

# CONSUMER CREDIT INSURANCE ASSOCIATION

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May 28, 2004

Office of the Comptroller of the Currency  
E Street, S.W.  
Public Information Room  
Mail Stop 1-5  
Washington, D.C. 20219  
Re: Docket No. 04-09

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: No. 2004-xx  
Re: Docket No. 2004-16

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551  
Re: Docket No. R-1188

Becky Baker  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-4328  
Re: 12 CFR Part 717

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, D.C. 20429  
Re: RIN 3064-AC81

Dear Sirs and Madams:

These comments are submitted on behalf of the Consumer Credit Insurance Association (CCIA), a national trade association of more than 140 insurance companies engaged in the business of insuring consumer credit transactions. A number of our member companies also provide administrative services to financial institutions for their debt protection programs. Accordingly, CCIA is dedicated to preserving, promoting, and enhancing the availability, utility, and integrity of insurance and related debt protection products delivered in connection with financial transactions.

We welcome the opportunity to offer comment on the proposed regulations implementing section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Our comments are limited to creditors' use of medical information in connection with credit insurance, debt cancellation contracts (DCCs), and debt suspension agreements (DSAs).

We recommend a specific and equal exception to the prohibition on such use of medical information to eliminate the ambiguity and inconsistency we perceive between the treatment of credit insurance, DCCs, and DSAs under the proposed regulations.

Exceptions (A) and (B) in Subpart D-Medical Information §\_\_.30(a)(2)(i) (defining “eligibility, or continued eligibility for credit”) are inconsistent as to insurance products and such debt protection products as DCCs and DSAs. Exception (A) permits use of medical information to determine qualification or fitness to be offered “... insurance products, or other non-credit products or services.” Exception (B) permits the use of medical information in determining whether benefits are triggered for “...a debt cancellation contract, debt suspension agreement, credit insurance product, or similar forbearance practice or program...” DCCs and DSAs should be included in exception (A), which permits use of medical information to determine qualification to be offered particular products. Equally, the general term “insurance products” should be included in exception (B), which permits the use of medical information to determine the triggering of benefits. This change would provide a consistent treatment for both credit insurance and DCCs and DSAs.

#### *Credit Insurance and DCC and DSA Programs As Functional Equivalents*

Credit insurance and DCCs and DSAs both serve to protect consumer debt and credit. Since they function equivalently they should be treated equivalently. While a number of credit lenders have moved from credit insurance programs to DCC and DSA programs, many banks continue to use both programs. It would impose an operational hardship for credit lenders using both types of programs to comply with two separate regulatory requirements regarding use of medical information: one to determine qualification for the insurance product and another to determine the benefits trigger for both the insurance product and the debt protection product. Moreover, there is no evident justification or stated reason why DCCs and DSAs are not contained in both exclusions. Section 411 of the FACT Act expressly empowers the federal banking agencies and the National Credit Union Administration to except from the prohibition on the use of medical information those transactions that are “...necessary and appropriate to protect the legitimate operational, transactional, risk, consumer, and other needs.” Therefore, consistent exceptions for use of medical information for determining “qualification or fitness for” and “triggering of provisions” of both credit insurance and DCCs and DSAs are within the agencies’ authority.

#### *References to Insurance As Opposed to Credit Insurance Create Ambiguity*

Credit insurance is a narrowly defined type of insurance under state statutes and regulations. Most states have enacted the NAIC Consumer Credit Insurance Model Act and the Consumer Credit Insurance Model Regulation. It is necessarily subsumed under the general term, insurance. Again, there is no evident justification to use the general term “insurance” in exception (A) and the specific term “credit insurance” in exception (B). Creditors may offer other types of insurance than credit insurance, such as term life, homeowners, automobile, and other personal lines coverage. Creditors would have a legitimate reason to use medical information to determine benefits triggers in those types of insurance as well as credit insurance.

Therefore, the general term “insurance product” should be used in both exception (B), as well as in exception (A). This would remove any ambiguity in using a general term in one instance and a specific term in the other.

We offer the following recommendations:

1. Move the exclusions, with suggested change in wording, currently in the definition of Eligibility to the Specific Exceptions for Obtaining and Using Medical Information section.
2. If the exclusions are not moved and remain in the definition of Eligibility, change the wording of exclusions A and B and their applicability to DCCs and DSAs to be consistent with and to reflect Section 411 of the FACT Act.

The suggested alternative language would be as follows:

Current \_\_.30(d)(vii) “As otherwise permitted by order of the OCC” moved to become new (viii) and replaced with:

(vii) To the extent such information is obtained for purposes of

(A) The consumer’s qualification or fitness to be offered employment, debt cancellation contracts, debt suspension agreements, insurance products, or other non-credit products or services;

(B) Any determination of whether the provisions of a debt cancellation contract, debt suspension agreement, ~~credit~~ insurance product, or similar forbearance practice or program are triggered;

(C) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit; or

(D) Maintaining or servicing the consumer’s account in a manner that does not involve a determination of the consumer’s eligibility or continued eligibility, for credit.

We appreciate the opportunity to provide these comments.

Yours truly,



Kathleen J. Wharton