. THIS AMOUNT IS COMPOSED OF:

$0.170	CENTRAL STATES HEALTH & LIFE CO. OF OMAHA POLICY 010000 DISABILITY INSURANCE.
$0.057	SINGLE CENTRAL STATES HEALTH & LIFE CO.
$0.227	TOTAL

FORM 10793 (3.53 RA)

CERTIFICATE OF INSURANCE - CENTRAL STATES INDEMNITY CO. OF OMAHA
SCHEDULE OF INSURANCE

INSURED CREDITOR\POLICYHOLDER:
PEOPLE'S BANK, CONNECTICUT

EFFECTIVE DATE:
JANUARY 13, 2000

INSURED CARDHOLDER:
DAVID E BIRNBAUM
3304 GILBERT ST

AUSTIN, TX 78703-2102

ACCOUNT NUMBER:
4017 3526 0513 6637

CERTIFICATE NUMBER:
20000113-129-0011

BIRTHDATE: AUGUST 01, 1953

GROUP MASTER POLICY NUMBER: 023255

MAXIMUM AMOUNT OF INSURANCE: $10,000

THIS AMOUNT SHALL NOT EXCEED $50,000

MAXIMUM NUMBER OF BENEFIT PAYMENTS: N/A

INSURANCE TERMINATION AGE: 71

PREMIUM RATES:
THE TOTAL RATE OF MONTHLY INSURANCE CHARGE FOR UNEMPLOYMENT INSURANCE IS $0.00200 ($.200 PER $100) OF MONTHLY OUTSTANDING BALANCE.
FORM 11442

THE TOTAL MONTHLY INSURANCE CHARGE FOR THIS COVERAGE IS $.427 PER $100 OF OUTSTANDING BALANCE.

07859 50947 09207 OCT10

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Central States toll-free telephone number for information or to make a complaint at

1-800-445-6500

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance

P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact Central States of Omaha first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Central States para informacion o para someter una queja al

1-800-445-6500

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con Central States of Omaha primero. Sino se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

CENTRAL STATES HEALTH & LIFE CO. OF OMAHA

Richard T. Kizer
President

W. M. Kizer
Chairman of the Board

Form 10793 (3.53 RA)

10-92

Print Form 47859

CERTIFICATE OF INSURANCE

The credit life and disability insurance under this Certificate is provided by:
CENTRAL STATES HEALTH & LIFE CO. OF OMAHA
Box 34350 • 96th & Western
Omaha, Nebraska 68134
"We" or "Us" means Central States Health & Life Co. of Omaha

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Your Co-Cardholder is not eligible for total disability insurance.

"Total Disability" means during the first 12 consecutive months of disability that you are not able to perform the essential and customary duties of your occupation because of injury or sickness. After the first 12 months of disability, the definition changes and requires that you are not able to perform the duties of any occupation for which you are reasonably qualified by education, training or experience. You will be required to give us proof of your continuing disability from time to time.

"Co-Cardholder" means your spouse or business partner(s) and such person(s) must be jointly and severely liable for repayment of the single indebtedness and are joint signers of the instrument of indebtedness. Your Co-Cardholder (if insured) is insured for the life insurance benefits of this Certificate as of the Effective Date.

"We", "Us" and "Our" means Central States Health & Life.

"You" or "Your" means the person named as the insured cardholder on the Schedule.

"Minimum Monthly Payment" means the amount computed by multiplying the outstanding credit card balance of your account on the first day of total disability, but not to exceed the Maximum Amount of Insurance, by the minimum monthly payment percentage required by the Creditor.

The Monthly Insurance Charge shown on the Schedule is subject to change as provided in the Group Policy. You will be given notice of any such change at least 31 days prior to the date of change. Such notice should be attached to this Certificate. The Creditor will furnish you with a statement each month showing: (1) the amount of the total Monthly Insurance Charge, shown separately for credit life and credit disability insurance; (2) the amount of indebtedness to which this charge was applied; (3) the date such charge was applied; (4) the period covered by such Monthly Insurance Charge; (5) notification of any Monthly Insurance Charge change as described above; and (6) notification of your termination date due to your reaching the termination age shown on the Schedule.

WHO GETS PAID

Claim payments are made to the irrevocable Creditor Beneficiary named in the Schedule to pay off or reduce your debt. If claim payments are more than the balance of your account, the difference will be paid by separate Company check to you or the Secondary Beneficiary, if any, or to your estate.

WHAT WE WILL PAY

Life Insurance Benefit. If you die while you are insured we will pay the outstanding balance of your account on the date of your death. But we won't pay more than the Maximum Amount of Insurance in the Schedule. If your Co-Cardholder dies while insured for joint life coverage we will pay on the same basis as above. Only one death benefit is payable under this Certificate.

If we collected a premium on an amount which is greater than the Maximum Amount of Insurance shown in the Schedule, and we did not correct the error within 90 days of the effective date of coverage and before a claim is incurred, then the amount on which the premium was paid becomes the Maximum Amount of Insurance.

Total Disability Insurance Benefit. We will pay your minimum monthly payment if you file written proof you became totally disabled and continue to be totally disabled for more than 30 days. Payment will be calculated from the first day of disability. If your disability is not for an even number of months, we will pay 1/30th of the minimum monthly payment under your account for each day of disability less than a full month. Payments will stop when you are not totally disabled anymore.

Maximum Total Disability Benefit. The maximum total disability benefit for each claim is the unpaid balance of your account at the time such total disability began plus accrued interest on that balance, but, shall not exceed the Maximum Amount of Insurance. If we collected a premium on an amount which is greater than the Maximum Amount of Insurance shown in the Schedule, and we did not correct the error within 90 days of discovery and before your disability began, then the amount on which you paid a premium becomes the Maximum Amount of Insurance. The maximum amount payable does not include any purchases, charges or fees added to your account after the first day of total disability.

WHAT WE WON'T PAY

Misstated Age. If you state that your age is over the Insurance Termination Age, as shown in the Schedule, and coverage is issued in error, we have the right within 90 days from the effective date of coverage to terminate the coverage and refund the full charge for insurance, provided such termination is accomplished and the appropriate refund is made prior to the incurred date of any claim under such coverage.

If you stated that you are under the Termination Age shown in the Schedule, but you are not, we will return your premium when we discover this and will not pay any benefits.

This also applies to your Co-Cardholder, if insured for joint coverage.

WHEN INSURANCE STOPS

The insurance provided by this Certificate may be cancelled by:

1. your giving written notice to the Creditor stating when thereafter such cancellation is to be effective; or
2. the Creditor or us by giving 31 days written notice.

The mailing of such notice is sufficient proof of notice. The effective date of cancellation stated in the notice is the end of the coverage provided hereunder. Delivery of such notice either by you, the Creditor or us shall be equivalent to mailing.

This Certificate of Insurance is automatically cancelled on:

1. the first billing date after you reach the Insurance Termination Age, shown on the Schedule; or
2. the date you die; or
3. the date your account is terminated; or
4. the date your account is in default. The Creditor will determine when default occurs according to its established rules which apply to all persons having accounts with the Creditor and which precludes individual selection. No account will be deemed to be in default unless:
   a. payment is 3 months overdue; or
   b. a judgement is entered in court with respect to the account.

The coverage provided by this Certificate of Insurance for the insured Co-Cardholder will end on the first of the following dates:

1. when the certificate terminates; or
2. the first billing date after the insured Co-Cardholder reaches the Insurance Termination Age, shown on

Cancellation will be without prejudice to any claim starting prior to such cancellation.

Grace Period. A grace period of 31 days will be allowed for the payment of any monthly premium due under this Certificate except the first. During the grace period, coverage will continue in force unless the Creditor or you give us written notice of discontinuance in advance of the date of discontinuance and according to the terms of this Certificate. If you die during the grace period, the overdue premium may be deducted in any settlement made under this Certificate.

WHAT THE CONTRACT IS

The Group Policy, the Application for the Group Policy and this Certificate are the complete contract of insurance.

RULES FOR FILING A TOTAL DISABILITY CLAIM

NOTICE OF CLAIM

Written notice of a claim must be given to us within 30 days after loss covered by this Certificate occurs or starts. If notice is not given within that time, it must be given as soon as it is reasonably possible. Notice must be given to us at Omaha, Nebraska or to any of our authorized agents. It should include your name and account number.

CLAIM FORMS

When we receive the notice of claim, we will send you forms for filing proof of loss. If these forms are not sent to you within 15 days, you will meet the proof of loss requirement by giving us a written statement of the nature and extent of the loss within the time limit stated in the Proof of Loss provision.

PROOFS OF LOSS

Written proof of loss must be given to us within 90 days after such loss. If it was not reasonably possible to give written proof in the time required, we won't reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, the proof required must be given no later than one year from the time specified unless you were legally incapacitated.

RULES FOR FILING A LIFE CLAIM

We must be given a certified copy of the death certificate as proof of a life claim. Payment shall be made upon receipt of or not later than two (2) months after receipt of the certified copy of the death certificate.

INCONTESTABILITY

The validity of the Group Policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue. No statement made by any person insured under the Group Policy relating to his/her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime and unless it is contained in a written instrument signed by him/her. A copy of the instrument will be given to you or to your beneficiary.

STATEMENTS AND REPRESENTATIONS

In the absence of fraud, all statements made by the Creditor, or by the persons insured shall be deemed representations and not warranties.

CONFORMITY WITH STATE STATUTES

Any part of the Group Policy which, on the Effective Date of the Group Policy, conflicts with the statutes of the state where the Group Policy was delivered is changed to conform to the minimum standards of those statutes.

PHYSICAL EXAMINATION AND AUTOPSY

We at our own expense have the right, and you must allow us the opportunity, to examine your person as often as is reasonably required while a claim is pending and to make an autopsy in case of death, if it is not forbidden by law.

REFUND OF UNEARNED PREMIUM

Any unearned premium refund will be returned on a pro rata basis.

CENTRAL STATES INDEMNITY CO. OF OMAHA
P.O. Box 34350 • 96th & Western
Omaha, Nebraska 68134

CERTIFICATE OF INVOLUNTARY UNEMPLOYMENT INSURANCE
UNEMPLOYMENT INSURANCE ONLY COVERS YOU. IT IS NOT JOINT INSURANCE.

INVOLUNTARY UNEMPLOYMENT BENEFIT

We will make your scheduled minimum monthly revolving account payment if your loss of employment income results from:

1. an involuntary loss of employment not excluded from coverage; or
2. temporary unemployment due to: 1) labor disputes; 2) strikes; or 3) lockouts.

You must be involuntarily unemployed for more than 30 consecutive days.

What We Will Pay: We will make benefit payments:

1. after the 30 day waiting period has been met (benefits will be retroactive to the first day);
2. while the involuntary unemployment continues (subject to any maximum benefits payment limitation shown on the schedule, if any); and
3. based on your outstanding balance on the date of involuntary unemployment.

What We Won't Pay: In no event will the total benefit payments exceed:

1. the maximum amount of insurance shown on the schedule; or
2. the maximum number of benefit payments shown on the schedule (if any); or
3. the amount outstanding on your revolving account and interest which shall accrue thereon, on the first day of involuntary unemployment; or
4. your maximum credit limit amount.

The benefit payments will not include:

1. any past due amounts; or
2. any late charges.

When Benefits Stop: We will stop paying benefits when the earliest of the following occur:

1. you are not involuntarily unemployed anymore; or
2. we have paid an amount equal to the outstanding balance on the date you became involuntarily unemployed; or
3. we have paid the maximum amount of insurance shown on the schedule; or
4. we have paid an amount equal to your maximum credit limit amount; or
5. we have paid the maximum number of benefits indicated on the schedule (if any).

PROVISIONS

Eligibility for Benefits: To be eligible for unemployment benefits, you must:

1. be insured under this plan at the time of involuntary unemployment;
2. provide proof that you are registered with:
   a. your state's unemployment office; or
   b. a recognized employment agency; and
3. have your employer submit a statement verifying your unemployment.

Upon our request and at reasonable intervals, you will give proof of your continuing unemployment.

Registration with your state's unemployment office or employment agency must:

1. begin within 15 days after the date of involuntary unemployment; and
2. continue for the entire period of the claim.

Exclusions: We will not pay benefits for unemployment caused by or resulting from:

1. retirement; or
2. normal seasonal unemployment; or
3. voluntary forfeiture of salary, wages or employment income; or
4. a disability; or
5. your being notified either orally or in writing of pending unemployment; or
6. discharge by your employer for cause, such as:
   a. willful misconduct; or
   b. violation of established policies; or
   c. forbidden acts; or
   d. neglect of duty; or
   e. criminal misconduct (unlawful behavior as determined by local, state, or federal law).

Reeligibility for Benefits: You will be reeligible for unemployment benefits:

1. following the completion of payments under an unemployment claim; and
2. if you have been gainfully employed for salary or wages:
   a. on a full-time basis:
      1. in a non-seasonal occupation; and
      2. at least 30 hours a week;
   b. for a period of 30 consecutive days; and
   c. for one employer.

GENERAL PROVISIONS APPLYING TO UNEMPLOYMENT CONTRACT

Eligibility for Insurance: To be eligible for this insurance, on the effective date, you must:

1. have a revolving account with the creditor;
2. be at least 18 years of age;
3. not have reached your 66th birthday;
4. be actively employed 90 days prior to the effective date for wages or profits:
   a. at least 30 hours a week;
   b. in a non-seasonal occupation;
   c. for the same employer; and
5. not be self employed or an independent contractor; or
6. not be a controlling stockholder of your employer.

Charges to Your Account During Claim Period: This coverage will not apply to any purchases; advances; or interest on such purchases or advances charged to your revolving account on or after the date of a loss under this certificate.

Notice of Claim: Notice of loss and written proof of loss must be filed with us or one of our duly authorized representatives. Notice of loss must be filed within 90 days from the date of loss, or as soon after as is reasonably possible.

Claim Forms: The creditor will report all notices and proof of loss to us on forms provided by us. If we or the creditor do not furnish you with Notice of Loss forms within 15 days after the notice of claim, then you will be deemed to have complied with the filing of "Notice of Claim".

Settlement of Claims: We will pay all adjusted claims to the creditor within 30 days after we receive satisfactory proof of:

1. indebtedness to the creditor; and
2. loss at our office.

Signed by:

CENTRAL STATES INDEMNITY CO. OF OMAHA

John E. Kizer
President

Michael H. Jensen
Secretary

CENTRAL STATES INDEMNITY CO. OF OMAHA

P.O. Box 34350 • 96th & Western
Omaha, Nebraska 68134

GENERAL PROVISIONS SECTION

30 DAY RIGHT TO EXAMINE YOUR CERTIFICATE

YOU HAVE THE RIGHT TO EXAMINE YOUR CERTIFICATE FOR 30 DAYS. IF YOU ARE NOT SATISFIED, YOU MAY RETURN IT TO US OR YOUR CREDITOR FOR A FULL REFUND. WHEN WE OR YOUR CREDITOR RECEIVE YOUR CERTIFICATE: 1) ANY PAYMENTS MADE FOR IT WILL BE REFUNDED TO YOU; AND 2) IT WILL BE DEEMED VOID FROM THE BEGINNING.

DEFINITIONS

"We", "we'll', "us" and "our" means — Central States Indemnity Co. of Omaha.

"You" and "your" means — the primary insured debtor. The person whose name the account is issued in.

"He", "his" and "him" refer to both genders.

"Creditor" means — to whom the debt is owed.

"Business day" means — a day other than a Saturday, Sunday or holiday recognized by the State of Texas.

"Effective date" means — the date the certificate is put in force. It is shown on the schedule attached to the certificate.

"In force" means — the certificate is in effect; premiums are paid and all conditions are met.

"Maximum amount" — the maximum amount of insurance. It is shown on the schedule attached to the certificate.

"Proceeds" — the amount of insurance we will pay as a benefit. This amount is subject to the maximum amount of insurance shown on the schedule attached to the certificate.

INSURING AGREEMENTS

In return for the payment of premiums, we will insure:

1. advances to you from your revolving account:
2. your revolving account up to the maximum amount of insurance stated on the schedule.

The certificate is subject to the provisions of the group master policy we issued to the creditor.

Coverage for one account is limited to the maximum amount as shown in the schedule. If you have more than one account:

1. the maximum amount of insurance shown on the schedule applies; and
2. the total insurance provided under all of your revolving accounts cannot exceed the maximum amount of insurance shown on the schedule attached to your certificate.

The certificate evidences coverage on your revolving account. It continues as long as there is an open balance in the revolving account(s). Insurance coverage will:

1. cease when your revolving account does not reflect an open balance; and
2. automatically be reinstated when there is an open balance.

In CO the following is applicable: If we issue, in error, an amount of insurance in excess of the maximum amount, we are liable for the amount of insurance issued unless we correct the amount:

1. not to exceed the maximum amount; and
2. before a claim occurs or commences.

PREMIUM CHARGE

The premium charge for the insurance is based on your previous month's balance and is based on one of the following methods:

1. if the charge is per day — the daily rate times each day's balance. The sum of these daily charges during the prior month is then obtained; or
2. if the charge is per month:
   a. the average daily balance times the monthly rate; or
   b. the ending billing balance times the monthly rate.

The premium charge is subject to change. We may change premium rates by giving the creditor written notice:

1. within 30 days; and
2. setting forth the revised rates and effective date.

An increase in rates will not be retroactive.

Refunds: Any unearned premium will be:
1. promptly paid or credited to you; and
2. computed by the "pro rata" rule.

No refund or credit will be made if the amount is less than one dollar.

GENERAL PROVISIONS APPLYING TO ENTIRE CONTRACT

Beneficiary: All benefits are paid to the creditor to pay off or reduce your revolving account balance.

Premium Charged: The premium charged to you for the insurance coverage will not be more than the premium rate filed with the State Insurance Department.

Cost statement: The creditor will furnish you with a statement each month which shows the:
1. amount of the insurance charge;
2. date the premium was charged; and
3. period covered by the monthly insurance charge.

Cancellation: The insurance may be cancelled by written notice:

1. from you — **to the creditor** stating when the cancellation will be effective; or
2. from the creditor or us — to you at your address shown in the schedule. The written notice will be effective not sooner than *31 days after mailing.

*45 days in NC; 60 days in KY and NV; 90 days in ID

Your certificate will be automatically cancelled on the:
1. date you are more than 90 days past due in making the required revolving account payment; or
2. date your revolving account is terminated; or
3. date the group master policy is cancelled; or
4. next statement date after you reach age 66 (age 71 in AZ, FL, MI, NV, OK and VA); or
5. date of death.

The mailing of the written notice will be sufficient proof of notice. The effective date of cancellation, as shown in the notice, will be the end of this coverage. Delivery of the written notice, either by you, the creditor, or by us, will be the same as mailing.

*Termination of the group master policy for any reason will:
1. be without prejudice to any claims arising prior to said termination; and
2. terminate coverage for all certificates issued.

*In **NJ** — termination of the group master policy can only be for nonpayment of premiums.

Changes: The certificate's terms and conditions may not be changed or waived except by an endorsement issued by us.

Suit: No legal action may be brought against us, unless it is brought within:
1. *12 months after a claim; or
2. the shortest limit of time permitted by law.

*24 months in AZ; 36 months in AR, CO, HI, IN, NV, NC, OH, TX and UT; 60 months in FL and KS; 72 months in NJ and SC

Assignment: Your certificate may not be assigned. You may not assign any of your rights.

Conformity with State Statutes: Any terms of your certificate which are in conflict with the statutes of the state where the certificate is issued, are amended to agree with those statutes.

Misrepresentation and Fraud: All statements made by you in the absence of fraud are deemed to be representations — not warranties.

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 2

Sample Debt Cancellation Contract Agreement

MBNA CreditProtection

Cancels your minimum monthly payment when you can't pay, and offers you a bonus service to help safeguard your personal credit information.

IMPORTANT DOCUMENTS ENCLOSED

David Birnbaum
Street
1701 A South Second
Austin, TX 78704-3441

03418

EFFECTIVE DATE: 06/03/2003
ACCOUNT ENDING IN 3641

Request Your Bonus Credit Report!

Dear David Birnbaum:

Thank you for enrolling in the MBNA Credit Protection Plan. This protection cancels your minimum monthly payment on your MBNA account when you can't pay. This is a solid step in protecting your financial future. On the reverse of this letter you will find important disclosures about Credit Protection, and the Plan's Terms and Conditions are enclosed. These documents explain benefits, limitations, and exclusions of the MBNA Credit Protection Plan. A postcard acknowledging that you have received these disclosures is also enclosed. Please sign, seal and return the postcard to MBNA.

If you experience one of these events, your Credit Protection offers security and stability:

- **For Involuntary Unemployment, Total Disability or Hospitalization**—
  minimum monthly payments canceled for up to 24 months, up to $25,000 maximum
- **For Employer Approved, Unpaid Leave of Absence**—
  minimum monthly payments canceled for up to 3 months, up to $25,000 maximum
- **For Accidental Death**—
  account paid in full, up to $25,000 maximum

What's more, should you find it necessary to activate any benefits, you will remain covered during the claim period and will not be charged for Credit Protection.

Having an extra measure of security in today's financial world is the best decision anyone can make. That's why your enrollment in Credit Protection includes an added benefit at no extra cost—
A BONUS CREDIT REPORT AND QUARTERLY MONITORING SERVICE.

Count yourself among the many Americans
doing more to shelter their financial reputations.

Your bonus report will come from a national reporting agency through Consumer Assist Network Association (CANA)*. The report's quarterly notifications of activity will help you remain informed and enable you to promptly dispute any inaccuracies. Complete the request form **NOW** so we can provide your credit report and begin the monitoring service. A postage-paid envelope is provided for your convenience.

Please take a few moments to review the disclosures and the Plan Terms and Conditions. You have thirty days from the date of enrollment to review these documents without obligation. Then, sign, seal and mail the enclosed postcard acknowledging your receipt of the disclosures and election to enroll in MBNA Credit Protection.

Jay Tschantz
Senior Vice President
Credit Protection Products

P.S. Make the most of your decision to protect your credit rating; complete the attached request form, so we can send your **Bonus Credit Report and Quarterly Monitoring Service at no extra cost to you.**

*MBNA has contracted with Consumer Assist Network Association, Inc. (CANA) to provide this service. Consumer Assist Network Association, Inc. (CANA) is not affiliated with MBNA.

060503

CPMWL7
04/24/2003

MBNA Credit Protection Plan - Plan Summary - **PLEASE READ CAREFULLY**

PLAN BENEFITS
The MBNA Credit Protection Plan ("Plan") provides a monthly benefit and a total debt benefit for certain covered events. Covered events include Involuntary Unemployment, Family Leave, Total Disability, Hospitalization, and Accidental Death.

THE PLAN IS OPTIONAL.
Your purchase of the Plan is optional. Whether or not you purchase the Plan will not affect your application for credit or the terms of any existing credit agreement you have with MBNA.

PLAN FEES.
A monthly Plan fee is assessed each billing cycle in which you have a Plan balance. The monthly fee for the Plan is $0.85 per $100 of the Plan balance. The Plan balance is the greater of (1) the New Balance Total less the Plan Fee billed in that billing cycle; or (2) the total of the Balance Subject to Finance Charge with a maximum in either event of $25,000.

[If the enrolled account is a Gold Option line of credit, the monthly Plan fees that will be added to your account balance may significantly increase your repayment term.]

USE OF ACCOUNT WILL BE RESTRICTED.
If Plan benefits are activated, you will be unable to incur additional charges on the account. Finance charges will continue to accrue.

TERMINATION OF THE PLAN.
You may cancel the Plan at any time. If you cancel within 30 days after enrollment you will receive a full refund of any Plan fees billed. Please call 1-877-406-3742 to cancel the Plan.

Upon 30 days advance written notice, MBNA may cancel the Plan for all accounts enrolled in the Plan. The Plan will also be cancelled in the event of your bankruptcy, a fraudulent benefit claim, your ceasing to be a borrower on the account enrolled in the Plan, or your death (after any accidental death benefit due under the Plan is paid). The Plan will also be cancelled automatically if the account is closed and has no outstanding balance.

ELIGIBILITY REQUIREMENTS, CONDITIONS AND EXCLUSIONS.
There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under the Plan.

The following is a summary of certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under the Plan. You will find a complete explanation in the Terms and Conditions of the Plan [[enclosed]] [[which will be provided upon enrollment]]. Please read them carefully.

Account Eligibility. The account cannot be 4 or more payments past due.

Eligibility for Benefits. Enrollment in the Plan must predate a covered occurrence. You must be employed full-time (not self-employed and not an independent contractor) at least 30 hours per week in a permanent job, for 30 consecutive days prior to Involuntary Unemployment and for 90 consecutive days prior to Family Leave.
Involuntary Unemployment, Family Leave, and Total Disability must continue for 30 consecutive days before benefits begin.

Certain Conditions & Exclusions. Benefits are not available for conditions diagnosed or treated during the six months prior to enrollment in the Plan. Family Leave must be unpaid and employer-approved. Hospitalization requires two consecutive over night stays as an in-patient. For Total Disability, you must be unable to perform the material and substantial duties of your normal occupation due to sickness or injury.

Plan Benefit Amounts. If Plan benefits are activated, MBNA will cancel up to 24 current monthly payments (3 for Family Leave) or cancel the total balance due on the account enrolled in the Plan (up to $25,000) for Accidental Death. The sum of all cancelled payments for a covered event will not exceed the lesser of the total amount owed on the account as of the date of the covered event or $25,000.

Important additional information about accounts that are enrolled in the Plan.

The Plan is not insurance. Benefits under the Plan may be taxable. Consult your tax advisor.

E10252

MBNA CREDIT PROTECTION TERMS AND CONDITIONS

IF YOU PURCHASE OR HAVE PURCHASED MBNA AMERICA'S CREDIT PROTECTION PLAN, THESE TERMS AND CONDITIONS ARE A PART OF THE MBNA AMERICA AGREEMENT ("AGREEMENT") GOVERNING THE ACCOUNT. THESE TERMS AND CONDITIONS REPLACE ALL STATEMENTS, IF ANY, IN THE ACCOUNT AGREEMENT PERTAINING TO CREDIT INSURANCE.

THE BENEFITS OF THIS PRODUCT ARE SUBJECT TO MATERIAL LIMITATIONS, INCLUDING ELIGIBILITY, BENEFIT RESTRICTIONS AND EXCLUSIONS. THESE LIMITATIONS ARE DESCRIBED IN THE FOLLOWING TERMS AND CONDITIONS, SO PLEASE READ THEM CAREFULLY BEFORE DECIDING TO PURCHASE OR KEEP THIS PRODUCT. THIS IS AN OPTIONAL ACCOUNT BENEFIT; YOU SHOULD CONSIDER WHETHER YOU HAVE OR CAN OBTAIN SIMILAR COVERAGE ELSEWHERE.

THERE IS NO OBLIGATION TO PAY PLAN FEES IF ENROLLMENT IN THE PLAN IS CANCELLED WITHIN 30 DAYS AFTER ENROLLMENT.

Benefits under the Plan begin immediately after enrollment once the Covered Person meets the eligibility criteria for the specific Covered Occurrence, as discussed in further detail below.

THE PLAN FEE IS ASSESSED MONTHLY STARTING IMMEDIATELY AFTER ENROLLMENT. IF THE ENROLLED ACCOUNT IS A GOLD OPTION LINE OF CREDIT, THE ADDITION OF MONTHLY PLAN FEES TO YOUR ACCOUNT BALANCE MAY SIGNIFICANTLY EXTEND THE REPAYMENT PERIOD OF YOUR ACCOUNT. ENROLLMENT IN THE PLAN WILL BE AUTOMATICALLY SUSPENDED IF YOUR ACCOUNT IS PAST DUE AS DESCRIBED BELOW.

Credit Protection
The Credit Protection plan (the "Plan") is an optional account benefit that may provide a Monthly Payment Benefit to an account enrolled in the Plan ("Enrolled Account") in the event of the Covered Person's Involuntary Unemployment, Hospitalization, Total Disability, employer-approved unpaid Family Leave of Absence, or a Total Debt Benefit in the event of the Covered Person's Accidental Death. Events that may result in a Monthly Payment Benefit or a Total Debt Benefit are called "Covered Occurrences". For Family Leave of Absence, a Monthly Payment Benefit is available to a co-applicant on the Enrolled Account (as shown in our records) who meets the eligibility criteria described in these Terms and Conditions.

Monthly Payment Benefit. The Monthly Payment Benefit, under certain conditions and subject to certain limitations, will cancel each Current Payment as shown on the monthly billing statement for the Enrolled Account during the Benefit Activation Period. The Current Payment will be cancelled as of its Payment Due Date. This benefit is provided in the event of a Covered Occurrence, excluding Accidental Death.

Even if a Covered Person experiences more than one Covered Occurrence at the same time, or for Family Leave of Absence ("FLA"), if the Covered Person or a co-applicant are eligible for FLA benefits, only one Monthly Payment Benefit will be granted each billing cycle.

UPON APPROVAL OF A BENEFIT ACTIVATION PERIOD, THE MONTHLY PLAN FEE IS WAIVED AND CHARGING PRIVILEGES ON THE ENROLLED ACCOUNT ARE TEMPORARILY SUSPENDED.

Certain recurring charges and small dollar purchases that do not require authorization may continue to post to the Enrolled Account. During the Benefit Activation Period, finance charges continue to accrue; as a result, canceling the Current Payment means that the balance on the Enrolled Account at the end of the Benefit Activation Period may be approximately equal to the balance at the beginning of the Benefit Activation Period. When a Benefit Activation Period ends, charging privileges (if applicable) are restored and the Plan Fee is again assessed on the Enrolled Account.

Total Debt Benefit. The Total Debt Benefit, under certain conditions and subject to certain limitations, will cancel the entire amount owed on the Enrolled Account (up to a maximum of $25,000). This benefit is provided if the Covered Person suffers an Accidental Death.

Optional Protection/Right to Cancel the Plan
An account does not have to be enrolled in the Plan. The Plan is a completely optional account benefit. If you choose to enroll, the Plan Fee is billed to the Enrolled Account. The Covered Person has 30 days from enrollment to notify the Plan Administrator to cancel the Plan without obligation. If notice is received during these 30 days, any Plan Fees billed to the Enrolled Account will be credited.

Frequently Used Terms
Benefit Activation Period means the time period during which a Monthly Payment Benefit is in effect. The Benefit Activation Period begins on the first day of a Covered Occurrence for which a Monthly Payment Benefit is provided and ends when the Covered Occurrence ends or when the total benefit under the Plan has been exhausted.

Covered Person means the person who is named on the Plan enrollment materials. Only persons who are listed in our records as primary applicants and co-applicants ("Applicant") on the Enrolled Account may be Covered Persons.

The Covered Person on an Enrolled Account may be changed by contacting the Plan Administrator. The Covered Person may not be changed during a Benefit Activation Period.

Gainfully Employed means working for salary or wages for at least 30 hours per week in employment considered to be permanent, not self-employed and not an independent contractor. The Covered Person must be Gainfully Employed to be eligible for Involuntary Unemployment. The Covered Person or co-applicant must be Gainfully Employed to be eligible for Family Leave of Absence.

Hospital means a facility which is licensed and operated according to law for the care and treatment of injured and sick people.

Plan Administrator means American Bankers Management Company, Inc. The Plan Administrator manages all aspects of the Plan under guidelines provided by MBNA America. The Plan Administrator may be reached toll free at 1-877-406-3742 between the hours of 8 a.m. and 8 p.m. (Eastern Time) Monday through Friday.

For mail, the address is:
American Bankers Management Company, Inc.
Benefit Activation Dept.
P. O. Box 105815
Atlanta, GA 30348

Pre-existing Condition means a condition for which the Covered Person received medical diagnosis or treatment during the six months immediately preceding the date of Plan enrollment.

Determination of Past Due Payments
If a Current Payment is not received by its Payment Due Date, then an account is one payment past due. If that past due amount is not received by the Payment Due Date of the third successive billing cycle, then an account is four payments past due.

Account Eligibility for Enrollment
An account is not eligible to be enrolled in the Plan and a request to be enrolled will be declined when an account is four payments past due.

Covered Person Eligibility
To be eligible for Plan benefits, the Covered Person must have been enrolled in the Plan at the time of the Covered Occurrence and must satisfy all eligibility criteria, for the specific Covered Occurrence, as detailed herein. Reasonable verification of eligibility may be required at any time as determined by the Plan Administrator. A Plan benefit may be denied if reasonable verification is requested and not received.

Description of Monthly Payment Benefits
Amount of Benefit. Each Current Payment on the Enrolled Account that becomes due during a Benefit Activation Period will be cancelled (considered paid). The limit on the total number of payments cancelled for any one Benefit Activation Period is 24 monthly Current Payments (3 monthly Current Payments for FLA) as shown on the corresponding monthly billing statements. The sum of the cancelled payments cannot exceed the lesser of:

- $25,000, or
- the total amount owed on the Enrolled account as the date of the Covered Occurrence, including all debits and credits with a transaction date through the date of the Covered Occurrence.

Covered Occurrences for Monthly Payment Benefits
Involuntary Unemployment means that the Covered Person suffers an involuntary loss of employment income caused exclusively by:

- layoff;
- termination;
- general strike;
- unionized labor dispute; or,
- lockout.

Eligibility. To be eligible for Involuntary Unemployment benefits, the Covered Person must have been Gainfully Employed for the 30 consecutive days immediately preceding the Involuntary Unemployment. The Involuntary Unemployment must continue for at least 30 consecutive days. The Benefit Period will begin on the 31st consecutive day of Involuntary Unemployment if all other conditions have been met. The Covered Person must also qualify for state unemployment benefits, register to work with a recognized employment agency, and remain so registered during the Benefit Activation Period.
Exclusions. This benefit is not available if Involuntary Unemployment is caused by:

- voluntary loss of employment income;
- resignation or retirement;
- disability caused by accident, sickness, disease or normal pregnancy or childbirth; or,
- termination resulting from willful or criminal misconduct.

Hospitalization or Hospitalized means that the Covered Person is confined in a Hospital as a registered bed patient.
Eligibility. To be eligible for Hospitalization benefits, the Covered Person must be hospitalized for at least two consecutive nights in a Hospital.
Exclusions. This benefit is not available if Hospitalization is caused by:

- a self inflicted injury;
- normal pregnancy or childbirth; or,
- a Pre-existing Condition.

Total Disability means that the Covered Person is unable to perform the material and substantial duties of their normal occupation as a result of injury or sickness.
Eligibility. To be eligible for the Total Disability benefit, the Covered Person must be diagnosed by a physician or other competent licensed professional as totally disabled, and be under the continuous care of a physician. The Total Disability must continue for at least 30 consecutive days. The Benefit Activation Period will begin on the 31st consecutive day of the Total Disability if all other conditions have been met.
Exclusions. This benefit is not available if Total Disability results from:

- a self inflicted injury;
- normal pregnancy or childbirth; or,
- a Pre-existing Condition.

Family Leave of Absence (FLA) means the Covered Person, or for this benefit only, a co-applicant on the Enrolled Account who takes an employer- approved unpaid leave of absence from their employment while:

- caring for their newborn child;
- caring for a child immediately after adoption;
- caring for their incapacitated spouse, child or parent;
- on active military duty as a result of mandatory recall;
- on jury duty; or,
- their principal residence is in a federally declared disaster area.

Eligibility. To be eligible for FLA benefits, the Covered Person or a co-applicant on the Enrolled Account must have been Gainfully Employed for the 90 consecutive days immediately preceding the FLA and must be granted an unpaid leave of absence by the employer. The FLA must last for a minimum of 30 consecutive days. The Benefit Activation Period will begin on the 31st consecutive date of the employer-approved unpaid FLA if all other conditions have been met. Documentation from the employer must be provided to the Plan Administrator stating that an unpaid leave of absence has been granted, the basis for the request, and the projected absence dates.

Total Debt Benefit
The Total Debt Benefit is paid in the case of Accidental Death. Accidental Death means the Covered Person loses their life as a direct result of an accidental cause.

Eligibility. To be eligible for the Accidental Death benefit, a Covered Person's death must occur within 365 days (inclusive) of an accident. A certified copy of the death certificate must be provided to the Plan Administrator.
Exclusions. This benefit is not available if loss of life is caused by:

- suicide or intentionally self-inflicted injury;
- war or any act of war;
- sickness or treatment of that sickness;
- committing or attempting to commit a crime;
- being intoxicated or under the influence of any drug, unless taken as prescribed by a physician; or,
- flight in any type of aircraft, except as a fare-paying passenger on a regularly scheduled commercial flight.

Benefit. The total amount owed on the Enrolled Account on the date of the Covered Person's Accidental Death will be cancelled, up to a maximum of the lesser of:

- $25,000, or
- the total amount owed on the date of the Covered Occurrence, including all debits and credits with a transaction date through the date of the Covered Occurrence.

If more than the maximum covered amount is owed, the difference must still be repaid.

Requesting Benefits
To obtain a benefit under the Plan, the Plan Administrator must be notified. The Covered Person, or someone on their behalf, must notify the Plan Administrator either orally or in writing no later than 90 days after the date of a Covered Occurrence. Where a co-applicant is eligible for FLA benefits, the co-applicant must provide the notification. The minimum monthly payments on the Enrolled Account must continue to be made until notice is received from the Plan Administrator that benefits have been approved.

If a Current Payment is made that is later cancelled by the Plan when the Plan Administrator approves a benefit, the amount cancelled will be credited to the Enrolled Account.

Plan Fees
We determine the Plan Fee assessed each billing cycle by multiplying a monthly rate by the Plan balance for that billing cycle. The monthly rate is $0.85 per $100 (or 0.0085). The Plan balance is the greater of: (1) the New Balance Total less the Plan Fee billed in that billing cycle; or, (2) the total of the Balances Subject to Finance Charge with a maximum in either event of $25,000. The Plan Fee will be shown on the Enrolled Account's monthly billing statement and added to the balance each month. For Gold Option lines of credit, we may offer the Plan with the Plan Fee included as part of the Current Payment. This means the Current Payment will increase by the amount of the Plan Fee. The Plan Fee is billed as a Purchase or Other Charge on the Enrolled Account. Rates are subject to change. Thirty days advance written notice will be provided for Plan Fee rate changes.

Voluntary Cancellation
Either MBNA America or the Covered Person may cancel the Plan for an Enrolled Account. The Covered Person may cancel at any time by providing written notice to the Plan Administrator. The address, toll free telephone number and hours of operation are listed under the Plan Administrator in the Frequently Used Terms Section. The monthly Plan Fee will be discontinued in the billing cycle in which notice is received. If the Enrolled Account is closed for any reason and has no balance, the Plan will also cancel. If MBNA America cancels the program for all Covered Persons, 30 days advance written notice will be provided. If an Enrolled Account is in a Benefit Activation Period at the time of Plan cancellation by MBNA America, the Current Payment will continue to be cancelled each billing cycle until the current Benefit Activation Period ends or the total benefit under the Plan has been exhausted.

Cancellation for Cause
The Plan will automatically cancel if any Applicant on an Enrolled Account files for bankruptcy . MBNA America will also cancel the Plan on an Enrolled Account for any of the following reasons:

- fraud or attempted fraud by an Applicant relating to Plan benefits;
- death of the Covered Person (although the Accidental Death benefit, if any, will be paid first); or
- the Covered Person is no longer an Applicant on the Enrolled Account.

Upon cancellation no further Plan Fee will be charged to the account. Covered Occurrences that occur after cancellation are not eligible for benefits.

Suspension of Enrolled Status During Payment Default
The enrolled status of the account will be suspended when an account is four payments past due. Covered Occurrences that occur while the Plan is suspended are not eligible for benefits, and the Plan Fee will not be assessed on the account.

Reinstatement. The Plan will be automatically reinstated once the account is less than four payments past due. The account will be reinstated as an Enrolled Account effective on the first day after the close of the billing cycle in which the payment was received that satisfied the reinstatement criteria.

General
Enrolling in the Plan is not a condition of obtaining credit. A Covered Person may not assign their rights under these Terms and Conditions. A waiver of one or more Plan requirements by MBNA America or the Plan Administrator will not constitute a waiver of any other Plan requirements. MBNA America may modify this Plan without notice if such modification is without charge and favorable to the Covered Person. Thirty days advance notice shall be provided for all other modifications. Other Plan options may become available.

Benefits May Be Subject to Taxation
The Plan does not constitute insurance; this is a payment/debt cancellation product provided by MBNA America. Unlike insurance benefits, benefits under the Plan (i.e., the amounts cancelled) may be subject to taxation. Consult your tax advisor.

Arbitration
If claims under the Agreement governing this MBNA America account are subject to an arbitration clause, that clause applies to any claims regarding the Plan.

Rev. 03/12/03

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 3

March 10, 1964 Letter from Comptroller of the Currency on DCCs

COMPTROLLER OF THE CURRENCY — UNITED STATES TREASURY
Washington, D. C. 20220

March 10, 1964

COPY OF A LETTER ADDRESSED TO THE
PRESIDENT OF A NATIONAL BANK

Reference is made to your letter of January 21, 1964, concerning debt cancellation contracts. Your inquiry is prompted by a discussion of this subject on page 264 of the December 1963 issue of The National Banking Review.

You are correct in your assumption that this ruling means that a National Bank may make additional charges to borrowers for the purpose of creating a fund out of which the balance due on a loan would be paid in the event the borrower died. The following is in reply to your specific questions:

1. Can the additional charge be made only on selected customers?

The bank may, in its discretion, determine whether to adopt standards such as age and health of the borrower, in making debt cancellation contracts available to its customers.

2. Does the debt cancellation contract referred to mean that the debt will automatically be cancelled in the event of the borrowers death?

Yes. The debt cancellation contract is understood to mean the bank's agreement to waive its claim or right to the unpaid balance of the loan at the death of the borrower.

3. Can a provision be inserted in the contract to the effect that the borrower must be in sound health when the contract is made?

The bank in its discretion may require the borrower to certify that to his best knowledge he is free from certain specified health hazards.

4. Do all charges go into reserve or is the reserve determined on an actuarial basis?

Charges should be placed in reserves to the extent necessary to protect the bank against loss incurred in connection with debt cancellation contracts. Such reserves may be determined by the use of accepted and reliable methods, including the use of an actuarial basis.

5. Can the charges collected and credited to the reserves be excluded from income until such time as taken out of the reserve?

The bank may exclude from income those charges collected and credited to reserves but which have not been taken out of reserves. However, upon the adoption of such practice, accounting recognition must be given to the requirements of the Internal Revenue Code of 1954 and regulations promulgated thereunder relating to the extent to which loss reserves are not subject to income tax.

6. Is there a limit to the amount of the reserve?

The reserve should be limited only after it affords adequate protection to the bank from actual and anticipated losses from debt cancellation contracts.

7. Will this type of contract be considered as engaging in the life insurance business?

The use of debt cancellation contracts, the imposition of an additional charge, and the establishment of reserves as protection against losses arising out of such contracts is a lawful exercise of the powers of a National Bank. The exercise of such powers is necessary to and is a part of the business of banking. Such activities may not therefore, properly be considered as engaging in the life insurance business.

Sincerely,

/s/ James J. Saxon
Comptroller of the Currency

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 4

1964 NAIC Resolution on DCCs

Hon. Richard G. Hershey, Chm., Ill.; Hon. Stafford R. Grady, Calif.; Hon. Robert A. Short, Del.; Hon. Henry Root Stern, Jr., N. Y.; Hon. Walter G. Korlann, Ore.; Hon. Ned Price, Texas; Hon. Charles L. Manson, Wis.

RESOLUTION

WHEREAS, The Comptroller of the Currency of the United States has ruled that:

> "The use of debt cancellation contracts, the imposition of an additional charge, and the establishment of reserves as protection against losses arising out of such contracts is a lawful exercise of the powers of a National Bank. The exercise of such powers is necessary to and is a part of the business of banking. Such activities may not, therefore, properly be considered as engaging in the life insurance business.", and

WHEREAS, Such ruling suggests that national banks may engage in the business of insurance without complying with applicable state insurance laws and regulations, and

WHEREAS, The public would thereby be deprived of the protection of such state laws and regulations with respect to credit life insurance, and

WHEREAS, The Attorney-General of several states have concluded that such activities by a national bank would constitute the doing of an insurance business in violation of the applicable insurance laws and regulations of their states and would conflict with the following provisions of Public Law 15:

> "(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation of taxation of such business.
>
> "(b) No act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such act specifically relates to the business of insurance . . . " and;

NOW, THEREFORE, BE IT RESOLVED, that:

1. The National Association of Insurance Commissioners direct the Federal Liaison Committee to confer with the Comptroller of the Currency concerning his letter rulings and to indicate its opposition thereto as said letter rulings would purport to authorize a national bank to engage in the business of insurance with-

out complying with the insurance law and regulations of the state in which it is located.

2. Each commissioner determine whether the Comptroller's letter rulings conflict with the insurance laws and regulations of his state, and, if so, advise the Comptroller and the National Banks within his state to that effect and, further, to take such other action as he deems appropriate in the circumstances.

FEDERAL LIAISON COMMITTEE

Walter G. Korlann
Joe B. Hunt by W. G. Fisher
Acting Commissioner

MEMORANDUM

AUTHORITY OF NATIONAL BANKS TO PROVIDE DEBT CANCELLATION CONTRACTS ON SELF-INSURED BASIS

The Comptroller of Currency has recently ruled that national banks may themselves directly provide to their borrowers "debt cancellation contracts" which we believe amount to credit life insurance. The Comptroller has taken the position that this activity in connection with installment loans and other related financial transactions is necessary to and a part of the banking business and cannot be considered as engaging in the life insurance business. A copy of his letter of March 10 to this effect to the president of a national bank is attached.

The purpose of this memorandum is to discuss the legal issues involved in the ruling. An analysis of the problem breaks down into two main questions: (1) Under their enabling statutes, are national banks restricted from conducting this type of activity? (2) If not, to what extent would state insurance laws and regulations be applicable? Underlying both of these issues is the more basic question whether this is insurance with which we are dealing. More precisely, would a bank which makes agreements to cancel debts if its borrowers die be construed to be engaged in the business of insurance? Comptroller Saxon has said no. As will be explained, his position on this point appears to be clearly contrary to the law.

Authority of National Banks to Provide Debt Cancellation Contracts

The powers of a national bank are derived solely from federal statutes. They have no authority other than powers expressly granted and such incidental powers as are necessary to carry into effect those express powers. Logan County National Bank v. Townsend, 139 U.S. 67 (1891). See also 10 American Jurisprudence 2d., pps. 241-243, §271 and cases cited therein. Since there is no express authority for banks to provide this type of service, the question is whether authority would be implied as an incidental power?

The pertinent provision of the National Bank Act, the enabling act for national banks, states that such banks have power to "exercise . . . all such incidental powers as shall be necessary to carry on the business of banking" including, among other things, "loaning money on personal security". 12 U.S.C. §24. There is also provision in section 92, that will be discussed later, which authorizes national banks in small communities to act as insurance agents and brokers.

In general, the incidental powers which are authorized have been interpreted under the cases as being those which can reasonably be said to be necessary to serve or preserve the banking business. Broadly speaking, if the activity falls into the category of an independent business enterprise, it would not be construed to be necessary to carry on the business of banking. But if its primary purpose is to furnish a service necessary to the carrying out of one of its express powers — in this case the collection and security of debts — then the activity would be deemed to be an appropriate incident to that power.

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To illustrate, in Atherton v. Anderson, 86 F(2d) 518, 525 (C.C.A. 6, 1936), the principle was stated as follows:

> "The controlling principle seems to us to be that while the bank has no power, either express or implied, to enter upon an original speculative enterprise, yet as an incident to its express powers the bank has a right to acquire property, to put it in condition for resale, and where such property is a manufacturing establishment whose value depends substantially upon uninterrupted operation, we think implied power exists to continue such operation for a time providing the primary purpose of the bank is to save its debt rather than to speculate in future profits, and there is reasonable prospect of realization."

Similarly, in Roebling v. First National Bank, 30 Fed. 744, 746 (D.C.W. Va., 1887), where a bank that had purchased land at a foreclosure sale was authorized to cut and sell timber, the court said:

> "No one will question the right of a bank to lend its money in the manner authorized by its charter; as a consequence it must have the power to collect it, and, as incident to the exercise of such power, the right to secure and save the debt."

And in Stark v. Brannon, 82 F. Supp. 614, 618 (D.C. Dist. Col., 1949), the term "incidental powers" was defined as follows:

> "The word 'incidental' means minor, auxiliary or subordinate to a principal or primary subject. A thing incidental to an express provision is dependent or ancillary to it. The term does not comprehend something additional to and independent of the principal subject matter. It relates solely to matters of a subordinate nature inherently forming a part and parcel of the main topic."

In view of the wide latitude given national banks to facilitate the collection of secured loans after default, it is quite logical that they also be given rather liberal authority to protect themselves with respect to unsecured loans, including such steps as requiring that the borrower be insured so that the balance of the indebtedness would be paid in the event he died. However, it does not follow that such banks are authorized to provide this type of protection directly on a self-insured basis. The fact that credit life insurance is readily available from so many insurance companies and has been so widely utilized by banks makes it unlikely that a court would decide it is necessary for national banks to self-insure through the device of so-called "debt-cancellation contracts" in order to carry on their banking business. It is one thing for a bank to see to it that credit life insurance on its debtors is provided by insurance companies, but it is quite a different matter for a bank to engage in providing such protection itself. This has always heretofore been considered to be and is an entirely different business.

An analogy might be made to fire and property insurance coverage in connection with secured loans. For example, a bank customarily requires fire insurance in connection with mortgage loans, with the policy assigned to the mortgagee to the extent of its interest in the property. This does not mean that a bank would be authorized to engage in the fire insurance business to the extent of self-insuring such coverage. The same applies with respect to collision, fire, theft and comprehensive insurance on automobile loans.

What is Insurance

It might be helpful to analyze briefly what is generally considered to be insurance. Insurance is, first of all, an agreement by which a risk is shifted from one person to another — a risk which is insurable, because it is capable of being measured or expressed in money or other material terms and because the probability of its occurrence can be reliably estimated: Helvering v. Le Gierse, 312 U.S. 531 (1941); Keller v. Commissioner of Int. Rev., 312 U.S. 543 (1941); see also Vance, Insurance (3rd ed. 1951) p. 2.

But insurance is more than a risk-shifting agreement. It is also a plan or scheme by which many individual risk-shifting agreements are brought together in such a way that the risks involved are not merely shifted but also distributed in a financial sense among a group of persons subject to similar risks. The risks are distributed by means of financial contributions paid into a common fund by the

persons subject to the risk in amounts proportional to the risks insured, and the fund is then used to indemnify those who suffer losses of the kinds insured against. Vance, op. cit. supra, p. 2.

Risk-shifting and risk-distribution, then, are the essence of insurance as an economic concept, and they are reflected in the legal concept of insurance as defined in the state insurance laws. These laws require that an activity to be subject to regulation as insurance meet two requirements: (1) it must involve an "insurance contract"; and (2) it must be "doing an insurance business" or "transacting insurance". Thus the code definitions of "insurance" or "insurance contract" define it as a risk-shifting or indemnity agreement. The Massachusetts definition is typical:

> "A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do an act valuable to the insured, upon the destruction, loss or injury of something in which the other party has an interest." Mass. G. L., Ch. 175 §2.

Some codes have more elaborate definitions whose essence, however, is the same. For example, the New York Insurance Law defines "insurance contract" as:

> " . . . any agreement or other transaction whereby one party, herein called the insurer, is obligated to confer benefit of pecuniary value upon another party, herein called the insured or the beneficiary, dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event. A fortuitous event is any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party." N.Y. Ins. Law, §41(1).

Generally speaking, in order to constitute insurance as defined in the insurance laws, the main purpose of the activity in question must be the shifting and distribution of mortality risks. These elements clearly are present in the "debt cancellation contracts" here under discussion. The cases that have been decided on this subject bear out this conclusion.

Debt Cancellation Contracts Constitute The Business of Insurance

Under the cases, debt cancellation agreements have been consistently held to constitute insurance contracts. While the decisions have not involved banks, nevertheless the principles established are as applicable to banks as to other lenders. The leading case is Attorney General v. C. E. Osgood Co., 144 N.E. 371, 372 (Mass. 1924). There it was held that an undertaking on the part of one selling merchandise on the installment plan to cancel the debt in case the buyer died before its satisfaction was insurance within the meaning of the state insurance code which prohibited the making of insurance contracts except as authorized thereunder. The court stated:

> "This constitutes insurance within the meaning of the statutory definition. The cancellation of the debt is the equivalent of the payment of money to the estate of the customer. The transfer of title to the personal property delivered on lease is a right valuable to the customer. The cancellation of the debt and the transfer of title to the personal property spring out of the agreement and are in performance of its terms. The customer pays to the defendant the consideration for the doing of these things in the money handed to it as deposit and as the partial payments made from time to time. The cancellation of the debt and the transfer of the title to the personal property occur upon the death of the customer. That loss of his life is plainly something in which the customer has an interest. Every element of the statutory definition of insurance is present.
>
> Whether this clause in the contracts of the defendant is ancillary to its chief business or is mainly for advertising ends is not relevant in view of the absolute prohibition in G. L., c. 175, §3, against the making of contracts for insurance except by companies and in the manner authorized by law. This prohibition is sweeping. It is not subject to exceptions. It is conceded that the defendant is not authorized to make contracts of insurance. Therefore it has violated the statute."

Upon a like principle, loan contracts providing for cancellation of notes for money loaned in event of the borrower's death were held to be contracts of life insurance and consequently invalid because the lender was not authorized to conduct an insurance business under the insurance laws: Ware v. Heath, (Tex. Civ. App.) 237 S.W. (2d) 362 (1951). See discussion of other cases to the same effect in 85 ALR 1039, supplemented at 100 ALR 1454. See also 29 American Jurisprudence, 438, §0.

A number of State Attorney General opinions also support this conclusion. See Georgia A. G. Opinion, dated October 13, 1954, 1954 Week. Und. Serv. Ga. 8; Florida A. G. Opinion # 054-169 of July 14, 1954, 1954 Week. Und. Serv. Fla. 30; Ohio A. G. Opinions for 1928, Vol. I, p. 424, No. 1722; Ohio A. G. Opinion of Nov. 23, 1945, 1945 Week. Und. Serv., Ohio 44.

The Specific Authorization to Act as Insurance Agent Implies Exclusion of Any Other Insurance Power

The only reference to insurance in the federal statutes relating to national banks is in 12 U.S.C. §92. Therein national banks in communities where the population does not exceed 5,000 inhabitants are specifically authorized to act as insurance agents and brokers. Manifestly, the power to act as an agent is quite different from and of far less magnitude than the power to engage in the insurance business. It is significant that at the time this provision was enacted it was recognized that specific statutory authority was necessary to permit national banks to act even in this limited area of insurance. Such specific and restricted grant of authority pertaining to the business of insurance would certainly imply that no other insurance activities may be pursued.

The narrowly circumscribed scope of this statutory power is illustrated in Washington Agency v. Forbes, 13 N.W. (2d) 121, 122 (1944). There the state insurance commissioner's revocation of a license of a Michigan corporation to conduct an insurance agency was upheld on the grounds that the corporation was controlled by a national bank, which in turn was prohibited under federal law from securing such license in communities of over 5,000 people. The court stated:

> "The policy of government respecting such matters as intimate relationships between banks and insurance agencies is for the most part set forth in legislation and executive actions. Congress views with none too great favor a national bank acting as insurance agent, forbidding it in places of 5,000 or more population."

Even If National Banks Could Be Said to Have Authority to Engage in the Insurance Business, State Insurance Laws Would be Applicable

Even if national banks were not restricted under their enabling statutes from engaging in the credit insurance business so far as insuring their debtors is concerned, the provisions of the state insurance laws and state insurance regulations dealing with credit life insurance would be applicable to such banks as engaged in this activity.

There are many cases discussing the question of the application of state regulatory statutes to the activities of national banks. A recent annotation analyzing a number of these cases is contained in 98 Lawyers Edition, pages 775-784 (1953).

The doctrine is well established that national banks, as instrumentalities of the federal government, are necessarily subject to the paramount authority of the United States and a state may not interfere with the performance of their primary functions. But as stated in the above-mentioned annotation, not all regulation of such banks by the state in which they are situated is prohibited. The doctrine of non-interference by a state with the operations of a national bank will only afford protection from such legislation as tends to impair the bank's utility and efficiency in the discharge of its duties as a banking agency of the federal government. Conversely, those laws and regulations which do not obstruct the functioning of the banking operation will apply. In fact, in the day to day conduct of their business, national banks are governed far more by state laws than by federal law. For example, note state laws governing their activities as trustees or in other fiduciary capacities.

In applying these general rules to a series of laws as complex as those contained in most state insurance codes, it would be difficult to predict just where the line would be drawn in deciding which of the provisions might be held to constitute an unreasonable interference with the operation of a national bank, and which would not. For example, provisions which give the insurance commissioner the right to go into

national banks and conduct examinations might be held inapplicable. Also, provisions dealing with the organization of an insurer, its investments, capital requirements and the like seem somewhat inappropriate as applied to banks.

On the other hand, recognizing the underlying purpose of state regulation over credit insurance, there is good reason for applying laws that have particular application to this coverage, such as the NAIC Model Credit Insurance Regulatory Law and the underwriting requirements and standard policy provisions pertaining to credit insurance.

The McCarran Act affords additional authority in supporting the application of state insurance laws to national banks. It provides:

> (a) "The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> (b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance. . . . unless such Act specifically relates to the business of insurance . . . " (15 U.S.C. 1012)

In thus providing that the business of insurance shall be regulated by the states unless Congress specifically makes a declaration to the contrary (which it has not done), it would seem clearly established that state law should and would control the insurance activities of national banks.

Therefore, unless it appears that some particular requirement of the insurance code would demonstrably impair a national bank's ability in discharging its duties as a banking agency, the law is clearly on the side of holding state insurance law and regulations applicable to national banks.

Charles K. Peters

Assistant General Counsel
Life Insurance Association of America

June 1, 1964

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 5

1992 OCC Letter to NAIC on DCC

ATTACHMENT TEN-C4

Comptroller of the Currency
Administrator of National Banks
Washington, D.C. 20219
Office of the Chief National Bank Examiner
(202) 874-5170

August 24, 1992

Director Lewis Melahn, Chair
(EX) Committee on Credit Insurance
Director, Missouri Division of Insurance
National Association of Insurance Commissioners
120 West 12th Street, Suite 1100
Kansas City, Missouri 64105-1925

Dear Director Melahn:

Your letter to Acting Comptroller Stephen R. Steinbrink was forwarded to my office for reply. In your letter, dated Aug. 6, 1992, you requested a written summary of the position of the Office of the Comptroller of the Currency (OCC) with respect to debt cancellation contracts.

The OCC recently reaffirmed its interpretive ruling on debt cancellation contracts (12 C.F.R. 7.7495) by filing a friend of the court brief in the matter of *First National Bank of Eastern Arkansas vs. Taylor*, 907 F2d 775 (8th Circuit 1990), cert. denied 111 S.Ct. 442 (1991). We believe that offering debt cancellation contracts is a service incidental to banking and, therefore, is a permissible activity for national banks. We are in the process of reviewing various legal and supervisory issues related to this activity and may provide national banks with additional guidance in the future.

We appreciate your offer to meet with the credit committee of your organization to discuss matters relating to debt cancellation contracts. However, it would be premature to schedule such a meeting at this time. Please consider extending your invitation again once the OCC has formulated supervisory policy for this banking activity.

Sincerely,
Donald G. Coonley
Chief National Bank Examiner

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ATTACHMENT TEN-C5

(EX) Committee on Credit Insurance
San Francisco, California
August 14, 1992

The (EX) Committee on Credit Insurance met in San Francisco, Calif., at 1:15 p.m. on Aug. 14, 1992. A quorum was present and Lewis Melahn (Mo.) chaired the meeting. The following committee members or their representatives were present: John Garamendi (Calif.); Tom Gallagher (Fla.); Tim Ryles (Ga.); Linda Takayama (Hawaii); Stephen F. Selcke (Ill.); David J. Dykhouse (Mich.); Terry Rankin (Nev.); Salvatore R. Curiale (N.Y.); Harold C. Yancey (Utah); and Jeffrey Johnson (Vt.).

1. Consideration of the Myriad of Other Credit Insurance Coverages

Director Lewis Melahn (Mo.) called on Commissioner Harold C. Yancey (Utah). Commissioner Yancey discussed the proliferation of coverages that Utah had noticed in the credit insurance market. He indicated that the Utah approach will be to consider these just like any other credit insurance programs except for credit property insurance and credit involuntary unemployment insurance. He indicated that he had received filings on limited credit hospitalization insurance, credit accidental death insurance, divorce insurance and various other types of credit insurance contracts. He was skeptical concerning the benefits provided and believed there was duplication of coverage provided by other credit insurance contracts. He expressed concern that by packaging the credit insurance coverages the insurers are making up for what they perceive as a rate shortfall due to operation of the *prima facie* rates on other lines of credit insurance. He expressed a desire to track the kinds of products being filed in the states and suggested that a limited survey over PROFS would be appropriate. He was particularly concerned with the limited credit hospitalization insurance, the limited credit accidental death and dismemberment programs and credit divorce insurance. Mike Madland (CUNA) indicated that all the coverages listed by Commissioner Yancey were of the accident and health type except for credit divorce which is casualty insurance. He indicated that the Commissioners could determine these coverages were unjust and prohibit their use. Brad Connor (Mo.) expressed his belief that the "credit other" category is in need of additional investigation. Director Melahn indicated that he would send a PROFS note inquiring how these are being handled in the various states.

2. NAIC Model Revisions

Mark Peavy (NAIC/SSO) reported on the inclusion of credit property and credit involuntary unemployment insurance in the Credit Insurance Models. He indicated that he had asked the advisory committee to provide a definition of the various property and casualty coverages. He noted that the states of Alaska and Missouri will work on a definition of credit property insurance and a definition of credit involuntary unemployment insurance to be included in the revised Credit Insurance Models. He indicated that Mr. Connor made a presentation to expand the models with appropriate "comprehensive" packages and that an outline was presented to the committee and the advisory committee.

3. NICO/CCIA Report

There was discussion by Mr. Peavy concerning the need for the committee to respond to the report. Jim Hunt (National Insurance Consumer Organization) indicated that he had compiled the data and commented on the report. Commissioner Yancey noted that the industry had responded to the report. William Burfeind (Consumer Credit Insurance Association) stated that a formal news release had been delivered. Mike Medland (CUNA) pointed out the exception in the report for credit union type programs such as that provided by his insurer, CUNA Mutual. Mr. Hunt indicated that he had used the NAIC data in compiling results. There was discussion by Mr. Burfeind of problems with the NAIC data. Mr. Peavy responded that the NAIC was doing the best it could to check the data as submitted by the credit insurers, however, most of the data problems could be attributed to credit insurers for submitting faulty data.

Commissioner Yancey indicated that the committee should leave it up to Director Melahn to respond and suggested a press release that outlined the works of the committee and the reform efforts made in the states. There was discussion by Meredith Brooks (Ga.) and Ken Sykes (Alaska) concerning the letter. Director Melahn indicated that he would draft a letter responding to the report. Mr. Burfeind suggested that there should be a loss ratio discussion in the response to the report. Mr. Hunt indicated that with respect to the NICO/CCIA news release that there was a possible article by Jane Bryant Quinn that might develop.

4. Update to the Advisory Committee

Mr. Peavy distributed an updated list of advisory committee members. Director Melahn discussed the NAIC advisory committee protocols and how advisory committees should operate and interact with the committee and the working groups. Bob Callahan (N.Y.) suggested that Mr. Hunt's affiliation with NICO be shown on the mailing list. Mr. Peavy indicated that this change would be made.

5. Debt Cancellation

Mark Peavy advised the committee that the information concerning debt cancellation provided by the advisory committee had been forwarded to the committee members. He also noted that a copy of the letter drafted by Director Melahn to the Acting Comptroller of the Currency had been sent and that the committee was awaiting response. He stated that he would forward the response to committee members when it had been received.

Director Melahn reported that the industry viewpoint on debt cancellation was well known and he noted that Arkansas had tried to regulate debt cancellation as insurance and lost its bid in the Eighth Circuit Court. Commissioner Yancey indicated that he was aware that debt cancellation contracts were marketed in Utah, however, he did not know how wide spread the coverage had been marketed.

Mr. Burfeind (CCIA) discussed the Arkansas situation and he indicated that the debt cancellation rate was typically the same as Arkansas' *prima facie* rates. He noted that the banks had been "pocketing" 30% and reserving approximately 70% of the monies collected. He believed the lending institutions hoped to move to invert that relationship so they would "pocket" 70% and reserve 30%. He did not believe that the banks were receiving a tax deduction on the reserves and urged the NAIC legal staff to become involved in the matter. He reported that he was aware of a major bank that was about to launch a debt cancellation contract. Mr. Burfeind believed that the banks may be forum shopping for another favorable Circuit Court decision. He expected the CCIA to revisit the issue with the NAIC. He felt the major interest by the banks in the debt cancellation was obviously a profit motive to the lenders. A secondary interest of the banks was to avoid the variations and multiplicity of credit insurance regulations and disclosure requirements in the various states. There was discussion by Mr. Burfeind and Mr. Hunt concerning the truth in lending disclosures.

Mr. Burfeind indicated that the NAIC has been on record since 1964 that debt cancellation contracts are insurance and urged that the issue be revisited. He noted that the same problems surface in debt cancellation contracts as in the regular credit insurance market. He expressed his belief that New York would be a good forum for a credit insurance decision concerning the debt cancellation contract. Bob Callahan (N.Y.) discussed a ruling on the National Bank decision on debt cancellation insurance and the New York Attorney General's opinion. Mr. Connor expressed his belief that there were no consumer protections available currently in the debt cancellation contracts. Mr. Burfeind agreed and indicated the banks were on their own, not only for consumer protection practices, but reserving requirements.

Ronald Markovits (Aon Corporation) indicated that there was no rate cap or regulation or specific fee and that any debt cancellation would be simply rolled into the interest rate charged by the lending institution. Mr. Hunt expressed his belief that the lending institutions may take advantage of the truth in lending exemption relative to debt cancellation. Mr. Burfeind stated that the issues were more fundamental than that. He urged the NAIC to determine whether or not debt cancellation contracts are insurance. Mr. Connor indicated that there is no regulation to prevent unfair rate discrimination in debt cancellation contracts. Mr. Callahan discussed the situation where a bank might have two different interest rates even though they have no identifiable insurance charge and expressed his belief that the New York Department would find that to be a premium charge.

Mr. Burfeind stated that the CCIA had intended to alert the NAIC membership and provoke an active interest on the part of the NAIC in debt cancellation contracts. This would allow each insurance regulator to address debt cancellation contracts when identified in the given jurisdiction.

Director Melahn questioned, from a legal vantage point, whether there was any transfer of risk and noted that in any case there was no regulation and no consumer protection. Amy Johnson (Public Insurance Counsel, Texas) expressed her belief that the truth in lending would require disclosure plus inclusion in the annual interest rate. There was discussion by Ms. Johnson and Mr. Burfeind concerning a situation in Texas where a mortgage insurer was seeking reimbursement from the debtor after paying the bank and indication that the bank was held to be an insured in that situation.

Tim Wagner (Peterson & Ross) indicated that the typical debt cancellation scheme calls for contractual liability policy running to the insurer to reduce the risk to the lending institution. Director Melahn stated that the charge for debt cancellations could all go to commission with no consumer protection, no loss ratio regulation, no *prima facie* rates and no commission caps. Mr. Burfeind indicated that the CCIA would like the NAIC to review its policy and provide *amicus* briefs where appropriate in the debt cancellation issues.

Commissioner Yancey expressed his belief that the committee should advise the officers of the NAIC of the upcoming problems in this area. Director Melahn indicated that he didn't know if the NAIC needed to take a position but he did express the need to advise the officers of the NAIC of the occurrence. Commissioner Yancey then asked the NAIC staff to review the history of the NAIC position on debt cancellation. Director Melahn asked insurance regulators to talk to their counterparts in the banking regulatory community. He noted that if bank regulators aren't regulating the contract, no protection is being offered to consumers at all. He felt this would make debt cancellation contracts ripe for post-claims underwriting activity. Commissioner Elizabeth Costle (Vermont) noted that her department regulated both banking and insurance and pointed out that many of the banking examiners working in the Vermont Department had formerly been employed in the insurance department and, therefore, had an insurance financial background in addition to banking. Director Melahn expressed his belief that this probably was not the case in most banking departments. Mr. Burfeind indicated that if the national banks are allowed to get into debt cancellations, state banks will also want to get into them. Mr. Callahan discussed the whipsaw effect of the state versus national banking system. There was discussion by committee members of the effect federal regulation of insurance would have, much like the federal regulation of banking. Mr. Wagner indicated that it is only a small step away from providing similar coverages for property perils if the debt cancellation contracts are allowed to continue on credit life type coverages. Mr. Burfeind indicated that debt cancellation contracts are not prevalent in the marketplace at this point, but that it was his understanding that many banks were looking into the matter.

Mr. Hunt indicated that as a practical matter that it would be highly unlikely the banks would get involved in a disability type debt cancellation contract as they would not be anxious to be involved in the determination of disability. Mr. Burfeind discussed the possible position of the industry with third-party administrators and other type arrangements. Dennis Dimaggio (American Bankers Insurance Group) indicated that it was his belief that the lending institutions were trying to exclude the charges from the truth in lending disclosures. He noted that if they were successful in this regard that the debt cancellation contracts would become more prevalent in the marketplace.

Director Melahn indicated that, in accordance with Commissioner Yancey's desires, he would write a letter to the Executive Committee indicating that debt cancellation contracts were becoming an issue. He noted that he would draft a separate letter to each of the NAIC members on banking contracts in hopes of gathering information for further discussion at the meeting in Cincinnati. Mr. Callahan indicated it would be helpful to him to attach the prior 1964 resolution to the letter.

6. <u>Any Other Matters Brought Before the Committee</u>

Mr. Peavy reported on a follow-up from John Kerper (Tillinghast) who had done a report on credit insurance in the state of Tennessee. This had been the topic of discussion in committee meetings in the past. He noted that the report was a generalized summary of one state's credit life insurance rates. It had outlined a building block approach which shows rates which developed relatively low loss ratios. He noted there was no specific action needed today, but he invited the advisory committee to comment on the report. Commissioner Yancey questioned Mr. Peavy concerning who paid for Mr. Kerper's report. Mr. Peavy reported that he was not sure of the precise method of payment, but that the Tillinghast report had been delivered to a committee formed by statute in Tennessee that had been formed to study credit insurance rates. Mr. Callahan discussed the erroneous assumption contained in the report that a 40% commission level was an appropriate commission level. He urged that a new report be prepared assuming a 50% loss ratio in place of a 40% commission level. This could be accomplished by squeezing the commission level so that the 50% loss ratio could be developed. Mr. Hunt questioned if the Tennessee report proves that you can't write credit insurance in New York or Wisconsin.

Mr. Callahan indicated that Mr. Kerper and his report simply used a different interpretation of the phrase "relation to premiums charged" coming up with the conclusion that 40% would be an appropriate commission level. He noted that regulators generally attempt to minimize expenses when regulating credit insurance and that the State of New York is not willing to abandon the loss ratio as an approach. He indicated that it is possible to get a rate that is both self-supporting and provides adequate rates of returns to insurers. Mr. Burfeind indicated that the State of New York had various loss ratios based on the type of contract issued. Mr. Callahan indicated that the experience rating formula recognized expense elements and that the target loss ratio rate was still self-supporting. Director Melahn indicated to Mr. Medland that the advisory committee would look into the matter.

Mr. Connor indicated that there were other problems concerning rate level, including the relationship of monthly outstanding balance to single premium and the source of business in different loss ratios. Director Melahn indicated that there is a Pricing

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 6

1999 TDI Letter on GLBA and DCCs

Texas Department of Insurance
333 Guadalupe Street P. O. Box 149104 Austin, Texas 78714-9104
512/463-6169

May 18, 1999

Ernest E. Vargo
Baker & Hostetler, LLP
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485

Re: Debt Cancellation Agreements

Dear Mr. Vargo:

In your letter to Mary Keller dated March 15, 1999, you seek the Department's opinion regarding whether the issuance of debt cancellation agreements by a national or state bank or a federal credit union constitutes the business of insurance when an insurer reinsures the risk. For purposes of this letter a debt cancellation agreement (DCA) is defined as an agreement between a lender and a borrower wherein the lender for a separately stated consideration agrees to waive all or part of the debt upon the happening of a fortuitous event, such as death, disability or the destruction of the lender's collateral.

You suggest, citing among other authorities, the determination of the Comptroller of the Currency and the opinion in *First National Bank of Eastern Arkansas, N.A. v. Taylor*, 907 F.2d 775 (8th Cir.), *cert. denied*, 498 U.S. 972 (1990) that DCAs are within the scope of a lender's implied powers under the National Bank Act and should not be deemed to constitute the business of insurance nor subject the lender to *any* insurance regulation. The Department respectfully disagrees.[1]

[1] The fact that an authorized insurer, in this case Balboa, in effect acts as a reinsurer of a Bank's risk assumed under a DCA, is, in our judgment, not relevant or material to the question of whether bank-issued DCAs constitute the business of insurance within the meaning of McCarran-Ferguson or state law.

Although the Department concedes that state law is not controlling on the issue of whether an activity falls within the "business of insurance" as that term is used in the McCarran-Ferguson Act,[2] the Department nonetheless is bound by Texas jurisprudence until instructed otherwise by a court of competent jurisdiction. In this regard, Texas case law is quite clear that DCAs are contracts of insurance. *Ware v. Heath*, 237 S.W.2d 362, 364 (Tex. Civ. App.-Fort Worth 1951, *no writ*.) *See also*, *Ware v. Paxton*, 266 S.W.2d 218, 223 (Tex. Civ. App.-Eastland 1954, *writ ref'd n.r.e.*).

While in our judgment the opinions of the Comptroller of the Currency and the Eighth circuit are not binding on the Department, we also find neither the legal reasoning nor the public policy arguments underlying these opinions persuasive, let alone "compelling" as you suggest. The *Taylor* Court after determining that the National Bank Act authorizes national banks to offer debt cancellation agreements concluded that the Arkansas statutes at issue (which effectively prohibited banks from engaging in this activity) could not be saved from federal preemption by McCarran-Ferguson's anti-preemtion rule.

The Court set out two grounds in reaching this result. One was its determination that McCarran-Ferguson's reverse preemption rule did not encompass the National Bank Act, claiming *Prieno*[3] and *Royal Drug*[4] as support for this novel position. Alternatively, and applying McCarran-Ferguson, the Court found that DCAs were not "insurance" within the meaning of that statute's safe harbor provision. In this regard, while acknowledging that there may be some risk transfer involved in these contracts, it found that since solvency, "the primary and traditional concern behind state insurance

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[2] *SEC v. Variable Life Ins. Co.*, 359 U.S.65 (1959)
[3] *Union Labor Life Ins. Co. v. Piereno*, 458 U.S. 119 (1982)
[4] Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979)

regulation," was not implicated, the product was not insurance within the meaning of McCarran-Ferguson. *Taylor, supra* at page 5. Solvency was not a concern, the court reasoned, since when the fortuitous event occurs a lender, rather than paying out a sum, simply extinguishes the debt.[5]

In our judgment, the Supreme Court's decision in *Barnett Bank*[6], decided some six years after *Taylor*, effectively overruled the first prong of the *Taylor* holding. In *Barnett*, the Court resolved a clash between a state insurance law and Section 92 of the National Bank Act. Rather than follow the reasoning in *Taylor*, the Court in *Barnett* examined the provisions of the statutes at issue and determined that McCarran-Ferguson's reverse-preemption rule did not apply because Section 92 "specifically related to the business of insurance." If the *Taylor* Court's holding that the National Bank Act is not subject to McCarran-Ferguson were correct, the Supreme Court would not have needed to undertake this analysis. It could have simply held, as *Taylor* did, that all activities of national banks are beyond state interference. The Court did not follow this path; instead it analyzed the conflicting statutes in terms of the McCarran-Ferguson Act.[7]

The second prong of the *Taylor* holding, that DCA's are not insurance within the meaning of McCarran-Ferguson's safe harbor because solvency is not implicated, is equally suspect in light of the Supreme Court's subsequent decision in *United States Dept. of the Treasury v. Fabe*.[8] In *Fabe* the Supreme Court

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[5] The Fort Worth Court of Appeals expressly rejected this analytical approach in *Ware* citing Couch as authority for the proposition that: "Nor is it essential that loss, damage, or expense indemnified against necessarily be paid to the contractee. It may constitute insurance if it be for his benefit and a contract on which he, in case of a breach thereof, may assert a cause of action." *Ware, supra* at page 2.

[6] *Barnett Bank of Marion County, N.A. v. Nelson*, 116 S. Ct. 1103 (1996)

[7] The seventh Circuit reached the same result when it observed that the National Bank Act "posses no unique immunity from the McCarran-Ferguson Act." *American Deposit Corp. v. Schacht*, 84 F.3d 834 (7th Cir.), cert. denied, 117 S. Ct. 185 (1996).

[8] 508 U.S. 491, 113 S.Ct. 2202 (1993).

clarified the test for determining whether a law was enacted "for the purpose of regulating the business of insurance" within the meaning of McCarran-Ferguson. In doing so it made clear that the narrower "business of insurance test"[9] developed by the Supreme Court in its antitrust jurisprudence was not applicable to other cases claiming federal preemption of state insurance laws. Under *Fabe*, a law is enacted "for the purpose of regulating the business of insurance "(the first clause of section 2(b) of the McCarran-Ferguson Act) if it is aimed at protecting or regulating the insurer/insured relationship, directly or indirectly. *Fabe*, 113 S.Ct. at 2208.

Fabe reaffirmed the Court's analysis in *SEC v. National Securities, Inc.*, 393 U.S, 453, 89 S. Ct. 564 (1969), the only case prior to *Fabe* in which the Court interpreted the first clause of the statute. As the Supreme Court stated in *National Securities*:

> The relationship between insurer and insured, the type of policy which could be issued, its reliability, interpretation, and enforcement – these were the core of the "business of insurance." Undoubtedly, other activities of insurance companies relate so closely to their status as reliable insurers that they too must be placed in the same class. But whatever the exact scope of the statutory term, it is clear where the focus was – it was on the relationship between the insurance company and the policyholder. *Statutes aimed at protecting or regulating this relationship directly or indirectly are laws regulating the "business of insurance."*

National Securities, 89 S. Ct. at 568-69 (emphasis added)

While the *Taylor* Court may very well have been right in its assessment that solvency should not be a state concern with respect to National Banks

[9] The test applied three criteria to determine whether a practice constituted the "business of insurance" in the antitrust context: (1) whether the practice has the effect of transferring or spreading the risk, (2) whether the practice is an integral part of the policy relationship between the insurer and insured, and (3) whether the practice is limited to entities within the insurance industry. *Union Labor Life In Co. v. Pireno*, supra at note 2. It should be noted that the *Taylor*

offering DCAs, it was quite wrong in suggesting that solvency is or should be the *exclusive* regulatory concern. Standing on an equal footing with solvency and clearly falling within the safe harbor "of regulation of the insurer/insured relationship" is the state interest in regulating forms, rates, claims handling and marketing practices. This state interest is especially heightened with respect to credit insurance (which include DCAs) where reverse competition drives rates to unnaturally high levels and where the disparity of bargaining power between lender/seller and consumer can lead, if unchecked, to tying or coercion.

The Department together with a number of other commentators believe that if National Banks are freed from all state regulation regarding DCAs the ultimate result could be total deregulation of the credit insurance marketplace since those now regulated will seek the shelter of a state or national bank charter in which to distribute these products.

Contrary to your suggestion, *Taylor* did not go so far as to find that all state insurance regulation regarding the offering of DCAs by National Banks was trumped by the application of ordinary federal preemption. In fact the court made it clear that its inquiry was "limited to the question of whether the Arkansas Insurance Commissioner may *prohibit* FNB from entering into debt cancellation agreements." *Taylor, supra* at page 3 (emphasis supplied). Although the Court held that Arkansas could not require banks to be licensed as insurers in order to offer DCAs, as this amounted to prohibition, it specifically left open the possibility of the continued viability of state regulation of national bank-issued DCAs in other areas. It observed in a footnote that:

> The Comptroller, in an *amicus curiae* brief, concedes that there may be particular state insurance regulations (e.g., those limiting premium rates) which apply to debt cancellation contracts and which do not conflict with national banking powers. We agree

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Court cited the third element of this test in support of its holding that the National Bank Act trumps McCarran-Ferguson.

> with the Comptroller's argument that these issues are more properly addressed on a case-by-case basis.

Taylor, supra at page 6, fn6.

A similar observation was made by the court in *Texas Bankers Ass'n. v. Bomer* [10]which held that Texas agent licensing laws were preempted to the extent that they deprived national banks as a *class* from selling annuities, but otherwise would survive preemption. Said the court:

> The Court agrees with the OCC's position that generally applicable state laws that regulate the business of insurance *will apply to national banks to the same extent as other entities* within the scope of those laws. The Court's opinion concerns only the licensing regulation at issue which prevents banks, as a class, from acting as agent in the sale of annuities. (emphasis supplied)

In light of our analysis of these authorities we are unwilling to concede totally our jurisdiction over the sale of DCAs by national banks. We acknowledge, however, that case law is reasonably clear that state insurance law cannot survive federal preemption if its effect is to exclude banks as a class from engaging in activity, albeit insurance activity, that the National Bank Act either expressly or impliedly sanctions. Given the current state of the case law it appears that a particular activity could be both the "business of banking" and the "business of insurance." In this regard we are closely scrutinizing the text and monitoring the progress of HR 10 in the United States Congress. As I am sure you are aware, the bill in its current form provides for the continuing "functional regulation" of the business of insurance by the states. Although the exact meaning of the phrase remains far from clear, it may very well encompass situations where, such as here, dual regulation is appropriate.

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[10] 1997 U.S. Dist. LEXIS 13422.

Presently, we are not accepting form and rate filings for DCAs that are "underwritten" by national banks.[11] We are hopeful that Congress may in the near term provide the clarity which would enable us to adopt some form of functional regulation (e.g., rate, forms, claims and marketing) without risking needless litigation from parties who have opposing interests in this area. In the meantime the Department has decided to temporarily reaffirm the policy first announced by Commissioner Georgia Flint:

> [T]his department will not attempt to regulate bank debt cancellation contracts written by banks, state or national, in connection with loans made by those banks. TDI will, however, regulate any third party insurance products sold in connection with such transactions, such as stop loss policies, etc. This position relates solely to contracts written by banks on their own loans.

Georgia Flint to Karen Neeley, Independent Bankers Association of Texas.

Although the Department cannot speak authoritatively on behalf of a sister agency, I feel obligated to point out that the Texas Office of Consumer Credit Commissioner has in the past taken the position that:

> "no bank in Texas extending consumer loans under the jurisdiction of the Texas Credit Code (Credit Code) may charge a consumer a fee for a debt cancellation contract or waiver. In the enactment of the Credit Code the Legislature was eminently clear: if a charge is not expressly authorized by statute, it is not permitted."

L. Pettijohn, Consumer Credit Commissioner, to K. Marchant, Chairman House Financial Institutions Committee.

Although it is my understanding that this continues to be the position of the Consumer Credit Commissioner, I would advise that you communicate with her staff directly on this matter.

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[11] Of course, as you correctly point out in your letter, Balboa and other insurers who in effect are "reinsuring" a bank's DCA risk "at all times will remain subject to insurance regulation" by the TDI.

I hope I have been responsive to your inquiry. To the extent that the Department may have issued informal advisories inconsistent with the position taken in this letter, they are hereby withdrawn. If you have further questions or comments feel free to call me at my direct number, 512-322-2250.

Sincerely,

William O. Goodman
Special Litigation Counsel

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 7

1999 Industry Response to TDI Letter

AMERICAN BANKERS
INSURANCE ASSOCIATION

An affiliate of the
AMERICAN **BANKERS** ASSOCIATION

Beth L. Climo
Executive Director

June 5, 2001

The Honorable Jose Montemayor
Commissioner
Texas Department of Insurance
333 Guadalupe Street
Austin, Texas 78701

Dear Commissioner Montemayor:

Recently, your Department issued an opinion to an attorney in Pennsylvania regarding the treatment of debt cancellation contracts and debt suspension agreements under the terms of the Gramm-Leach-Bliley Act. That opinion concluded that the Gramm-Leach-Bliley Act classifies debt cancellation contracts and debt suspension agreements as insurance products, and authorizes the States to regulate such products as insurance.

As you might expect, the American Bankers Insurance Association takes issue with that opinion. We believe the Taylor case remains the prevailing federal law on the treatment of debt cancellation contracts and debt suspension agreements, and that the Gramm-Leach-Bliley Act does not provide otherwise.

An alternative analysis of the impact of the Gramm-Leach-Bliley Act on debt cancellation contracts and debt suspension agreements, prepared by the law firms of Barnett & Sivon, P.C. and McIntyre Law Firm PLLC, is enclosed.

Additionally, I have taken the liberty of forwarding a copy of this letter and the enclosed analysis to Commissioner Shapo, since I understand his Functional Regulation Working Group may be asked to review the treatment of debt cancellation contracts and debt suspension agreements.

Finally, I will be in New Orleans next week, along with one of the authors of the enclosed analysis, Jim McIntyre, and we would be pleased to discuss this matter with you at that time.

Sincerely,

Beth L. Climo

Beth L. Climo

Enclosure

cc: Director Nathaniel S. Shapo, Illinois Department of Insurance

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THE IMPACT OF THE GRAMM-LEACH-BLILEY ACT ON DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

INTRODUCTION

The Texas Department of Insurance (the "Department") has opined that the Gramm-Leach-Bliley Act classifies debt cancellation contracts and debt suspension agreements as "insurance." Further, the Department has concluded that it may regulate such products as "insurance" when they are offered by a national bank. Our analysis of the Gramm-Leach-Bliley Act reaches just the opposite conclusion. Debt cancellation contracts and debt suspension agreements are "banking" products, and the Gramm-Leach-Bliley Act does not classify them as insurance products. Furthermore, the Gramm-Leach-Bliley Act does not authorize the States to regulate such products as "insurance."

SUMMARY

The Department has opined that debt cancellation contracts are "insurance" products under the terms of Section 302 of the Gramm-Leach-Bliley Act because such products were "authorized" by the OCC prior to January 1, 1999. The Department has misread Section 302. The exception for "authorized products" that is contained in Section 302 is not intended to apply to any product "authorized" prior to January 1, 1999, but only to "insurance" products "authorized" by the OCC prior to that date. Thus, in order to determine whether or not a product is "insurance" for purposes of Section 302, it is necessary to determine what the term "insurance" means for purposes of Section 302. There is a two-part definition of "insurance" in Section 302, which the Department fails to analyze. Our analysis of that definition indicates that debt cancellation contracts and debt suspension agreements are not "insurance" products under either part of the definition, but are "banking" products.

The Department also has opined that since Section 302 defines debt cancellation contracts and debt suspension agreements as "insurance" products, Texas and other States may regulate such products pursuant to the "functional" regulation provisions of the Gramm-Leach-Bliley Act, Sections 104 and 301. Again, the Department has misread the law. Debt cancellation contracts and debt suspension agreements are not "insurance" for purposes of Section 302. Moreover, what is or is not "insurance" for purposes of Section 302 has no bearing on what products a State may regulate as "insurance" under the terms of the "functional" regulation provisions of the Gramm-Leach-Bliley Act. The McCarran-Ferguson Act controls what is or is not "insurance" for purposes of the "functional" regulation provisions of the Gramm-Leach-Bliley Act, and the prevailing interpretation of debt cancellation contracts under the McCarran-Ferguson Act, as set forth in the Taylor case, is that debt cancellation contracts, and by extension debt suspension agreements, are not "insurance." That interpretation is supported by an analysis of the Pireno case. It is also supported by a recently proposed OCC regulation, which classifies debt cancellation contracts and debt suspension agreements as "banking" products.

ANALYSIS

Debt Cancellation Contracts and Debt Suspension Agreements Are Not "Insurance" Products

The Department's opinion[1] that the Gramm-Leach-Bliley Act classifies debt cancellation contracts and debt suspension agreements as "insurance" products rests entirely upon the assumption that debt cancellation contracts and debt suspension agreements are "authorized products," as that term is used in Section 302 of the Gramm-Leach-Bliley Act.[2] Section 302 of the Gramm-Leach-Bliley Act prohibits national banks and their subsidiaries from underwriting "insurance" products. "Authorized products," however, are excepted from this prohibition.

"Authorized products" are defined in subsection (b) of Section 302 as follows:

(b) AUTHORIZED PRODUCTS. – For purposes of this section, a product is authorized if –

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.[3]

Debt Cancellation Contracts And Debt Suspension Agreements Are Not "Authorized Products" Unless They Can Be Found To Be "Insurance" Products.

The Department assumes that debt cancellation contracts and debt suspension agreements are "authorized products" because the Office of the Comptroller of the Currency ("OCC") authorized national banks to offer such products prior to January 1, 1999.[4] The Department then

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[1] Letter from William O. Goodman, Special Litigation Counsel, to Patrick T. Beaty, Saul Ewing, Attorneys at Law, Harrisonburg, PA, March 14, 2001.

[2] 15 U.S.C. § 6712.

[3] 15 U.S.C. § 6712(b).

[4] Page 3 of the Department's opinion letter. In 1963, the OCC determined that national banks could offer debt cancellation contracts conditioned upon the death of a borrower. This interpretation was subsequently codified in 1971 at 12 C.F.R. § 7.7495 (later renumbered as 12 C.F.R. § 7.1013). In 1994, the OCC determined that national banks could offer debt cancellation contracts conditioned upon a borrower's disability or unemployment. (See OCC Interpretive

concludes that since debt cancellation contracts and debt suspension agreements are "authorized products," they are, per se, "insurance" products. The Department states this conclusion as follows: "If in fact Congress did not consider these products to be insurance such a carve out from the prohibition against national banks underwriting insurance would have been unnecessary." [5] In our opinion, this analysis is just the reverse of what Congress intended when it created the exception for "authorized products." Debt cancellation contracts and debt suspension agreements are not "insurance" because they are "authorized products;" they are "authorized products" only if they can first be found to be "insurance" products.

The exception for "authorized products" is intended to grandfather "insurance" products that were permissible for national banks acting as principal prior to the enactment of Section 302. Without such an exception, national banks and their subsidiaries would have been required to discontinue activities long permissible for national banks, such as the underwriting of credit insurance.[6] Under the Department's reading of the exception, however, every product authorized by the OCC prior to January 1, 1999 is an "authorized product." In other words, the Department would have us believe that Congress felt it necessary to except mortgages, financed leases, credit cards, and scores of other products from the prohibition on underwriting "insurance."

Support for reading the exception for "authorized products" as an exception for "insurance" products is found in the Report of the House of Representatives' Committee on Banking and Financial Services that accompanied the House version of the Gramm-Leach-Bliley Act. That report describes the prohibition on the underwriting of "insurance" by national banks and their subsidiaries as follows:

> With regard to national bank powers, Title III clarifies that national banks cannot underwrite insurance within a bank, except for those *products* which national banks were authorized to engage in as of January 1, 1999. For purposes of this clarification, insurance is defined as those *products regulated as insurance* as of January 1, 1999 with new products after that date being treated as insurance if regulated as insurance... (emphasis added)[7]

Letter No. 630 (May 1993)) In 1998, the OCC permitted national banks to offer debt suspension agreements in connection with credit card debt. (See OCC Interpretive Letter No. 827 (April 1998))

[5] Page 4 of the Department's opinion letter.

[6] The OCC has determined that credit-related insurance products are "authorized products" for purposes of Section 302 when provided by a national bank as a principal. (See OCC Interpretive Letter No. 886 (April 2000)) The Department claims that Interpretive Letter No. 886 also suggests that the OCC views debt cancellation contracts and debt suspension agreements to be "authorized products." Interpretive Letter No. 886 relates exclusively to credit-related insurance products, and makes no reference to debt cancellation contracts or debt suspension agreements.

[7] House Report 106-74 Part 1 (106th Congress 1st Session), page 104.

In the second sentence of this statement, the term "products" is linked directly to "insurance." This suggests that the Committee intended the reference to the "products" exception in the first sentence to be a reference to "insurance" products.

Additionally, the OCC has read the exception for "authorized products" as an exception for "insurance" products. In a regulation implementing several provisions of the Gramm-Leach-Bliley Act, including Section 302, the OCC defined the term "authorized product" as "...a product that would be defined as *insurance* under section 302(c) of the Gramm-Leach-Bliley Act ... that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal..." (emphasis added)[8]

In sum, the Department concludes that Section 302 classifies debt cancellation contracts and debt suspension agreements as "insurance" products because the Department assumes that such products are "authorized products." Section 302, however, requires a reverse showing. In order for a product to be an "authorized product," it first must be found to be an "insurance" product. Thus, we need to examine what is or is not "insurance" for purposes of Section 302. For that, we must turn to the definition of "insurance" in Section 302.

The term "insurance" is defined in subsection (c) of Section 302.[9] There, we find a definition of "insurance" that has two parts. The first part, which appears in paragraph (1), applies to products offered prior to January 1, 1999. It reads, in pertinent part, as follows:

> (c) Definition. – For purposes of this section, the term "insurance" means—
>
> > (1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided...

The second part of the definition, which appears in paragraph (2), applies to products offered after January 1, 1999. That part of the definition reads, in pertinent part, as follows:

> (c) Definition. – For purposes of this section, the term "insurance" means—
>
> > (1) ....
> >
> > (2) any product first offered after January 1, 1999, which—
> >
> > > (A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or

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[8] 12 C.F.R. § 5.34(d)(1).

[9] The Department's opinion letter refers to this definition, but contains no analysis of it.

commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.[10]

As explained below, it is our view that debt cancellation contracts and debt suspension agreements may not be classified as "insurance" under the terms of either part of this definition.

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[10] 15 U.S.C.§ 6712(c).

Debt Cancellation Contracts And Debt Suspension Agreements Offered Prior To January 1, 1999 Are Not "Insurance" Products Because They Were Not Regulated As Insurance By The States

Paragraph (1) of subsection (c) provides that an "insurance" product is any product regulated as "insurance" by a State prior to January 1, 1999. In its opinion letter, the Department admits that Texas did not regulate debt cancellation contracts and debt suspension agreements as "insurance" as of January 1, 1999.[11] Thus, such products are not "insurance" in the State of Texas under the terms of paragraph (1).

Moreover, it is our view that, as a matter of law and practice, no State can claim to have regulated debt cancellation contracts and debt suspension agreements as "insurance" prior to January 1, 1999. First, as a matter of law, the States lack the authority to regulate debt cancellation contracts and debt suspension agreements as "insurance." The prevailing federal law on the treatment of such products, which was established by the U.S. Court of Appeals for the Eighth Circuit in 1990, is that such products do not constitute the "business of insurance" under the terms of the McCarran-Ferguson Act, which, generally, gives the States the authority to regulate the "business of insurance."[12] Since debt cancellation contracts and debt suspension agreements are not the "business of insurance," it follows that they cannot be regulated by a State as "insurance."[13]

Second, regardless of how debt cancellation contracts and debt suspension agreements are treated under the McCarran-Ferguson Act, no State actually regulated such products as "insurance" prior to January 1, 1999. Prior to January 1, 1999, several States had opined that

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[11] Page 4 of the Department's opinion letter.

[12] First Nat'l Bank of Eastern Arkansas v. Taylor, 907 F.2d 775 (8th Cir.), cert. denied, 111 S. Ct. 442 (1990). In Taylor, the Arkansas Insurance Commissioner argued that he had the authority to regulate debt cancellation contracts under the terms of the McCarran-Ferguson Act. The U.S. Court of Appeals for the Eighth Circuit held otherwise for two reasons. First, it concluded that the McCarran-Ferguson Act was not directed at the activities of national banks. Second, it determined that debt cancellation contracts differ significantly from traditional insurance products because such contracts do not "implicate" the central concern of State insurance regulation, the prevention of insolvency.

[13] In its opinion, the Department argues that while debt cancellation contracts may not qualify as "insurance" within the meaning of the McCarran-Ferguson Act, they may still be regulated as "insurance" by a State. In support of this argument, it cites Footnote 6 in the Taylor opinion in which the Court notes that the OCC, in its amicus curiae brief, concedes that there may be particular State insurance regulations which apply to debt cancellation contracts and which do not conflict with national bank powers. We suggest that the Department reads too much into this footnote. First, given the OCC's recently proposed regulation governing the issuance of debt cancellation contracts and debt suspension agreements, we doubt that the OCC would still make such a concession. Furthermore, the Court does not agree that States may regulate such products, only that this issue should be addressed on a case-by-case basis.

debt cancellation contracts and debt suspension agreements were "insurance" under applicable State law. However, opining that a product is "insurance" does not constitute the regulation of a product.

To regulate means to govern or direct according to rule, to bring under the control of law, or to make regulations for.[14] In other words, the act of regulating a product involves the adoption of rules, controls or regulations applicable to that product. For example, every State has rate regulations, form requirements, and claim requirements applicable to credit insurance, a product that the Department claims to be in the same "genus" as debt cancellation contracts and debt suspension agreements. Prior to January 1, 1999, however, we are not aware of any State that had adopted rate regulations, form requirements, claim requirements or any other rules, controls or regulations on debt cancellation contracts or debt suspension agreements.

Debt Cancellation Contracts And Debt Suspension Agreements Offered After January 1, 1999 Are Not "Insurance"

Paragraph (2) of subsection (c) provides a definition of "insurance" for products offered after January 1, 1999. Subparagraph (A) of paragraph (2) states that a product "first offered" after January 1, 1999 is "insurance" if the product "insures, guarantees, or indemnifies" against liability or certain losses. Subparagraph (B) further provides that "banking" products are not "insurance" products. Debt cancellation contracts and debt suspension agreements are not covered by the definition in paragraph (2) because they do not meet several features of the definition: They were not "first offered" after January 1, 1999; they do not have the attributes of "insurance;" and, most importantly, they are banking products, which are excluded from this definition of "insurance."

Debt Cancellation Contracts And Debt Suspension Agreements Are Not "Insurance" Because They Were Not "First Offered" After January 1, 1999

The definition of "insurance" in paragraph (2) of subsection (c) applies to products "first offered" after January 1, 1999. The Report accompanying the House version of the Gramm-Leach-Bliley Act indicates that the reference to products "first offered" after January 1, 1999 is intended to cover "new" products offered after that date.[15] Debt cancellation contracts and debt suspension agreements are not "new" products. They have been available in most, if not all, States for decades. Therefore, unless a State can demonstrate that such products were not offered within the State prior to January 1, 1999, debt cancellation contracts and debt suspension agreements cannot be classified as "insurance" in that State under the terms of paragraph (2).

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[14] Webster's Third New International Dictionary, G & C Merriam Co., 1966.

[15] House Report 106-74 Part 1 (106th Congress 1st Session), page 104.

Debt Cancellation Contracts And Debt Suspension Agreements Are Not "Insurance" Because They Do Not "Insure, Guarantee, or Indemnify" Against Risks

The definition of "insurance" in paragraph (2) of subsection (c) applies only to products that "insure, guarantee, or indemnify" against liability and certain risks. Debt cancellation contracts and debt suspension agreements do not have these attributes.

Debt cancellation contracts and debt suspension agreements do not "insure" a borrower. To "insure" means to assure against a loss by a contingent event.[16] In other words, to "insure" means to transfer a risk of loss from one party to another.[17] Debt cancellation contracts and debt suspension agreements involve little, if any, transfer of risk of loss from a borrower to a bank. Under a debt cancellation contract or debt suspension agreement, a bank agrees to terminate or postpone the borrower's obligation to pay a debt, not to make any payment to the borrower. As the U.S. Court of Appeals for the Eighth Circuit stated in First National Bank of Eastern Arkansas v. Taylor:

> ...the [debt cancellation] contracts do not require the bank to take an investment risk or to make payment to the borrower's estate. The debt is simply extinguished when the borrower dies.[18]

The term "insure" also means to enter into a contract for insurance through which a party can reduce a given risk through the pooling of risks.[19] Debt cancellation contracts and debt suspension agreements do not involve any pooling of risk. In a debt cancellation contract or debt suspension agreement the only parties involved are the bank and the borrower.

Furthermore, the two principal characteristics of "insurance" — the transfer of risk and its distribution to a risk pool — must be evaluated within the context of the *complete* transaction. "The question of whether an arrangement is one of insurance may turn, not on whether a risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its *principal* object and purpose."[20] This is because

> ...insurance regulatory laws are not properly construed as aimed at an absolute prohibition against the inclusion of any risk-transferring-and-distributing provisions in contracts for services or for the sale or rental of goods. In short, the presence of a small

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[16] Webster's Third New International Dictionary, G & C Merriam Co., 1966.

[17] This definition of "insurance" is consistent with the interpretive guidelines in the National Association of Insurance Commissioner's White Paper on the Definition of Insurance.

[18] 907 F. 2d at 780.

[19] Webster's Third New International Dictionary, G & C Merriam Co., 1966.

[20] Truta v. Avis Rent A Car System, Inc., 193 Cal. App. 3d 802, 812 (1987) (citing 12 Appelman, Insurance Law and Practice (1981) Section 7002).

> element of insurance, if one wishes to call it that, closely associated with the predominant element of the transaction — the element that gives the transaction its distinctive character — does not conclusively demonstrate that the transaction is within the reach of insurance regulatory laws.[21]

In the case of both debt cancellation contracts and debt suspension agreements, "the element that gives the transaction its distinctive character" is the basic loan, one of the terms of which addresses the cancellation or suspension of debt.

Nor do debt cancellation contracts or debt suspension agreements "indemnify" a borrower for purposes of subparagraph (A) of paragraph (2). To "indemnify" means to secure or protect against loss.[22] Under a debt cancellation contract or debt suspension agreement, a bank is not securing the borrower against a loss. The bank is merely terminating or postponing a debt.

Finally, debt cancellation contracts and debt suspension agreements do not "guarantee" a borrower for purposes of subparagraph (A) of paragraph (2). The term "guarantee" means to become responsible for the debt of another or to act as a surety.[23] Under a debt cancellation contract or a debt suspension agreement, a bank does not assume the responsibility to pay the debt of a borrower. Instead, the debt is cancelled in the case of a debt cancellation contract, in which case the bank will adjust its reserves established for that purpose for the outstanding indebtedness or receive benefits under a contractual liability policy issued to the bank by an insurance company for that purpose. In the case of a debt suspension agreement, payment of debt is suspended. In some cases, accrued interest is accounted for by adjustments from the reserve account established for that purpose or from benefits received under a contractual liability policy for that purpose. Furthermore, it has long been held that national banks may not act as a guarantor or surety for another party.[24]

Debt Cancellation Contracts And Debt Suspension Agreements Are Not "Insurance" Products Because They Are "Banking Products" Specifically Excluded From The Definition Of Insurance

Subparagraph (B) of paragraph (2) of subsection (c) provides that a product is not "insurance" for purposes of Section 302, if that product is a "product or service of a bank." Additionally, clause (ii) of subparagraph (B) specifically lists a "loan" or "other extension of credit" as a type of "banking product." Since debt cancellation contracts and debt suspension

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[21] Id. (Citing Keeton, Insurance Law (1971) Section 8.2(c))

[22] Webster's Third New International Dictionary, G & C Merriam Co., 1966.

[23] Webster's Third New International Dictionary, G & C Merriam Co., 1966.

[24] Farmers' & Miners' Bank v. Bluefield Nat'l. Bank, W.VA. 1926, 11 F. 2d 83, cert. denied 46 S. Ct. 483. See, also, Peoples Nat'l Bank v. Southern States Finance Co., 1926, 133 S.E. 415, 192 N.C. 269.

agreements are part of a loan, this limitation excludes debt cancellation contracts and debt suspension agreements from the definition of "insurance" in paragraph (2) of subsection (c).

A debt cancellation contract or debt suspension agreement is an agreement between a lender and a borrower in which the lender, for a fee, agrees to waive or suspend all or part of the debt upon a certain occurrence. This agreement relates directly to one of the central features of a loan – the terms and circumstances under which the loan will be repaid. In other words, debt cancellation contracts and debt suspension agreements are nothing more than a part of a loan, and a loan is a "banking" product.

The federal banking agencies have long recognized debt cancellation contracts and debt suspension agreements as an integral part of a lending relationship. In 1963, the OCC determined that, under the terms of the general powers clause of the National Bank Act, national banks could provide debt cancellation contracts conditioned upon the death of a borrower. That interpretation was subsequently upheld by the U.S. Court of Appeals for the Eight Circuit in the Taylor case, which noted that debt cancellation contracts are:

> [d]irectly related to [a bank's] lending power. The contracts are sold only in connection with loans made by [the bank], and involve only [the bank] and its borrowing customers. The contracts provide borrowers with a convenient method of extinguishing debt in case of death, and enable [the bank] to avoid the time, expense, and risk associated with attempting to collect the balance of the loan from a borrower's estate[25].

More recent OCC interpretations reinforce the relationship between debt cancellation contracts and debt suspension agreements and lending. For example, when it authorized national banks to issue debt suspension agreements issued in connection with credit cards, the OCC noted that:

> This type of contractual provision is no less a part of lending than any of the various other terms (covenants, security interest, etc.) that are part of a loan agreement.[26]

Furthermore, in a regulation proposed to govern debt cancellation contracts and debt suspension agreements issued by national banks, the OCC expressly states that such contracts and agreements are "banking" products, and are not to be treated as "insurance" products under pre-existing OCC regulations that address the sale of "insurance" products by national banks.[27]

The Office of Thrift Supervision also has concluded that debt cancellation contracts offered by federal savings associations in connection with consumer loans are loan products,

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[25] 907 F. 2d at 778.

[26] OCC Interpretive Letter 903 (January 2001), page 3.

[27] 66 Fed. Reg. 19,901 (April 18, 2001).

subject to regulation by the OTS. The OTS's reasoning in this determination highlights the fact that such contracts are part of a loan:

> Th[e] express authorization [in the Home Owners' Loan Act] to "make" loans includes within it the authority to negotiate and fix the terms of each loan, including the terms for repayment and circumstances under which a repayment obligation can be modified, compromised or forgiven. . . . [It] includes within it the authority to specify the details of the rights and responsibilities of the borrower and lender. . . . [W]e are dealing with the terms and circumstances under which a debt must be repaid, *which is the heart of a loan contract*. . . Given the obvious risk that a borrower may die or become disabled during the term of a loan and given the costs and complexities associated with repossessing and reselling property or pursuing a borrower's estate, it is reasonable for a loan contract to contain terms specifying alternative rights and responsibilities of the parties in the event of such an occurrence. . . . Indeed, the authority to compromise or forgive a loan is *so fundamental to the lending business* of a federal savings association that the model bylaws prescribed by the OTS and its predecessor for federal mutual savings associations have long contained a provision expressly acknowledging that savings associations may "extend leniency and indulgence to borrowing members who are in distress and . . . *compromise and settle any debts and claims*." [28] (emphasis added)

<u>The Gramm-Leach-Bliley Act Does Not Authorize the States to Regulate Debt Cancellation Contracts and Debt Suspension Agreements as Insurance</u>

Having concluded (incorrectly in our view) that Section 302 classifies debt cancellation contracts and debt suspension agreements as "insurance" products, the Department goes on to claim that the "functional" regulation provisions of the Gramm-Leach-Bliley Act, Sections 104 and 301[29], authorize the State of Texas to regulate debt cancellation contracts and debt suspension agreements as "insurance." Again, the Department misreads the Gramm-Leach-Bliley Act. The definition of "insurance" in Section 302 has no relationship to the functional regulation provisions in Sections 104 or 301. Moreover, nothing in Section 104 or Section 301 of the Gramm-Leach-Bliley Act gives Texas, or any other State, the authority to regulate debt cancellation contracts or debt suspension agreements as "insurance."

The Definition Of "Insurance" In Section 302 Does Not Apply To The Functional Regulation Provisions Of The Gramm-Leach-Bliley Act

Contrary to the view of the Department, the definition of the term "insurance" in Section 302 has no bearing on the functional regulation provisions of the Gramm-Leach-Bliley Act. The definition of the term "insurance" in Section 302 relates solely to the prohibition on underwriting established in that Section, not to the regulation of "insurance" products by the States. The plain language of the definition indicates that Congress intended the term to apply only to Section 302.

[28] OTS Op. Chief Counsel (September, 1993).

[29] 15 U.S.C. §§ 6701 and 6711.

The definition begins with the phrase "For purposes of this section, the term 'insurance' means...." (emphasis added). Moreover, the definition of "insurance" in Section 302 is not the only definition of "insurance" in the Act. Section 336 of the Act includes a definition of the term "insurance" for purposes of Subtitle C.[30] Thus, if Gramm-Leach-Bliley gives the States any authority to regulate debt cancellation contracts or debt suspension agreements as "insurance," that authority must be found in Sections 104 or 301 of the Act.[31]

The Functional Regulation Provisions Of The Gramm-Leach-Bliley Act Do Not Give The States The Authority To Regulate Debt Cancellation Contracts And Debt Suspension Agreements As "Insurance" Products

Neither Section 301 nor Section 104 of the Gramm-Leach-Bliley Act gives the States the authority to regulate debt cancellation contracts or debt suspension agreements as "insurance." Among other provisions, Section 104 reaffirms the McCarran-Ferguson Act, requires all persons engaged in the business of insurance in a State to be licensed by such State, and establishes certain standards for the federal preemption of State insurance laws and regulations. Section 301 provides that insurance activities shall be functionally regulated by the States, subject to the preemption standards in Section 104. Neither section otherwise defines what is or is not an "insurance" activity. As noted, however, Section 104 includes a reaffirmation of the McCarran-Ferguson Act. Thus, it appears that McCarran-Ferguson controls what is or is not an "insurance" product for purposes of the functional regulation provisions of the Gramm-Leach-Bliley Act.

The prevailing federal case on the application of the McCarran-Ferguson Act to debt cancellation contracts, and, by extension, to debt suspension agreements, is the Taylor case. In that case, the U.S. Court of Appeals for the Eighth Circuit held that debt cancellation contracts are not the "business of insurance" for purposes of the McCarran-Ferguson Act.[32] Thus, if the functional regulation provisions of the Gramm-Leach-Bliley Act have any impact on debt cancellation contracts and debt suspension agreements, it could be argued that they reaffirm the decision in the Taylor case.

The Department maintains that Taylor "merits little, if any, precedential weight on the matter of whether these products qualify as insurance under federal law." [33] While the Department may disagree with the result in Taylor, it remains the prevailing federal case on the treatment of debt cancellation contracts and debt suspension agreements. Furthermore, debt

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[30] 15 U.S.C. § 6766.

[31] Even if we accepted the Department's view that the definition of the term "insurance" in Section 302 applies to Sections 301 and 104 of the Gramm-Leach-Bliley Act, States would have no authority to regulate debt cancellation contracts and debt suspension agreements as "insurance," since, as we have explained, such products are not "insurance" under the terms of Section 302.

[32] 907 F.2d at 779.

[33] Page 15 of the Department's opinion letter.

cancellation contracts and debt suspension agreements cannot be classified as the "business of insurance" under the Supreme Court interpretations of the McCarran-Ferguson Act.

As the Department notes, the U.S. Supreme Court has established a three-part test for determining what constitutes the "business of insurance" for purposes of the McCarran-Ferguson Act: (1) does the practice transfer or spread a contract or policyholder's risk; (2) is the practice an integral part of the policy relationship between the insurer and the insured; and (3) is the practice limited to entities within the industry.[34] Debt cancellation contracts and debt suspension agreements are not covered by any of these tests. First, as discussed above, debt cancellation contracts and debt suspension agreements involve little, if any, transfer of risk, and do not involve any pooling of risk. Second, since these contracts are merely part of a loan, the relationship between the parties is as a creditor and borrower, not an insurer and insured. Finally, the practice of issuing debt cancellation contracts and debt suspension agreements is not limited to entities within the insurance industry; such products are offered by banks.

OCC Regulation Of Debt Cancellation Contracts And Debt Suspension Agreements Has Occupied The Field

Finally, the OCC has determined that it, not the States, should regulate debt cancellation contracts and debt suspension agreements offered by national banks. Under the terms of the National Bank Act, a State law may apply to the activities of a national bank unless it conflicts with the National Bank Act or a regulation issued by the OCC, in which case, federal law prevails. The OCC recently has proposed a regulation to comprehensively regulate debt cancellation contracts and debt suspension agreements offered by national banks. Among other matters, the OCC's proposed regulation would prohibit national banks from tying the sale of credit to debt cancellation contracts and debt suspension agreements; would require a national bank to obtain a customer's consent to purchase such products; would require a national bank that offers a contract or agreement that does not provide for a refund of the unearned portion of a fee upon termination or repayment to offer customers the option of purchasing a contract or agreement that provides for a refund; would require a national bank to make certain disclosures to a customer before the sale of such products, including the total fees involved; and would require a national bank to establish a separate loss reserve for such contracts or to obtain third party insurance for them.

CONCLUSION

The Texas Insurance Department misreads Section 302 of the Gramm-Leach-Bliley Act. Debt cancellation contracts and debt suspension agreements are "banking" products and are not classified as insurance by the Gramm-Leach-Bliley Act. Furthermore, that Act does not authorize the States to regulate such products as insurance.

Barnett & Sivon, P.C. McIntyre Law Firm, PLLC

June 5, 2001

[34] Union Labor Life Insurance Company v. Pireno, 458 U.S. 119, 120 (1982).

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 8

2001 Comment Letter from CEJ and CFA on proposed DCC/DSA Rule

The Center For Economic Justice
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June 18, 2001

John D. Hawke, Jr.
Office of the Comptroller of the Currency
Public Information Room
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219.

By Fax (202) 874-4448 and Electronic Mail

Attention: Docket No. 01-07

Dear Comptroller Hawke:

The following comments are submitted on behalf of the Center for Economic Justice and the Consumer Federation of America.[1] Both organizations have been very active on credit and insurance and debt cancellation contracts (DCC) and debt suspension agreements (DSA).

We commend the OCC for deciding to proceed with proposed rules regarding DCC/DSA with the intent of improving protections for consumers who purchase these products. Because of the reverse-competitive market in which DCC and DSA are sold, such consumer protections are necessary.

The proposed rules contain important consumer safeguards, including the anti-tying provision that is one piece of the protections necessary to prevent coercive sales.

The proposed rules also provide for a number of consumer disclosures. While disclosures can be an essential tool for informing consumers, we are convinced that disclosures alone will be insufficient to prevent unfair sales of DCC and DSA. Consequently, we urge the OCC to add a number of additional consumer protections to the needed DCC and DSA regulations.

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[1] The **Center for Economic Justice** is a nonprofit organization that advocates on behalf of low-income consumers on credit, utility and insurance issues before administrative agencies. **Consumer Federation of America** is a membership organization of more than 260 organizations from throughout the nation with a combined membership exceeding 50 million people that engages in advocacy and education on issues affecting consumers and especially the least affluent consumers. CFA's advocacy focuses on financial services, utilities, product safety, transportation, health care and food safety.

Our comments can be summarized as follows:

1. DCC/DSA functional equivalents of credit insurance. In economic terms, DCC/DSA are perfect substitutes for credit insurance.

2. DCC/DSA markets are characterized by reverse competition. This is the most important characteristic of DCC/DSA for purposes of crafting consumer protection regulations.

3. The proposed regulation of DCC/DSA is significantly different than state credit insurance regulation and will result in regulatory arbitrage by lenders to the detriment of consumers.

4. We have seen no evidence to indicate that disclosures alone are sufficient to protect consumers of DCC/DSA and/or credit insurance.

5. There is evidence that disclosures alone do not protect consumers of credit insurance and DCC/DSA.

6. The proposed regulations will undermine the consumer protection advances made regarding financed single premium credit insurance used in predatory lending.

7. W support the additional consumer protections recommended by the National Association of Insurance Commissioners.

8. We propose additional provisions regarding lump-sum products, method of refund and collection of data on actual DCC/DSA experience.

9. The OCC's regulation of DCC/DSA will determine whether functional regulation actually means effective consumer protection or is a euphemism for regulatory arbitrage by regulated entities.

<u>DCC and DSA are Functional Equivalents to Credit Insurance</u>

It is essential to recognize two characteristics of DCC and DSA when determining what type of regulatory oversight is necessary to protect consumers of the products. First, DCC and DSA are functional equivalents of credit insurance for both consumers and lenders. Second, the market in which DCC and DSA are sold is characterized by reverse competition.

From the standpoint of consumers, both credit insurance and DCC/DSA provide debt relief following a specific event – death, disability, involuntary unemployment, leave of absence and/or divorce. The benefits provided may be the same – paying off the loan or making monthly payments on the loan – or may be different – freezing the loan

instead of making monthly payments. But both products purport to provide some form of debt relief to the consumer and will be viewed generally as the same product by the consumer.

From the standpoint of the lender, both credit insurance and DCC/DSA provide two important benefits – loan protection and additional income. Part of the amounts paid for either credit insurance or DCC/DSA serve to pay off or otherwise protect the lender's loan if a consumer experiences one of the triggering events. Part of the amounts paid for either credit insurance or DCC/DSA is additional fee income to the lender. While the logistics of selling credit insurance and DCC/DSA may vary slightly for lenders, the key benefits of both products are the same.

It is easy to demonstrate that DCC/DSA serve as a substitute for credit insurance. In an overview of DCC/DSA products entitled "Debt Protection Products," credit insurance industry actuary Gary Fagg compares credit insurance with DCC/DSA.[2]

On page 6 of "Debt Protection Products," we find a table showing credit insurance terms and the equivalent DCC and DSA terms. For example, instead of using the insurance term "premium," DCC and DSA use the terms "protection" and "feature." Instead of using the insurance term "premium," DCC and DSA use the term fee.

On page 9, Mr. Fagg identifies typical DCC and DSA package configurations – which are generally the same as the package configurations for credit insurance. On pages 21 through 37, Mr. Fagg discusses "covered" events and describes the coverage and benefits that both credit insurance and DCC/DSA provide for these events. DCC/DSA are used to provide property coverage, as is credit insurance.

To further illustrate that DCC/DSA are a perfect substitute (as understood in economic terms) for credit insurance, we note that, in 1999, the Target department store offered a credit insurance package ("Accountgard") in connection with its private label credit card. In 2000, the credit insurance package was replaced with a DCC package called "SafetyNet." The credit insurance and DCC packages offered identical benefits – up to a maximum of $10,000, the consumer's balance would be paid off (insurance) or canceled (DCC) in the event of death or after 90 days of unemployment, disability or leave of absence.

DCC/DSA Markets are Characterized by Reverse Competition

Like credit insurance markets, the dominant characteristic of the markets in which DCC/DSA are sold is reverse competition. A useful description of credit insurance markets is found in NY State Insurance Department Regulation 27A (11NYCCR 185).

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[2] This document can be found on Mr. Fagg's company website – www.creditre.net – by clicking on the "debt protection" link. The overview is dated October 12, 2000.

With the substitution of "DCC/DSA" for "credit insurance" in these sections, we see that the same market dynamics that affect credit insurance similarly affect DCC/DSA.

> 185.0(b) In the marketing of credit insurance, the inferior bargaining position of the debtor creates a "captive market" in which, without appropriate regulation of such insurance, the creditor can dictate the choice of coverages, premium rates, insurer and agent, with such undesirable consequences as: excessive coverage (both as to amount and duration); excessive charges (including payment for nonessential items concealed as unidentifiable extra charges under the heading of insurance); failure to inform debtors of the existence and character of their credit insurance and the charges therefor, and consequent avoidance of the protection provided the debtor by such coverage.
>
> (c) In the absence of regulation, premium rates and compensation for credit insurance tend to be set at levels determined by the rate of return desired by the creditor in the form of dividends or retrospective rate refunds, commissions, fee or other allowances, instead of on the basis of reasonable cost. Such "reverse competition," unless properly controlled, results in insurance charges to debtors that are unreasonably high in relation to the benefits provided to them.

In a normally competitive market, competition for the consumer's business leads to lower prices and reasonable profits. In a reverse competitive market, such as the markets for DCC/DSC and credit insurance, the consumer is unable to exert market pressure leading to lower prices or reasonable profits.

The National Association of Insurance Commissioners (NAIC) recently adopted a model law regarding the regulation of credit property insurance in an effort to promote more effective and more uniform regulation of the product across the states. One of the purposes of the model is to:

> *Address the problems arising from reverse competition in credit insurance markets.*

The model law defines reverse competition:

> "Reverse competition" means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business

by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise.

In a reverse competitive market, powerful market forces work to the disadvantage of the consumer. As we show below, the results of reverse competition in DCC/DSA markets can be unreasonable benefits provisions and/or excessive fees. Perhaps most important, in a reverse competitive market, consumer disclosures are insufficient to protect consumers from their weak market position versus the strong market position of the seller.

The Proposed Regulation of DCC/DSA is Significantly Different than State Credit Insurance Regulation and Will Result in Regulatory Arbitrage by Lenders.

Although there are variations among the states, state credit insurance regulation includes some consistent features to address the problems of reverse competition. These common regulatory provisions include minimum benefit standards and/or prior approval of products before introduction in the market place; prima facie rates and/or prior approval of rates prior to use; claim settlement standards; refund standards; prohibited sales practices; and required consumer disclosures.

In contrast, the proposed DCC/DSA regulations provide fewer (though very important) sales prohibitions and required consumer disclosures.

Given that credit insurance and DCC/DSA are economic substitutes and that the proposed OCC regulations enable lenders to avoid the rate, form, refund and claim settlement oversight of state credit insurance regulation, the proposed OCC regulations create a strong incentive for lenders to shift from sales of credit insurance to sales of DCC/DSA.

The movement from credit insurance to DCC/DSA – which has already begun in the absence of any DCC/DSA regulation – will continue and accelerate under the proposed OCC regulations because the regulations create two systems of regulation for essentially the same product. Because one system – regulation of DCC/DSA – provides significantly less oversight of benefits, charges and claim settlements, there is an economic imperative for lenders to move from credit insurance to DCC/DSA. The movement to DCC/DSA will accelerate under the proposed regulations because the regulations remove some of the uncertainty regarding DCC/DSA that has prevented some lenders from yet making the switch from credit insurance sales.

The proposed OCC regulations for DCC/DSA will create a system of regulatory arbitrage between state credit insurance regulation and federal DCC/DSA regulation that will undermine state credit insurance regulation and significantly lessen consumer protections.

We Have Seen No Evidence to Indicate That Disclosures Alone Are Sufficient to Protect Consumers of DCC/DSA and/or Credit Insurance.

The premise behind the proposed OCC regulations is that, in addition to four prohibited practices, consumers can be protected from unfair, misleading and coercive sales practices by requiring lenders to make certain disclosures.

We have not seen any evidence that consumer disclosures are effective in protecting consumers of credit insurance or DCC/DSA. In fact, we have seen the presence of disclosures used by lenders as a defense against consumers who have been harmed as a result of unfair and coercive sales practices in credit insurance.

Although disclosures are required in the sale of credit insurance, yet unfair and coercive sales practices have occurred. The 1999 report by the Center for Economic Justice and Consumers Union identified a number of instances of unfair and coercive sales practices in credit insurance, including telemarketing sales.[3] In the past week alone, two accounts of additional unfair and coercive sales practices have appeared.

A June 15, 2001 article from Reuters entitled, "Ex-Citigroup Worker Alleges Illegal Lending Norms," reported the following:

> A Citigroup Inc. unit deliberately targeted low-income, uneducated borrowers for loans and insurance they did not need or understand, a former employee alleged in a government lawsuit. The financial services giant has consistently denied such practices.
>
> The charges, filed in an affidavit by part-time branch assistant manager Gail Kubiniec of Citigroup unit CitiFinancial, are part of the lawsuit filed by the Federal Trade Commission (FTC) against Associates First Capital Corp., a consumer lending unit that is part of CitiFinancial. The suit alleges predatory lending and deceptive marketing.
>
> ``I and other employees would often determine how much insurance could be sold to a borrower based on the borrower's occupation, race, age, and education level," Kubiniec said in the affidavit, a copy of which was provided to Reuters by a New York-based consumer advocacy group.
>
> ``If someone appeared uneducated, inarticulate, was a minority, or was particularity young or old, I would try to include all the coverages CitiFinancial offered," she said in reference to insurance and other products often tied to real estate or personal loans.
>
> Citigroup has not admitted to predatory lending, but said in March it had

[3] The report can be found at the CEJ website: http://www.cej-online.org/report.pdf.

> dealt with the FTC's concerns by putting into place a program that addresses lending practices at Associates First, which Citigroup bought last year.

A June 14, 2001 article in the Jackson, Mississippi *Clarion-Ledger*, entitled, "Lender hit with $71M Verdict: Lawsuit accused Washington Mutual of Flipping Loans," reported the following:

> A Mississippi jury has awarded more than $71 million in damages to plaintiffs in a lawsuit accusing Washington Mutual Finance Group LLC of goading customers into renewing loans with additional undisclosed charges.
>
> The verdict in Holmes County late Tuesday gave $69 million in punitive damages and more than $2.2 million in compensatory damages to 23 plaintiffs following more than two weeks of testimony.
>
> Seattle-based Washington Mutual Finance Group currently operates more than 2,300 consumer banking, mortgage lending, commercial banking, consumer finance and financial services offices throughout the nation.
>
> The lawsuit filed against Washington Mutual Finance Group, formerly known as City Finance Co., accused the bank subsidiary of not disclosing to customers insurance premiums in loan renewals.
>
> "Washington Mutual illegally flipped loans," said Rep. Edward Blackmon Jr., attorney for the plaintiffs ."Flipping simply means that they enticed people back into the office to renew loans once they had paid down on a certain amount because it is very profitable for them to renew loans rather than allowing them to pay it out."
>
> Blackmon said by "flipping" the loans, Washington Mutual could "add on various insurance policies." He said customers were also unaware of the relationship City Finance had with insurance companies.
>
> "The companies that were issuing the insurance appeared to be disassociated with City Finance, but in fact, the agreement between these companies and City Finance allowed City Finance to retain a substantial proportion of those premium payments," Blackmon said.

There is Evidence That Disclosures Alone Do Not Protect Consumers of Credit Insurance and DCC/DSA.

A recent survey conducted by the Insurance Research Council of 1,996 people asked if people agreed or disagreed with the statement, "If banks sold homeowners insurance, people would be expected to buy their homeowners insurance there to get a loan." Sixty-one percent (61%) of the respondents said they strongly agree, agreed or probably agreed with the statement. While this single survey question is not dispositive of the thesis that most consumers will the ability to get a loan is tied in some way to the purchase of ancillary products from a lender, it does suggest that many consumers may have such a belief.

Even when consumers receive disclosures that the lenders' decision to grant a loan is not conditioned on the purchase of insurance, there is evidence that consumers still feel their ability to obtain the loan or to obtain favorable loan terms is connected to purchasing insurance. In a 1993 survey of consumers of 3600 consumers[4] who had the "opportunity to purchase credit life insurance in conjunction with all types of consumer loans, except first mortgages and credit cards:"

> Of those who actually purchased credit life insurance, 19.3 percent said it was not explained to them that the insurance was optional. Relative to whites, African American borrowers were less likely to remember hearing that the purchase of credit insurance was not required.
>
> Of those who actually purchased credit life insurance, 15.1 percent said that they felt buying credit insurance improved their chances of obtaining the loan; 7.3 percent thought the purchase of credit insurance improved their credit terms.
>
> Of those who actually purchased credit life insurance, 12 percent said they felt pressured to purchase it.

Disclosures Have Not Prevented Unreasonable DCC/DSA Provisions or Excessive Fees

The majority of DCC/DSA sold today provide disclosures similar or equal to the required disclosures in the proposed OCC regulations. Yet, these disclosures have not prevented excessive fees or unreasonable provisions to be offered and sold to consumers.

In our letter to you of March 27, 2000, we showed how the expected benefits to consumers of an Advanta DCC/DSA product was only 18% of the fees paid – much lower than the ratio of benefits to premiums for credit insurance. None of the proposed

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[4] Barron, John M. and Michael E. Staten, *Credit Insurance: Rhetoric and Reality*. 1994, Credit Research Center, Purdue University. It should be noted that the Credit Research Center is funded and controlled by sellers of credit insurance and DCC/DSA and consistently produces research to support the positions of these lenders and insurers.

disclosures provide the consumer with any indication of the likelihood of obtaining a benefit or the average payout as a percentage of fees by the lender. As consumers, we would certainly have a different reaction to a product that provided a 25% commission to the lender and paid 60% of the fees in benefits than to a product that paid 70% commission and 15% in benefits.

We have recently seen sales materials for a Fleet Bank DCC/DSA agreement that provides an unreasonable restriction. The "Credit Protector" program waives the monthly minimum payment up to a maximum of 12 months if the borrower becomes involuntarily unemployed, disabled or takes an approved leave of absence and waives the entire credit card balance if the borrower becomes permanently disabled or dies. However, in another part of the sales literature, in a section "Credit Protector Disclosure Summary," we find:

> While you are taking advantage of Credit Protector benefits, you may not make any new charges or cash advances. . .. The suspension and waiver will not reduce or eliminate the balance on our account . . ..

In our view, the benefits for the Credit Protector program will be an even smaller percentage of the fee than in the Advanta program. It is precisely when a borrower becomes disabled or unemployed when he or she is most in need of their credit card to borrow money in time of need. Thus, many consumers will unlikely be in a position to stop using their Fleet credit card in exchange for the limited benefits of suspending the debt. This is precisely the type of benefit limitation that is not permitted with credit insurance because it unfair, unreasonable and difficult for a consumer to fully understand when purchasing the product.

The Proposed Regulations Will Undermine the Consumer Protection Advances Made Regarding Finance Single Premium Credit Insurance Used in Predatory Lending.

A number of organizations – ranging from fair lending groups to the United States Departments of Treasury and Housing and Urban Development to Fannie Mae and Freddie Mac – have recognized the problems of financed single premium credit in connection with longer term loans. The proposed OCC regulations on DCC/DSA will allow lenders to simply substitute a DCC for the financed single premium credit insurance that is the subject of criticism and challenge. Thus, the proposed OCC regulations would be indirectly contributing to the continuation of predatory lending practices.

We Support the Additional Consumer Protections Recommended by the NAIC.

In an effort to shorten our comments, we refer to the comments submitted on June 18, 2001 by the NAIC on the proposed DCC/DSA regulations. We support the additional consumer protections recommended by the NAIC and will not repeat them here.

In particular, we urge the inclusion of a minimum standard for the relationship between benefits received and fees paid. The 60% standard recommended by the NAIC is modest. Our analysis of credit insurance rates in many states shows that loss ratios of over 60% provide insurers with reasonable profit and lenders with substantial commissions. Given the types of benefits typically offered today, a 60% minimum loss ratio standard for DCC/DSA will provide lenders with sufficient margin for expenses and profit. More important, a loss ratio standard ensures that consumers will receive substantial benefits from either credit insurance or DCC/DSA. A lender can easily achieve the 60% standard by improving the benefits under the DCC/DSA.

Given the reverse competitive nature of credit insurance and DCC/DSA markets and value of credit insurance and DCC/DSA to lenders, a loss ratio standard is essential for consumer protection. In a normally competitive market, one could argue that market forces reflect consumer preferences for a product and market outcomes reflect the value to consumers. Those arguments are not valid for credit insurance because of reverse competition. Because of the value of credit insurance and DCC/DSA to lenders and the dominant position of lenders in the credit insurance and DCC/DSA transaction, it is reasonable and necessary to establish, as a matter of public policy, a minimum benefit for the ultimate consumer in the credit insurance and DCC/DSA transaction.

Recall that it is the lender who decides what product or package of products to offer and the consumer is generally in a position to either accept or reject the single package offered – regardless of whether the consumer is ineligible for one or more coverages in the package. Even if lenders offered different DCC/DSA packages – and even the choice among lenders is very limited – it is unreasonable to expect a consumer to decide upon a bank for a credit card or installment loan based upon the credit insurance or DCC/DSA product offered. One of the fundamental aspects of a reverse competitive market is that the product in question is a relatively small purchase compared to the main transactions – in this case, the installment loan or the credit card.

We also call your attention to the recommended prohibitions against post-claims underwriting and non-cancelable products – essential consumer protection.

Additional Recommendations

We offer a few additional recommendations. First, DCC/DSA products that require a lump sum up front payment by the consumer, with the possible exception of GAP waiver products, should be prohibited for loans with terms greater than, say, 48 months. Such a prohibition is necessary to prevent DCC/DSA from being used as a tool for predatory lending. An alternative approach to preventing DCC/DSA from being used by predatory lenders is to prohibit the financing of the DCC/DSA fee.

Second, the regulations should require reporting of DCC/DSA experience by lenders, including fees collected, refunds paid, claims paid, claim reserves, and expenses with at least claim information broken out by coverage (e.g., life, disability,

unemployment, leave of absence, property). Such reporting – and public availability of the resulting experience reports – is essential for the public to monitor the reasonableness of DCC/DSA and whether lenders are complying with loss ratio standards.

We recommend that DCC/DSA data reporting be consisted with the Credit Insurance Experience Exhibit (CIEE), which is the form that credit insurers use to report credit insurance experience to the states and NAIC. Because the NAIC is currently in the process of updating and revising the CIEE, the OCC has an opportunity to work with the NAIC to develop DCC/DSA reporting requirements that are most consistent with credit insurance reporting and impose the least cost on lenders..

Third, the calculation of the refund if the loan is prepaid, accelerated or otherwise discharged should provide a benefit at least as great as provided by the actuarial method. The actuarial method refund is the charge for the remaining term. The Rule of 78 generally does not provide a fair refund for consumers.

The OCC's Regulation of DCC/DSA Will Determine Whether Functional Regulation Actually Means Effective Consumer Protection or is a Euphemism For Regulatory Arbitrage.

We encourage the OCC, and other federal banking regulators, to work with the NAIC, consumer advocates and lenders to craft effective functional regulation over the debt protection products of credit insurance and DCC/DSA. We believe the NAIC has recognized that effective functional regulation means more than asking the OCC to regulate DCC/DSA like the states regulate credit insurance. The NAIC has taken action in recent months to encourage states to improve the regulation of credit insurance, is considering adding credit insurance products to CARFRA (an entity that provides for a single national review and approval of insurance products) and has adopted a model law regarding the regulation of credit property insurance. The NAIC has demonstrated its commitment to improving state regulation of credit insurance to address concerns that push lenders towards DCC/DSA and to working with the OCC on effective functional regulation. If the OCC fails to adopt meaningful consumer protections for DCC/DSA, the OCC will bear the responsibility for the consumer abuses that will certainly occur.

Sincerely,

Birny Birnbaum
Center for Economic Justice

J. Robert Hunter
Consumer Federation of America

Comparison of Costs and Benefits of Debt Cancellation Contracts and Credit Insurance

Citibank Credit Protector			Credit Insurance (American Bankers in Texas)				
Balance	$2,000.00		Balance	$2,000.00		Life	$0.048
Rate	$0.69	per $100	Rate	$0.386	per $100	Disability	$0.148
Monthly Cost	$13.80		Monthly Cost	$7.72		IUI	$0.190
Benefits			*Benefits*				
Life	$0.00		Life	$2,000.00			
Disability	$300.00		Disability	$666.72			
Unemployment	$300.00		Unemploymen	$1,440.00			
Total	$600.00			$4,106.72			

Anticipated Claim Payments -- less than
$0.56 4.1%

Anticipated Payments to Lender -- more than
$13.24 95.9%

Anticipated Claim Payments:
$3.86 50%

Anticipated Payments to Lender:
$2.32 30%

Disability

Interest Rate **15.00%** *Credit Insurance Benefit* 2.8%

	DCC/DSC		***Credit Insurance***		
Month	*Balance*	*Finance Charge*	*Finance Charge*	*Balance*	*Benefit*
0	$2,000.00			$2,000.00	
1	$2,000.00	$25.00	$25.00	$1,969.44	$55.56
2	$2,000.00	$25.00	$24.62	$1,938.50	$55.56
3	$2,000.00	$25.00	$24.23	$1,907.17	$55.56
4	$2,000.00	$25.00	$23.84	$1,875.45	$55.56
5	$2,000.00	$25.00	$23.44	$1,843.33	$55.56
6	$2,000.00	$25.00	$23.04	$1,810.81	$55.56
7	$2,000.00	$25.00	$22.64	$1,777.89	$55.56
8	$2,000.00	$25.00	$22.22	$1,744.55	$55.56
9	$2,000.00	$25.00	$21.81	$1,710.80	$55.56
10	$2,000.00	$25.00	$21.39	$1,676.63	$55.56
11	$2,000.00	$25.00	$20.96	$1,642.03	$55.56
12	$2,000.00	$25.00	$20.53	$1,607.00	$55.56
Remaining Balance		$2,000.00		$1,607.00	
Benefits Paid		$300.00		$666.72	

Unemployment

Interest Rate **15.00%** *Credit Insurance Benefit* 6.0%

	DCC/DSC		***Credit Insurance***		
Month	*Balance*	*Fin. Charge*	*Fin. Charge*	*Balance*	*Benefit*
0	$2,000.00			2000	
1	$2,000.00	$25.00	$25.00	$1,905.00	$120.00
2	$2,000.00	$25.00	$23.81	$1,808.81	$120.00
3	$2,000.00	$25.00	$22.61	$1,711.42	$120.00
4	$2,000.00	$25.00	$21.39	$1,612.81	$120.00
5	$2,000.00	$25.00	$20.16	$1,512.97	$120.00
6	$2,000.00	$25.00	$18.91	$1,411.88	$120.00
7	$2,000.00	$25.00	$17.65	$1,309.53	$120.00
8	$2,000.00	$25.00	$16.37	$1,205.90	$120.00
9	$2,000.00	$25.00	$15.07	$1,100.97	$120.00
10	$2,000.00	$25.00	$13.76	$994.73	$120.00
11	$2,000.00	$25.00	$12.43	$887.16	$120.00
12	$2,000.00	$25.00	$11.09	$778.25	$120.00
Remaining Balance		$2,000.00		$778.25	
Benefits Paid		$300.00		$1,440.00	

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 9

2002 DCC/DSA Rulemaking Decision by OCC Sample Credit Insurance Certificate

[BILLING CODE 4810-33-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 37

[Docket No. 02-14]

RIN 1557-AB75

Debt Cancellation Contracts and Debt Suspension Agreements

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adding a new part 37 to its regulations that addresses debt cancellation contracts (DCCs) and debt suspension agreements (DSAs). The purpose of the final rule is to establish standards governing these products in order to ensure that national banks provide such products consistent with safe and sound banking practices and subject to appropriate consumer protections.

EFFECTIVE DATE: This rule is effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; Suzette Greco, Special Counsel, Securities and Corporate Practices Division, (202) 874-5210; or Rick Freer, Compliance Specialist, Compliance Division, (202) 874-4862, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

National banks' authority to offer DCCs and DSAs

A DCC is a loan term or a contractual arrangement modifying loan terms linked to a bank's extension of credit, under which the bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. A DSA is a loan term or a contractual arrangement modifying loan terms linked to a bank's extension of credit, under which the bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event.

Under a DCC or a DSA, the customer typically agrees to pay an additional fee to the bank in exchange for the bank's promise to cancel or temporarily suspend the borrower's obligation to repay the loan. The fee may be a lump sum that is payable at the outset of a loan (that may be financed over the term of the loan), or the fee may take the form of a monthly or other periodic charge. The fee compensates the bank for releasing borrowers from loan obligations under the circumstances specified in the DCC or DSA. These arrangements also provide customers a convenient method of extinguishing debt in times of financial or personal hardship, and enable the bank to avoid the time and expense of collecting the balance of the loan from a borrower's estate in the event of the borrower's death or other specified circumstances.[1]

The authority of national banks to offer DCCs and DSAs is well-established.[2] Nearly 40 years ago, in 1963, the OCC concluded that offering DCCs was a lawful exercise of the powers

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[1] See generally, Joseph L. Moore & James W. Smith, Debt Cancellation Contracts: A Neglected Asset, 112 Banking L. J. 918 (1995).

[2] 12 U.S.C. 24(Seventh). See Memorandum from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, to John D. Hawke, Jr., Comptroller of the Currency, dated June 25, 2002 (discussing national banks' authority to offer DCCs and DSAs).

of a national bank in connection with the business of banking.[3] The following year various OCC issuances affirmed that position.[4] As explained by Comptroller James Saxon:

> The debt cancellation ruling issued by this Office [OCC] is not intended as a means for National Banks to invade the field of insurance. Rather, it is a recognition by this Office of a National Bank's right to protect itself by the establishment and maintenance of appropriate reserves against anticipated losses in connection with its lending activities under 12 U.S.C. § 24. The necessity to maintain such reserves and to adjust its charges in relation to both reserves and the risk involved in a particular transaction has long been recognized as an essential part of the business of banking.[5]

In 1971, the OCC codified the interpretive ruling on DCCs as 12 CFR 7.7495.

The only Federal circuit court of appeals that has considered DCCs or DSAs upheld the OCC's determination that the National Bank Act authorizes national banks to enter into DCCs with their borrowers and that DCCs were banking products, not part of the "business of insurance."[6] In First Nat'l Bank of Eastern Arkansas v. Taylor, the Eighth Circuit Court of Appeals considered whether DCCs provided by a national bank to its loan customers were subject to Arkansas State insurance regulation. The court held that the National Bank Act authorized national banks to offer DCCs. Further, it held that Federal law precluded the State

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[3] See Comptroller of the Currency, The National Banking Review 264 (Dec. 1963).

[4] See Letter from James J. Saxon to the President of a National Bank (Mar. 10, 1964); Letter from James J. Saxon to the President of a National Bank (Mar. 26, 1964); James J. Saxon, Statement of the Comptroller of the Currency on Debt Cancellation Contracts and Their Relation to State Law (May 18, 1964); James J. Saxon, Letter to the Presidents of all National Banks (July 21, 1964).

[5] James J. Saxon, Statement of the Comptroller of the Currency on Debt Cancellation Contracts and Their Relation to State Law (May 18, 1964).

[6] See First Nat'l Bank of Eastern Arkansas v. Taylor, 907 F.2d 775 (8th Cir.), cert. denied, 498 U.S. 972 (1990).

insurance commissioner from requiring the national bank to obtain a State insurance license and from taking enforcement action against the national bank for failing to do so.[7]

The Eighth Circuit found that DCCs do not constitute the "business of insurance" under the McCarran-Ferguson Act because the product falls within the powers incidental to banking granted by the National Bank Act.[8] The court emphasized that DCCs offered by banks in connection with their loans differ significantly from traditional insurance contracts. DCCs do not require the bank to take an investment risk or make payment to the borrower's estate. The loan simply is extinguished when the borrower dies. Thus, the court reasoned, "the primary and traditional concern behind state insurance regulation -- the prevention of [the insurer's] insolvency -- is not of concern to a borrower who opts for a debt cancellation contract."[9] The court concluded that further support for its holding that DCCs do not constitute the "business of insurance" derives from the fact that national banks fulfilling their obligations under DCCs do not implicate this central concern of insurance regulation.[10]

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[7] "Because national banks are considered federal instrumentalities, states may neither prohibit nor unduly restrict their activities. Thus, the National Bank Act preempts the Commissioner's authority to prohibit FNB from offering debt cancellation contracts." Id. at 778 (citations omitted).

[8] The court recognized that whether an activity falls within the "business of insurance" for purposes of the McCarran-Ferguson Act is a federal question and not determined by State law defining insurance. Id. at 780, n.8 (citing SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65, 69 (1959)). See also Steele v. First Deposit Nat'l Bank, 732 So.2d 301 (Ala. Civ. App. 1999) (finding a credit protection debt deferral product was not within the meaning of the "business of insurance").

[9] Taylor, 907 F.2d at 780.

[10] See id.

In 1996, the OCC amended the interpretive ruling (renumbered as §7.1013) to expressly include offering DCCs for the disability of the borrower, in addition to death.[11] The OCC also has issued various interpretive letters concerning DCCs and DSAs over the years.[12] In 1998, for example, the OCC confirmed that a national bank may offer DSAs as well as DCCs, as part of its express authority to make loans.[13]

The OCC's rulemaking

On January 26, 2000, the OCC published in the Federal Register an advance notice of proposed rulemaking (ANPR) requesting comment on whether regulations addressing DCCs and DSAs were necessary or appropriate (65 FR 4176).[14] In particular, in the ANPR, we noted the absence of a comprehensive Federal consumer protection scheme governing DCCs and DSAs.

We OCC received 41 comments in response to the ANPR. Commenters were evenly divided on whether additional regulations were necessary. On balance, we agreed with those who favored additional standards in this area.

On April 18, 2001, we published a notice of proposed rulemaking (NPRM) requesting comment on proposed regulations governing DCCs and DSAs (66 FR 19901). The preamble to the proposal said that the proposed rules were designed to facilitate consumers' informed choice about whether to purchase DCCs or DSAs, to discourage unfair or abusive sales practices, and to promote national banks' ability to offer DCCs and DSAs on a safe and sound basis.

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[11] See 61 FR 4849 (Feb. 9, 1996).

[12] See, e.g., Interpretive Letter No. 641 (Jan. 7, 1994); Interpretive Letter No. 827 (Apr. 3, 1998); Interpretive Letter No. 903 (Dec. 28, 2000).

[13] See Interpretive Letter No. 827 (Apr. 3, 1998).

[14] The comments we received on the ANPR are summarized in the notice of proposed rulemaking (66 FR 19901, Apr. 18, 2001).

The OCC received 51 comment letters in response to the NPRM.[15] The commenters included bank trade associations, national banks, credit card companies, and consumer groups. Comments were also filed by insurance trade associations, insurance companies, and State insurance regulators. Finally, we received comments from a number of individuals and companies. The vast majority of commenters favored the proposed regulation, but most of these commenters recommended changes.

The final rule makes a number of changes to the proposal, many in response to suggestions provided by commenters. The next section of this discussion sets out a general overview of the final rule.

II. Overview

The final rule includes the following significant features:

- It codifies the OCC's longstanding position that DCCs and DSAs are permissible banking products.
- It establishes important safeguards to protect against consumer confusion and areas of potential customer abuse. In particular, the final rule prohibits national banks from offering lump sum, single premium DCCs or DSAs in connection with residential mortgage loans.
- The rule provides for standardized disclosures of key information in connection with the offer and sale of DCCs and DSAs. The disclosure requirements are structured to accommodate widely used methods of marketing DCCs and DSAs, including telephone solicitations, mail inserts, and so-called "take one" applications.

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[15] Several commenters filed multiple comments.

- To the extent feasible, the rules apply consumer protections modelled on the framework of consumer protections that Congress directed the OCC (and the other Federal banking agencies) to apply to banks' insurance sales. National banks are familiar with these insurance sales requirements, which are contained in part 14 of the OCC's regulations, and the approach taken in the final rule enables banks to harmonize their policies, procedures, and employee training programs across the two product lines.
- The rule addresses safety and soundness considerations presented by DCCs and DSAs by requiring national banks to manage the risks associated with these products according to safe and sound banking principles, including appropriate recognition and financial reporting of income, expenses, assets, and liabilities associated with DCCs and DSAs, adequate internal controls, and risk mitigation measures.

Section III of this preamble discussion describes the most significant comments we received on the proposed rule and responds to the commenters' principal concerns. Section IV summarizes the final rule.

III. Summary of Comments

Authority, purpose, and scope (section 37.1)

The proposed rule removed 12 CFR 7.1013 and replaced it with 12 CFR 37.1. Section 37.1(a) stated the authority of national banks under 12 U.S.C. 24(Seventh) to enter into both DCCs and DSAs and to charge a fee for these products. Section 37.1(b) set forth the purposes of the new regulations. Section 37.1(c) stated that the regulations applied to the provision of DCCs and DSAs by national banks and Federal branches and agencies. In addition, it clarified that the

sale of DCCs and DSAs are governed by new part 37 and not by 12 CFR 14 (Consumer Protections for Depository Institution Sales of Insurance).

Applicability of State law

Many commenters sought clarification about the regulatory framework that governs DCCs and DSAs. They urged the OCC to clarify that DCCs and DSAs offered by national banks are not subject to regulation under State insurance law. One commenter, however, asserted that DCCs and DSAs are "authorized" insurance products under the Gramm-Leach-Bliley Act (GLBA)[16] and that States have express authority to regulate them as insurance, subject only to the preemption standards set forth in section 104 of the GLBA.

As is described in the Background section of this preamble discussion, DCCs and DSAs are banking products authorized under 12 U.S.C. 24(Seventh). This final rule, together with any other applicable requirements of Federal law and regulations, are intended to constitute the entire framework for uniform national standards for DCCs and DSAs offered by national banks. Accordingly, the final rule states that DCCs and DSAs are regulated pursuant to Federal standards, including part 37, and not State law.

Establishment of fees

Many commenters urged that the OCC regulate the amount of fees banks can charge for DCCs and DSAs. The premise of a number of these comments was the assertion that DCCs and DSAs are substitute products for credit insurance. These commenters contended that the market for DCCs is analogous to the market for credit insurance, which is characterized by "reverse competition." "Reverse competition" refers to market conditions that result in increased prices because insurers compete with each other for the business of the agents who control placement

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[16] Pub. L. No. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

of the product. To obtain this business, insurance companies pay high commissions or provide other compensation or services, resulting in higher costs that are then passed on to the consumer. These commenters expressed concern that disclosure requirements are inadequate to address this market failure, and they recommended that the OCC impose the same type of regulation -- including fee, form, and claims regulation -- on the sale of DCCs or DSAs as is commonly required by State insurance regulators with respect to the sale of credit insurance.

For several reasons, we decline to depart from the basic regulatory approach we proposed, although the final rule does contain enhanced consumer protection features beyond those contained in the proposal. First, as the Taylor court explained, DCCs and DSAs are distinct from credit insurance as a matter of law. Moreover, we see no evidence that the market for DCCs and DSAs suffers from the same flaws as the commenters assert prevail in the credit insurance market. Issuers of DCCs and DSAs do not compete to enlist independent, third-party sellers to place their product. Instead, every national bank that issues DCCs or DSAs is its own seller because these products are provided in conjunction with loans that the bank itself makes. Commenters provided no evidence of impairment in the market for DCCs and DSAs, but instead relied on concerns regarding distortions and abuses in the credit insurance market. Thus, we cannot conclude that the strongest reason given by the commenters in support of fee regulation -- dysfunction in the market that disclosures are inadequate to overcome -- is present in the market for DCCs and DSAs. Moreover, as the rule's express prohibition on tying makes clear, the choice of purchasing the product is left exclusively to the customer. We have concluded, therefore, that a regulatory approach that includes price controls as a primary component is not warranted.

The OCC's regulations reflect the fact that national banks may set fees subject to standards of prudent banking practices. Section 7.4002 of our rules authorizes national banks to establish non-interest charges and fees "according to sound banking judgment and safe and sound banking principles."[17] A bank satisfies this standard if it employs a decision making process to set fees that involves consideration of four factors identified in the regulation. The standards of §7.4002 apply to the fees charged by a national bank for a DCC or DSA.

Several commenters stated that, in some cases, either banks do not charge customers a fee for a DCC or DSA or a third party pays the fee. These commenters urged the OCC to clarify that the regulation does not apply if the customer does not pay a fee for the DCC or DSA, or to create an exemption to some of the provisions of the rule. We have not modified the final rule in this way because, in our view, such a modification could create an incentive for banks to evade the requirements of the rule. This could occur if, for example, a bank structures its fees so that it does not explicitly charge the customer for a DCC or DSA but builds that fee into some other component of the transaction.

For these reasons, §§37.1(a), (b), and (c) are substantively the same in the final rule as in the proposal, with certain stylistic changes to improve clarity. For stylistic purposes, the regulation text uses both the terms "extension of credit" and "loan;" we do not intend this usage to create any substantive distinctions. In addition, we have added a phrase in subsections (a) and (c) to clarify that DCCs and DSAs are offered in connection only with extensions of credit made by the same bank.

Definitions (section 37.2)

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[17] 12 CFR 7.4002(b)(2).

The proposed rule defined a DCC as a contract entered into between a bank and its customer providing for cancellation of all or part of the amount a customer owes under an extension of credit from that bank upon the occurrence of a specified event. A DSA was similarly defined as a contract entered into between a bank and its customer providing for suspension of all or part of the customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The rule used the term "bank" to include a national bank as well as a Federal branch or agency. A customer was defined as an individual who obtains a loan or other extension of credit from a bank primarily for personal, family or household purposes.

A number of commenters sought clarification of the terms defined in the proposal, and we have, accordingly, made a number of clarifying changes to the text. For example, many commenters were concerned that the definitions of a DCC and a DSA implied that they are products separate from the underlying extension of credit. The text of the final rule adds language to clarify this point.

The final rule makes stylistic changes in all the definitions and adds five definitions: actuarial method, closed-end credit, contract, open-end credit, and residential mortgage loan. In response to suggestions from commenters, we have added a sentence to the definition of a DSA to clarify that the rule does not cover so-called "skip-a-payment" agreements in which the triggering event for a deferral arrangement is either the borrower's unilateral election to defer payment or the bank's unilateral decision to allow a deferral of repayment. The rule covers "hybrid" arrangements that contain both debt suspension and debt cancellation features. It also covers DSAs where interest continues to accrue during the suspension period, as well as DSAs where the accrual of interest is suspended.

Both the proposal and the final rule require that if a refund feature is part of the DCC or DSA, the bank must compute that refund using a method no less favorable to the consumer than the actuarial method. In response to requests from commenters, the final rule defines that term. The rule adopts the definition of "actuarial" found in the Truth in Lending Act (TILA), because banks are already familiar with the TILA definition and its implementation in the Federal Reserve Board's Regulation Z.[18] For the same reason, the terms "open-end credit" and "closed-end credit" are defined based on Regulation Z.[19]

For purposes of the prohibition on single-payment fees for DCCs and DSAs issued in connection with residential mortgage loans, we have added the term "residential mortgage loan" and defined it to mean a loan secured by one-to-four family, residential property.

Finally, the rule adds the new term "contract" as a less cumbersome, short-form reference to a debt cancellation contract or a debt suspension agreement in the remainder of the regulation text.

Prohibited practices (section 37.3)

Anti-tying provision

The proposed rule contained several types of customer protections that would be standard when a bank provides products associated with a loan, including an anti-tying provision precluding a bank from extending credit or changing the terms or conditions of an extension of credit conditioned upon the purchase of a DCC or DSA from the bank.

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[18] See 15 U.S.C. 1615(d)(1). See also 12 CFR 226, app. J (appendix to the Federal Reserve Board's Regulation Z, implementing the TILA, explaining the use of the actuarial method for purposes of computing the annual percentage rate).

[19] See 12 CFR 226.2(20) and 226.2(10), respectively.

Several commenters supported the anti-tying prohibition. These commenters thought that a bank's authority to deny a consumer's request for credit gives the bank a unique ability to seek to coerce consumers to purchase a DCC or DSA. They asserted that disclosures alone are not effective to dispel the potentially coercive effect that tying has in this context.[20]

A number of commenters opposed this provision, however. These commenters offered different objections, depending on their view of the effect on these products of the anti-tying provision in section 106 of the Bank Holding Company Act Amendments of 1970.[21] Section 106 generally forbids a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions, on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions. One of these exceptions, the statutory "traditional bank product" exemption, permits a bank to extend credit, lease or sell property, furnish services, or fix or vary prices on these transactions, on the condition that a customer obtain a loan, discount, deposit or trust service from the same bank.[22] Some commenters argued that section 106 does not apply because DCCs and DSAs are an integral term of the loan agreement and the tying prohibition only applies to separate products. Others thought that section 106 applies but would operate to permit tying either because the DCC or DSA is part of the loan and section 106 permits the tying of loan

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[20] In support of this view, one commenter cited a study indicating that even when consumers receive disclosures informing them that the lender's decision to grant a loan is not conditioned on the purchase of insurance, some consumers still believe that there is a connection between their ability to obtain the loan or to obtain favorable loan terms and their purchase of insurance. See John M. Barron & Michael E. Staten, Credit Research Center, Purdue University, Credit Insurance: Rhetoric and Reality (1994).

[21] Section 106 is codified at 12 U.S.C. 1972.

[22] See 12 U.S.C. 1972(1)(A).

products, or because the DCC or DSA is a "traditional bank product" and may be tied to a loan on that basis. On the other hand, one commenter argued that the rule's anti-tying provision is unnecessary because section 106 already applies to prohibit tying a loan to a customer's purchase of a DCC or DSA from the bank.

DCCs and DSAs may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequent to the execution of that agreement. In either case, the effect of the DCC or DSA is to extinguish or suspend the borrower's obligation to repay under the otherwise operative provisions of the loan. Since a bank's ability to adjust the terms of loan repayment is an integral component of its authority to lend, in our view, a DCC or DSA could properly be treated as a component of the loan and, as such, would not be subject to the tying prohibitions in section 106 because a DCC or DSA is a term of the loan rather than a separate product. Thus, the final rule retains a tying prohibition specifically applicable to DCCs and DSAs.

Misleading practices

The proposed rule prohibited a bank from engaging in any practice that could mislead a reasonable person with respect to the information that the proposal required to be disclosed.

Several commenters objected to the "reasonable person" standard on the grounds that it was vague, subjective, or so broad that it would be impossible to enforce.[23] Yet, the proposed standard was very similar to the standard governing misleading practices found in the regulations

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[23] A few commenters also argued that this provision is unnecessary because national banks are already subject to the prohibitions in the Federal Trade Commission Act against fraud and misleading or deceptive advertising. Section 5 of the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*) (FTC Act) generally prohibits "unfair or deceptive acts or practices in or affecting commerce." The prohibition retained in the final rule is consistent with, but not duplicative of, the standards in the FTC Act.

of the OCC (and the other Federal banking agencies) implementing consumer protections in the insurance sales context.[24] National banks' sale of DCCs and DSAs, which may be solicited and marketed using methods similar to insurance solicitation and marketing, can present similar consumer protection issues as the sale of insurance products. Moreover, national banks are already generally familiar with the standard contained in the insurance sales regulations. Thus, the final rule retains the substance of the prohibition as proposed but with changes in wording so that the language conforms more closely with the language of part 14. We have also added an express reference to misleading advertisements, as well as practices, to make clear that the scope of the prohibition is no less than that in part 14.

Unilateral modification of the contract

The proposed rule prohibited a bank from retaining a unilateral right to modify or cancel the contract.

A commenter representing several organizations supported this provision, but the majority of the commenters who addressed it either were opposed or recommended modifications. Many commenters stated that modifying the terms of credit is standard business practice in the credit card industry. They noted that modifications are subject to the protections of the TILA and Regulation Z, which permit changes in certain terms upon notice and agreement by the customer. Other commenters suggested that the OCC create an exemption in the case of customers who pay the fee on a monthly basis and have the right to cancel at any time. Several

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[24] See 12 CFR 14.30(b). This provision is included in part 14 of the OCC's regulations, which implements the insurance sales consumer protections prescribed by section 305 of the GLBA. The statute requires the regulators to prohibit advertising or statements that could mislead any person or cause a reasonable person to reach an erroneous belief with respect to several enumerated facts. See 12 U.S.C. 1831x (codifying section 305 of the GLBA).

commenters urged the OCC to permit banks to make unilateral changes, provided the change benefits the customer.

The OCC remains of the view that retaining a unilateral right to modify or cancel the DCC or DSA, whether the product is associated with open- or closed-end credit, has the potential to be abusive because it could be exercised in such a way as to deny a customer debt relief for which the customer has paid. We agree, however, that some of the circumstances described by the commenters do not present this potential for abuse. Accordingly, the final rule excepts unilateral changes from the prohibition in two circumstances: first, if the modification is favorable to the customer and is made without additional charge to the customer; and, second, if the customer is notified of the proposed change and provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect. For example, the OCC would generally regard a 30-day notice period as reasonable. This time period is consistent with the time requirements imposed by TILA in an analogous situation.[25] The final rule does not require that the contract language specify the circumstances under which the bank may make a unilateral modification, though inclusion of explicit provisions in the contract may be helpful to avoid misunderstandings. Rather, the rule operates to prohibit the bank from requiring its customer to abide by a unilateral modification unless it meets one of the exceptions described in the rule.

Single, lump sum payment

Several commenters urged the OCC to include in the final rule a provision prohibiting banks from requiring a customer to pay the fee for a DCC or DSA in a single payment. These commenters focused on abuses that have occurred in the sale of credit insurance in the subprime

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[25] The types of changes that might occur if a bank made a unilateral modification to a DCC or DSA are analogous to changes for which Regulation Z requires 30 days prior notice. See, e.g., 12 CFR 226.9(e) and (f).

market for residential mortgage loans and argued that the sale of DCCs and DSAs present a similar potential for abuse. They noted that customers who pay the fee in a single payment routinely add the amount of the fee to the amount borrowed, which means that customers will pay interest on the fee for the life of the loan. They contended that lenders marketing credit insurance target borrowers who are unsophisticated about financial products and thus unlikely to realize that financing the fee has the effect of reducing the homeowner's equity in his or her home.

The issues identified with respect to single premium credit insurance in the home mortgage market are particularly problematic because they highlight practices targeting consumers whose economic choices may be circumscribed or who may be especially vulnerable to predatory sales practices. Moreover, we are aware, as commenters pointed out, that some large financial institutions have voluntarily abandoned the practice of financing single payment credit insurance premiums for home mortgage loans. In addition, both Fannie Mae and Freddie Mac have announced that they will no longer purchase mortgages that carry single premium credit insurance.[26] The reaction of these market participants supports the conclusion that the potential for abuse in the marketing and sale of these products outweighs any potential consumer benefits.

In the absence of evidence that the abuses identified by the commenters are occurring in the DCC or DSA market, we have declined to adopt an across-the-board prohibition on lump sum fees. We remain concerned, however, that abuses similar to those occurring in the credit insurance market not develop with respect to DCCs or DSAs provided in connection with home

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[26] See Freddie Mac Unveils Policy on Insurance To Protect Borrowers, Wall St. J., Mar. 27, 2000, at A6; Fannie Mae Chairman Announces New Loan Guidelines to Combat Predatory Lending Practices, News Release (Fannie Mae), Apr. 11, 2000.

mortgage loans. To guard against that result, the final rule prohibits a national bank from requiring a customer to pay the fee for a DCC or DSA in a single payment, payable at the outset of the contract, if the debt that is the subject of the contract is a residential mortgage loan. The rule permits single payment contracts in the case of all other consumer loans, but requires banks that offer the option of paying the fee in a single payment to also offer the bona fide option of paying for that contract in periodic payments. In such cases, the bank must also make certain disclosures related to the fee.

Terms not routinely enforced

The proposed rule prohibited a bank from including in a DCC or DSA any term that the bank routinely does not enforce.

Twelve commenters addressed this provision and they unanimously opposed it. They contended, among other things, that it sets a standard that is unclear and difficult to administer. In addition, they argued that the provision could harm customers because it would have a chilling effect on banks' flexibility to work with customers to resolve delinquent debt issues and rehabilitate credit relationships. Several commenters stated that legal means already exist to address instances in which the failure routinely to enforce a term would mislead consumers, such as the OCC's general authority to enforce unfair or deceptive business practices laws applicable to national banks.

We agree with these commenters that this prohibition would be counterproductive if it produced the unintended result of deterring banks from negotiating with their customers to work out or restructure delinquent debt. Accordingly, we have deleted this prohibition from the final rule.

Refunds of fees in the event of termination of the agreement or prepayment of the covered loan (section 37.4)

The proposal required a bank that provides a no-refund DCC or DSA also to offer a product that provides for a refund of the unearned portion of the fee in the event of termination of the agreement or prepayment of the covered loan. In addition, the proposal required banks to calculate the amount of any refund due a customer based on a method at least as favorable to the customer as the actuarial method.

Several commenters opposed this provision. Some argued that fees charged in connection with DCCs and DSAs should be treated the same as any other fee a bank charges in connection with a loan. Others thought that no-refund DCCs and DSAs are inherently unfair to consumers and recommended that the OCC prohibit them. Many commenters stated that the refund provision should not apply to open-end credit where customers pay for DCCs or DSAs on a month-to-month basis.

As we noted in the proposal, some banks that offer DCCs and DSAs may structure those products so that the customer does not receive a refund of any unearned portion of the fee paid for the product if the DCC or DSA is terminated or the customer prepays the loan covered by the contract. Banks have suggested that customers benefit from a "no-refund" product because the total fee paid by the customer is substantially less than the fee that would be charged for the same product with a fee refund feature. On the other hand, a no-refund product could be structured in a way that is unfair to customers if, for example, the customer pays most of the fee early in the term of the contract but also prepays the loan well before the end of the term.

We continue to believe that the approach that best balances encouraging banks to provide a viable choice of products for consumers with discouraging unfair practices is to require banks to offer both options so that a customer can choose between a lower total fee or the availability of a refund. In our view, the potential for unfairness in a no-refund product lies principally in the

fact that the customer may be induced to pay "up front" for coverage that he or she never receives because the loan is prepaid. This result is substantially mitigated if the consumer has the option of DCC or DSA coverage on a "pay as you go" basis.

Accordingly, the final rule retains this provision (as renumbered) with one substantive change. The text of the final rule requires that a bank that offers a no-refund DCC or DSA must also offer the customer a bona fide option to purchase a comparable contract that provides for a refund. The option to purchase is bona fide if the refund product is not deliberately structured in such a way, including pricing of the product, as to deter a customer from selecting that option.

In response to questions raised by commenters, we clarify that the refund provision does not apply in the case of open-end credit where customers pay for the contract on a month-to-month basis. In that case, there are no "unearned" fees to refund. Nor does it apply if the fee for the contract is paid by the bank or some other third party rather than the customer.

If a customer is entitled to a refund, the amount due the customer may vary greatly depending on the method used to calculate the refund. The two most commonly used formulas for computing refunds are "the Rule of 78's" and the actuarial method. Under the Rule of 78's, a customer will receive a substantially lower refund than if the actuarial method had been used to compute the refund. Because application of the Rule of 78's creates substantial inequities for the customer, the final rule retains the requirement that banks calculate the amount of any refund due a customer based on a method at least as favorable to the customer as the actuarial method. As described earlier in this discussion, we have added to the final rule a definition of the term "actuarial method."

Method of payment of fees (section 37.5)

As we have described, section 37.3(c)(2) prohibits a bank from requiring a customer to pay the fee for a DCC or a DSA in a single lump sum where the associated credit is a residential mortgage loan. Several commenters urged the OCC to prohibit a bank from requiring a customer to pay the fee for any DCC or DSA in a single payment. While we do not believe the available evidence supports that result, we agree that single payment fees have potential to be problematic even outside the home mortgage loan context. Accordingly, for DCCs or DSAs associated with any other type of loan, § 37.5 of the final rule requires a bank that offers a customer the option to pay the fee for a contract in a single payment also to offer that customer a bona fide option to pay the fee for that contract in periodic payments. The option is "bona fide" if it is not deliberately priced in such a way as to deter a customer from selecting that option.

Disclosures (section 37.6)

Content of short and long form of disclosures in general

The proposed rule listed eight disclosures that a bank, where applicable, was required to give.

Many commenters objected to the number of required disclosures. They noted that banks already are required to provide disclosures under the TILA and argued that the new disclosures were too burdensome for banks and too confusing for customers. Several commenters who supported rate, form, and claims regulation similar to the regulation of the insurance industry challenged the usefulness of disclosures and criticized the OCC for relying too heavily on disclosures. For the reasons we have earlier described, in our view, regulation of DCCs and DSAs as if they were insurance products is not appropriate. We agree with the commenters who thought the proposed disclosure requirements could be improved, however.

Therefore, the final rule retains much of the content of the disclosures prescribed by the proposal, but revises the disclosure process so that it more readily accommodates the methods banks use to market and sell DCCs and DSAs. The final rule specifies which disclosures must be given at different stages of the marketing and sales process and provides forms of disclosure that serve as models for satisfying the requirements of the rule.

In the final rule the disclosures have been reorganized into two types: a short form of disclosure suitable for use in telemarketing and various abbreviated written solicitations, and a more detailed long form of disclosure that a customer generally will receive prior to purchasing the contract. A sample short form is provided as Appendix A to the regulation and a sample long form is provided as Appendix B. Use of these forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met. Because many of the disclosures will appear in both the short and long form, we discuss the short and long form disclosures together.

Anti-tying disclosure

The proposed rule required a bank to inform the customer that neither its decision whether to approve a loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA from the bank.

Commenters opposed to the anti-tying prohibition also opposed the anti-tying disclosure. Most of these commenters contended that the anti-tying disclosure is necessary only if the DCC or DSA is being sold while a customer's application for credit is pending. If the OCC retains this disclosure, they recommended creating an exemption for DCCs and DSAs sold subsequent to the extension of credit.

As described earlier in this discussion, the final rule retains the prohibition on tying either the availability or the terms of credit to a customer's purchase of a DCC or DSA. Because the effectiveness of the prohibition is greatly enhanced if the customer knows that the bank may not tie DCCs or DSAs to its loan products, the final rule also retains the requirement that the bank provide an anti-tying disclosure. The disclosure appears in both the short form and long form and, insofar as appropriate,[27] is similar in content to the anti-tying disclosure required by the insurance sales consumer protection rules. The appendices suggest a wording that is simpler than the text of the proposed rule, however, and contain a statement that purchase of the product is optional and will not affect either the bank's credit decision or the terms of credit already extended.

Explanation of effect of debt suspension agreement

Certain commenters asserted that there is a potential for increased customer confusion regarding DSAs when compared with credit disability insurance products and DCCs where disability is the triggering event. They noted that these products are similar to DSAs in that they address the health status of customers in relation to their ability to continue employment. In response to these commenters' suggestions, the final rule requires a bank to explain in the long form the nature of a debt suspension agreement. The bank must disclose that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired.

Disclosure of the amount of the fee

4.

[27] See 12 CFR 14.40(b)(2). The insurance sales rules also require a bank to disclose that it may not condition an extension of credit on its customer's not obtaining insurance from an entity unaffiliated with the bank. A similar disclosure is not appropriate in the case of a DCC or DSA, since the DCC or DSA must be offered by the bank extending the credit.

The proposed rule required a bank to inform customers of the total fee for the DCC or DSA.

Many commenters argued that it is not possible to compute the total fee for a DCC sold in connection with open-end credit because the fee is based on the customer's outstanding balance which fluctuates from month to month. The commenters urged the OCC to eliminate this disclosure in the case of open-end credit or to adopt a more flexible alternative. Most commenters recommended that an appropriate disclosure would be the unit-cost approach under Regulation Z or the formula used to compute the fee.

We agree that it may be impracticable to require disclosure of the amount of the fee at the time the bank first solicits the purchase of a DCC or DSA, particularly in the case of open-end credit. The final rule therefore requires a bank to make disclosures regarding the amount of the fee only in the long form. However, the disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either: (1) disclose that the periodic fee is based on the account balance multiplied by a unit-cost and provide the unit-cost, or (2) disclose the formula used to compute the fee.

Disclosure concerning lump sum payment of fee

The proposed rule required a bank to disclose the method of payment, including whether the payment would be collected in a single payment or periodic payments, and whether the fee was included in the loan amount.

Only two commenters directly addressed this disclosure. One commenter recommended that the OCC eliminate this disclosure, and the second commenter stated that this disclosure would be confusing in the context of open-end credit.

The final rule modifies this disclosure to reflect the requirements in § 37.5. As modified, this disclosure, which is included in both the short and long form, requires a bank to disclose, where appropriate, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan, since, under the final rule, the option to pay the fee in a single payment is not available in that case. The rule also requires a bank to disclose that adding the fee to the amount borrowed will increase the cost of the contract.

Disclosure concerning lump sum payment of fee with no refund

The proposed rule required a bank to disclose, if applicable, that the customer is not entitled to a refund of the unearned portion of the fee in the event the customer terminates the contract or prepays the loan prior to the scheduled termination date, and that the customer has the option of purchasing a DCC or DSA that provides for a refund in those circumstances.

A few commenters urged the OCC to clarify that this disclosure does not apply to open-end credit accounts where the fee is billed monthly. One commenter recommended that the OCC replace this disclosure with a statement as to whether the customer will be entitled to a refund of the unearned portion of the fee in the event the customer terminates the contract or prepays the loan in full prior to the scheduled termination date.

In response to these comments, the final rule deletes part of this disclosure and adds a new sentence. The revised disclosure appears in both the short and long form. The final rule eliminates the requirement that a bank must state whether or not the customer will be entitled to a refund of the unearned portion of the fee in the event the customer terminates the contract or prepays the loan in full prior to the scheduled termination date. Instead, if a customer may elect to pay the fee in a single payment, the rule requires a bank to disclose that the customer has the

option to choose a contract with or without a refund provision. An additional sentence in both the short and long form states that prices of refund and no-refund products are likely to differ.

Disclosure concerning refund of fee paid in lump sum

A bank's cancellation policy may be a material factor in a customer's decision whether to purchase the product, particularly if the customer has elected to pay the fee for a DCC or DSA in a single payment and also has elected to finance the fee. The final rule accordingly requires, at § 37.5, that (for DCCs or DSAs associated with loans other than residential mortgage loans) if a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. This disclosure is required in both the short and long form. It apprises the customer that the DCC or DSA may be canceled at any time for a refund, within a specified number of days for a full refund, or at any time with no refund. The method the bank uses to calculate any refund due is addressed in § 37.4(b).

Disclosure concerning whether use of credit line is restricted

The proposed rule required a bank to inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line.

Only two commenters addressed this disclosure. One commenter contended that the phrase "activation of the debt cancellation contract" might be ambiguous and suggested that the OCC clarify that this phrase refers to the customer's assertion of the right to cancel or suspend payments on the debt. The second commenter recommended that the OCC amend this disclosure to state that it does not apply to closed-end loans.

The final rule retains this disclosure, but only in the long form because the information, while relevant to the customer's final decision to purchase a DCC or DSA, is not necessarily central to the customer's initial evaluation of the product.

Disclosure concerning termination of a DCC or DSA

The proposed rule required a bank to explain the circumstances under which a customer or the bank could terminate the contract if termination is permitted during the life of the loan.

Two commenters urged the OCC to eliminate this disclosure. One of these commenters argued that it was unnecessary and burdensome and recommended that the OCC require this information to be contained in the DCC, provided the customer has 30 days within which to cancel the DCC. The final rule retains this disclosure, but requires it only in the long form.

Additional disclosures to be provided

The final rule adds a disclosure in the short form requiring banks to inform consumers that the bank will provide additional information before the customer is required to pay for the product. The adjustments made in the rule to accommodate marketing practices that do not lend themselves to detailed disclosures mean that some important information will not be conveyed when the bank first solicits the purchase of a DCC or DSA. This disclosure apprises the customer that more information will be available for consideration before the customer is obligated to pay for the product.

Disclosure pertaining to eligibility requirements, conditions, and exclusions

The proposed rule required a bank to describe any material limitations relating to the DCC or DSA.

Many commenters objected to this disclosure, and the majority of them urged the OCC to eliminate it. They contended that the term "material limitations" is ambiguous and creates the potential for litigation over its meaning.

Several commenters noted that the "material limitations" are included in the contract that is mailed to the customer. They said that almost all of the provisions of a DCC impact in some way on the customer's ability to collect benefits and these limitations are therefore so lengthy that they are not suitable for disclosures apart from the contract. Commenters recommended a number of alternatives, including modifying the required timing of the disclosure and permitting a bank to refer the customer to the contract for a description of its limitations.

The final rule retains this disclosure. The DCC and DSA contracts we have reviewed often contain provisions imposing requirements on a customer's eligibility to claim benefits under the contract, or conditions or exclusions that could effectively preclude the customer from obtaining those benefits. Examples include: imposing a waiting period before a customer may activate benefits; limiting the number of payments a customer may defer; limiting the term of coverage to a specific number of months; limiting the maximum amount of indebtedness the bank will cancel; or terminating coverage when the customer reaches a particular age. Knowledge of these limitations may be dispositive to the customer's decision whether to purchase the product. Moreover, disclosing them may enable the bank to avoid sales practices that could subject it to substantial reputation or litigation risk.

We have modified the disclosure significantly, however, to address the concerns expressed by the commenters. In both the short and long form, the final rule replaces the phrase "material limitations" with the phrase "eligibility requirements, conditions and exclusions" and requires a bank to disclose that these features could prevent a customer from receiving benefits

under the contract. The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. In response to commenters' suggestions, the long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

Disclosure concerning procedures

The proposed rule required a bank to describe the procedures a customer must follow to notify the bank that a triggering event has occurred.

Several commenters contended that disclosing this information would be lengthy and cumbersome, particularly if the DCC was offered in connection with a credit card or other marketing material where available space is limited. Some of these commenters urged the OCC to eliminate this disclosure while others proposed permitting a bank to deliver this information to a customer post-sale.

We agree that, while this information is relevant to a customer who has purchased the contract and wishes to activate the debt suspension or debt cancellation feature, it is unlikely to be a factor in the customer's decision whether to purchase the product. Therefore, the final rule eliminates the requirement for this disclosure.

Disclosure requirements; timing and method of disclosures (section 37.6(c))

The proposal required a bank to provide certain disclosures to a customer before the customer completes the purchase of a DCC or DSA. It also required that the disclosures be made in writing, or electronically, if done in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*) (E-Sign).

Most commenters objected to the requirement that the disclosures be made in writing as impracticable where a bank advertises or solicits the purchase of DCCs or DSAs through telemarketing, so-called "take one" applications, statement inserts, and direct mail solicitations. Commenters recommended a variety of alternatives to the proposal, including mailing written disclosures to the customer within a prescribed number of days or permitting the customer to cancel the product without charge. A number of commenters urged the OCC to adopt the approach of Regulation Z, which permits a bank to make limited initial disclosures in the case of open-end credit if the bank provides the full disclosures before the customer is obligated to pay, and permits oral disclosures in certain cases.

The final rule makes significant modifications in the timing and method requirements. It addresses the concerns raised by the commenters by establishing different timing and method requirements for short form and long form disclosures. Creating two separate forms also eliminates the need for banks to provide the most detailed and complicated information – information about eligibility requirements, conditions, and exclusions that limit the customer's ability to obtain benefits – in the short form.

Section 37.6(c)(1) requires a bank to disclose certain information in the short form orally at the time the bank first solicits the purchase of a contract. Section 37.6(c)(2) requires a bank to disclose the applicable information in the long form in writing before the customer completes the purchase of the contract. However, if the bank solicits a customer's purchase of a DCC or DSA

in person – for example, at the time the customer applies for credit in person – then the bank must also provide the long form disclosures in writing at that time.

The final rule creates special exceptions for transactions by telephone, solicitations through written materials such as mail inserts or "take one" applications, and electronic transactions. The first exception, in § 37.6(c)(3), addresses the concern that lengthy disclosures are not practical for solicitations via telemarketing. Under the telemarketing exception, banks may give the short form disclosures orally, provided they mail the written disclosures within 3 days after the telephone solicitation. These telemarketing provisions are similar to those in the insurance sales consumer protection rules with which banks are already familiar.[28] The rule requires that the customer have an opportunity to review the more detailed information before being obligated to pay for the contract.

The second exception, in § 37.6(c)(4), is for written solicitations such as mail inserts and "take one" applications. Similar to the telemarketing exception, it permits a bank to give only the short form disclosures in mail inserts or "take one" applications where space is limited, provided the bank mails the written disclosures within 3 days after the customer contacts the bank to respond to the solicitation. The effect of this exception is the same as the effect of the provision in the insurance sales consumer protection rules that covers mail and "take one" solicitations. No oral disclosures are required and the short form disclosures may be made in this written material.

The third exception, in § 37.6(c)(5), permits disclosures to be made electronically in a manner consistent with the requirements of E-Sign.

Form of disclosures (section 37.6(d))

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[28] See 12 CFR 14.40(c)(3).

Proposed §37.6(c) required disclosures to be clear, conspicuous, readily understandable, and designed to call attention to the nature and significance of the information provided.

The only commenter that addressed the form of the disclosures thought that Regulation Z sets forth a standard for disclosures and that a new standard is unnecessary.

In our view, however, the better model for requirements as to form is part 14 of the OCC's rules, which governs products that are often marketed and sold using methods similar to the methods used to market and sell DCCs and DSAs. Accordingly, the final rule modifies this provision so that its text is more similar to part 14.[29] Section 37.7(d)(1) therefore requires that the disclosures must be simple, direct, readily understandable and designed to call attention to the nature and significance of the information provided. Section 37.7(d) requires that the disclosures must be meaningful. The examples of methods, such as spacing and type style, that a bank could use to satisfy the requirements for the form of disclosures have not been changed.

Advertisements and other promotional material for debt cancellation contracts and debt suspension agreements (section 37.6(e))

As described earlier, the final rule conforms more closely with part 14[30] because it covers advertising and promotional material. See § 37.3(b). Accordingly, the final rule adds a new subsection (e) requiring that short form disclosures must be made in advertisements and promotional material for DCCs unless the advertising and promotional material is of a general nature describing or listing the services or products offered by the bank.

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[29] See 12 CFR 14.40(c)(5) and (6).

[30] See 12 CFR 14.40(d).

Affirmative election to purchase and acknowledgment of receipt of disclosures required (section 37.7)

Proposed § 37.4 required that the customer affirmatively elect to purchase a DCC or DSA in writing in a document that was separate from the documents pertaining to the credit transaction. The proposal permitted the acknowledgment to be made electronically if the bank complied with the requirements of E-Sign.

Most of the commenters who addressed this provision opposed it because, they said, the written election would have the effect of curtailing or prohibiting current marketing practices. They urged the OCC to eliminate these requirements or to modify them to permit oral elections with certain safeguards.

Several commenters stressed that requiring separate documents also would create significant compliance difficulties in the case of "take one" credit applications where space is limited to a single sheet of paper, and in the case of auto financing, where procedures are not as readily monitored by the bank. Many commenters contended that this provision was not consistent with the TILA, which permits a customer's affirmative election to be in the same document as the loan contract.

The final rule retains the requirement that the bank obtain the customer's affirmative election to purchase a DCC or DSA before obligating the customer to pay for the product. We have made substantial revisions, however, to address the commenters' concerns about the effects of the proposed requirements on methods widely used to market DCCs and DSAs and to conform the rule with the insurance sales regulations with which banks already are familiar. The final rule also adds a requirement, like that contained in the insurance sales regulations, that the

bank obtain a customer's written acknowledgment of receipt of the disclosures required by § 37.6.[31]

In the case of telephone solicitations, the final rule permits the customer's affirmative election to be made orally, provided the bank: (1) maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract; (2) mails the affirmative written election and written acknowledgment, together with the long form disclosures to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show that it made reasonable efforts to obtain the documents from the customer; and (3) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

In the case of solicitations conducted through written materials such as mail inserts or "take one" applications, the final rule permits the bank to provide only the short form disclosures in the written materials, provided the bank mails the acknowledgment of receipt of disclosures and the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the bank or otherwise responds to the solicitation. The bank may not obligate the customer to pay for the contract until after the bank receives the customer's written acknowledgment of receipt of disclosures, unless the bank: (1) maintains sufficient documentation to show that the bank provided the acknowledgment of receipt of disclosures to the customer as required by this section; (2) maintains sufficient documentation to show that the bank made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long form disclosures; and (3) permits the customer to cancel

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[31] See 12 CFR 14.40(c)(7).

the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

The final rule also eliminates the requirement that the customer's election to purchase be in a separate document, and thus better harmonizes this provision with the requirements of the TILA.[32] Similarly, the rule imposes no requirement that the customer's written acknowledgment of receipt of disclosures be in a separate document. The final rule clarifies that the standard for the form of the election and acknowledgment information is the same as for the form of disclosures (which is also the same standard contained in part 14 of our rules). The information must be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The rule also adds a statement that the election and acknowledgment will satisfy these standards if they conform with the requirements in § 37.6.

Finally, the provision in proposed § 37.4 permitting the customer's affirmative election to be made electronically has been moved to § 37.7(d) and modified to include the customer's acknowledgment of receipt of the disclosures.

<u>Safety and soundness requirement (section 37.8)</u>

The OCC's prior regulation on DCCs (12 CFR 7.1013) permitted, but did not require, banks to establish the reserves necessary to enable them to enter into DCCs. The proposed rule <u>required</u> national banks to establish a separate loss reserve and to maintain the reserve at a level

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[32] Regulation Z permits a creditor to exclude from the finance charge the charge or premium paid for voluntary debt cancellation coverage provided certain conditions are met. One of those conditions requires that the consumer sign or initial an affirmative written request for coverage after receiving the disclosures required by Regulation Z, but there is no requirement that the affirmative written request be contained in a separate document. <u>See</u> 12 CFR 226.4(d)(3)(i)(C).

adequate to conduct this business in a safe and sound manner. As an alternative, the proposed rule also permitted a national bank to obtain third-party insurance to cover "expected losses."

The commenters were divided about whether the OCC should retain the proposed requirement for an "identifiable loss reserve." Some commenters, however, pointed out that the reserve requirement, as drafted, may not accurately reflect current accounting practices and the standards established by generally accepted accounting principles for recording the income and liabilities associated with DCCs and DSAs. One commenter, for example, said that the OCC should distinguish between reserve requirements for DCCs, which are based on future losses in the credit accounts and already included in the loan loss reserves, and DSAs, which need only address foregone interest payments. This commenter also said that losses on the two types of products may vary widely and that banks should be permitted to reserve separately on each.

The OCC's recent supervisory experience indicates that methodologies for recognizing losses may appropriately vary depending on whether the product requires the bank to forgive the debt or only forego interest income for a period of time. These methodologies vary further and are more complex if the product has both debt cancellation and debt suspension features or if the bank securitizes the loans associated with the DCCs or DSAs.

For these reasons, we have concluded that the loss reserve requirement contained in the proposal is not sufficiently flexible to permit appropriate management and recording of anticipated losses in the variety of situations that occur in actual practice. Accordingly, the final rule replaces that requirement with a requirement that banks must establish and maintain effective risk management and control processes over its DCCs and DSAs. Such processes include appropriate recognition and financial reporting of income, expenses, assets, liabilities, and appropriate treatment of all expected and unexpected losses associated with the products.

The final rule also requires a bank to assess the adequacy of its internal control and risk mitigation activities, which would include, if appropriate, the bank's purchase of third-party insurance, in view of the nature and scope of its DCC and DSA programs.

IV. Summary of the Final Rule

New part 37 defines the relevant terms, including "debt cancellation contract" and "debt suspension agreement."

The rule prohibits certain practices for banks that provide DCCs or DSAs. These practices are: tying the approval or terms of an extension of credit to a customer's purchase of a DCC or DSA; engaging in misleading advertisements or practices; retaining a right to modify a DCC or DSA unilaterally, unless the modification benefits the customer or the customer has a reasonable opportunity to cancel without penalty; and charging a single, lump-sum fee for a DCC or DSA issued in connection with a residential mortgage loan.

The rule permits a bank to offer a DCC or DSA that makes no provision for a refund of fees but, if the bank does so, it also must offer the customer a bona fide option to buy the product that includes a refund feature.

For loans other than residential mortgage loans, the bank may offer the customer the option of paying the fee for the associated DCC or DSA in a single, lump sum; but if it does, it also must offer a bona fide option of paying the fee for that contract in monthly or other periodic payments. If the bank offers the option to finance the single payment fee, it must disclose to the customer whether the customer may cancel the product and receive a refund and any time limits that apply to the customer's right to cancel.

The rule also requires that national banks disclose certain information to their customers. The rule accommodates the methods that national banks use to market DCCs and DSAs by

permitting the use of abbreviated disclosures in marketing circumstances -- including telephone solicitations and "take one" applications -- where full disclosure of the terms most relevant to the consumer's decision to purchase is not practicable.

The abbreviated or "short form" disclosures that the rule requires include:

- disclosure that the decision to buy a DCC or DSA is optional and whether or not the customer purchases the product will not affect the customer's application for credit or terms of any existing loan;
- disclosure that if a no-refund product is offered, a product with a refund feature also is available;
- disclosure for DCCs or DSAs offered in connection with loans other than residential mortgage loans, that if the customer may elect to finance a single payment, lump sum fee, the customer also has the option to pay the fee in periodic payments, and a statement about the effect of the customer's cancellation of the DCC or DSA before expiration of the term of the loan;
- a statement that the customer will receive additional information before being obligated to pay for the DCC or DSA; and
- a statement that certain eligibility requirements, conditions, and exclusions apply that may affect the customer's ability to claim benefits under the DCC or DSA are described more fully in the "long-form" disclosures that the rule also requires.

The "long-form" disclosures may be given after the bank's initial marketing occurs but generally must be given prior to the completion of the sale of the product. If the solicitation occurs when the customer applies for credit in person, then the long form disclosures must be given at that time. The information required to be disclosed in the long form includes:

- disclosure that the decision to buy a DCC or DSA is optional and whether or not the customer purchases the product will not affect the customer's application for credit or terms of any existing loan;
- disclosure that in the case of a DSA, the DSA only suspends, and does not cancel, the customer's obligation to pay the associated debt;
- disclosure, if applicable, that the customer may not incur additional charges under its loan agreement if the DCC or DSA is activated;
- an explanation of the circumstances in which the customer has the right to cancel the DCC or DSA; and
- a description of any applicable eligibility requirements, conditions, or exclusions, which may be provided either in the disclosure form itself or by reference to particular provisions of the DCC or DSA.

The disclosure requirements are complemented by a requirement that a national bank generally obtain the customer's written acknowledgment of his or her receipt of the required disclosures and an affirmative election to purchase the DCC or DSA before completing the sale. Like the disclosure requirements, these provisions of the rule are also tailored to accommodate the use of sales methods -- such as by telephone -- where immediate receipt of a written acknowledgment is not practicable.

The rule requires that disclosures and acknowledgments and affirmative elections be presented in a form that is simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. Disclosures must also be meaningful, and the rule gives examples of methods -- such as spacing and type styles -- that may be used to satisfy that standard.

Appendices to the rule contain the two sample forms of disclosure: the "short form" for use in situations where the abbreviated disclosures may be used, and the "long form" for use thereafter to ensure that the customer is adequately informed about the key terms of the DCC or DSA prior to completing the purchase. Banks are required to make only the disclosures that are appropriate to the product offered. The forms of disclosure are illustrative of the wording and format a bank could use to comply with the rule's disclosure requirements. Banks that make disclosures in a form substantially similar to the forms provided in the rule will be deemed to satisfy the disclosure requirements. These particular forms are not mandatory, however, and a bank may elect to use different wording or a different format, as long as the approach chosen satisfies the substance of the applicable requirements.

Finally, the rule contains a safety and soundness requirement that a national bank that offers DCCs or DSAs must manage the risks associated with these products in accordance with safe and sound banking principles. The rule also requires a bank to establish and maintain effective risk management and control processes, including appropriate recognition and financial reporting of income, expenses, assets, and liabilities associated with the products and adequate internal control and risk mitigation measures.

Effective date

Two commenters requested that the OCC delay the effective date of the final rule until one year from the date of its publication. Another commenter requested a delayed effective date of six months to a year. Each of these commenters stressed that the rule will require banks that currently offer DCCs and DSAs to review their programs, create new forms, and train employees to comply with new procedures. One commenter thought that the adjustments to marketing and methods necessary to implement the regulations governing DCCs would be comparable to those

required to implement the consumer protections for bank sales of insurance, which also required new disclosures. Part 14 originally had an effective date of 120 days, but that transition period was later extended to a total of nine months.

The final rule has a delayed effective date of nine months. We agree with the commenters that we should be guided by our experience in implementing part 14. The final rule requires two types of disclosures and prohibits a number of practices that currently are not barred. Furthermore, unlike the sale of insurance products, DCCs and DSAs are offered in connection with an extension of credit, which will require banks to coordinate the disclosures in the final rule with disclosures they are required to make under TILA.

V. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC submitted the collection of information requirements contained in the notice of proposed rulemaking to the Office of Management and Budget (OMB) for review and received approval under OMB Control Number 1557-0224.

The revision of the collection of information requirements contained in this final rule have been submitted to the OMB for review.

The final rule retains much of the content of the disclosures prescribed by the proposed rule, but revises the disclosure process so that it more readily accommodates the methods banks

use to market and sell DCCs and DSAs. The final rule specifies which disclosures must be given at different stages of the marketing and sales process.

The final rule provides two forms of disclosure that serve as models for satisfying the requirements of the rule. Those two disclosure forms are set forth in appendices to the final rule. Appendix A sets out a short form of disclosure suitable for use in telemarketing and various written solicitations, while Appendix B provides a more detailed long form of disclosure that a customer generally will receive prior to purchasing the contract. Use of the forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met.

The final rule generally requires a bank to disclose information about a DCC or DSA orally in the short form and in writing in the long form. In the case of solicitations through written materials such as mail inserts or "take one" applications, however, the bank may provide the short form disclosures in writing. The final rule also permits short and long form disclosures to be made electronically.

Comments Received

The OCC received two comments regarding the burden imposed by the proposed rule. Both commenters stated that the amount of time required to develop the required disclosures was greater than the OCC's estimate of 10 hours. The first commenter, a large national bank, stated that developing the required disclosures would involve approximately 25 hours to consider legal, operational, and marketing issues. However, if the disclosures were modified in accordance with the recommendations in its comment letter, the commenter estimated that the amount of time would be approximately 15 hours. We believe that modifications to the timing and manner of the required disclosures address most of the commenter's objections. Notwithstanding these

changes, upon further consideration of the paperwork burdens likely to be imposed as a result of the final rule, the OCC has estimated that the burden imposed on the average national bank offering DCCs and DSAs is likely to be 24 hours per bank.

The second commenter mentioned the increased burden associated with the requirements that the disclosures be in writing and separate from the loan application. The commenter contended that, particularly for credit cards banks, the total cost of creating, print, and distributing new forms could outweigh any benefit a national bank might gain from selling DCCs and DSAs. As described in the discussion above, modifications in the proposed rule eliminate the separate document requirement and permit oral disclosure in certain circumstances. In addition, we believe that the 9-month delayed effective date will enable banks to minimize costs. They should have sufficient lead time to deplete their current supply of forms, revise forms to be used once the rule becomes effective, and include the required disclosure in their next print run.

Disclosure Requirements

Section 37.6 requires a bank to provide the following disclosures, as appropriate:

- Anti-tying disclosure – The final rule requires a bank to inform the customer that neither its decision whether to approve a loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA. This disclosure appears in both the short form and the long form ("This product is optional").
- Explanation of debt suspension agreement – The final rule requires a bank to disclose that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan

after the period of suspension has expired. This disclosure appears in the long form ("Explanation of debt suspension agreement").

- Disclosure of the amount of the fee – The final rule requires a bank to make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either: 1) disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or 2) disclose the formula used to compute the fee. This disclosure appears in the long form ("Amount of fee").
- Disclosure concerning lump sum payment of fee – The final rule requires a bank to disclose, where appropriate, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan since, under the final rule, the option to pay the fee in a single payment is not available in that case. The final rule also requires a bank to disclose that adding the fee to the amount borrowed will increase the cost of the contract. This disclosure appears in the both the short form and long form ("Lump sum payment of fee").
- Disclosure concerning lump sum payment of fee with no refund – The final rule requires a bank to disclose that the customer has the option to choose a contract with or without a refund provision. This disclosure appears in both the short form and long form ("Lump sum payment of fee with no refund"). This disclosure also contains a sentence that states that prices of refund and no-refund products are likely to differ.

- Disclosure concerning refund of fee paid in lump sum – The final rule requires that if a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer that the DCC or DSA may be canceled at any time for a refund, within a specified number of days for a full refund, or at any time with no refund. This disclosure appears in both the short form and long form ("Refund of fee paid in lump sum").
- Disclosure concerning whether use of credit line is restricted – The final rule requires a bank to inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line. This disclosure appears in the long form ("Use of card or credit line restricted").
- Disclosure concerning termination of a DCC or DSA – The final rule requires a bank to explain the circumstances under which a customer or the bank could terminate the contract if termination is permitted during the life of the loan. This disclosure appears in the long form ("Termination of [PRODUCT NAME]").
- Disclosure concerning additional disclosures – The final rule requires a bank to inform consumers that the bank will provide additional information before the customer is required to pay for the product. This disclosure appears in the short form ("Additional disclosures").
- Disclosure pertaining to eligibility requirements, conditions, and exclusions – The final rule requires a bank to describe any material limitations relating to the DCC or DSA. This disclosure appears on both the short form and the long form ("Eligibility requirements, conditions, and exclusions"). The content of the short and long form

may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

Affirmative Election to Purchase and Acknowledgment of Receipt of Disclosures Required

Section 37.7 requires a bank to obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6.

If the sale of the contract occurs by telephone, the customers affirmative election to purchase and acknowledgment of receipt of the required short form may be made orally, provided the bank maintains certain documentation.

If the contract is solicited through written materials such as mail inserts or "take one" applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank maintains certain documentation.

The affirmative election and acknowledgment may also be made electronically.

Burden Estimate

The estimated total annual burden with respect to extensions of credit will depend on the number of banks that offer DCCs and DSAs, the number of consumer loan transactions per bank per year where disclosures are provided, and the amount of time per transaction. The OCC cannot at this time accurately estimate the total number of participating banks or the total number of consumer loan transactions in which disclosures are provided to individual customers because the OCC does not currently collect this type of data. Solely for the purpose of complying with the Paperwork Reduction Act, the OCC has estimated the annual paperwork burden assuming that 2,200 national banks will provide DCCs and DSAs, and the average burden associated with developing the disclosures would be approximately 24 hours.

The likely respondents are national banks.

Estimated number of respondents: 2,200 respondents

Estimated number of responses: 2,200 responses

Estimated burden hours per response: 24 hours

Estimated total annual burden hours: 52,800 hours

Comments

The OCC requests comment on appropriate ways to estimate the total number of participating banks, the total number of consumer loan transactions in which these disclosures will be provided to individual customers, and the burden associated with developing the disclosures and providing the disclosures to individual customers.

The OCC will revisit the burden estimates when we have more information on the number of potential respondents and consumer loan transactions. The revised estimates will also reflect all comments received concerning the burden estimates.

The OCC also invites comment on:

Whether the collection of information contained in this final rule is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

The accuracy of the OCC's estimate of the burden of the information collection;

Ways to enhance the quality, utility, and clarity of the information to be collected;

Ways to minimize the burden of the information collection on the respondents, including the use of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on the collection of information should be sent by mail to Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557-0224, Office of Management and Budget, Washington, DC 20503, or by e-mail to jlackeyj@omb.eop.gov.

Comments should also be sent to Jessie Dunaway, OCC Clearance Officer, Legislative and Regulatory Activities Division, Attention: 1557-0224, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8-4, Washington, DC 20219. Due to disruptions in the OCC's mail service, commenters are encouraged to send comments by fax to (202) 874-4889, or by e-mail to jessie.dunaway@occ.treas.gov.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

The final rule will apply only to those national banks that choose to offer DCCs or DSAs. However, the OCC has very limited data as to the number of national banks that currently offer these products. For purposes of this analysis, we have conservatively assumed that all national banks will offer these products.

Compliance and Record keeping Requirements of the Final Rule

The final rule imposes the following conditions or requirements:

- A national bank that offers a DCC or DSA with no refund of unearned fees in the event the customer terminates the DCC or DSA must also offer that customer the *bona fide* option to purchase the product with a refund feature;
- A national bank is prohibited from requiring a customer to pay the fee for a DCC or DSA in a single payment, payable at the outset of the contract, if the debt that is the subject of the contract is a residential mortgage loan;
- A national bank must provide customers with the short form disclosures at the time of solicitation;
- A national bank must provide customers with the long form disclosures before the customer completes the purchase of a DCC or DSA;
- A national bank must obtain a customer's written affirmative election to purchase the DCC or DSA; and
- A national bank must obtain a customer's written acknowledgment of receipt of the disclosures.

The rule provides banks significant flexibility in meeting these requirements. For example, in the case of telephone solicitations, the rule permits an oral affirmation, provided the bank makes reasonable efforts to obtain a written affirmative election, and waives the requirement obtain a written acknowledgment, provided the bank makes reasonable efforts to obtain the acknowledgment. A bank that takes advantage of the special exceptions must maintain sufficient documentation to demonstrate that it made reasonable efforts to obtain the written affirmative election and written acknowledgment.

Costs Associated with Compliance and Recordkeeping Requirements of the Final Rule

Based on input from OCC examiners and other staff, we have determined that national banks typically offer refundable products and are moving away from offering customers a lump sum DCC or DSA in conjunction with a mortgage loan. We have therefore concluded that there will be only minimal costs associated with complying with the requirement that a bank offer offers a DCC or DSA with a no refund DCC or DSA must also offer that customer the *bona fide* option to purchase the product with a refund feature and the prohibition on paying the fee in a single, lump sum. Accordingly, our cost estimate focuses on costs associated with the short form disclosure, long form disclosure, affirmative election, and written acknowledgment.

We expect that national banks will incur four types of costs associated with these requirements: (1) development of the short form disclosure, long form disclosure, affirmative election and acknowledgment forms; (2) distribution of the documents; (3) documentation requirements; and (4) employee training.

We estimate these costs per bank to be $4,992. To determine whether this will have a significant impact on small banks, we considered the average annual net income for a small

bank, which was $796,000 as of March 31, 2002. In light of the fact that these costs are approximately 0.6 percent of net income, we do not find them to be significant.

C. Executive Order 12866

The OCC has determined that the final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866. Under the most conservative cost scenarios that the OCC can develop on the basis of available information, the impact of the proposal falls short of the thresholds established by the Executive Order.

D. Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts State law, the Order imposes certain consultation requirements with State and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the OMB any written communications submitted to us by State and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

Some commenters raised issues concerning whether DCCs and DSAs should be regulated as insurance that could be construed as falling within the scope of Executive Order 13132. In the opinion of the OCC, however, the final regulation on DCCs and DSAs does not have Federalism

implications. The GLBA designates the States as the appropriate functional regulators of national bank insurance activities.[33] As we have described earlier in this preamble discussion, as a matter of law DCCs and DSAs are not insurance, but rather, bank products. This conclusion was confirmed, as to DCCs, by the Taylor case decided in 1990. The reasoning and conclusions of the Taylor court are equally applicable to DSAs. Because these products are bank products and not insurance the framework of State insurance regulation would not apply to them, even in the absence of Federal regulations. While this regulation establishes new standards that govern national banks providing DCCs and DSAs, the standards are therefore not in derogation of State insurance law or regulation. For this reason, the regulation does not directly affect the States, substantially or otherwise; it does not alter the relationship between the national government and the States; and it does not alter the distribution of power and responsibilities among the various levels of government.

Since the regulation does not satisfy any of the components of the definition of actions that have Federalism implications under Executive Order 13132, the provisions of the Executive Order do not apply. The OCC nonetheless believes that it has in material respects satisfied the requirements of the Order. First, the OCC has received and considered a number of comments from State insurance authorities, as described earlier in the preamble. In addition, at the end of the public comment period and very early in the development of the final rule, on June 18, 2001, senior representatives of the OCC met with members of the National Association of Insurance Commissioners (NAIC). The concerns of the NAIC were memorialized in its written comment which is a part of the record of this rulemaking. Principally, the NAIC urged the OCC to adopt DCC/DSA regulations that were similar to the rate, form, and claims regulation imposed on

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[33] GLBA sec. 301, *codified at* 15 U.S.C. 6711.

insurance products under many State insurance regulatory regimes. For the reasons described earlier in this preamble, including the reason that DCCs and DSAs are not insurance, the OCC declined to follow that recommendation. Finally, prior to the publication of this final rule, the OCC has transmitted to the Director of OMB the written communications – that is, the comment letters – we have received from State officials.

E. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a rule.

The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Solicitation of Comments on Use of "Plain Language"

Section 722 of the GLBA requires that the Federal banking agencies use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make the proposed rules easier to understand.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 37

Banks, banking, Consumer protection, Debt cancellation contract, Debt suspension agreement, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends part 7 of chapter I of Title 12 of the Code of Federal Regulations and adds a new part 37 as follows:

PART 7--BANK ACTIVITIES AND OPERATIONS

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq*., 93a, and 1818.

2. Section 7.1013 is removed.

3. Add part 37 to read as follows:

PART 37--DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

Sec.

37.1 Authority, purpose, and scope.

37.2 Definitions.

37.3 Prohibited practices.

37.4 Refunds of fees in the event of termination or prepayment of the covered loan.

37.5 Method of payment of fees.

37.6 Disclosures.

37.7 Affirmative election to purchase and acknowledgment of receipt of disclosures required.

37.8 Safety and soundness requirement.

Appendix A to Part 37 – Short Form Disclosures

Appendix B to Part 37 – Long Form Disclosures

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 93a, 1818.

§ 37.1 Authority, purpose, and scope.

(a) Authority. A national bank is authorized to enter into debt cancellation contracts and debt suspension agreements and charge a fee therefor, in connection with extensions of credit that it makes, pursuant to 12 U.S.C. 24(Seventh).

(b) Purpose. This part sets forth the standards that apply to debt cancellation contracts and debt suspension agreements entered into by national banks. The purpose of these standards is to ensure that national banks offer and implement such contracts and agreements consistent with safe and sound banking practices, and subject to appropriate consumer protections.

(c) Scope. This part applies to debt cancellation contracts and debt suspension agreements entered into by national banks in connection with extensions of credit they make. National banks' debt cancellation contracts and debt suspension agreements are governed by this part and applicable Federal law and regulations, and not by part 14 of this chapter or by State law.

§ 37.2 Definitions.

For purposes of this part:

(a) Actuarial method means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(b) Bank means a national bank and a Federal branch or Federal agency of a foreign bank as those terms are defined in part 28 of this chapter.

(c) Closed-end credit means consumer credit other than open-end credit as defined in this section.

(d) Contract means a debt cancellation contract or a debt suspension agreement.

(e) Customer means an individual who obtains an extension of credit from a bank primarily for personal, family or household purposes.

(f) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents.

(g) Debt suspension agreement means a loan term or contractual arrangement modifying loan terms under which a bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. The term debt suspension agreement does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment.

(h) Open-end credit means consumer credit extended by a bank under a plan in which:

(1) The bank reasonably contemplates repeated transactions;

(2) The bank may impose a finance charge from time to time on an outstanding unpaid balance; and

(3) The amount of credit that may be extended to the customer during the term of the plan (up to any limit set by the bank) is generally made available to the extent that any outstanding balance is repaid.

(i) Residential mortgage loan means a loan secured by 1-4 family, residential real property.

§ 37.3 Prohibited practices.

(a) Anti-tying. A national bank may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the bank.

(b) Misrepresentations generally. A national bank may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.

(c) Prohibited contract terms. A national bank may not offer debt cancellation contracts or debt suspension agreements that contain terms:

(1) Giving the bank the right unilaterally to modify the contract unless:

(i) The modification is favorable to the customer and is made without additional charge to the customer; or

(ii) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(2) Requiring a lump sum, single payment for the contract payable at the outset of the contract, where the debt subject to the contract is a residential mortgage loan.

§ 37.4 Refunds of fees in the event of termination or prepayment of the covered loan.

(a) Refunds. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

(b) Method of calculating refund. The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

§ 37.5 Method of payment of fees.

Except as provided in § 37.3(c)(2), a bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a bona fide option of paying the fee for that contract in monthly or other periodic payments. If the bank offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the bank must also disclose to the customer, in accordance with § 37.6, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

§ 37.6 Disclosures.

(a) Content of short form of disclosures. The short form of disclosures required by this part must include the information described in Appendix A to this part that is appropriate to the product offered. Short form disclosures made in a form that is substantially similar to the disclosures in Appendix A to this part will satisfy the short form disclosure requirements of this section.

(b) Content of long form of disclosures. The long form of disclosures required by this part must include the information described in Appendix B to this part that is appropriate to the product offered. Long form disclosures made in a form that is substantially similar to the disclosures in Appendix B to this part will satisfy the long form disclosure requirements of this section.

(c) Disclosure requirements; timing and method of disclosures.

(1) Short form disclosures. The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

(2) Long form disclosures. The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the bank shall provide the long form disclosures in writing at that time.

(3) Special rule for transactions by telephone. If the contract is solicited by telephone, the bank shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(4) Special rule for solicitations using written mail inserts or "take one" applications. If the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the short form disclosures in the written materials if the bank mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the bank to respond to the solicitation, subject to the requirements of § 37.7(c).

(5) Special rule for electronic transactions. The disclosures described in this section may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq*.

(d) Form of disclosures.

(1) Disclosures must be readily understandable. The disclosures required by this section must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

(2) Disclosures must be meaningful. The disclosures required by this section must be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) A plain-language heading to call attention to the disclosures;

(ii) A typeface and type size that are easy to read;

(iii) Wide margins and ample line spacing;

(iv) Boldface or italics for key words; and

(v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(e) Advertisements and other promotional material for debt cancellation contracts and debt suspension agreements. The short form disclosures are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

§ 37.7 Affirmative election to purchase and acknowledgment of receipt of disclosures required.

(a) Affirmative election and acknowledgment of receipt of disclosures. Before entering into a contract the bank must obtain a customer's written affirmative election to purchase a

contract and written acknowledgment of receipt of the disclosures required by § 37.6(b). The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The election and acknowledgment satisfy these standards if they conform with the requirements in § 37.6(b) of this part.

(b) Special rule for telephone solicitations. If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the bank:

(1) maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract;

(2) mails the affirmative written election and written acknowledgment, together with the long form disclosures required by § 37.6 of this part, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(3) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

(c) Special rule for solicitations using written mail inserts or "take one" applications. If the contract is solicited through written materials such as mail inserts or "take one" applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by § 37.6 of this part, to the customer within 3 business days, beginning on the first business day after the customer contacts the bank or otherwise responds to the solicitation. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank:

(1) maintains sufficient documentation to show that the bank provided the acknowledgment of receipt of disclosures to the customer as required by this section;

(2) maintains sufficient documentation to show that the bank made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long form disclosures; and

(3) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

(d) Special rule for electronic election. The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

§ 37.8 Safety and soundness requirements.

A national bank must manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with safe and sound banking principles. Accordingly, a national bank must establish and maintain effective risk management and control processes over its debt cancellation contracts and debt suspension agreements. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A bank also should assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation contract and debt suspension agreement programs.

Appendix A to Part 37 - Short Form Disclosures

X **This product is optional**

Your purchase of [PRODUCT NAME] is optional. Whether or not you purchase [PRODUCT NAME] will not affect your application for credit or the terms of any existing credit agreement you have with the bank.

X **Lump sum payment of fee**
[Applicable if a bank offers the option to pay the fee in a single payment]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose to pay the fee in a single lump sum or in [monthly/quarterly] payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of [PRODUCT NAME].

X **Lump sum payment of fee with no refund**
[Applicable if a bank offers the option to pay the fee in a single payment for a no-refund DCC]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose [PRODUCT NAME] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ.

X **Refund of fee paid in lump sum**
[Applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

[Either:] (1) You may cancel [PRODUCT NAME] at any time and receive a refund; ***or***
(2) You may cancel [PRODUCT NAME] within ___ days and receive a full refund; ***or***
(3) If you cancel [PRODUCT NAME] you will not receive a refund.

X **Additional disclosures**

We will give you additional information before you are required to pay for [PRODUCT NAME]. ***[If applicable]:*** This information will include a copy of the contract containing the terms of [PRODUCT NAME].

X Eligibility requirements, conditions, and exclusions

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either:] You should carefully read our additional information for a full explanation of the terms of [PRODUCT NAME] ***<u>or</u>*** You should carefully read the contract for a full explanation of the terms of [PRODUCT NAME].

Appendix B to Part 37 - Long Form Disclosures

X **This product is optional**

Your purchase of [PRODUCT NAME] is optional. Whether or not you purchase [PRODUCT NAME] will not affect your application for credit or the terms of any existing credit agreement you have with the bank.

X **Explanation of debt suspension agreement**
[Applicable if the contract has a debt suspension feature]

If [PRODUCT NAME] is activated, your duty to pay the loan principal and interest to the bank is only suspended. You must fully repay the loan after the period of suspension has expired. ***[If applicable]:*** This includes interest accumulated during the period of suspension.

X **Amount of fee**

***[For closed-end credit]*:** The total fee for [PRODUCT NAME] is $_______.

[For open-end credit, either:] (1) The monthly fee for [PRODUCT NAME] is based on your account balance each month multiplied by the unit-cost, which is ________; ***or*** (2) The formula used to compute the fee is __________________].

X **Lump sum payment of fee**
[Applicable if a bank offers the option to pay the fee in a single payment]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You may choose to pay the fee in a single lump sum or in **[monthly/quarterly]** payments. Adding the lump sum of the fee to the amount you borrow will increase the cost of [PRODUCT NAME].

X **Lump sum payment of fee with no refund**
[Applicable if a bank offers the option to pay the fee in a single payment for no-refund DCC]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

You have the option to purchase [PRODUCT NAME] that includes a refund of the unearned portion of the fee if you terminate the contract or prepay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.

X **Refund of fee paid in lump sum**
[Applicable where the customer pays the fee in a single payment and the fee is added to the amount borrowed]
[Prohibited where the debt subject to the contract is a residential mortgage loan]

[Either:] (1) You may cancel [PRODUCT NAME] at any time and receive a refund; ***or*** (2) You may cancel [PRODUCT NAME] within ___ days and receive a full refund; ***or*** (3) If you cancel [PRODUCT NAME] you will not receive a refund.

X **Use of card or credit line restricted**
[Applicable if the contract restricts use of card or credit line when customer activates protection]

If [PRODUCT NAME] is activated, you will be unable to incur additional charges on the credit card or use the credit line.

X **Termination of [PRODUCT NAME]**

[Either]: (1) You have no right to cancel [PRODUCT NAME]; ***or*** (2) You have the right to cancel [PRODUCT NAME] in the following circumstances: _____________.

[And either]: (1) The bank has no right to cancel [PRODUCT NAME]; ***or*** (2)The bank has the right to cancel [PRODUCT NAME] in the following circumstances: ______________.

X **Eligibility requirements, conditions, and exclusions**

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either]: (1) The following is a summary of the eligibility requirements, conditions, and exclusions. *[The bank provides a summary of any eligibility requirements, conditions, and exclusions]*; ***or*** (2) You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraphs ________ of the [PRODUCT NAME] agreement.

Dated: August 16, 2002

____

John D. Hawke, Jr.,
Comptroller of the Currency.

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 10

2003 OCC Notice of Delay in Implementation of Certain Provisions of DCC/DSA Rule and Request for Comment

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 37

[Docket No. 03-XX]

RIN 1557-AB75

Debt Cancellation Contracts and Debt Suspension Agreements; Change in Compliance Date and Request for Comment

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of delay in compliance date; request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has determined to delay the date when compliance is required with certain provisions of the final rule governing debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) in order to allow the OCC to consider issues that have recently been brought to our attention concerning the application of the DCC/DSA rule in the context of closed-end consumer loan transactions where DCCs and DSAs are offered through unaffiliated, non-exclusive agents. The delay of the compliance date applies only to the extent and to the types of transactions described in this document. In all other circumstances, national banks are required to comply with the DCC/DSA rule as of June 16, 2003, which is the date on which the rule takes effect. The OCC also is inviting comment on issues raised by national banks related to the sale of DCCs and DSAs in connection with closed-end consumer loans offered through such non-exclusive agency relationships.

DATES:

Compliance date: The compliance date for certain provisions in 12 CFR part 37 published at 67 FR 58962 (September 19, 2002) is delayed indefinitely. See Supplementary Information for details. OCC will publish a document in the Federal Register announcing the compliance date.

Comment date: Comments must be received by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Comments should be directed to Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219, Attention: Docket No. 03- __; Fax number (202) 874-4448 or Internet address: regs.comments@occ.treas.gov. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to send comments by fax or e-mail when possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect the comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Pamela Mount, Compliance Specialist, Compliance Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2002, the OCC published the final rule governing DCCs and DSAs.[1] The final rule establishes consumer protection standards and safety and

[1] 67 FR 58962. The rule is codified at 12 CFR part 37.

soundness requirements that apply with respect to DCCs and DSAs entered into by national banks in connection with extensions of credit they make to customers. The rule prohibits national banks from engaging in certain practices, such as tying and misleading marketing or advertising. It also requires, among other things, that national banks provide standardized disclosures about the DCC and DSA products they offer; that they obtain a customer's acknowledgment of receipt of those disclosures; and that they obtain the customer's affirmative election to purchase the product. In addition, the rule requires a national bank that offers a customer the option to pay the fee for a DCC or DSA in a single payment also to offer that customer a bona fide option to pay the fee on a periodic basis ("periodic payment option"). The final rule takes effect on June 16, 2003.

The OCC recently has received information that the periodic payment option requirement may present unique issues, of which the OCC was previously unaware, in connection with DCCs and DSAs offered by national banks through unaffiliated, non-exclusive agents, with respect to certain types of consumer purchase transactions, most notably car loans made available through automobile dealers.

Accordingly, we have determined that it is appropriate to delay the mandatory compliance date for the periodic payment option in the case of transactions where unaffiliated, non-exclusive agents of a national bank offer that bank's DCC or DSA in connection with closed-end consumer credit, until the OCC has an opportunity to further evaluate the feasibility of approaches to providing appropriate customer protections in connection with that type of transaction. Because the availability of the periodic payment option also triggers certain disclosures, we also are delaying the time for compliance with certain other provisions in the DCC/DSA final rule that are linked to the requirement to

offer a periodic payment option, including the requirement to provide the long form disclosures.

Banks offering DCCs and DSAs through non-affiliated, non-exclusive agents thus remain subject to the following requirements:

- The bank may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer's purchase of a DCC or DSA.
- The bank may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.
- The bank may not offer DCCs or DSAs that contain terms giving the bank the right unilaterally to modify the contract unless the modification is favorable to the customer and is made without additional charge to the customer; or the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.
- If a DCC or DSA is terminated, the bank must refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.
- The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.
- If the bank offers the customer the option to finance the fee for a DCC or DSA, the bank must disclose to the customer whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.
- A national bank must provide to the customer at the time of the initial solicitation of the DCC or DSA, the short form disclosures described in Appendix A to part 37, as

modified to reflect delay of the compliance date for providing the periodic payment option and related changes. The form of the short form disclosures must be readily understandable and meaningful. The short form disclosures also must be included in advertisements and other promotional material for DCCs and DSAs, unless they are of a general nature.

- Before entering into a contract, the bank must obtain a customer's written affirmative election to purchase the DCC or DSA. The written election must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.

- A national bank must manage the risks associated with DCCs and DSAs in accordance with safe and sound banking principles.

Description of Provisions Affected

As a result of today's actions, compliance with the following provisions will not be required, until further notice, when a national bank, in connection with closed-end consumer credit[2] extended by that bank, offers a DCC or DSA through an unaffiliated, non-exclusive agent:

- The requirement to offer a periodic payment option set forth in 12 CFR 37.5.

- The requirement set forth in 12 CFR 37.4(a) that a bank that offers a customer a DCC or DSA without a refund provision also must offer that customer a bona fide option to purchase a comparable DCC or DSA that provides for a refund.

- The long-form disclosure requirement set forth in 12 CFR 37.6.

- The second disclosure set forth in Appendix A to part 37 (Short Form

Disclosures), entitled "Lump sum payment of fee," informing the customer that he or she has the option to pay the fee in a single lump sum or in periodic payments.

- The third disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Lump sum payment of fee with no refund," informing the customer that he or she has the option to purchase a DCC or DSA with a refund provision.

- The fifth disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Additional disclosures," indicating that the customer will receive additional information before being required to pay for the DCC or DSA.[3]

- The requirement to obtain a customer's written acknowledgment of receipt of disclosures set forth at 12 CFR 37.7(a).

The OCC expects that national banks that do not provide long forms disclosures will conspicuously inform customers that they will receive a copy of the contract before they are required to pay for the product.

Request for Comment

As we have indicated, the purpose of this delay in the time for compliance is to permit the OCC to consider how best to address compliance issues that arise under the circumstances described in this notice. To aid our review of these issues, we invite comment on the following specific questions, as well as on any other aspect of this notice that commenters wish to address:

---

[2] As used in this notice, the term "closed-end consumer credit" and "closed-end consumer loan" refer to consumer credit other than open-end credit, as defined in the final DCC/DSA rule. These terms do not include loans secured by 1-4 residential real property. *See* 12 CFR 37.2(a).

[3] The sixth disclosure set forth in Appendix A to part 37, provides banks the option of directing customers either to the long form disclosures or the contract for a full explanation of the terms. Clearly, since the long form is not required for the time being, the bank will refer customers to the contract.

1. Please comment on any compliance issues or problems posed by providing the periodic payment option and the associated short and long form disclosures for DCCs or DSAs sold by unaffiliated, non-exclusive agents in connection with closed-end loans.

2. Please explain the types of loan products, e.g., car loans, where this issue arises.

3. What alternative approaches are available to provide appropriate consumer protections?

4. In the case of closed-end loans, should the requirement in the long form disclosures to disclose the total fee for a DCC paid on a monthly or periodic basis be modified? Is there an alternative, effective way to disclose that information that could be added to the rule?

Dated: ________________, 2003

____

John D. Hawke, Jr.,
Comptroller of the Currency.

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 11

2003 Comment Letter from CEJ and CFA to OCC

Consumer Federation of America	**The Center for Economic Justice**
1424 16th Street, NW, Suite 60 Washington, DC 20036 (202) 387-6121 www.consumerfed.org	1701 A South Second Street Austin, TX 78704 (512) 927-1327 phone www.cej-online.org

July 14, 2003

Office of the Comptroller of the Currency
Public Information Room
250 E Street, SW., Mail Stop 1-5
Washington, DC 20219

By Electronic Mail: regs.comments@occ.treas.gov

Re: Comments on
Debt Cancellation Contracts and Debt Suspension Agreements;
Change in Compliance Date and Request for Comment

Dear Comptroller Hawke:

The Consumer Federation of America and the Center for Economic Justice submit this letter with comments on your decision to delay indefinitely certain consumer protection provisions of the recently promulgated Debt Cancellation Contracts and Debt Suspension Agreements rule (DCC/DSA rule).

The notice on this issue states:

> The Office of the Comptroller of the Currency (OCC) has determined to delay the date when compliance is required with certain provisions of the final rule governing debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) in order to allow the OCC to consider issues that have recently been brought to our attention concerning the application of the DCC/DSA rule in the context of closed-end consumer loan transactions where DCCs and DSAs are offered through unaffiliated, non-exclusive agents. The delay of the compliance date applies only to the extent and to the types of transactions described in this document. In all other circumstances, national banks are required to comply with the DCC/DSA rule as of June 16, 2003, which is the date on which the rule takes effect. The OCC also is inviting comment on issues raised by national banks related to the sale of DCCs and DSAs in connection with closed-end consumer loans offered through such non-exclusive agency relationships.

The notice further describes your action:

> In addition, the rule requires a national bank that offers a customer the option to pay the fee for a DCC or DSA in a single payment also to offer that customer a bona fide option to pay the fee on a periodic basis ("periodic payment option"). The final rule takes effect on June 16, 2003.
>
> The OCC recently has received information that the periodic payment option requirement may present unique issues, of which the OCC was previously unaware, in connection with DCCs and DSAs offered by national banks through unaffiliated, non-exclusive agents, with respect to certain types of consumer purchase transactions, most notably car loans made available through automobile dealers.
>
> Accordingly, we have determined that it is appropriate to delay the mandatory compliance date for the periodic payment option in the case of transactions where unaffiliated, non-exclusive agents of a national bank offer that bank's DCC or DSA in connection with closed-end consumer credit, until the OCC has an opportunity to further evaluate the feasibility of approaches to providing appropriate customer protections in connection with that type of transaction. Because the availability of the periodic payment option also triggers certain disclosures, we also are delaying the time for compliance with certain other provisions in the DCC/DSA final rule that are linked to the requirement to offer a periodic payment option, including the requirement to provide the long form disclosures.

Our comments will largely be limited to the process – or lack of process – involved in your decision to delay indefinitely important consumer protection provisions of the DCC/DSA rule. Although we submitted a request for information on June 24, 2003 for any comments received by the OCC related to the decision to delay implementation and for any other documents relied upon by the OCC in coming to this decision, we were informed that no such documents exist by Karen Solomon of your office on July 8, 2003. Consequently, our comments must respond to the summary description of the situation, cited above, and to any information provided in our conversation with Ms. Solomon.

Your decision to delay important consumer protection provisions in the DCC/DSA rule is troubling for several reasons. First, the decision-making process that led to indefinite delay in implementing these consumer protection provisions was closed to the public. Clearly, lenders provided substantive comments to you after the rule was adopted and, also clearly, you delayed implementation of certain provisions based upon those lender allegations. Consumer groups and other members of the public had no opportunity to learn about the alleged problems for certain auto dealers or to respond to these allegations before you made your decision to delay implementation. It is unfair to

eliminate these important consumer protections without notifying the public of your intent to do so prior to your action. These lenders had the opportunity to make these comments during the official comment period prior to your adoption of the rule.

Further, your official announcement about delaying implementation of provisions affecting auto dealers did not occur until two days before the rule took effect. Your action is unfair to those lenders and auto dealers who took the necessary actions to comply with the rule, as promulgated, and rewards those auto dealers who made no effort to comply but, instead, spent their resources to lobby against the rule.

Second, the rule in its entirety – including the provisions you decided to delay – should have gone into effect on June 16, 2003. If there was a concern on you part about certain provisions, then you should have issued a notice prior to taking an action. Instead of allowing lenders to continue a practice that your own rule identifies as harmful to consumers – offering only single fee products – the consumer protections should have been implemented until you had information to conclusively determine that these provisions were not essential consumer protections. Your decision puts the desires of auto dealers and lenders over the needs of consumers. If auto dealers were unable to sell DCCs in compliance with the rule, then they should simply not sell the products until they are able to comply. It is illogical and anti-consumer to allow unfair sales practices to continue because auto dealers allege a difficulty in compliance.

Third, your decision shows little concern for the potential abuses associated with financed single fee products sold in connection with loans. The problems with financed single premium credit insurance are well known. And your DCC rule prohibits the sale of single fee DCCs in connection with real-estate secured loans. The same abusive characteristics of financed single premium credit insurance are present with financed single fee DCCs sold in connection with longer-term auto loans. There was a very good reason why your rule included a provision that monthly fee products must also be offered when a single fee product is offered: it is an essential consumer protection to avoid loan packing and unfair and coercive sales of highly profitable DCCs/DSAs by lenders. Your decision to indefinitely delay these requirements eliminates crucial consumer protections.

Fourth, based upon the description of the alleged problems – that certain auto dealers' software systems are not capable of adding a monthly pay product – your decision to indefinitely delay the mandatory monthly pay offer is unjustified. At what point in time did the basis for implementing a consumer protection requirement become whether the lender or auto dealer could easily comply with the requirement? Further, the argument that auto dealers simply don't have the systems to offer a monthly pay product is specious – it is precisely the same argument offered by subprime lenders who wanted to continue offering only financed single premium credit insurance and did not want to offer the less profitable monthly pay credit insurance. Miraculously, these lenders developed the necessary systems to offer the monthly pay product when the secondary market told them they couldn't sell loans withy single premium credit insurance.

Further, what exactly does it take to offer a monthly fee product? A monthly fee product is, by definition, the same fee each month. It is added to the loan amount. It is not financed, and consequently, does not involve complicated amortization and annuity calculations or even integration with the loan calculation. Based upon the limited information we have seen, there is no substantive reason why auto dealers could not comply with the consumer protection requirements that you delayed implementation of. Yes, the auto dealers would incur modest new costs to modify their systems and, yes, the auto dealers will sell far fewer single fee DCC products and, yes, the auto dealers will realize less profit on monthly pay products than financed single fee products. None of these are reasons to eliminate the important consumer protection against a predatory lending practice.

In our July 8, 2003 conversation, Ms. Solomon described another alleged problems for lenders offering auto loans through auto dealer agents – that banks offering DCCs and DSAs through this outlet were put at a competitive disadvantage versus other products that auto dealers could sell on a financed single fee basis without having to offer a monthly pay alternative. Stated differently, auto dealers can sell financed single premium credit insurance in connection with auto loans without having to offer a monthly pay credit insurance alternative. Therefore, banks may have difficulty getting an auto dealer to sell DCCs and DSAs because of the requirement to offer a monthly pay alternative. This allegation is, of course, not a legitimate justification for scrapping important consumer protections in the DCC/DSA rule. Relying upon this allegation as support for your action means eliminating demonstrated consumer protections in the sale of DCCs and DSAs because some other product can be sold with fewer consumer protections and greater profit for lenders. It is classic regulatory arbitrage – playing different regulators off against each other in a race to the bottom of consumer protection.

In conclusion, we urge you to withdraw your delay in implementing certain provisions of your DCC rule, to required lenders and auto dealers to comply with all the provisions of the rule or cease selling DCCs until they are able to do so and, if you still feel there is some issue with auto dealers warranting attention, make the issues and allegations known to the public so there will be a fair discussion of the issues.

Sincerely,

J. Robert Hunter
Director of Insurance
Consumer Federation of America

Birny Birnbaum
Executive Director
Center for Economic Justice

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 12

Summary of Current DCC/DSA Program Benefits and Fees

Debt Cancellation Contracts and Debt Suspension Agreements:
Covered Events and Program Costs

Lender	Fleet	Citicorp	B of A	B of A	Discover	Discover
Loan	Credit Card	Citi Gold AA MC	Credit Card	Installment Loan	Discover Card	Personal Loans
Offer Expiration	1/1/2001	5/15/2003	5/1/03 web	5/1/03 web	5/1/03 web	5/1/03 web
Program Name	Credit Protector	Credit Protector	Cardholder Security Plan	Borrowers Protection Plan	AccountGuard	Discover Credit Protection
Cost per Unit Single	0.69	0.69	0.75		0.79	0.39
Cost per Unit Joint	0.79					
Fee Basis	$100 of outstanding balance	$100 of new balance on statement	$100 of monthly outstanding balance		$100 Total Balance End of Monthly Billing Period	$100 of original loan amount
Death	DCC Balance 10K					
Acc Death		DCC Balance	DCC Balance 10K			
Total Disability	DCC Balance 10K	DCC Balance	12 month DCC			
Disability	12 month DS	24 month DS		12 month DCC	24 month DS	24 month DS
Unemployment	12 month DS	24 month DS	12 month DCC	12 month DCC	24 month DS	24 month DS
Family Leave	12 month DS	3 month DS	12 month DCC		3 month DS	3 month DS
Hospitalization		1 month DS				
Military Call Up		Unlimited DS				
Disaster Relief		3 month DCC				
Life Event		1 month DCC				
Divorce						
Other		No card use if DS Free after 84 payments			Dis and UE are 30R, no waiting period for family leave No use of card after applying for benefits No extraordinary use of card after beginning of covered event	

Debt Cancellation Contracts and Debt Suspension Agreements:
Covered Events and Program Costs

Lender	Retailers Nat Bank	Retailers Nat Bank	Retailers Nat Bank	Retailers Nat Bank	Advanta	Bank One
Loan	Target Visa Card	Target Visa Card	Target Visa Card	Mervyns Card	Business Card	Amnesty Int Card
Offer Expiration	3/15/2000	10/15/2001	5/1/03 web	3/15/2000	6/1/2001	12/20/2002
Program Name	SafetyNet	SafetyNet	SafetyNet	SafetyNet	Credit Saver Protection	First Protect
Cost per Unit Single					0.7	0.79
Cost per Unit Joint	0.99	0.99	0.99	0.99		
Fee Basis	$100 of protected balance each month	$100 of protected balance each month	$100 of protected balance each month	$100 of protected balance each month	$100 of monthly ending balance	$100 of avg daily balance up to $15K
Death	DCC Balance 10K	DCC Balance 10K	DCC Balance 10K	DCC Balance 10K	DCC Balance 10K	
Acc Death						
Total Disability	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K		
Disability					30R 12 month DS	14R 18 month DS
Unemployment	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K	30R 12 month DS	14R 18 month DS
Family Leave	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K	90R DCC balance 10K		14R 6 month DS
Hospitalization						2 nights 18 month DS
Military Call Up						
Disaster Relief						
Life Event						
Divorce						4 month DS
Other	If leave begins within 90 days of enrollment not covered	If leave begins within 90 days of enrollment not covered	If leave begins within 90 days of enrollment not covered info accurate as of 8/1/01	If leave begins within 90 days of enrollment not covered	No card use after applying for benefits If unemployment within 60 days, refund, no benefits	Must work 30hrs week for 90 days prior to leave Disclosures dated 9/13/01

Debt Cancellation Contracts and Debt Suspension Agreements:
Covered Events and Program Costs

Lender	Bank One	Chase	Providian	Providian	Capital One	MBNA
Loan	Amnesty Int Card	Platinum MC	Platinum Visa	Platinum Visa		Platinum Plus VISA
Offer Expiration	12/10/2001	3/21/2001	5/21/1999	4/30/2003		4/1/2002
Program Name	First Protect	Payment Protection Plan	Credit Protection Plan	Credit Protection	None Found	Credit Protection Plan
Cost per Unit Single	0.79	0.69	12.95	0.79		0.85
Cost per Unit Joint						
Fee Basis	$100 of avg daily balance up to $15K	$100 of month end balance	monthly	$100 of balance per month		$100
Death				24 month DS		
Acc Death						DCC Balance 25K
Total Disability						30R 24 month DCC
Disability	14R 18 month DS	24 month DS	18 month DS	24 month DS		
Unemployment	14R 18 month DS	24 month DS	18 month DS	24 month DS		30R 24 month DCC
Family Leave	14R 6 month DS	24 month DS		24 month DS		3 month DCC
Hospitalization	2 nights 18 month DS	24 month DS	18 month DS	24 month DS		30R 24 month DCC
Military Call Up						
Disaster Relief				24 month DS		
Life Event						
Divorce	4 month DS					
Other	Must work 30hrs week for 90 days prior to leave Disclosures dated 6/26/01	Benefits available 90 days after enrollment	months of benefit equal to lesser of months enrolled or 18 no activation for pre-existing condition in first 6 months no activation for unemployment in first 3 months	card use with benefit activation up to $1,500 line of credit .69 rate if retired 4/03 terms and conditions flyer		TD, hospitalization pre-existing cond with 6 mos of enrollment

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 13

Current DCC/DSA Offers and Initial Disclosures

Overview
Apply Now
Check Your Application
Manage Your Loans
Loan Choices
Mortgages
Home Equity Loans & Lines of Credit
Auto Loans
More Loans
Borrowers Protection Plan
Learning Center
Homes & Communities

Borrowers Protection Plan®

Give your family a valuable gift in the event of a sudden job loss or disability - time to recover.

What is Borrowers Protection Plan?

Borrowers Protection Plan is an optional feature of your loan that can provide peace of mind du times - like an unexpected job loss or disability. Borrowers Protection Plan will cancel your mor and interest payment for up to a total of 12 months[1] if you lose your job through no fault of you unable to work due to illness or injury.[2] Borrowers Protection Plan helps eliminate the worry of loan payment or jeopardizing your credit rating.

Please note: Borrowers Protection Plan is only available on loans with a monthly fixed paymer available **prior** to loan closing.

Benefits of protection

- **Affordable.** Decide what you and your family need and we'll help make it affordable. Y convenient monthly payments and get built-in savings if you purchase more types of pr choose joint protection on the same loan. Better yet, Borrowers Protection Plan is not fi monthly fee added to the loan that can be cancelled at any time.
- **Easy to obtain.** Take advantage of our convenient purchase process. There are no he requirements or medical exams and **any** size loan qualifies.
- **Supplemental benefits.** Your monthly benefits will not be reduced because of other st unemployment benefits or disability income you may receive. And if you should die in a your loan balance will be canceled, freeing up other resources to take care of your fami

Three protection packages

You can choose one of three protection packages:

- Involuntary unemployment and disability protection
- Involuntary unemployment protection
- Disability protection

Select the combination that offers you and your family the protection you need. All three packa Accidental Death protection and are available on a single or joint basis[2]:

- **Involuntary unemployment protection** cancels the monthly principal and interest pay to a total of 12 months[1] if you lose your job through no fault of your own.[2]
- **Disability protection** cancels the monthly principal and interest payment for up to a to months[1] if you're unable to work due to illness or injury.[2]

Are your current benefits enough?

Ask a Bank of America representative about Borrowers Protection Plan when applying for your

- Prequalify to buy a home »
- Prequalify to refinance »
- Apply now for fixed-rate option on a home equity line of credit »
- Apply Now for a Home Equity Loan »
- Apply Now for an Auto Loan »

[1]Borrowers Protection Plan will cancel your monthly principal and interest payment for up to a total of 12 months durin the first 10 years of a longer term loan, whichever is shorter.

[2]Certain exclusions and restrictions may apply. Specific details can be found in the addendum.

[3]Certain exclusions and restrictions may apply. Benefit is limited to a death resulting from an accident only.

Borrowers Protection Plan is not insurance. It's a debt cancellation contract between Bank of America and you. Wheth purchase Borrowers Protection Plan will not affect your application for credit, or the terms of any existing credit agreen have with the bank.

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Personal • Small Business • Corporate & Institutional • About Bank of America
Privacy & Security • Careers

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Credit Cards

Overview
Choose a Card
Add a Feature
Mini Card
Photo Expressions
Cardholder Security Plan
Verified By Visa
Photo Security
Apply Now
Check Your Application
Manage Your Card
Frequently Asked Questions

Cardholder Security Plan™

Enroll in an optional plan that can credit the minimum payment due on your credit card account when you can't.

Benefits
The optional Cardholder Security Plan can credit up to 12 monthly benefit amounts to your credit card account in the event of your

- Total disability
- Involuntary unemployment
- Unpaid family leave of absence

It can also credit a benefit amount equal to your outstanding credit card balance on the date of loss up to $10,000 in the event of your accidental death.

Cost
The monthly program fee is $.75 per $100 of your monthly outstanding balance and is automatically billed to your account. If you have no monthly outstanding balance on your statement, there's no charge.

Request the Cardholder Security Plan

- **If you don't have a Bank of America credit card**, apply for a card now and request the Cardholder Security Plan.
- **If you already have a Bank of America credit card**, call **1.888.668.6938** to request or learn more about the Cardholder Security Plan.

Compare Cards

Choose and compare c

Help me choose

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Home
Apply for a Card
Account Center
Cashback Bonus Award
ShopCenter
Special Events and Promotions
Customer Service
Products and Services
Credit Protection
Card Registration
Credit Report
Accident Protection
Health Care Discounts
Other Financial Services
About Discover Financial Services
Student Center
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Credit Protection

Discover® AccountGuard®– Protection from the Unexpected

Get Peace of Mind When You Need it Most

Discover® AccountGuard® protects your Discover Card Account by placing your monthly payments on hold when you or your joint Cardmember experience:

- Involuntary unemployment
- Disability due to accident or illness
- Unpaid, employer-approved leave of absence

No Payments, Charges or Fees

With optional Discover AccountGuard, you will make no payments to your Discover Card Account for up to 24 months (3 months for unpaid employer-approved leave of absence). During this time, your Account will have:

- No minimum monthly payments
- No finance charges
- No overlimit fees
- No late fees
- No monthly Discover AccountGuard fees

When your Account is on hold you will not be able to use your Discover Card.

Pay Nothing When Your Balance is Zero!

When you protect your Account with Discover AccountGuard, you pay only 79¢ per $100 of your outstanding monthly balance, conveniently charged to your Discover Card Account. There is no cost for Discover AccountGuard if you have a zero balance on the last day of your billing period. You may cancel your Discover AccountGuard option at any time and Discover AccountGuard comes with a 30-day money-back guarantee.

To enroll by phone, please call 1-877-737-1931.

Enroll Today!

If you are already registered, log in to enroll.

LOG IN AND ENROLL

Not registered for the Account Center? Sign up today. You can enroll for Discover AccountGuard online. Look for the links on the Account Summary page.

REGISTER AND ENROLL

See Discover AccountGuard Important Information for complete details.

Site Map | Help

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Personal Loans

Apply for a Loan

Payment Calculator

About Our Loans

Automatic Payment

Discover Credit Protection

Discover Card Home

Important Information

Discover® Credit Protection is an optional provision of your Discover® Personal Loans Agreement. This protection is available to any person who is contractually liable under your Loan Agreement and named on the Notification of Enrollment form. The monthly fee is based upon your original loan amount and costs $0.39 per $100. Upon your Involuntary Unemployment, Disability or Leave of Absence (each, a "Covered Event"), you will be entitled to a period of time when you do not need to make scheduled monthly installment payments and will not have any additional finance charges, late fees, or Discover Credit Protection fees applied to your Loan Account. However, scheduled monthly installment payments will resume when benefits have ended and your loan term will be extended for the number of monthly installment payments for which you received Discover Credit Protection benefits. **Discover Credit Protection is not insurance and will not pay off any of your balance. Discover Credit Protection is not required to obtain or retain a Discover Personal Loan and your decision to enroll in Discover Credit Protection is not a factor in our credit decision.**

Benefits:
Benefits are provided for "Involuntary Unemployment"—a total loss of salary or wages as the result of your loss of employment due to layoff; general strike; lockout; or involuntary termination of employment by the employer (excluding termination for willful or criminal misconduct). You must qualify for state unemployment benefits or register for work at a recognized employment agency. You do not qualify for Involuntary Unemployment benefits due to Involuntary Unemployment commencing prior to your enrollment in Discover Credit Protection.

Benefits are also provided for "Disability"—an accident or illness that prevents you from performing the material and substantial duties of your job or, if you are retired or are otherwise unemployed, that would prevent you from performing the material and substantial duties of any and all jobs. You must be under the continuous treatment of a physician. You do not qualify for Disability benefits due to: (a) childbirth; (b) normal pregnancy; (c) intentionally self-inflicted injuries; (d) Disability during the first 6 months of Discover Credit Protection arising from an accident or illness that caused you to consult with a physician or seek medical treatment within 6 months prior to enrolling for Discover Credit Protection; or (e) a Disability commencing prior to your enrollment in Discover Credit Protection.

Finally, benefits are provided for "Leave of Absence"—your employer-approved absence from employment without pay: (a) to care for a new baby, a new adopted child or an incapacitated member of your immediate family; (b) as a result of your recall to active military service; or (c) as a result of an event giving rise to the declaration of a federal disaster area where you reside or are employed. You do not qualify for Leave of Absence benefits if your leave is due to an event that begins prior to the time you enroll in Discover Credit Protection.

Generally, benefits for a Covered Event commence for the monthly installment period in which we determine that you have provided satisfactory evidence that the Covered Event has continued for 30 consecutive days (there is no waiting period for Leave of Absence although you must be enrolled for 30 days prior to receiving benefits) and continue for up to a total of 24 monthly installment periods (3 monthly installment periods for Leave of Absence) or until your Covered Event ends, whichever occurs first.

Limitations on Benefits:
There are important limitations on Discover Credit Protection benefits. **You must notify us as soon as is reasonably possible after the start of a Covered Event because you can never receive any retroactive benefits under Discover Credit Protection.** You will not qualify for benefits if your Loan Account is delinquent for at least 60 days when we review your application for benefits. **You may not obtain benefits for Involuntary Unemployment or Leave of Absence if you are retired, self-employed, employed by a member of your household, or employed for too short a time or for too few hours.**

Additional Information:
Further limitations and details are set forth in your Discover Credit Protection Terms and Conditions, which will govern in the event of any inconsistency with this Important Information. Upon enrollment, you will be mailed your Discover Credit Protection Terms and Conditions. We may change the Discover Credit Protection terms and either you or we may cancel Discover Credit Protection at any time. However, no such change or cancellation will reduce the benefits you are already receiving at the time of such notice. If you cancel within 30 days of your enrollment date, we will refund your Discover Credit Protection fee.

Please use your browser's "Back" button to return to the previous page.

Discover Personal Loans Privacy Policy

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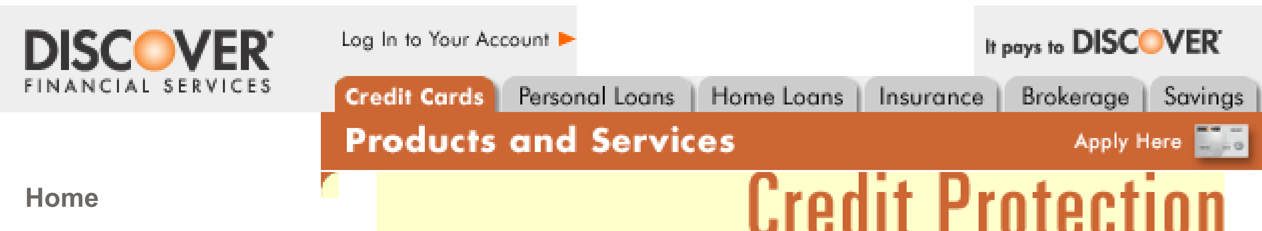

Home
Apply for a Card
Account Center
Cashback Bonus Award
ShopCenter
Special Events and Promotions
Customer Service
Products and Services
Credit Protection
Card Registration
Credit Report
Accident Protection
Health Care Discounts
Other Financial Services
About Discover Financial Services
Student Center
Information for Merchants

Credit Protection

Discover® AccountGuard® Important Information

Discover® AccountGuard® protection is an optional provision of your Discover Cardmember Agreement. This protection is available to any person who is contractually liable under your Discover Card Agreement and named on the Notification of Enrollment form (individually or collectively "you"). The fee is based upon your total balance (excluding Discover AccountGuard fees) at the end of each monthly billing period (including any partial monthly billing period at the beginning of your enrollment) and costs $0.79 per $100. Upon your Involuntary Unemployment, Disability or Leave of Absence (each, a "Covered Event"), you will be entitled to a period of time when you do not need to make minimum monthly payments and will not have any finance charges, late fees, overlimit fees, or Discover AccountGuard fees applied to your Account. **Discover AccountGuard is not insurance and will not pay off any of your balance. Discover AccountGuard is not required to obtain or retain a Discover Card and your decision to enroll in Discover AccountGuard is not a factor in our credit decision.**

Benefits
Benefits are provided for "Involuntary Unemployment"—a total loss of salary or wages as the result of your loss of employment due to layoff; general strike; lockout; or involuntary termination of employment by the employer (excluding termination for willful or criminal misconduct). You must qualify for state unemployment benefits or register for work at a recognized employment agency. You do not qualify for Involuntary Unemployment benefits due to Involuntary Unemployment commencing prior to your enrollment in Discover AccountGuard.

Benefits are also provided for "Disability"—an accident or illness that prevents you from performing the material and substantial duties of your job or, if you are retired or are otherwise unemployed, that would prevent you from performing the material and substantial duties of any and all jobs. You must be under the continuous treatment of a physician. You do not qualify for Disability benefits due to: (a) childbirth; (b) normal pregnancy; (c) intentionally self-inflicted injuries; (d) Disability during the first 6 months of Discover AccountGuard protection arising from an accident or illness that caused you to consult with a physician or seek medical treatment within 6 months prior to enrolling for Discover AccountGuard; or (e) a Disability commencing prior to your enrollment in Discover AccountGuard.

Finally, benefits are provided for "Leave of Absence"—your approved absence from employment without pay: (a) to care for a new baby, a new adopted child or an incapacitated member of your immediate family; (b) as a result of your recall to active military service; or (c) as a result of an event giving rise to the declaration of a federal disaster area where you reside or are employed. You do not qualify for Leave of Absence benefits if your leave is due to an event that begins prior to the time you enroll in Discover AccountGuard.

Generally, benefits for a Covered Event commence for the billing period in which we determine that you have provided satisfactory evidence that the Covered Event has continued for 30 consecutive days (there is no waiting period for Leave of Absence although you must be enrolled for 30 days prior to receiving benefits) and continue for up to a total of 24 billing periods (3 billing periods for Leave of Absence) or until your Covered Event ends, whichever occurs first.

Limitations on Benefits
There are important limitations on Discover AccountGuard benefits. **You must notify us as soon as is reasonably possible after the start of a Covered Event because you can never receive any retroactive benefits under Discover AccountGuard.** You will not qualify for benefits if your Account is seriously delinquent when we review your application for benefits. You may not engage in any extraordinary use of your Account after the beginning of a Covered Event and may not use your Account at all after applying for or obtaining benefits, unless benefits are denied. **You cannot obtain benefits for Involuntary Unemployment or Leave of Absence if you are retired, self-employed, employed by a member of your household, or employed for too short a time or for too few hours.**

Additional Information
Further limitations and details are set forth in your Discover AccountGuard Terms and Conditions, which will govern in the event of any inconsistency with this Important Information. We may change the Discover AccountGuard terms and either you or we may cancel Discover AccountGuard at any time. However, no such change or cancellation will reduce the benefits you are already receiving at the time of such notice. If you cancel within 30 days of your enrollment date, we will refund your Discover AccountGuard fee.

Please use your browser's "Back" button to return to the Discover AccountGuard enrollment page.

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Personal Loans
Apply for a Loan
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About Our Loans
Automatic Payment
Discover Credit Protection
Discover Card Home

Protection You Can Use

Get Peace of Mind When You Need It Most
Discover® Credit Protection safeguards your Discover Personal Loan Account by placing your monthly installment payment on hold when you experience:
- Involuntary unemployment
- Disability due to accident or illness
- Unpaid, employer-approved leave of absence

No Payments, Charges or Fees
With optional Discover Credit Protection, you will make no payments to your Discover Personal Loan Account for up to 24 months (3 months for unpaid employer-approved leave of absence). During this time, your Account will have:
- No monthly payments
- No additional finance charges
- No late fees
- No monthly Discover Credit Protection fees

Low Cost Protection
When you protect your Personal Loan Account with Discover Credit Protection, you pay only 39¢ per $100 of your original loan amount, which is conveniently added to your scheduled monthly installment payment. For example, if your Discover Personal Loan was issued for $5,000, your Discover Credit Protection fee will only be $19.50 per month!

Plus, if you're not completely satisfied, you may cancel your Discover Credit Protection option at any time. Cancel within the first 30 days and receive a full refund.

Discover Credit Protection is not insurance and will not pay off any of your balance. Discover Credit Protection is not required to obtain or retain a Discover Personal Loan and your decision to enroll is not a factor in our credit decision.

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Enroll in Discover® Credit Protection Today

If you are planning to apply for a Discover® Personal Loan and want to request Discover Credit Protection when you apply, just check the "yes" box on Step 3.

Apply for a Loan

If you already have a Discover Personal Loan, just sign up by calling us toll-free at **1-800-473-3395.**

For complete details, please see Discover Credit Protection Important Information.

Sincerely,

Michael J. Barrett, President
Chase Manhattan Bank USA, National Association

P.S. You must respond by June 30, 2003 to get this low 0% introductory APR on balance transfers. To apply, mail the form below, call 1-888-381-6868 or visit our website at www.mychaseplatinum.com. Don't miss out — do it today!

*See reverse for Disclosures regarding rates, fees and additional costs and other information for this offer.

WZ6538947300

FILL OUT, DETACH PART BELOW AND MAIL IT BACK IN THE ENCLOSED ENVELOPE A1PX ITSGALT-97

CALL TOLL FREE 1-888-381-6868 AND USE YOUR INVITATION CODE WZ6538947300 OR COMPLETE THE INVITATION CERTIFICATE

Visa Platinum Offer Expires: June 30, 2003

Birny Birnbaum
1701 S. 2nd St., A
Austin, TX 78704-3441

The following information is necessary prior to opening your account. **PLEASE USE A BLUE OR BLACK BALLPOINT PEN.**

Signature (Required, not transferable) DATE
X

Social Security Number

Date of Birth M M D D Y Y

Yearly Total Income' $ .00

Home Phone

'You need not include alimony, child support, or separate maintenance income if you do not want such income to be considered.

Employer's Name

Business Phone

Yes! I want to help protect my credit rating. Please enroll me in the Chase Payment Protector Plan. I have read and understand the offer as described on the reverse side. *I acknowledge that the purchase of the Chase Payment Protector Plan is not required to obtain credit and my decision whether to purchase is not a factor in Chase's credit approval.* I understand that enrollment is optional and I may cancel at any time.

INITIAL HERE FOR OPTIONAL PAYMENT PROTECTOR DATE

Mother's Maiden Name

If you would like an additional card in another name, print name below.
First Middle Initial Last

Complete this form today to pay off your outstanding balances at a low fixed APR of just 0%.*

You can transfer two balances to your new Visa Platinum.*

1) Account Number — Exact Amount to be Paid and Transferred $

2) Account Number — Exact Amount to be Paid and Transferred $

WZ6538947300 0825033564 PZ-214305-006380

* See reverse for Disclosures regarding rates, fees and additional costs and other information for this offer.

DISCLOSURE

In these disclosures, "we," "our" or "us" means Chase Manhattan Bank USA, National Association.

NOTICE: You agree that we may obtain and use consumer credit reports and exchange credit information in connection with this offer and any update, renewal or extension of credit we may extend to you or for any other legitimate business purpose. If you request, we will inform you whether any credit report was requested and, if so, the name and address of the consumer reporting agency which furnished the report. You agree that we may share personal and account information about you with our affiliates for the purpose of marketing to you their products and services, including banking, insurance and investment products. You agree that we will consider your response for a Chase Visa Platinum with Elite Pricing. You agree that we reserve the right, based upon our evaluation of information furnished by you or others, to open a Chase Visa Platinum with Premium Pricing account or a Chase Visa Platinum with Standard Pricing account, with the pricing terms stated below, with a credit line that may be as low as $500, if you do not qualify for the Chase Visa Platinum with Elite Pricing, or not to open any account. We may exclude existing cardmembers from this offer. You must be at least 18 years old to qualify (19 in AL and NE). You must have a valid permanent home address within the 50 United States or the District of Columbia. Responses with addresses outside this market area, including addresses in U.S. territories, commonwealths and possessions, will not be approved. This offer and any resulting account are subject to Delaware and federal law. You agree that the use of any card or account issued in connection with this offer is subject to the terms specified in, and such terms are subject to change as provided in, the Cardmember Agreement mailed with your card. The Cardmember Agreement contains a binding arbitration provision which may affect your rights to go to court, including your right to a jury trial or your right to participate in a class action or similar proceeding. Payments may be applied, by Chase in its sole discretion, to promotional rate balances (like reduced rate Balance Transfers or other reduced rate offers) before standard rate balances.

State laws require the following notices: **California Residents:** Married applicants may apply for separate credit. **New York Residents:** May contact the New York State Banking Department at 1-800-518-8866 to obtain a comparative listing of credit card rates, fees and grace periods. **Ohio Residents:** The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law. **Married Wisconsin Residents:** No provision of any marital property agreement, unilateral statement, or court order applying to marital property will adversely affect a creditor's interests unless prior to the time credit is granted, the creditor is furnished with a copy of the agreement, statement or court order, or has actual knowledge of the provision. In addition, you must send us the name and address of your spouse within 15 days to Chase Manhattan Bank USA, National Association, P.O. Box 15006, Wilmington, Delaware 19850-5006, so that we can provide your spouse with a disclosure required under Wisconsin law.

FEATURES AND SERVICES SUMMARY: Some card features and services are provided by independent suppliers who assume full responsibility for their programs. The availability, scope, underwriters and suppliers of these services are subject to change. Card features and services have some restrictions, exclusions and limitations. Full details will be provided when you become a cardmember.

Daily and transaction limits apply to ATMs.

BALANCE TRANSFER DISCLOSURES: You agree to allow approximately 30 days for us to process your response and transfer the balance(s) to your Chase account. Please continue to make at least the minimum payments on your other credit cards until we notify you that the balances have been transferred. Chase is not responsible for fees and finance charges incurred by you prior to your balance being transferred to Chase. Payment of the amount(s) authorized by you may or may not satisfy any outstanding balance(s) on the designated account(s). You will continue to be responsible for any balances on your other credit cards. In the event that your request(s) exceed the amount of your credit line, the bank will fulfill your requests in numeric order as listed in your response, may decline to process one or more requests and/or may complete one request in a partial amount. Chase will limit total transfer amounts to $250 less than your total credit line in order to leave part of your line available. The payment and transfer of balances are contingent upon approval by the bank and receipt of complete, legible balance transfer requests. Your balance transfer request may not be used to make payments toward amounts you owe Chase. Transfer requests to cash or to yourself cannot be processed. In the event we establish a Chase Visa Platinum with Standard Pricing account for you, balance transfer requests cannot be processed.

PIVELITE1211

SUMMARY OF TERMS:

Annual Percentage Rate (APR) for Purchases	Preferred Pricing:[1] 9.24% for Elite Pricing, or 13.24% for Premium Pricing, or 19.24% for Standard Pricing.
Other APRs	Preferred Pricing[1] -- Balance Transfers: For Elite and Premium Pricing, Fixed 0.00% introductory rate from account opening through August 2004.[1] Thereafter, 9.24% for Elite Pricing, or 13.24% for Premium Pricing. Cash Advances: 19.99% for Elite and Premium Pricing, or 23.99% for Standard Pricing. Non-Preferred Pricing -- Purchases, Balance Transfers and Cash Advances: Up to 24.24%.
Variable Rate Information	Your APR may vary. Preferred Pricing[1] -- Purchases and Balance Transfers: For all purchases from account opening, and for both outstanding and new balance transfers after August 2004, for accounts with Elite Pricing, the rate is determined monthly by adding 4.99% (or 8.99% for accounts with Premium Pricing) to the Prime Rate.[2] For all purchases from account opening for accounts with Standard Pricing, the rate is determined monthly by adding 14.99% to the Prime Rate.[2] Cash Advances: For accounts with Elite and Premium Pricing, the rate is determined monthly by adding 14.99% (or 15.99% for accounts with Standard Pricing) to the Prime Rate (not less than 19.99% or 23.99%, respectively).[2] Non-Preferred Pricing -- Purchases, Balance Transfers and Cash Advances: The rate is determined monthly and is up to the Prime Rate plus 19.99%.[2]

Grace Period for Repayment of the Balance for Purchases	Not less than 20 days	**Transaction Fee for Cash Advances**	3% of each cash advance ($5 minimum)
Method of Computing the Balance for Purchases	Average Daily Balance (including new purchases)	**Transaction Fee for Balance Transfers**	No fee from account opening through August 2004. Thereafter, $50 per transaction unless otherwise disclosed to you in writing.
Annual Fee	None		
Minimum Finance Charge for Purchases	$.50 (if a finance charge is imposed)	**Late Payment Fee**	$15 for a Balance up to $150.00; $29 for a Balance of $150.01 up to $1,200.00; $35 for a Balance of $1,200.01 or greater ("Balance" means Previous Balance on statement that shows the late fee); and $35 when Non-Preferred rate is in effect on monthly statement.
Transaction Fee for Purchases in a Foreign Currency	For Foreign Currency Transactions, 2% of the converted transaction amount.		
Over the Credit Limit Fee	$29; or $35 when Non-Preferred rate is in effect on monthly statement.		

[1]Any promotional rate may change to your regular Preferred Pricing rate if any minimum payment on your Account was past due. Any promotional rate or regular Preferred Pricing rate may change to your Non-Preferred rate if any loan or account of yours with us or your other creditors was past due, your Account was overlimit or any payment on your Account was returned unpaid. All rate changes effective as of your last Statement Closing Date.

[2]The Prime Rate used to determine your APR is the highest rate published in *The Wall Street Journal* on the last business day of the prior month.

Other fees may apply.

Chase credit cards are issued by Chase Manhattan Bank USA, National Association.

Citi® Acceptance Form

Please see back of letter for the Citibank Disclosures, which include rates, fees, and other cost information.

Social Security Number

Home Phone No. with Area Code

Name on Phone Bill

E-Mail Address: Include full address with punctuation. Example: jdoe@citi.net
If you provide an e-mail address, we may use it to contact you about your account. We may also use your e-mail address to send you information about products and services you might find useful.

Business Phone No. with Area Code

Mother's Maiden Name/Security Password
Use letters only. Remember this confidential password to ensure proper identification when you call.

Date of Birth

Years At Current Address — **Current Residence** Please **check** one. Own Home Rent Other

Years At Current Job — **Occupation** Please **check** one (if applicable). Self-Employed Retired

Position

Your Annual Income*

Other Household Income* +

Total Annual Household Income*

*Alimony, child support or separate maintenance income need not be revealed if you do not wish it to be considered as a basis for repaying this obligation.

136711043

BIRNY BIRNBAUM
1701 S. 2ND ST. APT. A.
AUSTIN, TX 78704-3441

To get your 0% APR on balance transfers, call 1-888-997-9100 by May 15, 2003 to apply.

Existing Accounts Please **check** those that apply. Be sure to specify Bank/Other Institution name.

Money Market/ Investment Accounts:	Yes	No	Citibank	Other:
Checking Account:	Yes	No	Citibank	Other:
Savings Account/ CDs/Treasury Bills:	Yes	No	Citibank	Other:

Citibank is allowed by law to share with its affiliates any information about its transactions or experiences with you. Unless otherwise permitted by law, Citibank will not share among its affiliates any other information that you provide or that it gets from third parties (for example, credit bureaus), if you check here

By signing below, I certify that I have read the Citibank Disclosures and agree to and meet the Terms and Conditions of Offer on back of letter.

Signature

Date

I would like a second card at no additional cost. (Print the full name of the family or household member.)

Yes, I want to help protect my credit card account by enrolling in Credit Protector which includes a **30-day Free Trial.** By providing my initials, I certify that I have read A Summary of the Credit Protector Program on the enclosed insert and I want to purchase this OPTIONAL account program. For each month's protection, bill my account the fee of $0.69 per $100 of the New Balance shown on my billing statement for the previous billing period. I may cancel at any time; enrollment is not required to obtain credit.

PRINT INITIALS

4TMUL643303MPOOQPDM NA3C3H CAA 01 1171198

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your billing statement was correct.

Special Rule for Credit Card Purchases.

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current address; and
- The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

A SUMMARY OF THE CREDIT PROTECTOR PROGRAM

Credit Protector is an optional feature that modifies the terms of your Card Agreement with Citibank (South Dakota) N.A., and your enrollment is not required for the extension of credit. In return for a monthly fee, we will defer or credit your total outstanding balance or credit your purchase or cash advance minimum due, as shown on your billing statement, on your Account.

WHAT ARE THE BENEFITS? Job Loss/Short-Term Disability: We will defer the total outstanding balance on your Account for up to a maximum of 24 consecutive months. **Long-Term Disability/Accidental Death:** We will cancel the total outstanding balance as of the date that the initial hospitalization or short-term disability is approved, or the date of death, up to $10,000. **Family Leave:** We will defer your total outstanding balance on your Account up to a maximum of 3 consecutive months. **Hospitalization:** We will defer your total outstanding balance on your Account for 1 month. **Military Reserve or Guard Call to Duty:** We will defer your total outstanding balance on your Account for the entire time that you remain on active duty. **Disaster Relief:** We will cancel your purchase or cash advance minimum due, as shown on your billing statement, for 3 consecutive months. **Life Event:** We will cancel your purchase or cash advance minimum due, as shown on your billing statement, for 1 month.

HOW AM I ELIGIBLE? If you, the cardmember (or any person in your household who is the highest wage earner) experiences any of these covered events, your Account will be eligible for protection. You must be enrolled in Credit Protector before the date of the covered event and, except for accidental death, at the time you notify us of the covered event. **Job Loss:** You (1) must be employed (working at least 30 hours a week, or 15 hours a week for full-time college students, in employment considered to be permanent, and not employed by a member of your family) for at least 90 days preceding the job loss, (2) qualify for state unemployment benefits, and (3) register for work and then remain so registered at a recognized employment agency to receive continuing benefits. If you are self-employed you can still be eligible for benefits. **Short-Term Disability:** You (1) must become sick or be accidentally injured, (2) are unable to perform your normal duties for at least 30 consecutive days, and (3) are under a physician's care for the injury or sickness for those 30 days and for as long as the injury or sickness continues. **Long-Term Disability:** You must be sick or injured and not able to perform the duties of any occupation, and that because of sickness or accidental injury you have qualified for 24 consecutive months of Credit Protector short-term disability benefits. **Hospitalization:** You are admitted to and you stay in a licensed hospital for at least one night, and a physician directs your hospitalization and care. **Family Leave:** You must be absent from full-time employment with your employer's approval, without pay, for the birth/adoption of a child or chronic sickness of a family member. **Accidental Death:** You die as a result of accidental injury, and the death occurs within 90 days of the injury. **National Disaster:** You must be directly impacted by a declared federal disaster within the United States, and you suffer a loss of at least $500 or you miss at least 5 consecutive days of work. **Life Events:** You or any member of your household living with you, gets married, gets divorced, gives birth to or adopts a child, purchases a new home, moves to a new residence, or enters for the first time an accredited college or graduate school. **Military Reserve or Guard Call to Duty:** You are called to active duty in a United States military reserve or guard unit for at least 31 consecutive days.

WHAT ARE THE LIMITATIONS AND EXCLUSIONS? General: You cannot use your Account for purchases or cash advances if we defer your total outstanding balance (including automatic or pre-arranged charges), but finance charges and fees will not accrue. However, if we cancel any part of your debt you may continue to use your Account, and finance charges will continue to accrue. You must not be currently receiving Credit Protector benefits on your Account for a covered event. **Exclusions:** You will not be approved for benefits if the event is a result of the following: **Job Loss** – If you voluntarily forfeited employment income; resigned; retired; became disabled through sickness, illness, disease, accident, injury, or pregnancy; ended a seasonal occupation; were terminated from employment because of willful or criminal misconduct; ended a military tour of duty; or reached the scheduled termination or expiration of an employment contract; **Short-Term Disability/Hospitalization** – If the disability or hospitalization resulted from intentionally self-inflicted injuries; **Family Leave** – If you are self-employed, employed by another member of your household, retired, or a member of one of the United States military branches; **Accidental Death** – If the death results from an injury that occurred before you enrolled in Credit Protector. For **Life Event** benefits, you are only allowed one benefit per year. You are only allowed one **Long-Term Disability** benefit per protected person. As requested, you must provide proof of eligibility and proof of the covered event.

HOW MUCH DOES IT COST? Credit Protector is available to you at no cost for the first 30 days, during which time you are entitled to benefits. You may cancel during the free trial and you will not be billed. Following the 30-day free trial period, we calculate the fee for each month's protection by multiplying $.69 per $100 of the New Balance shown on your billing statement for the previous billing period. Unless you cancel, this fee will be charged to your enrolled credit card each month. If you make 84 payments of the monthly Credit Protector fee with no activation of benefits, we will no longer charge the monthly fee.

HOW IS IT CANCELED? You can cancel at any time simply by calling **1-888-592-7344** or in writing to Credit Protector, at P.O. Box 1507, Fort Worth, TX 76101-9904. We may cancel your enrollment for any reason, but we will provide you with written notice of cancellation.

HOW DO I REQUEST BENEFITS? We must be notified of the covered event no later than 180 calendar days after the covered event occurs; and we must receive proof of job loss, short-term disability, hospitalization, family leave, life event, national disaster, and military reserve or guard call to duty, within 30 days of the date you notified us of the event, or within 180 days for long-term disability and accidental death. To request benefits, simply call **1-888-592-7344** or write to us at P.O. Box 901016, Fort Worth, TX 76101-2016. You must provide proof as requested, for eligibility and of the covered event.

For further questions please contact us at **1-888-592-7344**. Please refer to the Credit Protector Terms and Conditions provided in the Credit Protector Welcome Kit for a full explanation of each of these conditions and exclusions.

Your Card is issued by Citibank (South Dakota), N.A.
Credit Protector is not available in MS and AL.

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R-PN33-01

INITIAL DISCLOSURE STATEMENT

Please read this Initial Disclosure Statement ("Statement") and the terms of the enclosed promotional offer and keep them for your records. If you are approved for credit, you will receive a Card Agreement with your card.

To simplify this Statement for you, the following definitions will apply. The words *you*, *your*, and *yours* mean all persons responsible for complying with this Statement or the Card Agreement, including the person who applies to open the account and the person to whom we address billing statements. The word *card* means one or more cards or other access devices, such as account numbers, that we issue to permit you to obtain credit under this Statement or your Card Agreement. The words *we*, *us*, and *our* mean Citibank (South Dakota), N.A., the issuer of the account.

How We Determine the Balance: The total outstanding balance (the amount you owe us) appears as the "New Balance" on the billing statement. To determine the New Balance, we begin with the outstanding balance on your account at the beginning of each billing period, called the "Previous Balance" on the billing statement. We add any purchases or cash advances and subtract any credits or payments credited as of that billing period. We then add the appropriate finance charges and fees and make other applicable adjustments.

Annual Percentage Rates for Purchases and Cash Advances:

- We calculate the variable annual percentage rate for standard purchases by adding 5.99% to the U.S. Prime Rate. As of February 1, 2003, the **ANNUAL PERCENTAGE RATE** for standard purchases is 10.24%, which corresponds to a daily periodic rate of 0.0281%.
- We calculate the variable annual percentage rate for standard advances by adding 14.99% to the U.S. Prime Rate, but such standard advance rate will never be lower than 19.99%. As of February 1, 2003, the **ANNUAL PERCENTAGE RATE** for standard advances is 19.99%, which corresponds to a daily periodic rate of 0.0548%.
- A daily periodic rate is the applicable annual percentage rate divided by 365.
- If any annual percentage rate is based on the U.S. Prime Rate plus a margin, we will calculate the rate by adding the applicable margin to the U.S. Prime Rate published in *The Wall Street Journal* on the last business day of each month. If more than one Prime Rate is published, we may choose the highest rate. If *The Wall Street Journal* ceases publication or to publish the Prime Rate, we may use the Prime Rate published in any other newspaper of general circulation, or we may substitute a similar reference rate at our sole discretion. Any increase or decrease in a variable annual percentage rate due to a change in the Prime Rate takes effect on the first day of the billing period that begins in the month directly following the month in which we determine the Prime Rate. Subject to any promotional rate that may apply, each time the annual percentage rate changes, we will apply it to any existing balances. The annual percentage rates in effect and any subsequent changes to them will appear on your billing statement. An increase in the variable annual percentage rate means you will pay a higher finance charge and perhaps a higher minimum payment.
- Please see the section entitled "Variable Annual Percentage Rates for Purchases and Cash Advances" for details relating to how your rates may change, including if you default under any Card Agreement that you have with us.

Variable Annual Percentage Rates for Purchases and Cash Advances: Your annual percentage rates may also vary if you default under any Card Agreement that you have with us because you fail to make a payment to us or any other creditor when due, you exceed your credit line, or you make a payment to us that is not honored by your bank. In such circumstances, we may increase your annual percentage rates (including any promotional rates) on all balances to a default rate of up to 19.99% plus the applicable Prime Rate. As of February 1, 2003, the maximum default **ANNUAL PERCENTAGE RATE** currently in effect is 24.24%, which corre-

International — at no additional cost to you. It's an easy way to show your support, because when you open an account, Amnesty International USA receives $1 — and every time you use your Visa card to make a purchase, Amnesty receives .50% of the sale at no additional cost.

(over, please)

R.S.V.P. BELOW OR CALL 1-800-592-6475 ☎

Please see separate insert for important information about rates, fees and other costs.

Please fill out this form with black ink. Please use capital letters.

FOLD HERE ▼

AMNESTY INTERNATIONAL

X

Your Signature Date

This form is not transferable and must be signed by the person to whom it is addressed. ***Customer Verification:*** *I certify that I am at least 18 years of age; that I have read and agreed to all the terms, authorizations, and disclosures included with this form; and that everything I have stated in this form is true and correct. I authorize First USA and the partner named above to exchange information about me and my account(s).*

☐ ***Enroll me in First Protect***℠ *I understand that this is an* ***optional*** *credit card payment deferral program. I have read and understand the First Protect Program Summary of fees, features and exclusions as described on the reverse side.*

Your Initials X

6JHC Amnesty International

Social Security Number — Mother's Maiden Name (for security purposes) — Date of Birth

Home Telephone — Business Telephone — No. of Dependents (excluding self)

Monthly Housing Payment .00 — Residence (check one): ☐ Rent ☐ Own ☐ Other — Time at Present Address yrs mos — Please Check if You Have: ☐ Checking Account ☐ Savings Account

*Alimony, child support, or separate maintenance income need not be revealed if you do not wish it to be considered as a basis for repaying this obligation.

Occupation/Position — Gross Annual Household Income* .00

Employer — Length of Time at Present Employer yrs mos

E-Mail Address (optional) here, and we'll keep you informed of upcoming special values via e-mail.

BALANCE TRANSFER OPTION *Transfer the amount(s) shown from the MasterCard®, Visa®, Discover®, American Express®, or any store card account(s) listed below to my new account:*

Amount . — Account Number (refer to credit card)

Amount . — Account Number (refer to credit card)

Invitation Number: **750306647157**
Offer Code: **510**

☐ YES! *Please send the below authorized user a free additional card:*

First Name — Initial — Last Name

Mr. Birny Birnbaum
P.O. Box 5355T
Austin, TX
78763-5355

☐ *If you need to make any name or address corrections, please check this box and make changes above.*

6JHC VP 1510XX 750306647157

Good Until: December 20, 2002

▲ FOLD HERE

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First Protect℠ Program Summary

This optional program can help protect you and your family by deferring your monthly payments if a covered event should occur.

Below is a summary of the program fees, features and exclusions, which are in effect as of your enrollment date in the First Protect program. Please refer to the First Protect Terms and Conditions you will receive in the enrollment package for a full explanation of each of these features and exclusions.

First Protect Product Description:

First Protect is an optional feature of your Account. For a monthly fee based on your average daily balance, First Protect will temporarily defer your required Minimum Monthly Payment and waive the Finance Charge on your Account balance if the primary cardmember experiences one of these covered events: Involuntary Unemployment, Hospitalization, Disability, Leave of Absence or Divorce.

Involuntary Unemployment Feature – First Protect will defer your monthly payments and waive finance charges for up to 18 consecutive billing cycles, if the primary cardholder becomes involuntarily unemployed or loses salary income for at least 14 consecutive days. **Exclusions:** Seasonal layoff or termination due to your willful or criminal misconduct, unionized labor dispute, or lockout. **Qualifications:** You must have been continuously employed for at least 30 hours per week during the 90-day period prior to the involuntary unemployment by someone other than yourself or another member of your household. You must also qualify for state unemployment benefits and register for work at a state employment office or recognized employment agency.

Hospitalization or Disability Feature – First Protect will defer your monthly payments and waive finance charges for up to 18 consecutive billing cycles if the primary cardmember is hospitalized for at least two consecutive nights or becomes disabled for at least 14 consecutive days. **Exclusions:** Intentional self-inflicted injuries or pre-existing conditions.

Leave of Absence Feature – First Protect will defer your monthly payments and waive finance charges during an employer approved temporary absence of at least 14 consecutive days. The deferral period will have a maximum length of 6 consecutive billing cycles. **Qualifications:** You must have been continuously employed for at least 30 hours per week during the 90-day period prior to the leave of absence by someone other than yourself or another member of your household.

Divorce Feature – First Protect will defer your monthly payments and waive finance charges for 4 consecutive billing cycles if you file for divorce. **Qualifications:** To qualify for a deferral, you must provide proof that divorce papers have been filed with the appropriate court of law.

Request for a Deferral: You must notify the First Protect Administrator within 90 days of (a) the fourteenth consecutive day of your involuntary unemployment, voluntary leave of absence, or disability, (b) the second overnight stay of your hospitalization or (c) the date of the filing of your divorce papers.

Cancellation Policy: Your enrollment in First Protect may be cancelled at any time and for any reason.

First Protect Fees: The monthly fee for First Protect is $.79 per $100 of your average daily balance, up to $15,000. This fee will be billed to your account and will be shown on your monthly statement.

Please note that all other provisions of your Cardmember Agreement will remain in full force.

First Protect is not available in all states. 09/13/01

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BUSINESSES LOCATED IN: AK, CO, CT, DE, DC, FL, GA, HI, ID, IL, IA, KY, MI, MS, MO, MT, NV, NH, NM, NY, ND, OH, OR, PA, SC, SD, TN, UT, WA, WV, WI, WY

The *Chargegard* protection described below is available only to businesses with primary addresses in one of the states listed above. Businesses with primary addresses in other states please refer to the Summary Credit Saver Protection below for information about the credit protection plan available in your state.*

SUMMARY OF INSURANCE COVERAGES

IMPORTANT INFORMATON ON CHARGEGARD LIMITATIONS, EXCLUSIONS, COSTS: Upon acceptance of your enrollment, you will receive your certificate(s) indicating your effective date. Eligibility, restrictio and exclusions vary by coverage and state. Read your certificate(s) carefully for full details. You are free to cancel any time. Premium rates are subject to change. Rates disclosed are accurate as of the printing date this disclosure. The underwriters referenced below reserve the right to modify the terms and conditions of the insurance certificate(s) upon written notice and subject to state regulations.

COVERAGE IS *NOT* AVAILABLE IN: AL, AZ, AR, CA, IN, KS, LA, ME, MD, MA, MN, NE, NJ, NC, OK, RI, TX, VT, VA

LIFE COVERAGE: If the Signing Individual or his/her joint cardmember (joint cardmember must be spouse or business partner in GA and NM; if no joint cardmember, then spouse) die, Chargegard will p the outstanding account balance as of the date of death, up to the policy maximum of $10,000. Suicide is excluded except in MO. Life coverage ends at age 65 in HI; age 66 in IA & WY and is replaced with Acciden Death coverage.

DISABILITY/UNEMPLOYMENT COVERAGE (applies only to you, the Signing Individual): If you become totally disabled or involuntarily unemployed, Chargegard will make your scheduled minimum monthly payme subject to the policy maximum of $10,000. You are eligible for these coverages if employed 30 hours or more a week or as otherwise required by state law (in PA, employed at least 9 months of the year) in a non-seasor occupation (seasonal restriction does not apply to disability in CO, MI, MS, MT, NM, NY, OR, PA, SC, UT, & WI; to unemployment in CO, MI, MT, NM, NY, PA, SC, UT & WI). Benefits begin after 30 consecutive days unemployment or disability and are retroactive to the first day of loss. Benefits are based on the outstanding balance as of the date of loss and will continue until your balance on that date has been paid off, you retu to work, or you reach the maximum limits of the master policy, whichever occurs first. Unemployment benefits are limited to 12 months in PA. In NY & PA, disability benefits are not payable for preexisting conditio treated within 6 months prior to the effective date. In PA, disability benefits are not payable for pregnancy, flight in non-scheduled aircraft or self-inflicted injuries. Unemployment excludes self-employment in (unemployment excludes labor disputes/strikes in IL & NY. Retirement is not covered. Purchases made after the date of loss will not be covered until you return to work.

GENERAL PROVISIONS: Maximum enrollment age is 69, except: 64 in WA & WI; 65 in CT, IA, ID, NY, OR, PA & WY; 70 in FL, MI & MO; 71 in NM. Coverage terminates at age 65 in WA & WI; 66 in CT, ID, NY, OR & P

The monthly premium charged to your credit card account will be 66¢ per $100 of your outstanding balance, except: 39¢ in CO; 48.1¢ in CT; 63.8¢ in GA; 57.5¢ in HI; 57.7¢ in IA; 63.7¢ in MI; 46.9¢ in NH; 64¢ in NM; 31¢ NY; 64.8¢ in ND; 59.4¢ in OR; 45.1¢ in PA; 54.2¢ in SC; 62.6¢ in UT; 57.3¢ in WI; 60¢ in ID, MO, WA & WY.

Coverage is underwritten by American Bankers Life Assurance Company of Florida (ABLAC) and American Bankers Insurance Company of Florida (ABIC), 11222 Quail Roost Drive, Miami, FL 33157-6596. In NY, life ar disability coverage is provided by Bankers American Life Assurance Company, Administrative Office, Syracuse, NY. The creditor has a financial interest in the sale of this insurance. Coverage for life and disability provided under form numbers AA2236-PL, AA2976-PL, AB9328PO-485, BA2051-PL, AB8633PO-0283 and BA2016PD-0795. Coverages are only available as a package. If you cancel within 30 days of receiving yo certificate, we will refund your premium.

This insurance product is not a deposit, nor is it insured or guaranteed by the FDIC, Advanta National Bank or any Federal Government Agency. We may not condition your extension of credit on either: your purcha of an insurance product from us or our affiliates, your agreement not to obtain insurance from an unaffiliated entity, or a prohibition on your obtaining insurance from an unaffiliated entity.

D.C. residents: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer m deny insurance benefits if false information materially related to a claim was provided by the applicant.

*State availability is subject to change. Credit protection is not available in Alabama.

BUSINESSES LOCATED IN: AZ, AR, CA, IN, KS, LA, ME, MD, MA, MN, NE, NJ, NC, OK, RI, TX, VT, VA

The Credit Saver protection described below is available only to businesses with primary addresses in one of the states listed above. Businesses with primary addresses in other states please refer to the *Chargega* Summary of Insurance Coverages above for information about the credit protection plan available in your state.*

SUMMARY OF CREDIT SAVER PROTECTION

IMPORTANT INFORMATION ON CREDIT SAVER PROTECTION: Before enrolling in the optional Credit Saver protection plan, please read this disclosure. You understand that you are free to discontinue covera at any time and are not obligated to obtain this protection from Advanta Bank Corp. ("ABC") and may obtain protection from another third party. Cost is 70¢ per $100 of the cardholder's monthly ending balance.

COVERAGE IS *NOT* AVAILABLE IN: AL, AK, CO, CT, DE, DC, FL, GA, HI, ID, IL, IA, KY, MI, MS, MO, MT, NV, NH, NM, NY, ND, OH, OR, PA, SC, SD, TN, UT, WA, WV, WI, WY

LIFE PROTECTION: If the Signing Individual dies, ABC will waive his/her account balance (up to the amount of the total credit limit or $10,000, whichever is less) on his/her account at the date of death. If a death lo is filed, as long as the Credit Saver fee is accepted and the individual was employed on a full-time basis (30 hours or more a week) on the date of loss while enrolled in the plan, the loss is valid for consideration. AE will not waive the Signing Individual's account balance in the event of suicide whether the Signing Individual was sane or insane at the time of death.

UNEMPLOYMENT/DISABILITY PROTECTION: If the Signing Individual was employed at least 30 hours a week in a non-seasonal occupation and becomes involuntarily unemployed and/or disabled and is unab to perform any work or services for wages or profits, and remains unemployed and/or totally disabled for a period of 30 consecutive days, ABC will (subject to exclusions) suspend the Signing Individual's payme obligation to make the required minimum monthly payment on their account balance as of the date of unemployment and/or total disability, including finance charges. ABC will also waive the Credit Saver fees on th Signing Individual's account for up to 12 months or until he/she returns to work for wages or profits, whichever comes first.

PLAN EXCLUSIONS: The Signing Individual's payment obligation will not be suspended and Credit Saver fees will not be waived if unemployment is the result of willful or criminal misconduct, organized lab dispute, or business failure or if total disability is the result of a condition for which the cardholder saw, or was under treatment by a physician or chiropractor both within the six months preceding and six mont after the effective date of benefits. If involuntary unemployment begins within 60 days of the effective date shown on the cardholder Amendment, the entire payment will be refunded, and no benefits will be due. Yo may not use your Account to make any additional purchases or cash advances effective from the date you notify us of your intent to activate this Amendment and while it is in effect. Charges made after the date disability or involuntary unemployment are your responsibility and will not be subject to the amendment.

This statement contains a general description of Credit Saver plan benefits and exclusions. Read your cardholder Amendment carefully for a complete explanation of plan definitions, terms, conditions, and exclusior

*State availability is subject to change. Credit protection is not available in Alabama.

The Impact of Debt Cancellation Contracts on State Insurance Regulation

A Report to the FIRST

By the Center for Economic Justice

July 2003

Appendix 14

Monthly Outstanding Balance Credit Insurance Sold In Connection with Open-End Loans

Countrywide Credit Insurance Open End, Monthly Outstanding Balance
Written Premums and Paid Losses, 1995-2000

Year	Total	Life	Disability	Unemployment
1995	$1,632,186,777	$538,019,521	$694,828,469	$399,338,787
1996	$1,765,198,197	$593,734,426	$754,528,401	$416,935,370
1997	$1,877,251,869	$553,134,852	$728,510,763	$595,606,254
1998	$2,092,386,996	$590,657,763	$847,513,207	$654,216,026
1999	$1,958,016,017	$571,455,260	$826,730,390	$559,830,367
2000	$1,965,461,753	$581,073,953	$834,514,909	$549,872,891
1995	$669,000,320	$323,857,129	$288,619,738	$56,523,453
1996	$749,765,615	$357,687,888	$327,408,735	$64,668,992
1997	$751,095,268	$344,594,251	$335,131,978	$71,369,039
1998	$845,476,852	$359,132,638	$413,872,596	$72,471,618
1999	$778,245,715	$353,130,951	$382,919,621	$42,195,143
2000	$733,528,887	$333,955,416	$364,046,406	$35,527,065
1995	41.0%	60.2%	41.5%	14.2%
1996	42.5%	60.2%	43.4%	15.5%
1997	40.0%	62.3%	46.0%	12.0%
1998	40.4%	60.8%	48.8%	11.1%
1999	39.7%	61.8%	46.3%	7.5%
2000	37.3%	57.5%	43.6%	6.5%