

July 14, 2003

Office of the Comptroller of the Currency
Public Information Room
250 E Street, SW
Mail Stop 1-5
Washington, D.C. 20219

Re: Docket Number 03-11

Dear Sir or Madam:

On behalf of the American Bankers Association (“ABA”), the American Bankers Insurance Association (“ABIA”)¹ and a coalition of companies that either offer or administer debt cancellation contracts (“DCCs”) and debt suspension agreements (“DSAs”), we appreciate the opportunity to comment on the application of the periodic payment option and associated disclosures to DCCs and DSAs sold by unaffiliated, non-exclusive agents² in connection with closed-end consumer loans.

Summary of Comments

We support the delay in the application of the periodic payment option and associated disclosures to DCCs and DSAs sold by unaffiliated, non-exclusive third parties in connection with closed-end consumer loans, and we recommend that the OCC permanently except such transactions from these requirements. We believe that these requirements would have the unintended consequence of reducing automobile loans by national banks, and would, in turn, limit financing alternatives for consumers.

More specifically, we recommend the OCC extend the scope of its exception to the requirements of the regulation to eliminate the periodic payment option and related disclosures for all closed-end consumer loans, other than real estate loans, regardless how such loans are sold. These requirements were not part of the originally proposed regulation, go farther in their scope than similar credit-related insurance requirements (which typically only require periodic

¹ The American Bankers Association (ABA) brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country. ABIA is the insurance affiliate of the ABA. Its mission is to develop positions and strategies on bank-insurance related matters, represent those positions before state and federal governments and in the courts, and support bank-insurance related programs and activities through research, education and peer group information sharing.

² Rather than using the term “agent,” we refer throughout this letter to an unaffiliated, non-exclusive *third party*, given that the OCC Notice does not appear intended to limit the term “agent” to that of a legal agency relationship.

payment coverage for real-estate secured loans), and have the practical effect of eliminating single-fee DCCs and DSAs on consumer loans.

We also recommend that the OCC clarify that the regulation does not apply to DCCs and DSAs that are part of closed-end loans acquired by national banks from non-affiliated third parties where the bank has not been involved in any aspect of the DCC/DSA.

Analysis

DCCs and DSAs Sold by Unaffiliated, Non-Exclusive Third Parties

We urge the OCC to except DCCs and DSAs sold by unaffiliated, non-exclusive third parties in connection with closed-end consumer loans from the periodic payment option and associated disclosures imposed by the regulation. We do so because these requirements would impose significant additional compliance costs on such third parties, which most, if not all, third parties would avoid by using lenders other than national banks.

This is a concern primarily in connection with automobile loans. National banks commonly will enter into agreements with unaffiliated automobile dealers to provide loans, which may include DCCs and DSAs, to the dealer's customers. Typically, however, these agreements are non-exclusive; that is, the national bank's loan products are just one of several alternative financing sources the dealer can make available to customers. Thus, to the extent that use of a national bank to finance an automobile loan imposes additional costs or other burdens on the dealer, the dealer simply will select another non-national bank lender to finance the loan.

The periodic payment option and associated disclosures would impose additional costs and other burdens on automobile dealers act on behalf of national banks. The application of the periodic payment option would require a dealer to establish two separate computer systems: one to calculate fee payments due under a single fee option, and another system to calculate fee payments under a periodic fee option. The associated disclosure requirements would require the dealer to train employees to offer the appropriate disclosure forms. A typical dealer would have little, if any, incentive to incur these additional costs and burdens when alternative sources of financing are readily available.

Thus, the application of the periodic payment option and associated disclosures would have the unintended consequence of limiting or eliminating national bank involvement in automobile financing. This, in turn, would reduce financing alternatives for consumers.

Consumer Loans, in General

We recommend that the OCC eliminate the periodic payment option and associated disclosures for DCCs and DSAs offered in connection with any closed-end consumer loan, other than a real estate loan. These requirements were not included in the proposed regulation, and in the final regulation they were discussed primarily in the context of real estate loans.

In the context of a real estate loan, we acknowledge that the periodic payment option and associated disclosures can provide a borrower with a certain level of protection from so-called "predatory lending" abuses, given the amount of fees involved and the length of the loan period.

Such protection, however, is not necessary in the context of non-real estate loans. In contrast to residential real estate loans, other closed-end consumer loans are of relatively short duration, the loan principal is much smaller, and there is no risk of losing equity in a home as a result of financing any associated DCC/DSA fees.

The application of the periodic payment option and associated disclosures will have the practical effect of eliminating the single fee alternative for consumers. Offering both payment methods requires a bank to maintain two separate payment systems and to train its employees on both systems. Most, if not all, national banks will conclude that it is easier to offer the required periodic payment option than both options. And, for some consumers a single fee option may be preferable to a periodic payment option. A single fee can be financed as part of the loan, and the consumer could feel confident that the charge for his or her protection would never increase. That option, however, will not be available to consumers should the periodic payment option continue to apply to all closed-end consumer loans.

Even if the periodic payment option is no longer required on closed-end consumer loans, consumers should have the protection of the refund provision in the regulation. The existing final rule requires a bank offering a single fee option without a refund also to offer a single fee option with a refund. We support the continued application of this provision to single-fee closed-end consumer loans. It provides the consumer with the ability to cancel the DCC or DSA and receive a refund of a portion of the fixed fee.

DCCs and DSAs on Loans from Non-affiliated Third Parties Without Bank Involvement

Finally, we ask the OCC to clarify that the regulation does not apply to a DCC or a DSA that is part of a closed-end loan acquired by a national bank from a unaffiliated third party where the bank has not been involved in any aspect of creating the DCC/DSA or administering a related claim. If a third party created the DCC/DSA and is obligated on it, independent of whether it is regulated as insurance in a particular state, then the bank cannot be said to have “entered into” the DCC or DSA for purposes of Section 37.1. Therefore, the regulation should not apply.

Conclusion

We urge the OCC to except DCCs and DSAs offered by unaffiliated, non-exclusive third parties in connection with closed-end consumer loans from the periodic payment option and associated disclosures imposed by the regulation. This exception will keep important automobile financing arrangements open for national banks and will, in turn, provide consumers with alternative sources of financing. We also recommend that the OCC provide a similar exception for DCCs and DSAs offered by national banks on all closed-end consumer loans, other than

residential real estate loans. Without this exception, consumer loan borrowers will, as a practical matter, not be able to obtain single fee products. Finally, we ask the OCC to clarify that the final rule does not apply to DCCs and DSAs offered by an unaffiliated third party where the national bank has had no involvement in the DCC/DSA. Your consideration of our comments is appreciated.

Sincerely,



Paul A. Smith
American Bankers Association



Beth L. Climo
American Bankers Association Insurance
Association

James C. Sivon
Barnett & Sivon, P.C.

James T. McIntyre
McIntyre Law Firm, PLLC

Counsel to the Coalition