CONSUMER CREDIT INDUSTRY ASSOCIATION

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Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)
Docket N. CFPB-2103-0018/RIN 3170-AA37

Dear Ms. Jackson:

Please accept this letter on behalf of the membership of the Consumer Credit Industry Association (CCIA). CCIA is a national trade association of insurance companies and other financial service providers selling or servicing consumer credit insurance, debt protection products, and other consumer products and services typically provided in connection with consumer credit transactions.

We are responding to the Consumer Financial Protection Bureau's (Bureau) request for public comment on its proposed amendment to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), Docket N. CFPB-2103-0018 (Amendment). Among other things, the proposal seeks to clarify the application of the Dodd-Frank Act's prohibition on financing single premium credit insurance on dwelling-secured mortgage loans to monthly "pay-as-you-go" programs. Our comments are directed to that part of the proposed rule.[1]

CCIA and its member companies first want to express appreciation to the Bureau for its willingness to provide a new proposed rule after hearing concerns from industry and consumer groups on the previous proposal. We believe a great deal of confusion has been rectified in the current proposed rule, including the more precise definition of "financing" in the current rule, and we offer additional comments for the Bureau's consideration.

As a matter of principle, CCIA maintains its position that the Dodd-Frank Act is unambiguous in its direction to limit any prohibition on the financing of credit insurance in connection with a residential mortgage loan or extension of credit under an open end consumer credit plan secured by a principal

[1] 12 C.F.R. § 1026.36(i). As in the CFPB proposed rule "credit insurance" is defined to include debt cancellation and suspension agreements as well as individual and group life and disability mortgage insurance, unless otherwise noted.

dwelling to single premium programs. The statutory language exempting "insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis"[2] from the prohibition is clear, and we believe any attempts to prohibit certain monthly pay programs by rule are in direct violation of the Dodd-Frank Act's mandate.

More specifically, Dodd-Frank Act Section 1414, which amended TILA Section 129C, and which Regulation §1026.36(i) is implementing, clearly indicates the intention to prohibit a very specific credit insurance product – single premium credit insurance sold in connection with a mortgage or open-end plan secured by a principal dwelling. Congress specifically and purposefully recognized that the prohibition should not include existing monthly pay programs, stating "insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor." As stated above, CCIA expresses concern that the CFPB rules would go beyond the clear intent of Dodd-Frank by defining the term "calculated and paid in full on a monthly basis" in a way that would move the prohibition beyond single premium programs to include many monthly pay programs. Additionally, the Bureau has stated its intent to avoid substantive changes to the single-premium financing prohibition recently enacted by Dodd-Frank, which has been enforced by Fannie Mae and Freddie Mac for over ten years.

For these reasons, CCIA urges the Bureau to limit the final rule to the original language of Dodd-Frank Act Section 1414(d) without limiting the definition of programs "calculated and paid in full on a monthly basis", and opposes changing the title of §1026.36(i) by removing the term "single premium." The term is a critical component of the subtitle because it reflects the original intent of the Dodd-Frank Act.

Nevertheless, if the Bureau does include any limitations to monthly pay programs, CCIA and its member companies request the following changes by the CFPB as it finalizes its proposed rule. CCIA believes the final rule must:

1. Retain the current definition of "financing" in the proposed rule, which is consistent with definitions in the Truth in Lending Act (TILA) and confirm that forbearances and other loan modifications do not constitute deferment of payment under the rule;
2. Recognize that "calculated on a monthly basis" includes not only decreasing premiums but "levelized" premiums; and
3. Acknowledge that debt cancellation and debt suspension monthly fees are calculated and paid in full in the same manner as credit insurance premiums regardless of whether the creditor or an insurer initiates the payment plan.

The following comments assume the Bureau will include limitations to monthly pay programs.

[2] 15 U.S.C. §1639c(d)

The CFPB Proposal Properly Defines "Financing"

CCIA agrees with the Bureau's proposed definition of "financing" in the re-designated §1026.36(i)(2)(ii), which states that a creditor finances credit insurance premiums or fees "when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer." We agree with the "right to defer" approach, provided that the Bureau include in §1026.36(i)(2)(ii) the exceptions mentioned in the commentary to the rule and that monthly premiums are financed only if they are deferred "beyond the month in which they are due." This would clarify that creditors finance premiums when they advance funds to the consumer to pay the premiums only if the payments are deferred beyond the month or period in which they are due.

"Calculated on a Monthly Basis" Includes Not Only Decreasing Premiums But Levelized Premiums

The Bureau proposes to clarify in §1026.36(i)(2)(ii) that credit insurance premiums or debt cancellation or suspension fees are calculated on a monthly basis only if they are determined mathematically by multiplying a rate by the monthly outstanding balance. The Bureau references this as a "monthly outstanding balance" or a M.O.B. credit insurance product. The Bureau's basis for this clarification is that credit insurance premiums or debt cancellation/suspension fees that do not decline as the consumer pays down the outstanding principal balance are not calculated "on a monthly basis" in any meaningful way. It suggests, for example that levelized premiums are not calculated to operate as a M.O.B. product and could not be categorically excluded from the scope of the 15 U.S.C. §1639c(d) prohibition on the ground that they are calculated and fully paid on a monthly basis.

This proposed approach to limit "calculated on a monthly basis" for purposes of the exemption from the prohibition to calculation methods in which premiums decrease comes despite no indication in Dodd Frank of that intention. There is no preferred method of calculating premiums or fees that are to be paid in full on a monthly basis. The exemption is not dependent on whether premiums are calculated as decreasing, level, or levelized. Rather, the exemption depends on whether the premiums are paid in full each month. Each of these "monthly pay as you go" payment plans provide for the premium or fee to be paid in full on a monthly basis, therefore each payment plan qualifies for the exemption.

We believe Dodd-Frank, through its express exception for premiums or fees paid in full on a monthly basis, intended to preserve the status quo for these "monthly pay as you go" programs which the credit insurance industry has used for many years. The consumer paying for a mortgage or open-end plan secured by a principal dwelling typically makes the same payment amount each month for principal, interest, and credit insurance premium. These "monthly pay as you go" plans provide clarity, predictability, and convenience to consumers and accommodate the lender's servicing systems. Premiums and fees for "monthly pay as you go" programs are level until the coverage ends, even though benefit amounts decrease over time. Premiums or fees are calculated on the basis that the amount of protection equals the outstanding loan amount. The benefits which are expected to be paid are estimated by constructing an amortization table based on a typical rate of interest and repayment period for mortgages. Then the level premium rate is determined so

that the premiums or fees expected to be collected over the projection period, together with interest earnings, are mathematically equivalent to the present value of the expected benefit payouts, expenses and contingency margins over that same period.

Congress did not intend to eliminate these “monthly pay as you go” programs because doing so would effectively eliminate the monthly credit insurance and debt cancellation and suspension market. Therefore, these programs should fall within the specific safe harbor of the exception in Dodd-Frank.

The Passive Conduit Concept Should Not Be Adopted

The Bureau suggests that whether levelized premiums meet the Dodd-Frank exception for monthly payments may depend on whether the creditor is a passive conduit when it is collecting and transmitting monthly premiums from the borrower to the insurer, rather than advancing funds to the insurer and collecting them later from the borrower with the ability to defer payments. On the other hand, the Bureau states that a creditor does not act as a passive conduit if it “achieves a levelized premium by deferring payments or portions of the payments due to a credit insurer for a monthly outstanding balance credit insurance product (or by imposing a finance charge incident to such deferment…)”. In such a case, the creditor would be “financing” the premiums.

We would request that this passive conduit concept not be adopted as it erroneously assumes that creditors realize a levelized premium or debt cancellation or suspension fee by deferring payments. “Monthly pay as you go” premiums or fees, as we explained above, are not calculated by deferring premiums or fees beyond the date they are due. The adoption of the re-designated §1026.36(i)(2)(ii) should be sufficient to define the “financing” of premiums or fees without the passive conduit concept.

Debt Cancellation and Suspension Fees Comply with the Dodd-Frank Exception

The Bureau solicits comments in its proposal to clarify 15 U.S.C. §1639c(d) and 12 CFR §1026.36(i) as to what actions by a creditor should or should not be considered financing of debt cancellation/suspension contract fees when the creditor is a party to the debt cancellation or suspension contract and payments for principal, interest and the debt cancellation or suspension contract are retained by the creditor.

As previously stated, debt cancellation/suspension fees operate in the same manner as credit insurance premiums that are calculated and paid in full on a monthly basis and not financed by the creditor. The creditor, or an insurer on its behalf, could perform the same actuarial calculations to derive fees as the credit insurance “monthly pay as you” programs discussed herein. In fact, due to their historical expertise in administering similar insurance programs, many creditors contract credit insurers to administer their debt cancellation/suspension programs as they have the actuarial expertise to conform these products for compliance to Dodd-Frank. Debt cancellation/suspension agreement fees as found in the language of 15 U.S.C. §1639c(d), are subject to the same prohibition and are eligible for the same exception as are credit insurance premiums. That debt collection and suspension contracts are offered by the lender and not the

insurer is irrelevant to the borrower, as the contracts operate in same manner as the exempted credit insurance monthly premium programs.

Conclusion

CCIA and its member companies appreciate the Bureau's willingness to consider changes to the proposed rule. Although we believe that the intent of the Dodd-Frank Act was to exempt all monthly pay programs from the prohibition of financing of single premium credit insurance on dwelling-secured mortgage loans, CCIA urges the Bureau to adopt the changes outlined in this comment letter.

Provided no further substantive changes to the rule are made as it is finalized, we would agree that the appropriate effective date for implementation of the rule is January 10, 2014.

CCIA is available to discuss any of these comments or any other matters related to the rule with the Bureau. Please feel free to contact me directly with any questions.

Respectfully submitted,

Scott J. Cipinko