

CHAPTER 5
DEBT CANCELLATION PRODUCTS

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

189—5.1(533) Authority and purpose.

5.1(1) Authority. This chapter implements the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with Iowa Code Supplement section 533.315(9) “b.” These rules are promulgated under the authority of Iowa Code Supplement section 533.107.

5.1(2) Purpose. These rules set forth the standards that apply to voluntary debt cancellation contracts and agreements entered into by credit unions. The purpose of these standards is to ensure that credit unions offer and implement such contracts and agreements consistent with safe and sound practices, and subject to appropriate consumer protections.

189—5.2(533) Definitions. The definitions of terms included in rule 189—1.1(533) apply to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“*Actuarial method*” means the formula used in calculating refunds which produces a refund equal to the original fee multiplied by the ratio of the sum of the remaining scheduled monthly loan balances divided by the sum of the original scheduled monthly loan balances as of the due date next following the date of refund.

“*Bona fide*” means authentic and genuine in nature and made in a sincere and honest fashion without any intention to deceive.

“*Borrower*” means an individual who is a credit union member and who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

“*Business day*” means every day except Saturday, Sunday and federal holidays unless on any such day an office of the credit union is open to conduct substantially all of its business.

“*Contract*” means a debt cancellation contract or a debt suspension agreement.

“*Debt cancellation product*” means a written contractual arrangement between a credit union and a borrower modifying loan terms under which the credit union agrees to suspend or cancel all or part of the borrower’s obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The contractual arrangement may be in the form of a debt cancellation contract, a debt suspension agreement or other accord and may be separate from or a part of other loan documents. A debt cancellation product does not include a loan payment deferral arrangement which is the borrower’s unilateral election to defer repayment or the credit union’s unilateral decision to allow a deferral of repayment.

“*Reasonable fee structure*” means a fee structure which allows a moderate return on investment and is suited to or within the means of an ordinary person, and is not formulated in a manner that an ordinary person would consider the fee structure excessive, outrageous, overreaching or unconscionable.

“*Residential mortgage loan*” means a real property loan secured by a one to four family dwelling that is the borrower’s primary or secondary residence.

189—5.3(533) Debt cancellation products.

5.3(1) General. A credit union may offer any debt cancellation product so long as the credit union complies with this chapter. The product may be offered for a fee or as an additional charge under a lease, loan or other extension of credit, and participation by a borrower must be voluntary.

5.3(2) Policies required. A credit union, before offering any debt cancellation product, must adopt written policies approved by its board of directors which establish and maintain effective risk management and control processes over the offering of the product. In addition, the policies must establish:

- a. A reasonable fee structure, if any fee will be charged for the product;
- b. Appropriate disclosures, which shall be given to the borrower in accordance with this chapter; and

c. Claims-processing procedures, which shall be utilized to process debt cancellation claims.

5.3(3) Additional requirements. A credit union offering any debt cancellation product must:

a. Purchase insurance from an insurance company authorized to do business in Iowa to indemnify the credit union from loss resulting from offering the product. A credit union, before purchasing insurance, shall perform an appropriate level of due diligence to satisfy itself of the selected insurer's financial stability and claims-paying ability;

b. Maintain an adequate loss reserve relating to the debt cancellation product in an amount sufficient to offset potential losses, if any, not covered by the insurance required by paragraph 5.3(3)"a." The superintendent may require any credit union offering a debt cancellation product to provide evidence of the adequacy of the loss reserve related to that product, including, but not limited to, an actuarial opinion assessing the adequacy of the loss reserve; and

c. Not condition the making or alteration of the terms or conditions of a lease, loan or extension of credit upon the borrower's agreeing to purchase a debt cancellation product.

5.3(4) Notification to the superintendent of intent to offer debt cancellation products. A credit union must notify the superintendent in writing of its intent to offer any type of debt cancellation product at least 30 days prior to any such product being offered to borrowers. The notice must contain:

a. A statement describing the type(s) of debt cancellation product(s) the credit union will offer to its membership;

b. The fee structure established for the debt cancellation product, if any. The superintendent may require a credit union to cost justify its fee structure if it appears the fees are not reasonable; and

c. The name of the insurance company from which the credit union will purchase contractual liability coverage or other insurance required by paragraph 5.3(3)"a," along with information describing policy limits, deductible amounts and all limitations on coverage.

5.3(5) Existing debt cancellation products offered prior to March 19, 2008. A credit union offering any type of debt cancellation product prior to March 19, 2008, must, immediately following that date, provide to the superintendent notice of the existence of such product and provide to the superintendent the same information as required in subrule 5.3(4). A debt cancellation product in existence prior to March 19, 2008, may continue in force with a borrower, but all debt cancellation products offered by the credit union on and after March 19, 2008, must meet the requirements of this chapter.

189—5.4(533) Prohibited practices.

5.4(1) Anti-tying. A credit union may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the borrower's entering into a debt cancellation contract or debt suspension agreement with the credit union.

5.4(2) Misrepresentations generally. A credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to a debt cancellation agreement.

5.4(3) Prohibited contractual arrangement terms. A credit union may not offer debt cancellation agreements that contain terms:

a. Giving the credit union the right to unilaterally modify the arrangement unless:

(1) The modification is favorable to the borrower and is made without additional charge to the borrower; or

(2) The borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the arrangement without penalty before the change goes into effect; or

b. Requiring the borrower to make a lump-sum, single payment at the outset of the contract or agreement where the debt subject to the contract or agreement is a residential mortgage loan.

189—5.5(533) Refunds of fees in the event of termination or prepayment of the covered loan.

5.5(1) Refund. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the borrower prepays the covered loan), a credit union shall refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a borrower a debt cancellation product that does not provide for a refund only if the credit union also offers

that borrower a bona-fide option to purchase a comparable contractual arrangement that provides for a refund.

5.5(2) *Method of calculation.* A credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method. However, if the refund calculation produces a result of less than \$5, the unearned fees may be considered to be zero and no refund will be owed to the borrower.

189—5.6(533) Method of payment of fees. Except as provided in paragraph 5.4(3)“b,” a credit union may offer a borrower the option of paying the fee for a debt cancellation product in a single payment or on a weekly, monthly or other periodic payment schedule. If a credit union offers the borrower the option to finance the single payment by adding the single payment to the amount financed, the credit union must also disclose to the borrower, in accordance with rule 189—5.7(533), whether, and, if so, the time period during which, the borrower may cancel the arrangement and receive a refund.

189—5.7(533) Disclosures. In connection with offering debt cancellation products, a credit union must make the short- and long-form disclosures described in this rule. In order to satisfy the requirements of this rule, the short-form disclosure must be substantially in the form described in rule 189—5.9(533), and the long-form disclosure must be substantially in the form described in rule 189—5.10(533).

5.7(1) *Short-form disclosure.* The credit union must make the short-form disclosure orally at the time the credit union first solicits the purchase of the contract or agreement with the borrower.

5.7(2) *Long-form disclosure.* The credit union must make the long-form disclosure in writing before the borrower completes the purchase of the contract or agreement. If the initial solicitation occurs in person, then the credit union shall provide the long-form disclosure in writing either at that time or at the time of the loan closing, but in no case later than three business days following the credit approval decision.

5.7(3) *Exceptions for non-in-person transactions.*

a. If the debt cancellation product is solicited by telephone, the credit union must make the short-form disclosure orally as required in subrule 5.7(1) and must mail the long-form disclosure required in subrule 5.7(2) and, if appropriate, a copy of the contract or agreement to the borrower within three business days, beginning with the first business day after the telephone solicitation or at the time of the loan closing, whichever is later.

b. If the debt cancellation product is solicited using the mail or “take-one” applications, the credit union may make only the short-form disclosure in writing as part of the written materials. If it is not included in the application materials, the long-form disclosure must be mailed to the borrower within three business days after the borrower contacts the credit union in response to the solicitation, beginning with the first business day, or at the time of the loan closing, whichever is later.

c. If the debt cancellation product is solicited using electronic media, the credit union may provide the disclosures required by this rule electronically, consistent with the requirements of this rule and the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq. The short-form disclosure shall be provided with the initial electronic solicitation, and the long-form disclosure no later than at the time of the loan closing or three business days following credit approval.

5.7(4) *Exception to receipt of borrower’s acknowledgment of disclosures.* A credit union may not obligate the borrower to pay for the debt cancellation product until after receiving the borrower’s written acknowledgment of receipt of disclosures unless, in the case of telephone, mail or “take-one” application solicitations, the credit union:

a. Maintains sufficient documentation to demonstrate that it provided the acknowledgment of receipt of disclosures to the borrower as required by this subrule;

b. Maintains sufficient documentation to demonstrate that it made reasonable efforts to obtain from the borrower a written acknowledgment of receipt of the long-form disclosure; and

c. Permits the borrower to cancel the purchase of the contract without penalty within 30 days after the credit union mailed the long-form disclosure to the borrower.

5.7(5) *Form of disclosure.* The disclosures required by this rule must be in a meaningful form, conspicuous, direct, and readily understandable, must be designed to call attention to the nature and significance of the information provided, and, if in written or electronic form, must include:

- a. A plain-language heading to call attention to the disclosure.
- b. A type size and a typeface that are easy to read.
- c. Wide margins and ample line spacing.
- d. Boldface or italics for key words and phrases.
- e. Distinctive type style and graphic devices when the disclosures are combined with other information.

5.7(6) *Disclosures in advertisements and promotional materials.* The short-form disclosure is required in advertisements and promotional materials except where the debt cancellation product is merely listed among products and services offered by the credit union.

189—5.8(533) Affirmative election to purchase and acknowledgment of receipt of disclosure.

5.8(1) Before entering into a debt cancellation contract or agreement, the credit union must obtain from the borrower a written affirmative election to purchase the product and written acknowledgment of receipt of the disclosures required in rule 189—5.7(533). The election and acknowledgment information must meet the intent and purpose of the standards established in rule 189—5.7(533).

5.8(2) The credit union must maintain sufficient documentation to demonstrate that it provided to the borrower the disclosures required by rule 189—5.7(533) and obtained from the borrower the documents required by this rule.

5.8(3) The credit union must permit the borrower to cancel the purchase of the debt cancellation product without penalty within 30 days after the credit union has mailed or otherwise provided the long-form disclosure to the borrower or has provided it to the borrower according to paragraph 5.7(4)“c” for an electronic media solicitation.

189—5.9(533) Short-form disclosure. The short-form disclosure must state:

5.9(1) *The product is optional.* “Your purchase of [debt cancellation product name] is optional. Whether or not you purchase [debt cancellation product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union.”

5.9(2) *Financing the payment of the fee.* “Adding the fee to the amount you borrow will increase the cost of [product name].”

NOTE: This provision is applicable if the credit union offers to the borrower the option to pay the fee in a single payment. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(3) *Refund of fee.* “You may choose [product name] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ.” And either: “If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund.” or “If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method.” or “If you cancel [product name] after the first 30 days of your loan, you will not receive a refund.”

NOTE: This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(4) *Additional disclosures.* “We will give you additional information before you are required to pay for [product name].” And, if applicable: “This information will include a copy of the contract containing the terms of [product name].”

5.9(5) *Eligibility requirements, conditions, and exclusions.* “There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name].” And either: “You should carefully read our additional information for a full explanation of the terms of [product name].” or “You should carefully read the contract for a full explanation of the terms of [product name].”

189—5.10(533) Long-form disclosure. The long-form disclosure must state:

5.10(1) *The product is optional.* “Your purchase of [product name] is optional. Whether or not you purchase [product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union.”

5.10(2) *Explanation of debt suspension agreement.* “If [product name] is activated, your duty to pay the loan principal and interest to the credit union is only suspended. You must fully repay the loan after the period of suspension has expired.” And, if applicable: “This includes interest accumulated during the period of suspension.”

NOTE: This provision is applicable if the contract has a debt suspension feature.

5.10(3) *Amount of fee.* For closed-end credit: “The total fee for [product name] is \$_____.” For open-end credit, either: “The monthly fee for [product name] is based upon your account balance each month multiplied by the unit cost, which is \$_____.” or “The formula used to compute the fee is _____.”

5.10(4) *Financing the payment of the fee.* “Adding the fee to the amount you borrow will increase the cost of [product name].”

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment. Lump-sum payment of the fee is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(5) *No refund of fee paid in lump sum.* “You have the option to purchase [product name], which includes a refund of the unearned fee if you terminate the contract or repay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.”

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment for a no-refund debt cancellation product. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(6) *Refund of fee paid in lump sum.* Either: “If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund.” or “If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method.” or “If you cancel [product name] after the first 30 days of your loan, you will not receive a refund.”

NOTE: This provision is applicable where the borrower pays the fee in a single payment and the fee is added to the amount borrowed. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(7) *Termination of [product name].* Either: “You have no right to cancel [product name].” or “You have the right to cancel [product name] in the following circumstances: _____.” And either: “The credit union has no right to cancel [product name].” or “The credit union has the right to cancel [product name] in the following circumstances: _____.”

5.10(8) *Eligibility requirements, conditions, and exclusions.* “There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name].” And either: “The following is a summary of the eligibility requirements, conditions, and exclusions: [Summary of eligibility requirements, conditions, and exclusions.]” or “You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraph(s) _____ of the [product name] agreement.”

189—5.11(533) Safe and sound practices.

5.11(1) A credit union must ensure that risks associated with debt cancellation contracts and debt suspension agreements are managed in accordance with safe and sound principles and practices. Consequently, a credit union must implement and maintain effective risk management and control processes in conjunction with its debt cancellation contracts and debt suspension agreements, including, but not limited to, appropriate recognition and reporting of income, expenses, assets and liabilities. Additionally, the processes must provide for the recognition and financial reporting of the appropriate treatment of all expected and unexpected losses associated with these products.

5.11(2) A credit union must assess the adequacy of its internal controls and risk mitigation activities in view of the characteristics and extent of its debt cancellation contracts and debt suspension agreements. Accordingly, a credit union must evaluate its existing risk tolerances and management systems to assess, evaluate and monitor third-party relationships in connection with the development, offering and servicing of the credit union’s debt cancellation contracts and debt suspension agreements, including compliance and

reputation risks, and the potential adverse impact nonperformance by the third party may have on the financial performance of the credit union.

5.11(3) Debt cancellation agreements may only be offered by a credit union in connection with an extension of credit primarily for personal, family or household purposes.

189—5.12(533) Exception for Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products offered by credit unions through unaffiliated, nonexclusive agents.

5.12(1) Credit unions offering Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products through unaffiliated, nonexclusive agents, most notably on vehicle loans made available through automobile dealers, are exempt from compliance with respect to:

a. The requirement to notify the superintendent of the existence of the Guarantee Automobile or Asset Protection (GAP) or other types of debt cancellation products in subrule 5.3(5);

b. The requirement that a credit union which offers a borrower a debt cancellation product without a refund also must offer a borrower a bona-fide option to purchase a comparable debt cancellation product that provides for a refund in subrule 5.5(1);

c. The requirement to provide the long-form disclosure in rule 189—5.10(533); and

d. The requirement to obtain a borrower's written acknowledgment of receipt of disclosures in subrule 5.7(4).

5.12(2) Credit unions offering GAP debt cancellation products through unaffiliated, nonexclusive agents remain subject to the following requirements:

a. The credit union may not extend credit or alter the terms or conditions of an extension of credit when the extension or alteration is conditioned upon the borrower's purchase of a debt cancellation product;

b. The credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this rule;

c. The credit union may not offer a debt cancellation product that contains terms giving the credit union the unilateral right to modify the contract unless the modification is favorable to the borrower and is made without additional charge to the borrower; or unless the borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect;

d. If a debt cancellation product is terminated, the credit union must refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise;

e. The credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method;

f. If the credit union offers the borrower the option to finance the fee for a debt cancellation product, the credit union must disclose to the borrower whether, and, if so, the time period during which, the borrower may cancel the contract and receive a refund;

g. At the time of the initial solicitation of the debt cancellation product, the credit union must provide to the borrower the short-form disclosure described in rule 189—5.9(533), as modified to reflect nonapplicability of those items described in subrule 5.12(1). The form of the short-form disclosures must be readily understandable and meaningful, and must be included in advertisements and other promotional material for debt cancellation products, unless the advertisements and promotional material are of a general nature;

h. Before entering into a contract, the credit union must obtain a borrower's written affirmative election to purchase the debt cancellation product. The written election must be conspicuous, simple, direct, and readily understandable and must be designed to call attention to its significance;

i. A credit union that does not provide the long-form disclosures will conspicuously inform borrowers that they will receive a copy of the contract before the borrowers are required to pay for the debt cancellation product; and

j. A credit union must manage the risks associated with the debt cancellation product in accordance with this rule.

These rules are intended to implement Iowa Code Supplement section 533.315(9) “b.”
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