



BULLETIN B 13-05

TO: INSURERS AUTHORIZED TO TRANSACT CREDIT CASUALTY INSURANCE AND LIMITED LINES CREDIT INSURANCE PRODUCERS LICENSED IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES

RE: DEBT CANCELLATION OR DEBT SUSPENSION PRODUCTS

The division has received questions concerning whether debt cancellation or debt suspension agreements, sometimes referred to as “GAP” waiver contracts, are regulated as insurance. Such contracts or agreements may or may not be insurance under Alaska law depending on the specific terms of the contract, the parties to the contract, and the contractual arrangements. The purpose of this bulletin is to provide guidance to the insurance industry and to the public about when such contracts or agreements, in the division’s view, do not constitute insurance as defined in AS 21.97.900(25). In general, a two-party debt cancellation or suspension agreement or “GAP” waiver contract between a party extending credit (a lender or other creditor) and a borrower is not considered insurance and, therefore, is not regulated under AS 21, the Alaska insurance code.

Insurance is defined in AS 21.97.900(25) as “a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.” In applying this definition, the division generally looks for a transfer of risk. In the two-party context, a debt cancellation or suspension agreement or “GAP” waiver contract does not involve an actual transfer of risk. Rather, the contract or agreement is an agreement between a lender or other creditor, including its assignees, (who is owed a debt) and a borrower (who owes the debt to the lender or other creditor) in which the lender or creditor agrees to cancel, suspend, or waive all or part of the debt if certain events occur. These products are commonly offered in conjunction with the sale of automobiles and are offered as part of the finance agreement between the lender or other creditor and the borrower. Under such contracts or agreements, no indemnification or payment is made by a third party on behalf of the borrower to the lender or other creditor. The lender or other creditor simply waives or cancels certain amounts owed. The lender or other creditor is essentially “self-insuring” the risk of the debt not being paid in full, which is a risk they have already assumed under the financing agreement, and then writing it off. Accordingly, such contracts or agreements do not fit within the definition of insurance.

The division is aware that a lender or other creditor frequently obtains a contractual liability or reimbursement insurance policy to act as a financial protection tool for the lender or other creditor. This policy reimburses the lender or creditor for losses incurred under their debt cancellation or suspension programs. The payment of benefits under this policy is provided

directly to the lender or other creditor and not to the borrower. The sale of the contractual liability or reimbursement insurance policy is insurance and is subject to the insurance code.

If the lender or other creditor promises benefits to the borrower in addition to the cancellation, suspension, or waiver of the borrower's debt, then the debt cancellation or suspension agreement or "GAP" waiver contract could be considered insurance. For example, if a lender or other creditor promises to provide, pay, or otherwise credit the borrower a sum of money to use towards the purchase of another vehicle in the event the borrower's vehicle is totaled, or if the agreement, as an additional benefit, provides coverage or a credit for all or part of the borrower's primary insurance physical damage deductible, these additional promises would make the contract an insurance contract. The division distinguishes the two-party debt cancellation product from an insurance product that consists of a third party promising to pay off the borrower's loan if certain events occur, such as total loss of a vehicle. Such a contract or agreement, in the division's view, would fit within the definition of insurance and, therefore, be subject to regulation under the insurance code.

In summary, if a lender or other creditor agrees to cancel, suspend, or waive a borrower's debt in conjunction with a loan or an extension of credit as outlined above, then such an agreement will not be regulated under the insurance code. The director, however, reserves the right to revisit this bulletin or depart from the conclusions contained in it if the actual facts or circumstances of a debt cancellation, suspension, or waiver program marketed and sold in this state demonstrate that there is, in substance, a transfer of insurance risk that is appropriately subject to regulation under the Alaska insurance code.

Dated: April 12, 2013

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a smaller 'D' and a large 'H'.

Martin D. Hester, Deputy Director, for
Bret S. Kolb
Director