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Transmittal – See OCC 2020-11

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Debt Cancellation Contracts and Debt Suspension Agreements: Final Rule

To

Chief Executive Officers of National Banks, Department and Division Heads, All Examining Personnel, and Other Interested Parties

Purpose

This bulletin transmits a final rule on debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) that was published in the *Federal Register* on September 19. The effective date of the rule is June 16, 2003.

Summary

The Office of the Comptroller of the Currency (OCC) is publishing a final rule that adds a new part 37 to the OCC's rulebook that governs DCCs and 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.

The final rule defines a DCC as a loan term or contractual arrangement under which a bank agrees to cancel all or part of a customer's obligation to repay a loan from that bank upon the occurrence of a specified event. A DSA is defined as a loan term or contractual arrangement under which a bank agrees to suspend all or part of a customer's obligation to repay a loan from that bank upon the occurrence of a specified event.

The final rule codifies the OCC's longstanding position that DCCs and DSAs are permissible banking products and states that they are governed by new part 37 and applicable federal law and regulations, and not by the OCC's insurance sales consumer protection regulations or by state law.

The final rule prohibits the following practices by banks that provide DCCs or DSAs:

- 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 offered in connection with a residential mortgage loan.

The final rule imposes the following limitations on banks that provide DCCs or DSAs:

- A bank may offer a DCC or DSA that makes no provision for a refund of the 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; and
- For loans other than residential mortgage loans, the bank may offer the customer the option of paying the fee 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.

The final rule requires national banks to disclose certain key information to their customers. The disclosure requirements are structured to accommodate the methods that national banks typically use to market DCCs and DSAs by permitting the use of abbreviated disclosures in certain marketing circumstances – including telephone solicitations and "take one" applications – where full disclosure of the terms most relevant to the customer's decision to purchase is not practicable.

Among other requirements, national banks must:

- Tell customers of the prohibition on tying.
- Explain that a DSA, if activated, does not cancel the debt, but only suspends requirements to make payments.
- Disclose the amount of the fees charged.
- Make customers aware of the option to pay in a lump sum or periodic installments.
- Disclose their refund policy if the fee is paid in a single payment and added to the amount borrowed.
- Tell customers whether they would be barred from using the credit line if the DCC or DSA was activated.
- Explain eligibility requirements, conditions, and exclusions that might affect a customer's ability to purchase or obtain benefits under a DCC or DSA.

Sample disclosures are attached to the final rule. The sample forms are not mandatory, but banks that make disclosures in a form substantially similar to those provided will be deemed to satisfy the disclosure requirements.

The final rule also requires 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 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 final rule requires that the disclosures, acknowledgement, and affirmative election 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.

Finally, the rule contains a safety and soundness requirement that a national bank that offers DCCs or DSAs must manage the risk 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.

For further information, contact Compliance Policy (202) 649-5470.

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- 67 FR 58962