

# **Texas Department of Banking**

## **Press Release**

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### **Commissioner Issues Response to Parity Request Relating to Sale of Debt Cancellation Products**

Date: November 7, 2002

Re: [\*\*\*] Bank, [\*\*\*], Texas; Parity Request Relating to Sale of Debt Cancellation Products  
Dear Mr. [\*\*\*]:

In your letter of October 21, 2002, you requested a determination from the Texas Department of Banking (Department) that [\*\*\*] Bank (Bank), a Texas state-chartered bank, may enter into debt cancellation contracts (DCCs) with its consumer loan borrowers to the same extent that national banks domiciled in Texas may legally enter into such contracts. You advise that the Bank desires to offer DCCs to its consumer loan borrowers wherein its borrowers voluntarily agree that upon the occurrence of a covered event such as death, illness, accident, or insurance gap, among others, the outstanding loan balance would be fully or partially repaid to the Bank under the terms of the DCC.

#### **Question Presented**

Whether, pursuant to Texas Constitution Article XVI, Section 16(c) and Finance Code §32.009, Bank may enter into DCCs with its consumer loan borrowers to the same extent that national banks domiciled in Texas may enter into such contracts.

#### **Summary of Opinion**

Under Texas Constitution Article XVI, Section 16(c) and Finance Code §32.009, Bank may enter into DCCs to the same extent as national banks. Until such a time as the Finance Commission adopts a rule establishing standards for the offer and sale of DCCs, the Department will apply the Office of the Comptroller of the Currency (OCC) regulations pertaining to DCCs contained at 12 C.F.R. Part 37.

#### **Discussion and Analysis**

Texas Constitution Article XVI, Section 16(c) and Finance Code §32.009 provide that a Texas state bank has the same rights and privileges that are or may be granted to a national bank domiciled in Texas. In accordance with Finance Code §32.009(b), a state bank that intends to exercise a right or privilege granted to national banks that is not authorized for state banks under Texas law shall submit a letter to the banking commissioner describing the activity and the specific authority of a national bank to engage in that activity. You have done this to my satisfaction.

It has been well established since at least 1963 that a national bank may offer DCCs. A series of interpretations by the OCC were codified in 1996 at 12 C.F.R. §7.1013, which provides as follows:

A national bank may enter into a contract to provide for loss arising from cancellation of an

outstanding loan upon the death or disability of a borrower. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.

On September 17, 2002, the OCC issued new 12 C.F.R. Part 37 which further clarifies the authority of a national bank to offer DCCs and debt suspension agreements (DSAs). This Part includes procedures for adhering to safe and sound banking practices and for complying with various consumer protection disclosure requirements. Effective June 16, 2003, new C.F.R. Part 37 will replace the OCC's current DCC regulation found at 12 C.F.R. §7.1013.

The Department has previously opined that "state-chartered banks have adequate authority to enter into [DCCs] with borrowers." Opinion No. 94-74 (November 14, 1994). This opinion which we reiterate here is based on the application of the constitutional parity provisions and the explicit authority of national banks to offer DCCs and DSAs as discussed above.<sup>1</sup>

The Department is in the process of preparing a proposed rule pursuant to Finance Code §32.009(e) to specifically authorize Texas state-chartered banks to enter into DCCs and DSAs with borrowers. The Finance Commission will consider the rule for proposal and publication for comment in the *Texas Register* at its February 14, 2003 meeting. The rule will establish standards for the offer and sale of DCCs and DSAs in order to ensure that state banks provide such products consistent with safe and sound banking practices and subject to a consumer protection scheme substantially similar to that imposed by 12 C.F.R. Part 37. Until the time such a rule is adopted and the Department issues guidance to state banks, the Department will apply the OCC regulations contained at 12 C.F.R. Part 37. Department examiners will review state banks' DCCs and DSAs pursuant to the standards contained in the OCC regulation.

You note in your letter that the Texas Department of Insurance has considered DCCs to be insurance products that should be regulated under a certificate of authority, and that the Office of Consumer Credit Commissioner has previously taken the position that no express provision of state law permits a bank to charge for a debt cancellation contract in connection with a consumer loan, and that a fee for this feature therefore violates state consumer credit laws. The Department's proposed DCC rule will, by necessity, specify that DCCs and DSAs are banking products and not insurance products subject to regulation by the Texas Department of Insurance, and that a fee charged for a DCC or DSA constitutes a permissible charge that can be imposed by a state bank on a consumer loan, notwithstanding the lack of specific authority in the consumer credit laws of this state. Pursuant to Finance Code §32.009(f), "[t]he exercise of rights and privileges by a state bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state."

## **Conclusion**

Pursuant to Texas Constitution Article XVI, Section 16(c) and Finance Code §32.009, Bank is authorized to enter into DCCs to the same extent as national banks. Until such a time as the Finance Commission adopts a rule establishing standards for the offer and sale of DCCs and DSAs, the Department will apply the OCC regulations pertaining to DCCs and DSAs contained at 12 C.F.R. Part 37.

If you have any questions regarding this matter, please contact Steve Martin, Senior Assistant General Counsel at 512-475-1305.