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Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R–1390; Regulation Z; Truth in Lending

Dear Ms. Johnson:

The American Bankers Insurance Association (ABIA) appreciates the opportunity to comment on the new disclosures proposed by the Federal Reserve Board (the "Board") for credit insurance, debt cancellation contracts and debt suspension agreements (collectively "debt protection products"). The ABIA is a subsidiary of the American Bankers Association. The ABIA is dedicated to furthering the policy and business objectives of banks in insurance. ABIA's members include banks, insurance companies, and firms that provide insurance-related services. ABIA's members also offer or administer debt protection products.

ABIA supports the disclosure of key credit terms related to debt protection products offered in connection with closed-end and open-end credit. Meaningful disclosures can help consumers make informed decisions about these products.

However, we have several concerns with the proposal in its current form.

I. The Proposal Does Not Recognize the Benefits of These Products for Consumers

In developing this proposal it does not appear that the Board has given consideration to the benefits consumers receive from debt protection products. These products permit borrowers to plan for, and adequately address, events that may alter their ability to repay an extension of credit. They strengthen the relationship between a borrower and a creditor and are designed to provide relief to the borrower to avoid default on a loan or line of credit. Below, we list some of the key benefits associated with these products. We urge the Board to consider these benefits.

- *Protection for Credit Ratings.* Debt protection products help consumers protect their credit ratings by helping them to avoid missing payments, incurring late fees, becoming delinquent on loans.

- *Protection Against Unemployment.* Only debt protection products readily provide consumers with protection against unemployment.

- *Protection Against Multiple Life Events.* Debt protection products can be designed to meet the changing needs of borrowers. In addition to providing relief upon the occurrence of the types of life events traditionally protected by credit insurance (loss of life, disability and unemployment), they can provide debt relief for a broad array of other life events, including a call-up to active duty military service, hospitalization, marriage, the birth or adoption of a child, divorce, natural disaster, moving, graduation, entering college, retirement, business interruption, and leave of absence.

Protection for Family Members. Debt protection products also have the flexibility to protect any borrower obligated in the credit agreement, as well as other family members.

<u>II. The Model Forms Will Confuse and Misinform Consumers</u>

TILA is intended to help consumers make informed decisions about credit through the disclosure of "meaningful" information. However, we are concerned that the proposed model forms will confuse, rather than inform, consumers.

Other Products

The model disclosures pose the following question: "Do I need this product?" and then states that "If you already have enough insurance or savings …you may not need this product. Other types of insurance can give you similar benefits and are often less expensive." The statement about "other" products is inaccurate. We are not aware of any other products that provide benefits to consumers similar to the benefits provided by debt protection products. No form of insurance covers such low dollar amounts. Moreover, debt protection products are the only products that provide consumers financial security against unemployment.

Eligibility

The Board has proposed that the model disclosures include the following statement: "You may not be eligible for benefits even if you buy this product." The model also requires that this statement be printed in bold type and underlined. This statement misrepresents the fundamental nature of debt protection products. It suggests that consumers who purchase debt protection products may not realize any value from the product unless they experience a covered event. Yet, even if a consumer never files a claim for a benefit, the products provide financial security and peace of mind.

STOP

To ensure that consumers understand the optional nature of the product, the Board has proposed that the model form begin with the word "STOP." It's our opinion that this introductory word is designed to thwart a sale instead of to educate a consumer. It is confusing because, by its plain language, it could prevent further reading instead of causing consumers to be more attentive to the disclosures that follow. In other words, the proposed language goes beyond what is authorized under TILA. In addition, it is unnecessary because the Board's own test found that "Almost all interview participants understood from their reading of this section of the form that credit life insurance is not required."[1]

Cost

The Board has proposed that creditors disclose the cost of coverage on a monthly basis based on the maximum amount of credit available to a consumer. Such a disclosure is both misleading and confusing for consumers because it typically will require a cost disclosure that is greater than the actual amount the consumer will pay. For example, if a consumer has purchased debt protection on a credit card account, a creditor would be required to disclose a cost figure based upon the consumer's overall credit limit, not just the amount outstanding on the card.

Tabular format.

As proposed, creditors would need to include the tabular disclosure in direct marketing materials, statement inserts, take-one applications, and other formats used to solicit the purchase of these products. We recommend that the creditors be permitted to include the disclosure on a separate document and that the applications and other solicitation materials direct consumers to that document.

The check box and a signature

The Board has proposed that the model form include both a signature line for consumers who wish to purchase the product as well as a check box. Processing enrollment forms that have both a check box and a signature line can create confusion. Often only the check box will be checked or the signature provided, but not both. In such cases it is not possible to determine if the customer intended to enroll in the product. We recommend that the check box be eliminated.

In addition, neither the check box nor the signature requirement accommodates telephone sales. We recommend that the Board clarify the ability of a consumer to acknowledge receipt of these disclosures orally or electronically.

Methodology

The methodology used by the Board to test the model forms was flawed in several respects: the test did not involve debt protection products, only credit insurance; the number of consumers involved in the test was too small to be predictive of consumer behavior; and, there was no control group, and this makes it impossible to know if the proposed forms are better or worse than the existing disclosures.

In addition, with respect to real estate related loans, we believe the accuracy of any testing undertaken by the Board before July 2010 has become obsolete by virtue of the passage

[1] ICF Macro report, July 16, 2009, page 47.

of the Dodd-Frank Act[2]. Because of that Act's mandate to integrate RESPA and TILA disclosures, virtually all existing disclosures associated with mortgage transactions will have to be changed. As such, the model forms tested by the Board do not reflect the new legal and regulatory disclosure system mandated by Dodd-Frank. We recommend, therefore, that the model disclosures proposed in this rule be reconsidered.

III. The Eligibility Determination and the Proposed Treatment of the Finance Charge Will Prevent Consumers from Obtaining Needed Protection

The Board has proposed to require creditors to make an "eligibility" determination at the time of enrollment in order to exclude fees related to debt protection products from the finance charge disclosure. The Board has not provided any factual basis for this proposed requirement.

Additionally, the Board has proposed that a creditor must either treat the entire debt protection as a finance charge if a consumer is not eligible for all of the benefits provided by a product or offer the consumer the option of selecting only the products for which the consumer is eligible. A creditor could exclude the charge from the finance charge if the consumer selected an optional product for which the consumer meets any applicable age or employment eligibility requirements. As noted above, one of the most valuable features of these products for consumers is the flexibility in coverage. These products are designed to provide consumers with financial security against multiple events, and a consumer's eligibility for individual benefits may vary from time to time. In its current form, this proposal could cause creditors to prohibit consumers from purchasing the product, even if the consumer (or a co-borrower) may experience a change in eligibility

IV. The Requirement That the Debt Cancellation Fees be Included in the Finance Charge For Voluntary Closed-End Credit Transactions is Contrary to the Intent of TILA and Congressional Intent

In 2009, the Board proposed that fees for debt cancellation and debt suspension products be included in the finance charge for closed-end mortgage transactions, even if the protection is purchased voluntarily. While §226.4(g) is not included in the current proposal, there are several references to its existence. We believe that proposed §226.4(g) is contrary to the intent of TILA. TILA is intended to help consumers compare credit terms, yet the Board's own tests show that this requirement will confuse consumers. Those tests found that:

> Only two of the 31 participants were able to explain what the [all-inclusive APR] meant—even after being specifically directed to read the explanation provided on the statement. Only one of the 31 participants indicated that he would ever use this information, and the example that one participant provided was an inappropriate use of the fee-inclusive APR. These findings are consistent with the Board's August 2009 HELOC proposed rules to amend Regulation Z to no longer require that the fee-inclusive APR be

[2] (The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203)

provided on periodic statements for HELOCs, which is also consistent with the Regulation Z requirements for credit card accounts.[3]

We also believe that the inclusion of voluntary fees in the finance charge is contrary to Congressional intent. Congress crafted an express exclusion from the finance charge disclosure for voluntary credit insurance premiums, if the creditor meets certain conditions.[4] The Board has long recognized that debt cancellation contracts, while not identical to credit insurance, should be treated like credit insurance for purposes of this exclusion. The Board took this position because it concluded that Congress intended the exclusion to reach products similar to credit insurance.[5] We see no reason for the Board to deviate from this interpretation. As long as a debt protection product is optional, we believe Congress intended that it should continue to be excluded from the finance charge.

The Dodd-Frank Act reinforces Congress' intent to exclude such fees from the finance charge. Section 1414 of Dodd-Frank adds a new Section 129C(d)(1) to TILA, which states that "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." (emphasis added) This recently enacted amendment to TILA is a clear expression of Congressional intent that these fees not be included in the finance charge.

V. The Board Has Not Given Sufficient Public Notice of Certain Parts of the Proposal

The Board has not provided sufficient public notice of the change related to voluntary closed-end credit transactions. In the August 2009 proposed rule (Docket No. R-1366), the Board proposed a new section 226.4(g) that would require fees for debt protection products to be included in the finance charge for closed-end mortgage transactions, even if the protection is purchased voluntarily. While there are references to this new section in the proposal, it does not appear in the text of the proposed revisions published by the Board. This has created public confusion over the Board's intent and should preclude further action on this particular provision, pending further public notice and comment.

Additionally, the Board has not given sufficient public notice of the changes related to open-end credit. As a general rule, the notice and comment must provide enough information so that the final rule is a "logical outgrowth" of the proposed rule.[6] Yet, when one reads the summaries prepared by the Board, it appears that this rule only applies to closed-end home

[3] ICF Macro report, July 2010, pages ii-iii.
[4] 15 U.S.C. 1605(b).
[5] August 2009 Proposal, Docket No. R-1366, p 43242 ("Over time, the Board, by regulation, has [determined] that certain other charges not specifically excluded by the statute are not finance charges. These regulatory exclusions often sought to bring logical consistency to the treatment of fees that are similar to fees the statute excludes or conditionally excludes from the finance charge.")
[6] *National Mining Association v. Mine Safety and Health Admin.*, 116 F.3d 520, 531 (D.C. Cir. 1997) page 531.

secured credit and HELOCs, not open-end credit. The summary of the regulation published by the Board does not mention the proposed changes to disclosures for debt protection products.

The "Summary of Major Proposed Changes" does not contain any reference to changes to the debt protection products, and instead focuses solely on rescission, reverse mortgages, and other changes that would apply to closed-end home secured credit and HELOCs. In fact, the first sentence of the "Summary of Major Proposed Changes" reads: "The goal of the proposed amendments to Regulation Z is to update and make clarifying changes to the rules regarding the consumer's right to rescind certain open- and closed-end loans secured by the consumer's principal dwelling."[7] It is not until deep into the Section-by-Section Analysis that the changes to debt protection product disclosures and the changes applying to open-end credit are first mentioned.

VI. Conclusion

Based upon the concerns described above, we respectfully request that the Board withdraw the current proposal and engage in a new round of consumer testing to develop model disclosure forms and other requirements that better recognize the benefits these products provide to consumers.

Respectfully Submitted

J. Kevin A. McKechnie
Executive Director

[7] Proposed rule, Docket no. R-1390, p 58539.