

Debt Cancellation Authority

Debt cancellation contracts (DCC) were the subject of HB 432 this session. Just prior to the session, the Network received a memo from the Montana Commissioner of Securities and Insurance (it can be seen on the attached pages) to reverse a previous position that these contracts were insurance. The ruling allowed state-chartered banks and credit unions to move forward with issuing DCCs.

That memo was the result of numerous meetings facilitated by the Network with the Commissioner's office, the Division of Banking, and state-chartered credit unions. Federally chartered credit unions have had authority to offer these products under the Federal Credit Union Act and the "prohibition" for state-chartered institutions was based on an old ruling that most parties felt needed to be revisited.

Despite the ruling from the Commissioner's office and the ability for state-chartered institutions to offer DCCs, HB 432 was brought to the legislature to give a more permanent statutory authority and avoid fears that future state auditors would not rely on the 2010 ruling. Initially, only state-chartered banks were included in HB 432, but the Network successfully lobbied to have credit unions included too.

State-chartered credit unions are now free to offer these products under 32-3-609, M.C.A., but are required to make application to the Division of Banking for approval.

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



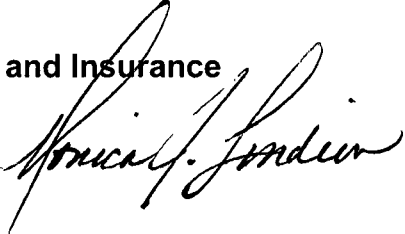
OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

TO: State-chartered banks and State-chartered credit unions in Montana
Annie Goodwin, Commissioner of Banking and Financial Institutions

FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

DATE: December 30, 2010



DEBT CANCELLATION CONTRACTS

The office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), has received several inquiries regarding Debt Cancellation Contracts (DCCs) issued by State-chartered banks and State-chartered credit unions and whether or not such DCCs are to be treated as insurance. The CSI has previously taken the position that DCCs issued by State-chartered banks and State-chartered credit unions are insurance and as such are regulated by Title 33 of the Montana Code Annotated. For the following reasons, it is the position of the CSI that DCCs issued by State-chartered banks and State-chartered credit unions are not insurance.

The basis for the CSI's previous interpretation has been a 1965 Attorney General Opinion that treated Nationally-chartered bank offerings of "Credit Life Insurance" policies as insurance. 31 Mont. Atty. Gen. Op. 6. Nationally-chartered banks, however, are regulated by federal law and the Office of the Comptroller of Currency (OCC) and the OCC does not consider DCCs issued by Nationally-chartered banks to be insurance. Similarly, DCCs issued by federal credit unions are not considered insurance by the National Credit Union Association, a federal government agency. The CSI's ability to regulate DCCs has since been limited by federal law, thus Nationally-chartered banks and federal credit unions are no longer required to register with the CSI.

Under Mont. Code Ann. § 32-3-206, State-chartered credit unions "may engage in any activity which a credit union could engage if it were operating as a federal chartered

credit union..." Accordingly, a DCC issued by a State-chartered credit union is not considered insurance.

State-chartered banks do not have a similar parity statute. It is the position of the CSI, however, that State-chartered banks should be treated similarly to all other financial institutions doing business and issuing DCCs in Montana. The 1965 Attorney General Opinion is not applicable, as it relates to Nationally-chartered banks, and there is no other basis in statute or case law to treat DCCs issued by State-chartered banks differently than DCCs issued by any other financial institutions in Montana.

Therefore, DCCs issued by a State-chartered bank or State-chartered credit union on or after December 30, 2010, will not be considered insurance by the CSI.