

# COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN  
COMMISSIONER



OFFICE OF THE MONTANA  
STATE AUDITOR

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## ADVISORY MEMORANDUM

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**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



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## DEBT CANCELLATION CONTRACTS

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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.