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December 22, 2010

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

Dear Secretary Johnson:

American General Finance, Inc. ("AGF") submits this comment letter on the Federal Reserve Board's ("Board") proposed changes to Regulation Z. The comments contained in this letter only pertain to the provisions of the proposed changes to Regulation Z ("the "Proposed Rule") that deal with credit insurance. AGF is a consumer lending institution with approximately $17 billion in receivables that provides consumer credit to consumers in 40 states.

AGF believes that the Truth in Lending Act ("TILA"), as enacted and amended, does not allow the Board the authority to promulgate the changes in the Proposed Rule relating to the disclosure of credit insurance charges and the inclusion of voluntarily purchased credit insurance premiums in the finance charge. AGF would also submit that the consumer testing upon which the provisions of the Proposed Rule are based, is materially flawed.

I. Lack of Authority

AGF's position regarding the Board's lack of authority, applies not only to the Proposed Rule's inclusion in the finance charge of premiums for voluntarily purchased credit insurance coverage, but also to the disclosures mandated by the Proposed Rule.

A. The Inclusion of Premiums, for Voluntarily Purchased Credit Insurance, in the Finance Charge on All Closed-end Transactions Secured by Real Property or a Dwelling, Regardless of the Disclosures Provided, Contradicts TILA's Express Exclusion of Such Premiums From the Finance Charge.

TILA specifically states that credit insurance premiums shall be excluded from the finance charge under certain conditions. Section 106(b) of TILA states as follows:

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge ***unless*** (emphasis added)

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

Pursuant to the express provisions of TILA, if the conditions listed in Section 106(b) are satisfied, then credit insurance premiums are not to be included in the finance charge. The Proposed Rule's new requirement that credit insurance premiums be included in the finance charge on ***all*** closed-end transactions secured by real property or a dwelling, ***without exception***, contravenes the express language of TILA.

B. Congress Expressed a Clear Intent to Maintain the Conditional Exclusion of Credit Insurance Premiums From the Finance Charge When, as Part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), it Revised TILA to Specifically Address Credit Insurance on Residential Mortgage Loans and Extensions of Credit Secured by the Consumer's Principal Dwelling, but Left Intact TILA's Existing Provisions Excluding Credit Insurance Premiums From the Finance Charge.

While in the midst of amending TILA to specifically address credit insurance on residential mortgage loans and extensions of credit secured by the consumer's principal dwelling in the Dodd-Frank Act, Congress could also have easily amended Section 106(b) of TILA to remove its express conditional exclusion of credit insurance premiums from the finance charge, but it chose not to do so. Congress chose instead to leave the conditional exclusion of credit insurance premiums from the finance charge intact. Congress also recognized the distinction between credit insurance paid on a single premium basis and credit insurance premiums calculated and paid on a monthly basis ("MOB").[1]

The Board and the Department of Housing and Urban Development, in a joint report published in 1998, stated that TILA's current approach, of providing additional cost information about such charges without adding them to the finance charge, seems more consistent with TILA's purposes.[2] There have been no changes to TILA since the publication of the joint report that would change this conclusion.

[1] Section 1414 of the Dodd-Frank Act amends TILA, in part, by adding 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."
[2] 1998 Joint Report to the Congress Concerning Reform of the Truth in Lending Act and the Real Estate Settlement Procedures Act, p. 13.

The Departments of Housing and Urban Development ("HUD") and Treasury also recognized the distinction between single premium and MOB credit insurance, when they published a joint report on predatory lending in 2000.[3] HUD and the Treasury limited their recommendations to the Board, regarding restrictions on credit insurance sold in connection with mortgage transactions, to single premium credit insurance. No such restrictions were recommended for MOB credit insurance.

Congress followed HUD and Treasury's recommendations, and the precedent set by the 33 states that have passed predatory lending legislation[4], and, as part of the Dodd-Frank Act, revised TILA to treat MOB premiums differently on residential mortgage loans and extensions of credit secured by the consumer's principal dwelling, stating that such premiums are not to be considered financed, but did not amend Section 106(b) to authorize the Board to require that MOB premiums be included in the finance charge. When, as part of the Dodd-Frank Act, Congress amended TILA to specifically address credit insurance on real estate secured loans, Congress passed on the opportunity to revise Section 106(b) of TILA to remove its express conditional exclusion of credit insurance premiums from the finance charge, which we believe reflects Congress' intent to maintain the conditional exclusion of credit insurance premiums from the finance charge on real estate secured loans.

C. The Board is Overstepping its Authority by Proposing New Required Credit Insurance Disclosures that are Worded in a Slanted Fashion, Which Must be Presented in a Rigid Format, and Which Appear Designed to Steer Consumers Away From Purchasing Credit Insurance Products.

Section 105(a) of TILA states that, "The Board shall prescribe regulations to carry out the purposes of this title." The purpose of TILA is set forth in Section 102(a), where it states in part, "It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." The purpose of TILA is to provide consumers with meaningful information that they can use to make informed financial decisions.

The new credit insurance disclosures and format that would be required under the Proposed Rules clearly reflect a negative evaluation of credit insurance products and a not so implicit attempt to prevent the purchase of those products by consumers. By proposing that one-sided, cigarette-type warning disclosures be required in connection with the sale of credit insurance products, the board is deviating from its mandate to ensure that the consumer has enough information to be able to compare credit terms, and is instead actively manipulating the consumer to do what the Board clearly thinks he should do. Such actions exceed the authority granted to the Board by TILA.

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[3] 2000 HUD/Treasury Report on Recommendations to Curb Predatory Home Mortgage Lending; see Chapter VI., C.1. (g)(i) and Chapter VI., C.2. (a).

[4] For example, see Illinois 815 ILCS 137/40 and 205 ILCS 635/5-15; Indiana 24-9-3-1, New Jersey 46:10B-25(a); North Carolina: 24-10.2 (b); New Mexico 58-21A-4; New York 6-L(2)(h); Ohio 1345.031 (B)(11); and South Carolina 37-23-70 (B).

II. The Board's Consumer Testing, Upon Which the Proposed Rules are Based, is Flawed, Both Statistically and Empirically

The Board's consumer testing of credit insurance disclosures only involved eighteen consumers – ten consumers in the first round of testing, and eight consumers in the second round. Eighteen consumers are not enough to comprise a statistically valid sample upon which to base significant changes that will potentially affect millions of credit transactions.

Additionally, the Board did not test to see if the consumers understood the benefits of credit insurance; only the "negative" aspects of the product were tested. There was no testing of sample disclosures designed to present the products benefits along side its limitations. In other words, the testing does not appear designed to evaluate whether a meaningful comparison of terms was being presented so as to enable the consumer to make an informed decision.

Lastly, no users of credit insurance were tested. One of the conclusions contained in a 2002 article on credit insurance published by the Federal Reserve Board's Division of Research and Statistics states as follows: "With respect to credit insurance, because the views of users and nonusers seem so divergent, it seems important that the views of users be given sufficient weight in considering public policies in this area."[5]

III. Comments on Specific Disclosures Contained in the Proposed Rule

Header: The use of "STOP" at the outset of the notice is overkill and not commensurate with the purpose and role of credit insurance disclosures. Compare this strong language with TILA's right to rescind notice. The notice of right to rescind, which arguably has more significant implications for consumers, does not use language anywhere near this strong. This type of alarmist language is not justified in the context of credit insurance disclosures.

Website: Given that the proposed disclosure is so slanted against credit insurance products, AGF is concerned that the website proposed by the Board would contain similarly biased information that would unfairly discourage consumers from obtaining credit insurance products. AGF generally opposes directing consumers to a website maintained by the Board as part of the credit insurance disclosures, unless the content of the website is also published in the Federal Register and the public is given an opportunity to comment on the website's content. Any future changes to the content of the website should similarly be published for public comment prior to posting.

Additionally, if the Board includes a link to its website on the disclosure, the Board should include other third-party websites so that the consumer can have the option of obtaining information from several different sources. For example, the Consumer Credit Industry Association's website provides consumers with an alternative source of information about credit insurance.

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[5] Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance*, Federal Reserve Bulletin, April 2002 at 208—213.

Do I need this product? The language in this portion of the disclosure effectively tells the consumer that they do not need credit insurance. The disclosure falsely implies that the consumer's existing insurance will cover their new debt obligation. Actually, just the opposite may be true; insurance existing prior to the loan transaction would not have been obtained in contemplation of the new debt. If the consumer's credit transaction is not covered by credit insurance and the consumer experiences a "covered event," then the consumer's existing insurance will not go as far as it would have otherwise gone had there been credit insurance in place and consequently, may not cover the debt.

Further, the statement that other types of insurance can provide similar benefits at lower cost is not always true, in some cases is simply wrong, and incorrectly assumes that the customer is eligible for such coverage. For example, as far as we know, involuntary unemployment insurance cannot even be purchased outside of the credit context. Similarly, traditional life insurance is typically not available in amounts under $50,000. Other factors also influence the true availability of other insurance; for example, smoking, being overweight, having to undergo a medical examination and lack of time, just to name a few.

How much does it cost? Requiring just the maximum potential periodic cost of the insurance to be disclosed is not really disclosing the potential cost of the credit insurance product. The cost of credit insurance could also be zero or somewhere between zero and the maximum cost, depending on the outstanding balance of the debt, which is why TILA allows the unit cost of credit insurance to be disclosed. To truly disclose the potential cost of the credit insurance product, either its unit cost should be used or a complete range of cost, from zero to the maximum, should be used.

Can I receive benefits? This language is extremely slanted, unfair and misleading. Credit insurance is no different than any other type of insurance, such as traditional life, homeowners' or auto insurance. Just because an individual does not receive a cash benefit does not mean that they have not received a benefit from having been insured. The insurance coverage and the peace of mind it confers ***is*** the benefit. To imply that credit insurance provides no benefits unless cash is paid out, is simply not accurate and is misleading.

Signature line and check box. This portion of the proposed disclosures conflicts with TILA, is redundant, serves no apparent purpose and will create potential liability for creditors. TILA only requires that a consumer give his "specific affirmative written indication" of his desire to purchase credit insurance. TILA does not state that ***two*** specific affirmative written indications are required.

There is no reason to require both a signature and a check box. One of these items sufficiently indicates the consumer's consent to purchase the credit insurance product. To require both introduces risk without any benefit, as creditors may have liability if the box is checked but the signature is not provided – or vice versa.

Similarly, there is no reason to require a restatement of the maximum cost in the signature line. This additional disclosure, conflicts with TILA, is redundant and complicates already excessive disclosures. TILA only requires the cost to be disclosed, it does not state that the cost must be disclosed ***twice*** and it does not state that only the maximum cost must be disclosed, twice.

III. Conclusion

The Board's own studies have concluded that consumers value credit insurance and the protection it provides them. "According to the views expressed by many users of credit insurance, eliminating this product by regulation could be disadvantageous to them."[6] As stated above, AGF believes that TILA, as enacted and amended, does not allow the Board the authority to promulgate the changes in the Proposed Rule relating to the disclosure of credit insurance charges and the inclusion of voluntarily purchased credit insurance premiums in the finance charge.

On behalf of AGF, I thank you for the opportunity to submit the foregoing comments on the Proposed Rule.

Respectfully Submitted,

Alexander G. Kolumbus
Assistant General Counsel

[6] See, Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance*, Federal Reserve Bulletin, April 2002 at 213.