



**To:** Jennifer Johnson  
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**Re:** Docket No. R-1167  
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**1. What are the similarities and differences among credit insurance, debt cancellation coverage and debt suspension coverage, in the case of both closed-end and open-end credit?**

Debt cancellation agreement means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel (interest and principal cancellation) all or part of a customer's obligation to repay an extension of credit from that financial institution upon the occurrence of a specified event. The agreement may be a separate form or a part of the loan documents.

Debt suspension agreement means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend (interest cancellation; principal suspension) all or part of a customer's obligation to repay an extension of credit from that financial institution upon the occurrence of a specified event. The agreement may be a separate form or a part of the loan documents. The term debt suspension agreement does not include loan payment deferral arrangements (interest and principal suspension) in which the triggering event is the borrower's unilateral election to defer repayment, or the financial institution's unilateral decision to allow a deferral of repayment.

CREDIT INSURANCE	DEBT CANCELLATION
Affirmative benefit payment by a third party insurer	Debt cancellation does not involve an affirmative payment; a debt cancellation contract is a 2-party agreement to cancel debt which is self-executing with no reserve investment risk <sup>1,3,4,6,8</sup>
Transfers risk	There is a shifting of an obligation to repay a loan from borrower to lender, but there is no risk (inability to repay) defined in traditional insurance terms as a fortuitous event (act of

Memorandum



	God, accident, etc.) <sup>7</sup>
Insurance policy is integral part of relationship between insurer and insured	Debt cancellation contract is not integral part of relationship between lender and borrower; debt cancellation contract is optional, not a condition of credit <sup>1,5,9</sup>
Offered by an insurance company; sale of insurance policy is primary business of insurer	Offered by a non-insurance company lender; sale of debt cancellation contract is incidental to lender's business <sup>9,10</sup>
Viability of insurance agreement depends on solvency of insurer	Viability of debt cancellation agreement does <u>not</u> depend on solvency of lender <sup>1,2</sup>
Viability of insurance agreement depends on spreading of risk by insurer	Viability of debt cancellation agreement does <u>not</u> depend on <u>spreading</u> of risk <sup>1,5</sup>
Business of insurance under McCarran Ferguson Act	Incidental power to make loans under the National Bank Act, National Home Loan Act <sup>2</sup>
Must be a nexus between the peril (risk of loss) and impairment of the insured's interest	There is no nexus between the peril (death, disability, job loss of borrower) and the obligation to repay the loan <sup>6</sup>
Insurance policy indemnifies the insured against loss	Debt cancellation contract does not indemnify borrower against loss; since the debt cancellation agreement cancels the repayment obligation, there is nothing to indemnify <sup>8</sup>

**Authorities**

- 1 = Alabama A.G. Opinion (11/8/99)
- 2 = Taylor case, 907F.2d 775 (8<sup>th</sup> Cir 1990)
- 3 = Delaware A.G. Opinion (12/21/94)
- 4 = Florida DOI Informational Bulletin (8/15/02)
- 5 = Georgia DOI memo (11/8/94)
- 6 = Maryland A.G. Opinion (10/17/94)
- 7 = North Carolina DOI Letter (4/27/99)
- 8 = Oklahoma Department of Banking memo (6/24/92)
- 9 = Oregon A. G. Opinion (11/3/99)
- 10 = Pireno case, 458US119 (US Sup. Ct. 1982)

2. ***With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold?*** Credit types may include: real estate secured installment, non-real estate secured installment, home equity line of credit and revolving credit cards.

***Do creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately?*** Creditors often package multiple types of protections within one product offering. In addition, creditors may choose to offer separate package options, which may include one or multiple protections that are designed to appeal to the various market segments.

***Do creditors typically sell the products at or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?*** Creditors typically offer the products at the time of loan close/account opening. However, for open-end credit plans, direct marketing methods (e.g. mail pieces, inserts, statement messaging, telemarketing, etc.) may be deployed.

3. ***What Disclosures are made with the sale of a product?*** Disclosures follow the Office of the Comptroller of Currency (OCC) requirements (short / long form). See 12 CFR Part 37.6.

***Upon conversion from one product to another, whether required by TILA or other laws?*** Conversion from a credit insurance product to a debt cancellation product would follow OCC required disclosures as well as Truth in Lending Act (TILA) disclosures, specifically required under Section 226.9(f).

4. ***Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. Sec. 226.4(b)(7) and (10) 4(d)(1) and (3).***

***Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available?*** Yes. The scope of debt cancellation protections has expanded beyond the protections listed in the referenced section of Regulation Z.

***Are the required disclosures adequate for all types of products subject to Sec 4(d)(1) or 4(d)(3)?*** Yes, the disclosures are adequate for all types of debt cancellation products.

5. ***Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 USC 1637(g); 12 CFR 226.9(f). Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage.***

***Should the Board interpret or amend Sec. 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements?***

The Board should amend Sec 226.9(f) to address conversions from credit insurance to debt cancellation agreements, not conversion to debt suspension agreements.

***If so, is there a need to address conversions other than for credit card accounts?*** Yes, there is a need to address conversions for any type of credit for which credit insurance protection is sold on a monthly outstanding balance basis.

- 6. OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends Sec. 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules.**

We need a provision in Regulation Z that affirmative election required for debt cancellation is satisfied when a customer elects for credit insurance coverage. The conversion to a debt cancellation product should be required to include the same level of protection as the credit insurance coverage. That would validate the required customer election.