



STATE OF WYOMING

DEPARTMENT OF AUDIT

DIVISION OF BANKING

(307) 777-7797 Fax (307) 777-3555 Email: jvogel@wyaudit.state.wy.us

Dave Freudenthal
Governor

Michael Geesey
Director

Jeffrey C. Vogel
Commissioner

Memorandum

To: President & CEO
Wyoming State Chartered Banks

From: Jeffrey C. Vogel, Commissioner

Date: September 26, 2003

Re: Debt Cancellation Contracts and Debt Suspension Agreements

The Division of Banking has received several inquiries as to whether Wyoming state chartered financial institutions are authorized to sell and finance debt cancellation contracts (DCC's) and debt suspension agreements (DSA's) in Wyoming.

A **Debt Cancellation Contract** is an agreement between a lender and borrower pursuant to which any remaining debt of the borrower is extinguished upon the occurrence of a specified event. A specified event may include but is not limited to a borrower's death, disability, or loss of employment. Another common specified event, known as a "GAP", is when the insured value of an automobile is not sufficient to cure a loan balance after an accident or disaster. The consideration received by the bank is normally a fee received at the time the loan is made.

A **Debt Suspension Agreement** 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.

The Wyoming Banking Statutes do not directly address DCC's or DSA's. Although there is no specific statutory citation in Wyoming Banking Law, DCC's/DSA's are authorized under general banking powers statutes. Wyoming Statute 13-2-101(a)(i) expressly authorizes banks to make contracts in its corporate name. It is the determination of the Division of Banking that these products are permissible for Wyoming state chartered financial institutions subject to certain policy provisions of the Division to assure that these products are not misleading or harmful to financial institutions or customers.

Safety and Soundness

The Division's goal in monitoring the safety and soundness of DCC's and DSA's is to ensure that financial institutions have properly analyzed the risks associated with offering these products, they have established adequate controls and safeguards to limit and mitigate these risks, and that they have appropriate staffing to properly administer these programs. The Division shall consider the amount of risk that the financial institutions are taking on. Depending on the amount of risk being incurred by institutions they shall establish risk management and control procedures to quantify the risk inherent in these products. Institutions engaging in these products must demonstrate that risks are properly managed and controlled.

Prohibited Practices

There are certain practices that must be avoided so that these products are not harmful or misleading to customers. These practices apply to all financial institutions offering DCC's and DSA's. Failure to maintain these practices will be considered an unsafe and unsound practice, and will be subject to administrative action as appropriate. These practices include the following:

1. **Anti-tying**
State chartered financial institutions shall not incorporate the approval or terms of an extension of credit to a customer upon the purchase of a DCC or DSA. It shall not be indicated in any way that the credit granting process is contingent or dependent upon the borrower's decision to purchase such a product.
2. **Misleading advertising or practices**
State chartered financial institutions shall not engage in any practice or make any disclosures in advertising, marketing or customer disclosures that are misleading, which could otherwise cause a reasonable person to reach a faulty belief regarding the information contained within.
3. **Unilateral Modification**
State chartered financial institutions may not offer DCC's or DSA's that contain terms giving the institution the right to unilaterally modify the contract unless:
 - a) The modification is favorable to the customer and is made without additional charge to the customer; or
 - b) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change is effective.
4. **Single lump-sum fees**
State chartered financial institutions are prohibited from using a single fee product associated with DCC or DSA coverage, or rolling the cost of the fee into the balance of the loan on residential mortgages. Monthly fee products are permissible for residential mortgages.

Institutions may offer a customer the option of paying the fee for a DCC or DSA product in a single payment (except for residential mortgages) provided that the institution also offers the customer a bona fide option to pay the fee in monthly or other periodic installments. If the institution offers the customer the option of financing the single payment by adding the balance to the amount the customer is borrowing, they must also disclose to the customer the time period during which the customer can cancel the agreement and receive a refund.

Refunds in the event of prepayment or termination of the loan

If a DCC or DSA is terminated, prepaid or otherwise cancelled prior to the maturity of the loan, the institution shall refund to the customer any unearned fees paid for the contract unless otherwise provided. An institution may offer a customer a contract that does not provide for a refund only if they also offer that customer a bona fide option to purchase a comparable contract that provides a refund feature. Such a feature is a refund that is at least as favorable to the customer as the actuarial method. In no event shall refunds be permitted under DCC or DSA agreements using any method that is less favorable to the customer than the actuarial method.

Disclosures

Short form:

The financial institution shall provide the short form disclosures orally at the time they first solicit the purchase of a DCC or DSA product to a customer, as well as during telephone and electronic solicitations. Institutions must disclose:

- 1) The decision to purchase a DCC or DSA is optional;
- 2) Single payment feature, if applicable;
- 3) If the institution uses a single payment feature without a refund feature;
- 4) Terms of a refund if DCC/DSA fees are paid in a single payment and the program has a refund feature;
- 5) An indication that additional disclosures are required and will be provided to the customer before being required to pay for the product, and
- 6) An indication that there may be eligibility requirements, the details of which will be provided in the long form disclosures.

Long form:

The financial institution shall make long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, then the institution shall provide the long form disclosures in writing at that time. Institutions must disclose:

- 1) The decision to purchase a DCC or DSA is optional;
- 2) An explanation of the features of a DSA (as opposed to a DCC) and that a DSA only suspends the obligation it does not cancel it;
- 3) Amount of fees for the DCC or DSA product;
- 4) The single payment feature, if applicable;
- 5) If the institution uses a single payment feature without a refund feature;
- 6) Terms of a refund if DCC or DSA fees are paid in a single payment and if the program has a refund feature;
- 7) Whether the use of a credit line would be restricted or impacted by the activation of the DCC or DSA;
- 8) Description of the termination provisions, if applicable, of a DCC or DSA product, and
- 9) Any eligibility requirements, limitations, or exclusions under the contract.

Short form disclosures are permitted in marketing materials, statement inserts, and direct mail solicitations, provided that the long form disclosures are provided to the customer in writing within three business days after the customer contacts the institution to respond to a solicitation.

Affirmative Election

A financial institution's customers shall be required to affirmatively elect to purchase a DCC or DSA product. This election shall be in writing and may be included in the loan documentation or in a separate document. In the case of telephone solicitations the customers election may be obtained orally, as long as the institution provides the customer the required disclosures and signature forms within three business days. In this case the customer also has the right to cancel the contract with in 30 days without penalty. The acknowledgement and election language must be conspicuous, direct, and readily understandable and designed to call attention to their significance.

If you have any additional questions or need additional information, please do not hesitate to contact the Division of Banking at (307) 777-7797.