COMMENTS
to the
Consumer Financial Protection Bureau
12 CFR Part 1026
[Docket No. CFPB-2012-0037]
RIN 3170-AA13
77 Fed. Reg. 55,272
Truth in Lending Act – Regulation Z
Loan Originator Compensation

by the
National Consumer Law Center
on behalf of its low income clients

as well as the

Center for Economic Justice

and the

National Association of Consumer Advocates

October 16, 2012

The **National Consumer Law Center**[1] ("NCLC") submits the following comments, on behalf of its low-income clients, with the **Center for Economic Justice**[2] and the **National Association of Consumer Advocates**.[3] These comments address the Bureau's loan originator compensation proposal, as well as the arbitration and credit insurance proposals.

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[1] The **National Consumer Law Center**® (NCLC®) is a non-profit Massachusetts corporation specializing in low-income consumer issues, with an emphasis on consumer credit. Since 1969, NCLC has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including Mortgage Lending, Truth in Lending and Foreclosures. These comments are written by NCLC attorneys Alys Cohen, Andrew Pizor, Lauren Saunders, Margot Saunders, and Diane E. Thompson. These authors have for many years provided assistance to attorneys and housing counselors helping consumers with problem mortgages across the country. These comments are based on these efforts as well as our knowledge and expertise in Truth in Lending, the Real Estate Settlement Procedures Act, the mortgage market specifically, and consumer law in general.

[2] The **Center for Economic Justice** (CEJ) is a non-profit organization that works to increase the availability, affordability and accessibility of insurance, credit, utilities, and other economic goods and services for low-income and minority consumers. Through research, education and advocacy, we are dedicated to: eliminating unfair discrimination in the availability, price, benefits and quality of basic goods and services and create their more equitable distribution in communities; eliminating community deterioration resulting from the lack of affordable and available basic goods and services; assisting other advocacy and community groups across the nation who are working for economic justice.

[3] The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

Overview of Comments

1. Comments on Loan Originator Compensation Proposal

We appreciate the careful attention to detail evident in the proposed rule on loan originator compensation. Obviously, a great deal of thought has been devoted to a significant number of potential complexities implicated by the rule. The Bureau has contemplated and addressed difficult issues. However, the Bureau's proposal undercuts congressional intent and promotes the very practices that led to the rampant abusive and discriminatory lending in the decades leading up to the current crisis.

- Permitting compensation to loan originators based on the terms of the loan is in contravention of the statute. By allowing creditors to compensate loan originators via bonuses and retirement plans based on the terms of loans, the Bureau blesses a payment structure that Congress intended to ban and makes originator compensation even less transparent to consumers.

- Permitting loan originators to lower their compensation to account for increases in third-party fees is an invitation to abuse.

- Permitting payments made to a loan originator by third parties pursuant to an agreement with the consumer to count as "compensation directly from a consumer" undermines the ban on dual compensation and invites abuse.

- Permitting creditors to offer loans with discount points, origination points, and fees while compensating the loan originator would gut the clear rule adopted by Congress. The weak disclosure rule the Bureau proposes in its stead would be easily undermined and which will overwhelmingly benefit creditors and loan originators at the expense of most consumers..

2. Comments on Arbitration and Credit Insurance Proposals

The proposed rules regarding mandatory arbitration clauses and the financing of credit insurance premiums add little to what is already provided by the statute. Instead, the most significant impact of these proposals may be to delay the effective date of those statutory provisions. We recommend that any regulations on these topics be postponed until after the statutory provisions take effect on January 21, 2013, or set an effective date for the rules no later than January 21, 2013. We also suggest some changes to the proposed regulations to more closely track the statutory language and avoid confusion and evasions.

I. The Proposed Mortgage Originator Compensation Rules Would Gut the Statute and Permit the Worst Practices of the Past Decades to Continue

Dodd Frank added new protections relating to mortgage originator compensation to the Truth in Lending Act specifically to prohibit two distinct acts:

1. Payments to originators that are based on the terms of the loan.[4]
2. Payments from both a homeowner and the creditor to the originator (dual compensation).[5]

The Bureau's proposal contravenes both of these core principles. Instead of prohibiting payments to individual loan originators based on the terms of the loan, it permits them when they are cloaked as bonuses or retirement plans. And it guts the restriction on dual compensation by creating so many exceptions that the rule will be undermined and the practice Congress intended to ban will instead flourish.

The core principles of the statute reflect a well-developed body of research demonstrating conclusively that dual compensation and payment to loan originators on the terms of the loans lead to higher pricing for homeowners across all categories,[6] rampant racial discrimination,[7] and, ultimately, the extension of unaffordable and unsustainable credit.[8]

We oppose the following aspects of the Bureau's proposal:

- Permitting dual compensation when the creditor offers the consumer the option of a loan without dual compensation.[9]
- Permitting loan originators to lower their compensation to account for increases in third-party fees.[10]
- Allowing third parties to make payments to a loan originator (or otherwise toward unspecified closing costs) pursuant to an agreement with the consumer at the same time the consumer is directly paying the loan originator.[11]
- Allowing compensation based on loan terms where the compensation is made through bonuses and retirement plans.[12]

A. The Bureau's Proposed Rule Would Allow Dual Compensation to Continue in Direct Contravention of the Statute.

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[4] 15 U.S.C. § 1639b(c)(1).
[5] 15 U.S.C. § 1639b(c)(2).
[6] *See, e.g.,* Office of Pol'y & Dev., Dep't. of Hous. & Urban Dev., RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-P-01: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs, 2-24 - 2-43 (2008).
[7] *See, e.g.,* Debbie Gruenstein Bocian, Keith S. Ernst & Wei Li, Ctr. For Responsible Lending, Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages 21-23 (May 31, 2006), *available at* http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf (discussing evidence and analysis that links pricing disparities with broker activity and incentives); *see also* Press Release, Office of the New York State Attorney General, Countrywide Agrees to New Measures to Combat Racial and Ethnic Disparities in Mortgage Loan Pricing (Dec. 5, 2006), *available at* http://www.oag.state.ny.us/press/2006/dec/dec05a_06.html (pricing disparities between whites and minorities highest for broker originated loans).
[8] *See, e.g.,* Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy: As Housing Boomed, Industry Pushed Loans to a Broader Market,* Wall St. J., Dec. 3, 2007, at A1 (61% of subprime borrowers in 2006 were prime eligible).
[9] Proposed § 1026.36(d)(2)(ii).
[10] Proposed comment § 1026.36(d)(1)-7.
[11] Proposed comment § 1026.36(d)(2)(i)-2(iii).
[12] Proposed § 1026.36(d)(1)(iii).

The statute bans payments from both a homeowner and the creditor to the originator (dual compensation).[13] The statute expressly prohibits the restructuring of the financing of an origination fee as part of broader steering-related provisions. This provision thus prohibits the manipulation of discount points and similar payments to split the payment of the fee to the originator between the homeowner and other parties. Yet, the Bureau proposes that creditors wishing to evade congressional intent need only "make[] available to the consumer a comparable, alternative loan that does not include discount points and origination points or fees, unless the consumer is unlikely to qualify for such a loan."[14]

We urge the Bureau to abandon the exception to the clear ban Congress adopted.[15] The Bureau's proposal is:

- contrary to congressional intent;
- allows a practice that is known to be more costly and inappropriate for the majority of consumers;
- easily abused; and
- not justified by highly speculative industry arguments lacking empirical support.

If the Bureau declines to abandon the exception entirely, the Bureau should at least modify it to minimize the likely harm to consumers. The most effective modification would be to allow creditors to offer the dual compensation loan only upon the specific written request of a consumer, not solicited by the creditor.

1. The Proposed Exception Undermines the Intent of the Prohibition in the Statute

The extensive and highly documented problems[16] with yield spread premiums drove the Department of Housing and Urban Development, the Federal Trade Commission, the Federal Reserve Board and Congress to try to contain and deal with the practice. The passage of the new section in Truth in Lending to protect against yield spread premiums was unquestionably premised on the historical experience that in the vast majority of cases payments by creditors to mortgage loan

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[13] 15 U.S.C. § 1639b(c)(1). *See also* 155 Cong. Rec. H5325 (May 7, 2009) (statement of Rep. Neugebauer) **("**Additionally, the manager's amendment says all origination fees must be collected either up front or all fees shall be in the rate. This means consumers, again, will no longer have the option of paying some closing costs up front and some through the rate.").

[14] Proposed § 1026.36(b)(2)(C)(ii) (emphasis added).

[15] We acknowledge that Congress allowed the Bureau to waive or provide exemptions to clause (ii) of the dual compensation ban (15 U.S.C. § 1639b(c)(2)(ii)) but the existence of such authority does not mean it should be used absent clear evidence that the default rule is contrary to consumers and the public's best interest and that lesser measures will not work. There is as yet no empirical evidence to suggest that the statute, as written, needs modification.

[16] *See, e.g.* Office of Pol'y & Dev., Dep't of Hous. & Urban Dev., RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-P-01: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs, 2-24 to 2-43 (2008); Howell E. Jackson & Laurie Burlingame, Kickbacks or Compensation: The Case of Yield Spread Premiums, 12 Stan. J.L. Bus. & Fin. 289, 353 n.98 (2007).

originators that varied based on the terms of the loan were not good for consumers and should be prohibited.[17]

However, Congress was persuaded that sometimes a sophisticated consumer may choose to pay for the closing costs by having the creditor make these payments and then applying a corresponding increase in the interest rate. This is the rationale for the exception found in § 1639b(c)(2)(B). Subparagraph (B) clearly articulates the congressional intent to eradicate creditor-paid fees to originators unless all of the origination and discount fees for the loan are paid by the creditor. The idea was to ensure that these fees would be paid by only one party – either the creditor (in which case the loan would be what is often referred to as a "no cost loan") or the borrower. While the Bureau has the authority to create an exemption, it must be in the interest of consumers and the public interest.

While no-cost loans use up much less equity or cash resources from the borrower and uniformly have lower fees and charges,[18] these loans are fairly rare and are almost exclusively used by sophisticated borrowers who understand how to ask for and obtain a more consumer-friendly product that is only occasionally offered to the general public. Albeit in an awkward way, the statute clearly ensures that these types of loans can continue to be made, even with the prohibition against creditor paid broker fees. Few can question that Congress intended to eradicate the abusive use of yield spread premiums while preserving the option of no-cost loans. Subsection (c)(2) ensures this by prohibiting payments to mortgage originators by anyone when the consumer has paid origination fees or discount points.

There are good reasons for this prohibition. Creditor-paid fees increase the interest rate. Consumers pay fees in the expectation of decreasing the interest rate. When both are present in the loan, the borrower's cash, paid to buy down the interest rate, is wasted because the creditor has bought the interest rate back up. Moreover, it is well-documented that this see-saw of incentive payments obscures the cost of credit to consumers and results in higher costs across the board.[19]

As demonstrated in the chart below, the two payments counteract each other. The Bureau's proposal would legalize Loans 5 and 6, in which the creditor compensates the loan originator and the consumer pays points. If the borrower finances the points, the borrower is even worse off because the borrower pays interest on the points (see Loan 5). Low-income and unsophisticated consumers are likely to continue to be encouraged to finance points to their detriment—especially because Dodd-Frank allows compensation that varies with the amount of the principal. If the creditor buys up the interest rate, the consumer would do better to pay the loan originator directly and forego the discount points. When creditors buy up the rate while the consumer is trying to

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[17] *See, e.g.,* 155 Cong. Rec. E1083 (May 6, 2009) (**statement of Rep. H**oyer)("[This bill] prevents lenders from steering borrowers into higher-cost loans and bans yield spread premiums and other compensatory incentives that lead brokers to push those loans on borrowers.").

[18] See Susan Woodward, Office of Pol'y & Dev., Dep't of Hous. & Urban Dev., A Study of Closing Costs on FHA Mortgage (2008), available at www.urban.org/UploadedPDF/411682_fha_ mortgages.pdf (finding "average fees for brokered loans ($4,000) are higher than the average for direct lender loans ($3,150)" and "Loans made by mortgage brokers are approximately $300 to $425 more expensive than those made by direct lenders, other loan characteristics being equal").

[19] *See, e.g.,* Office of Pol'y & Dev., Dep't. of Hous. & Urban Dev., RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-P-01: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs, 2-24 - 2-43 (2008).

buy down the rate, the consumer pays more money while thinking she is getting a reduced interest rate and a bargain. Scenarios in which the borrower benefits from the dual compensation contemplated by the Bureau are in the distinct minority.

Points and Lender-Paid Fees
A Bad Combination

Assume that with this lender the payment of 2 points will buy the interest rate of the loan down by 3/8th (0.375) of a percent. Conversely, the lender will pay 2 points towards broker costs and the interest rate will rise by the equivalent amount.

	Loan 1	**Loan 2**	**Loan 3**	**Loan 4**	**Loan 5**	**Loan 6**
	Par Loan					
Broker Paid $2000	Consumer[20]	Consumer	Consumer	By lender	By lender	By lender
2 Points	None	Financed	Cash	None	Financed	Cash
Interest Rate	8.5%	8.125%	8.125%	8.875%	8.5%	Same as par
Loan Amount	$100,000	$102,000	$100,000	$100,000	$102,000	Same as par
Monthly Payments	$768.91	$757.35	$742.50	$795.64	784.29	Same as par
Months until Extra Costs = Investment	——-	173 months	76 months	75 months	131 months	Same as par
Balance at 84m	$93,079.05	$94,484.33	$92,631.69	$93,503.78	$94,940.63	Same as par

All types of payments to the originator from the creditor – including but not limited to yield spread premiums – are problematic because the payments distort the broker's incentives, are not transparent to the consumer, and are often a source of gouging. Though mortgage brokers market themselves as helpful to borrowers, these forms of compensation encourage brokers to steer borrowers to riskier and more expensive loans.[21] Brokers and industry often argue that borrowers want creditor paid fees because they help address liquidity problems by reducing closing costs. But creditor-paid fees are often included in many loans with low loan-to-value ratios, in which the borrower could easily have financed additional closing costs.[22]

In most cases, the total amount that a borrower will pay in interest is far more than any savings from a reduced broker fee.[23] Worse, lender-paid broker compensation, as HUD has detailed,

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[20] In cash.

[21] *See, e.g.*, S. Rep. No. 251, 110th Cong., 1st Sess. at 80 (Dec. 18, 2007) ("Mortgage brokers are salesmen who want to maximize their net income. Their interest in providing the least expensive mortgage is limited. In fact, lenders provide them incentives to do the opposite."); McClelland v. Family Dwellings, L.L.C. (*In re* McClelland), 2008 WL 5157685 (Bankr. W.D. Mo. June 20, 2008) (recounting expert testimony that "the only reason" the broker "would have arranged" for loan at higher cost than homebuyer was eligible for was that it was more profitable for broker to do so).

[22] Howell E. Jackson & Laurie Burlingame, Kickbacks or Compensation: The Case of Yield Spread Premiums, 12 Stan. J.L. Bus. & Fin. 289, 353 n.98 (2007).

[23] *See* Howell E. Jackson & Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield Spread Premiums*, 12 Stan. J.L. Bus. & Fin. 289 tbl. 6 (2007) (average borrowers' fees reduced by twenty-five cents for every dollar the broker paid through a yield spread premium, compared to loans without a yield spread premium); *cf.* Keith Ernst, Debbie Bocian &

leads to higher settlement costs and higher broker costs, as well as higher interest rate costs.[24] Borrowers whose brokers are paid both directly by the borrower and by the lender, as most were, pay more in closing costs than borrowers who pay the broker directly. Furthermore, loans involving brokers typically have higher closing costs overall than loans from direct lenders.[25] It is simply not true, in most cases, that payment of a yield spread premium saves borrowers money.

It is the duality of the sources of payments that creates extensive confusion among consumers and makes it virtually impossible for consumers to prevent the higher fees that are caused when originators receive payments from both sources. Moreover, disclosure of these competing fee structures is ineffective. [26]

2. The Comparable, Alternative Loan Disclosure Is Easily Evaded and Will Not Protect Consumers

The flat prohibition in the statute creates an easily understood, clear rule that will benefit the majority of borrowers. The Bureau's proposed alternative loan offer disclosure is an exception that will gut the rule. It benefits only a minority of atypically sophisticated borrowers and is more likely to protect the lending industry at the expense of most consumers.

The Bureau's proposal for Reg. Z § 1026.36(d)(2)(ii) will be a very difficult rule to enforce and very easy to manipulate. In the Supplementary Information, the Bureau notes a number of risks posed by the proposal. Creditors may be dishonest about how they decide who is unlikely to qualify for the no-cost loan; they may manipulate underwriting standards; or they may set interest rates high for certain customers to avoid being required to offer the no-cost loan.[27] All of these risks pose grave risks for violations of fair lending laws and discriminatory treatment of protected classes. Additional rules to address these risks will only add greater complexity to the rules. The Bureau's consideration of such rules underlines how badly hamstrung the proposal will leave the Bureau in ensuring equal access to credit on fair terms for all. The Bureau has only limited ability to supervise or audit lending so it will depend on complaints and private enforcement to uphold these rules. The

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Wei Li, Ctr. for Responsible Lending, Steered Wrong: Brokers, Borrowers, and Subprime Loans 30 (2008), *available at* www.responsiblelending.org/pdfs/ steered-wrong-brokers-borrowers-and-subprime-loans.pdf (borrowers over four years for every $100,000 borrowed, or roughly an additional 3% of the loan amount).

[24] Office of Pol'y & Dev., Dep't of Hous. & Urban Dev., RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-P-01: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs, 2-24 to 2-43 (2008).

[25] *See* Susan Woodward, Office of Pol'y & Dev., Dep't of Hous. & Urban Dev., A Study of Closing Costs on FHA Mortgages (2008), *available at* www.urban.org/UploadedPDF/411682_fha_mortgages.pdf (finding "average fees for brokered loans ($4,000) are higher than the average for direct lender loans ($3,150)" and "Loans made by mortgage brokers are approximately $300 to $425 more expensive than those made by direct lenders, other loan characteristics being equal").

[26] *See, e.g.,* U.S. Dep't of Housing and Urban Dev., Office of Pol'y Dev.& Research, RESPA Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs 3-39 - 3-46 (2008); JAMES M. LACKO & JANIS K. PAPPALARDO, FED'L TRADE COMM'N, THE EFFECT OF MORTGAGE BROKER COMPENSATION DISCLOSURES ON CONSUMERS AND COMPETITION: A CONTROLLED EXPERIMENT 28 (2004), *available at* http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf (adding yield spread premium disclosure to prototype disclosures on two loans with the same terms and interest rate resulted in a drop in the identification of the cheaper loan from 94% to 70%).

[27] 77 Fed. Reg. 55271, 55313 (Sept. 7, 2012).

more complicated the rules are and the more opaque the process is, the lower the likelihood that consumers will even realize when they have been cheated.

Under the proposed rule, advertisements and pre-printed price lists need only show the dual-compensation loans. As a result, creditors will be able to use artificially low rates to lure borrowers. Creditors offering primarily no-cost loans will be placed at a competitive disadvantage as a result. Given the increased financial transparency of no-cost loans (and the near impossibility of accurate shopping on loans with some fees in and some fees out), this alone is reason to reject the Bureau's proposal.

The Bureau appears to envision the two loan estimates being offered very early in the relationship between consumer and creditor (or broker).[28] At this time the creditor is unlikely to have complete information on the consumer's qualifications and may easily make incorrect assumptions about who is "unlikely" to qualify for the no-cost loan. Historically, assumptions about who is and is not likely to qualify for preferred credit have tended to track along racial and ethnic lines. By suggesting the creditors make this judgment call early in the process, the Bureau may be inviting the most invidious of discrimination.

This risk is compounded because, as the Bureau notes, the exception for homeowners unlikely to qualify for a no-cost loan is especially conducive to manipulation. Worse, homeowners who are unlikely to qualify for a no-cost loan are most likely to be harmed by the rule, because they have no backstop to the complex split-compensation rule, and may not be in a position to evaluate it. Thus, the exception for borrowers unlikely to qualify for a loan may well be used to screen out borrowers of color and steer them into abusive, high-cost lending, the very result the Dodd-Frank Act was meant to combat.[29]

Communication of the no-cost loan offer is likely to often be oral. The proposal appears to indicate that consumers will not receive a Loan Estimate for it. In fact, if the creditor provides a Loan Estimate for another loan first, the consumer may never be offered the no-cost loan. The rule and commentary are vague about what loan the creditor can disclose on a Loan Estimate to cut-off the consumer's right to a no-cost loan offer. This means consumers will rarely have a fair opportunity to compare the details of the two offers side-by-side.

In the Supplementary Information, the Bureau exhibits great confidence in the results of consumer testing that is described as showing consumers can make complex trade-offs among pricing offers. In those tests, however, consumers were given Loan Estimates and Closing Disclosures to compare. According to the proposed rule, consumers are unlikely to receive comparable disclosures for dual-compensation and no-cost loans. Instead, they are most likely to receive only the one the creditor wants them to receive. In addition, the Bureau is over-selling the results of the consumer testing. While the tests appear to show that consumers understand that there is a trade-off between discount points and the interest rate, the tests did not study consumer's

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[28] *See id.* (indicating that quote for loan without points need only be given if quote for loan with points is given before consumer receives GFE and stating "The Bureau believes that consumers generally ask for, and are provided, quotes from creditors prior to application").

[29] *See, e.g.,* H.R. Rep. No. 94. 111th Cong., 1st Sess. at 78-79 (May 4, 2009) ("[T]he Federal banking agencies, in consultation with the Secretary and the Commission, will jointly prescribe regulations to prohibit . . . abusive or unfair lending practices that promote disparities among consumers of equal creditworthiness but of different race, ethnicity, gender, or age . . . .").

ability to identify which offer has the lowest cost of credit from among a variety of different loan terms.

Understanding the concept of a trade-off is quite different from comparing actual numbers—especially when they are provided by a sweet-talking salesman over the phone who is not required to provide all the details. Behavioral research has clearly shown that consumers can easily be swayed by numerous cognitive and psychological phenomena that skilled brokers and lenders can manipulate.[30]

Moreover, the Bureau simply overlooks the history of consumer testing on mortgage loan originator compensation disclosures. The Federal Reserve Board, for example, found that disclosures about mortgage broker's conflicts of interest resulted in a greater erroneous belief that the creditor was working on behalf of the consumer.[31] HUD's testing of its forms found that increased disclosure of yield spread premiums interfered with consumer shopping.[32] Form disclosures in general are used only to insulate creditors from liability, not to promote a more transparent marketplace.[33]

For these reasons, the Bureau should abandon its approach to the dual compensation issue. It should rewrite the proposed regulation to eliminate the loophole it is proposing to create. The regulation as written would have no beneficial effect on the market, would undermine congressional intent and harm consumers.

3. An Alternative: Prohibit Creditors from Offering or Advertising Dual Compensation Loans But Allow Consumers to Request Them.

If we have not convinced the CFPB to abandon the proposed regulation, we urge the Bureau to consider an alternative that would reduce the potential for creditor abuse while still making dual-compensation loans available. Paying points is generally a bad idea for most consumers given the time it takes to recoup the cost, the difficulty of predicting whether the consumer will refinance or sell before that time comes, the mathematical difficulty of calculating when that time is, and the difficulty of comparing a variety of different offers. These problems are compounded when the creditor is allowed to compensate the loan originator at the same time. Therefore, creditors should only be allowed to offer or disclose dual-compensation loans upon written request.

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[30] *See generally* Debra Pogrund Stark and Jessica M. Choplin, A Cognitive and Social Psychological Analysis of Disclosure Laws and Call For Mortgage Counseling to Prevent Predatory Lending, 16 Psychology, Public Policy, and Law 85 (2010).

[31] 74 Fed. Reg. 44,522, 44,564–44,565 (July 30, 2008) (discussing results of consumer testing of broker compensation conducted under the auspices of the Federal Reserve Board).

[32] *See, e.g.,* U.S. Dep't of Housing and Urban Dev., Office of Pol'y Dev.& Research, RESPA Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis: Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs 3-39 - 3-46 (2008). *Cf.* JAMES M. LACKO & JANIS K. PAPPALARDO, FED'L TRADE COMM'N, THE EFFECT OF MORTGAGE BROKER COMPENSATION DISCLOSURES ON CONSUMERS AND COMPETITION: A CONTROLLED EXPERIMENT 28 (2004), *available at* **http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf** (adding yield spread premium disclosure to prototype disclosures on two loans with the same terms and interest rate resulted in a drop in the identification of the cheaper loan from 94% to 70%).

[33] *See, e.g.,* Nunn v. IMC Mortgage Co., 308 B.R. 150 (W.D. N.Y. 2004) (relying on state mandated broker disclosure form to find that the underlying loan could not be abusive because there was adequate disclosure); Hanning v. Homecomings Fin. Networks, Inc., 436 F. Supp. 2d 865, 872 (W.D. Mich. 2006) (same).

Creditors could offer no-cost loans or loans where borrowers pay both points and the originator compensation. This leaves a broad range of potential credit terms and would not restrict credit because the consumer could always ask for the dual-compensation loan if they wanted it.

There are some consumers who have the sophistication and unique circumstances required to benefit from this arrangement. They are more likely to shop, more likely to negotiate, and less likely to be steered to a bad loan by slick (but legal) sales tactics. These consumers will know what to ask for. But all consumers should be offered loans that comply with Congress's ban on dual-compensation, first. It should be the consumer's election to bend that ban, not the creditor's.

As a great deal of research shows, the default option is the one chosen by most consumers. The default option must be the safer one, the one authorized by statute. Consumers who have the savvy and sophistication to profit from a some-in, some-out arrangement will also have the savvy and sophistication to request such a loan. Consumers who are likely to be misled by creditor blandishments are not likely to request such a loan, absent significant pressure from the loan originators or creditor.

If the Bureau adopts this proposal it must take care to ensure that the choice is truly driven by the consumer. As with waiver of the right of rescission, the Bureau should ban the use of preprinted forms to make the election, and should require that the election be made in writing by the homeowner.

B. Permitting loan originators to lower their compensation to account for increases in third-party fees may sound harmless but is an invitation to abuse.

Proposed Official Interpretation § 1026.36(d)(1)-7 allows loan originators to decrease their compensation to "cover unanticipated increases in non-affiliated third-party closing costs." This exception may conjure the image of a mortgage broker generously lowering her fee to help a consumer close a loan, but it can also conceal less benevolent conduct. This proposal weakens the incentive for third parties to provide accurate estimates of their fees and encourages RESPA violations such as kickbacks and referral fees. If a third-party's fee comes in higher than anticipated, the broker will be under pressure to absorb the increase to close the loan. Because third-party charges are often much less than broker compensation (hundreds of dollars versus thousands), third-parties will have a greater incentive (on a percentage basis) to increase their fees than brokers will have to resist decreasing their compensation.

Third-parties and brokers will also have an incentive to arrange kickbacks and referral agreements by which brokers will promise to reduce their compensation when costs come in high for third parties that promise to refer business to the broker. Brokers could also promise to offer this concession to third parties who pay a kickback that reduces the cost of the broker's concession or who offer the broker's customers better terms in other transactions.

Even if there is no misconduct, this exception will put upward pressure on broker compensation to give brokers room to absorb unanticipated closing costs. It also weakens market incentives for third-parties to price services competitively. Consumer and creditor shopping will have less impact on pricing because third parties will have a backdoor way to increase prices.

All of these risks also undermine the transparency of the market. The Bureau's attempt to limit abuse (by mandating that the exception does not apply where the loan originator has reason to know the actual costs) is unenforceable and ignores market realities. Many loan originators and third-party service providers will know each other because they are in the same community or work in the same markets. Even where there is no traceable exchange of information about the actual costs of specific transactions, loan originators will know—by virtue of experience—what the actual costs are likely to be. The only way to solve these problems is to eliminate this exception.

C. Permitting Third-Party Payments to Loan Originators Pursuant to a Consumer Agreement, Alongside a Homeowner Payment, Undermines the Ban on Dual Compensation and Invites Abuse

Under Proposed § 1026.36(d)(2)(i)(B), compensation directly from a consumer is deemed to include payments to a loan originator that are actually made by a third party (such as home builders, home improvement contractors, and sellers) pursuant to an agreement between the consumer and the third party. According to the commentary, "The parties do not have to agree specifically that the payments will be used to pay for the loan originator's compensation, but just that the person will make a payment toward the borrower's closing costs."[34]

This, however, is exactly the kind of practice that has been shown to lead to higher costs for homeowners and is in direct contravention of the statute's ban on dual compensation. Given that the parties the Bureau identifies—such as sellers, home improvement contractors, and home builders—have been implicated in every form of abusive lending and too often engage in "bird-dogging" for loan originators, there is no rational justification for this exception. The most obvious risk of this practice is that third parties will simply inflate their charges by the amount of the payment toward the closing costs.

Home improvement contractors have routinely been implicated in scams involving abusive lending.[35] Usually, home improvement contractors solicit business door-to-door in poor neighborhoods with promises to arrange credit, and then work through a friendly broker willing to ignore the niceties of document verification to arrange an inflated loan for overpriced and shoddy work.[36] In these cases, the homeowner may never even meet the broker, and a payment from the contractor to the broker cannot be considered anything but a kickback.

In recent years, HUD has spent much energy investigating kickback arrangements between creditors and home builders.

Even the least controversial of the third parties the Bureau proposes to permit to pay loan originators directly, nominally on behalf of the homeowner, sellers, have often been involved in schemes to inflate broker compensation. Property flipping scams, for example, rely on conspiracies between brokers and sellers.[37] Disclosures, or form agreements, do not prevent abuse in this area

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[34] Proposed Official Interpretation § 1026.*36(d)(2)(i)* -2(iii).

[35] *See* National Consumer Law Center, The Cost of Credit: Regulation, Preemption, and Industry Abuses § 11.6.2 (4th ed. 2009 and Supp.).

[36] *See, e.g.*, National Consumer Law Center, Unfair and Deceptive Acts and Practices § 8.4 (7th ed. 2008 and Supp.).

[37] *See, e.g.*, Hoffman v. Stamper, 867 A.2d 276 (Md. 2005) (conspiracy among seller and loan originator); Ingalls v. United States, 2007 U.S. Dist. LEXIS 1820 (D.N.J. Jan. 10, 2007) (conspiracy between real estate agent and broker); United

any more than they do with other abusive practices by loan originators. [38] Sellers and brokers share a common interest in inflating the cost of the transaction; the CFPB should not encourage this particular alignment.

Instead of undermining the restrictions on mortgage loan originator compensation, the Bureau should eliminate Proposed § 1026.36(d)(2)(i)(B) entirely. If a borrower and a third party have an agreement of the kind envisioned by subparagraph (B), the third party can simply give the borrower a check. Rather than permitting these payments to be laundered through the closing, a direct payment between the third party and the consumer will accomplish the same goal sought by the Bureau with greater transparency and without risking the problems outlined above.

D. Neither Bonuses Nor Retirement Plans Should Be a Cover for Circumventing the Rule Forbidding Payment Based on the Terms of Loan

One of the most important changes in Dodd-Frank and the proposed regulation is the ban on yield spread premiums and other compensation tied to the terms of a loan (other than the amount borrowed). We believe this will significantly reduce loan originators' incentive to push borrowers into loans that benefit the originator without regard to the borrower's best interests.

The proposed rule, however, allows internal compensation—from a corporate loan originator to an individual loan originator employed by that organization—to be based on mortgage profits from a pool, and specifically permits those profits to be determined with reference to the terms of the mortgages.

Worse, the proposed rule actually permits individual loan originators to be compensated based on the terms of their individual loans, so long as that individual originates no more than five loans in any calendar year for the company.[39] That loophole is an invitation to return to the days of proliferating brokerage companies, with the same principal sometimes appearing in ten or more starring roles.

Companies compensate employees via bonuses and retirement plans because it works. Bonuses and retirement plan contributions change employee behavior. Pooling compensation does not remove the danger that loan originators will seek to originate loans with abusive terms in order to boost their overall compensation package. To suggest otherwise ignores economic realities and flouts the law. Allowing individual loan originators to profit from compensation based on the aggregate terms of the loans they broker, such as the yield spread or other terms, poses the same risk to consumers as doing so on an individual basis. Many other industries offer their employees bonuses and profit sharing plans that are not linked to incentives that hurt consumers. Loan originator organizations could offer similar programs.

Although the proposal restricts this internal compensation to plans with a limited percentage of mortgage profits, the result is the same—an incentive to promote loan terms for the originator's

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States v. Owens, 301 F.3d 521 (6th Cir. 2002) (conspiracy between seller and loan originator); Boone v. Bownes (S.D. Ill. Aug. 26, 2005) (Civ. Action No. 02-143-MJR) (conspiracy between broker and seller).

[38] *See, e.g.,* 74 Fed. Reg. 44,522, 44,564–44,565 (July 30, 2008) (discussing results of consumer testing of broker agency and compensation disclosure conducted under the auspices of the Federal Reserve Board).

[39] § 1026.36(d)(1)(iii)(B)(2).

personal gain, even if it is indirect. The Bureau should restrict all profit-sharing plans, of any description, to those based on volume of mortgages originated and should prohibit tying compensation to loan terms. The purpose of Dodd-Frank was to remove the incentives for brokers to originate loans with terms judged to be abusive. The Bureau is proposing to allow creditors to back door these incentives. The Bureau's proposal will make these incentives to pack loans with abusive terms more obscure to consumers but no more obscure to loan originators.

II. Postpone the Ban on Mandatory Arbitration Clauses and Waivers of Certain Consumer Rights until after the Statute Takes Effect

The proposed regulation implementing the ban on mandatory arbitration clauses, 12 C.F.R. § 1026.36(h), adds little to the statute and may delay implementation of the ban on mandatory arbitration. We recommend that § 1026.36(h) be adopted after the statute takes effect on January 21, 2013 or have an effective date no later than January 21, 2013. The proposed regulation also could unduly limit the effect of the ban on waivers of causes of action. We have some suggested clarifications.

A. Congress Intended the Ban to Become Effective in January 2013

Dodd-Frank § 1400(c)(3) states that "a section of this title [Title XIV] for which regulations have not been issued on [January 21, 2013] shall take effect on such date." Thus, if no regulation implementing the ban on mandatory arbitration is enacted by January 21, 2013, then the ban goes into effect on that date, or possibly earlier.[40]

On the other hand, adoption of proposed § 1026.36(h) *before* January 21, 2013, with an effective date *after* January 21, 2013, will lead to unnecessary confusion and litigation as to whether the statutory provision is in effect on January 21, 2013. Where a regulation under Title XIV is enacted by January 21, 2013, Dodd-Frank § 1400(c)(2) provides that the statutory provision is effective upon the *regulation's* effective date. It is unclear whether § 1400(c)(2) is referring only to statutory provisions requiring regulations or also to other statutory provisions not requiring regulations, such as the ban on mandatory arbitration clauses.

January 21, 2013 is two and a half years from the July 21, 2010 enactment of Dodd-Frank. That is surely enough time for lenders to implement the ban on mandatory arbitration. For many years prior to Dodd-Frank's enactment, Fannie Mae and Freddie Mac have refused to purchase mortgage loans containing arbitration clauses, and the small portion of the mortgage market still requiring arbitration clauses can easily amend their contracts to eliminate that requirement. This is not a complicated requirement.

Where lenders take advantage of the ambiguity as to the effective date to continue to insert or enforce arbitration clauses in mortgage loan agreements after January 21, 2013, those homeowners may have to engage in extensive litigation as to the enforceability of that arbitration requirement before they reach the merits of their dispute. This would be contrary to the

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[40] There is ambiguity as to whether this effective date applies to Title XIV provisions not requiring regulations (such as TILA § 129C(e)) or whether Dodd-Frank's default effective date of July 22, 2010 applies. But courts to date have applied the January 21, 2013 effective date. *See, e.g.,* Hummel v. Hall, 2012 WL 2335950 (W.D. Va. June 19, 2012).

congressional intent that all Title XIV provisions not requiring regulations be in effect *no later than* January 21, 2013. In a floor statement discussing Dodd-Frank's Conference Report, Senator Dodd stated:

> There are a number of provisions in title XIV for which there is not a specified effective date other than what is provided in section 1400(c). It is the intention of the conferees that provisions in title XIV that do not require regulations become effective no later than 18 months after the designated transfer date for the CFPB, as required by section 1400(c). However, the conferees encourage the Federal Reserve Board and the [Consumer Financial Protection Bureau] to act as expeditiously as possible to promulgate regulations so that the provisions of title XIV are put into effect sooner.[41]

Thus, the intent of Congress was that January 21, 2013 be an outside date. Regulations should not delay implementation of this important ban on forced arbitration beyond that date.

A. The Regulation Adds Little to the Statute and Does Not Merit Delaying the Effective Date

The proposed regulation provides little guidance beyond the requirements already set forth in the statute. Proposed § 1026.36(h)(1) restates 15 U.S.C. § 1639c(e)(1) and (2) with no additional guidance or interpretation.

Proposed § 1026.36(h)(2) restates the provision in 15 U.S.C. § 1639c(e)(3) that mortgage agreements cannot bar a consumer from bringing an action in court, for damages or any other relief, under any provision of law. The proposed regulation does make some wording changes to the statutory provision. However, the regulation does not provide significant or important guidance and the statutory provision is quite clear. The additions do not merit delaying the effective date of the statute.

The ban on arbitration clauses and waivers of claims is straight forward and does not pose compliance problems. There is no reason that the statutory provision cannot go into effect in January. To the extent that the regulation provides any additional protection, that new protection can await the effective date of the regulation. This is not a situation where institutions must change complicated computer systems and need to do it only once. Consumers who enter into mortgage contracts after January should not be deprived of access to justice while awaiting the regulations.

B. The Regulation Could be Read to Narrow the Statute and Needs to Be Clarified

1. No Waiver of Any Cause of Action

The proposed regulation inserts the word "Federal" in the subtitle: "No waivers of <u>Federal</u> statutory causes of action." That word is absent from the statute.

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[41] 156 Cong. Rec. S5902-10 at S5928, 2010 WL 2788026 (daily ed. July 15, 2010).

The statute prohibits waivers of claims "pursuant to section 1640 of this title or any other provision of law" in connection with violations of any provision of federal law.[42] Not all such claims are federal statutory causes of action. Violations of federal law can be the basis of a state law common law claim or claim for unfair or deceptive practices. Federal causes of actions can also arise in the absence of an explicit statutory cause of action, such as through an implied right of action or an action under the Declaratory Judgment Act.

The proposed regulation itself follows the statute, and limits waivers of a claim "pursuant to any provision of law."[43] But the heading of the subsection could unnecessarily limit the interpretation of the protection.

Courts can sort out when a plaintiff has or does not have a cause of action. But if the plaintiff has one in connection with any violation of Federal law, Dodd-Frank prohibits the agreement from waiving it. Thus, the word "Federal" should be deleted from the heading.

2. Post-Dispute Arbitration Proceedings

The proposed rule expands the ban on waivers of claims or relief to post-dispute arbitration proceedings as well as court actions. In other words, the proposed rule bans a contract clause that does not require arbitration but limits the claims that can be brought or relief that can be sought in arbitration should the parties later agree to arbitrate post-dispute.

We support the proposal to prohibit waivers of claims or relief regardless of the forum in which the dispute is addressed. If the parties agree to arbitrate after a dispute arises, the consumer should not be limited in what claims or relief can be addressed. However, we have never seen such a clause, which might not be in the creditor's interest, as it would discourage consumers from agreeing to arbitrate. Thus, while we support the proposal, we do not believe that it is valuable enough to be worth delaying the effective date of the ban on pre-dispute arbitration.

Moreover, the wording of proposed section 1026.36(h)(2) is awkward and confusing. We initially misunderstood it to bar contracts that ban post-dispute arbitration agreements. Consequently, we propose that, if the regulation is adopted, it be reworded as follows:

> (2) No waivers of ~~Federal~~ statutory causes of action. A contract or other agreement in connection with a consumer credit transaction secured by a dwelling may not limit a consumer from bringing a claim ~~in court, an arbitration, or other non-judicial procedure,~~ pursuant to any provision of law, for damages or for any other relief~~,~~ in connection with any alleged violation of any Federal law. This prohibition applies whether the claim is brought in court or pursuant to a post-dispute agreement to use arbitration or other non-judicial procedure~~ to resolve a dispute, thus such an agreement may not limit the ability of a consumer to bring a covered claim through the agreed-upon non-judicial procedure.~~

[42] 15 U.S.C. § 1639c(e).
[43] Proposed § 1026.36(h)(2).

III. Credit Insurance, Debt Cancellation and Debt Suspension

A. The Effective Date Should Not Be Delayed

Like the arbitration provision, proposed 12 C.F.R. § 1026.36(i), is virtually identical to the Dodd-Frank provision it implements, 15 U.S.C. § 1639c(d). There are no substantive differences, additions or clarifications. The regulation merely restates the statutory provision in slightly different words and incorporates related definitions elsewhere in the regulation.

As with the arbitration provision, the mere fact of enacting a regulation could have the effect of delaying the effective date of the ban on financing credit insurance. This important provision was added to Dodd-Frank in light of the findings of a number of federal agencies that the financing of single premium credit insurance sold in connection with mortgages is unfair and abusive.[44] Congress appropriately prohibited mortgage lenders from financing single-premium credit insurance.[45] Congress intended this provision to go into effect no later than January 21, 2013 and its effective date should not be delayed.

B. Financing Credit Insurance "Directly or "indirectly" Is Not Allowed

The statute states that no creditor may finance credit insurance "directly or indirectly." The proposed regulation omits those words with no explanation. In order to stop evasions, proposed § 1026.36(i)(1) should be revised to state: "A credit may not finance, directly or indirectly, any premiums or fees …."

C. Prevent Evasions of "Calculated and Paid In Full On A Monthly Basis"

We suggest that the CFPB add staff commentary to prevent an overbroad reading of the statutory exemptions.

The statute contains an exemption for credit insurance for which the fees are "calculated and paid in full on a monthly basis." 15 U.S.C.§ 1639c(d)(1). The lender may not finance – directly or indirectly – these premiums or fees. However, lenders currently utilize at least two methods to violate this clear language.

The statutory language describes a true monthly outstanding balance ("MOB") product. With MOB products, the monthly premium or fee charge is based on the rate multiplied by the outstanding balance of the loan. If the outstanding balance is $10,000 and the rate is $0.50 per $100 of outstanding balance, the premium or fee charge is 10,000 / 100 x $0.50 or $50.00. This is how the fee is calculated on a monthly basis and the fee will decline over time as the remaining principal on the loan declines over time.

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[44] *See, e.g.,* Curbing Predatory Home Mortgage Lending: A Joint Report, United States Department of the Treasury and United States Department of Housing and Urban Development, June 2000; Prepared Statement Of The Federal Trade Commission Before The Board Of Governors Of The Federal Reserve System on Predatory Lending Practices in the Home-Equity Lending Market (September 7, 2000).

[45] The term "credit insurance" will be used in these comments to refer to credit insurance, debt cancellation and debt suspension and any other products covered by the Dodd-Frank provision.

One current practice violating the statutory requirement for "calculated and paid in full" involves a lender calculating the premium or fee on a monthly basis, but adding those amounts to the loan with the result that the premiums or fees are financed and not paid in full. Table 1 illustrates this practice and shows how adding the credit insurance charge to the loan is a financing of the charges. This lender practice clearly violates the requirement that premiums or fees be paid in full monthly and violates the intent to prohibit the direct or indirect financing of credit insurance sold in connection with a real-estate secured loan.

Table 1: Example of Lender Financing Monthly Credit Insurance Charge

Loan Terms				
Original Amount Financed	$20,000.00			
Term of Loan in Months	144			
Annual Interest Rate	8%			
Monthly Payment	$216.49			
Credit insurance rate, per $100 of monthly outstanding balance	$0.40			
	Loan with Credit Insurance Charge			
Period	1	2	3	4
Remaining Principal Beginning of Month	$20,000.00	$19,996.51	$19,992.98	$19,989.42
Payment	$216.49	$216.49	$216.49	$216.49
Finance Charge (Interest)	$133.33	$133.31	$133.29	$133.26
Principal Payment	$83.16	$83.18	$83.20	$83.23
Remaining Principal End of Month Before Credit Insurance Charge	$19,916.84	$19,913.33	$19,909.78	$19,906.19
Credit Insurance Charge	$79.67	$79.65	$79.64	$79.62
Remaining Principal End of Month After Credit Insurance Charge	**$19,996.51**	**$19,992.98**	**$19,989.42**	**$19,985.81**
	Loan with NO Credit Insurance Charge			
Period	1	2	3	4
Remaining Principal Beginning of Month	$20,000.00	$19,916.84	$19,833.13	$19,748.86
Payment	$216.49	$216.49	$216.49	$216.49
Finance Charge (Interest)	$133.33	$132.78	$132.22	$131.66

Principal Payment	$83.16	$83.71	$84.27	$84.83
Remaining Principal End of Month	**$19,916.84**	**$19,833.13**	**$19,748.86**	**$19,664.03**

As this table shows, by the end of month four, the consumer owes $321.78 more principal on the loan that has the credit insurance premium added to principal than the one that lacks such premiums. Clearly, the premiums are being financed when they are added to the loan amount instead of being paid in full each month.

Another practice in the marketplace involves credit insurance products that have flat monthly premiums, which are not "calculated and paid in full on a monthly basis" and do not reflect the declining principal balance. A filing with a state insurance department, attached as Exhibit 1, is an example of these "levelized premium" products. The filing states, "We propose to use these rates to write single or joint credit life insurance on a closed end monthly levelized premium basis for fixed period loans secured by real estate." This product violates the statutory requirements because the premiums are not calculated on a monthly basis.

The CFPB should add examples in the commentary making clear that products that add the premium to the principal or that are not calculated on a monthly basis based on the outstanding loan amount (remaining principal) are covered by the ban on financing mortgage credit insurance.

D. The Proposal Could Unduly Limit the Types of Credit Insurance Covered

The Dodd-Frank credit insurance provision lists several types of credit insurance that are covered. 15 U.S.C. § 1639c(d). Proposed regulation 1026.36(i) does not repeat that list but instead defines "credit insurance" by referencing the insurance described in existing 12 CFR 1026.4(d)(1) and (3). Section 1026.4, however, does not define credit insurance. It merely describes the conditions under which certain types of credit insurance and debt cancellation premiums may be excluded from the finance charge. Defining "credit insurance" by reference to the finance charge rules is an awkward way of defining a term. The cross reference also leaves out some types of credit insurance that are covered by the statutory ban on financing.

First, the terminology for the types of credit insurance described in section 1026.4 does not match the terminology for the types of credit insurance listed in the Dodd-Frank ban on financing credit insurance. For example, Dodd-Frank refers to credit disability, credit unemployment, and credit property insurance, *see* 15 U.S.C. § 1639c(d), terms that are not used in section 1026.4. While the Dodd-Frank and section 1026.4 terms may overlap to some degree, it is not clear if section 1026.4 reflects all the credit insurance listed in Dodd-Frank.

Second, Section 1026.4(d)(3) does not include payments "directly or indirectly" for any debt cancellation or suspension agreement or contract, as required by the statute, 15 U.S.C. § 1639c(d).

Third, cross-referencing a section that deals with whether credit insurance premiums are treated as part of the finance charge for disclosure purposes introduces a host of ambiguities. We think that the intent of proposed § 1026.36(i) is to incorporate only the list of types of credit insurance found in § 1026.4(d)(1) and (3), not the tests that those sections set out for determining whether the premium must be included in the finance charge for disclosure purposes. (We think that that is the intended meaning of the language in proposed § 1026.36(i)(2)(i) "whether or not such insurance is voluntary.") However, the language is not at all clear. Whether or not a credit insurance premium is treated as part of the finance charge for disclosure purposes is irrelevant to whether it is covered by the ban on financing the premium. Tying the two sections together only promotes confusion.

Given that section 1026.4 does not define credit insurance at all, it will avoid confusion and the possibility of evasions to include a definition in proposed regulation 1026.36(i) that tracks the statutory mandate. Thus, proposed section 1026.36(i)(2)(i) should be revised to read:

> (2) In this paragraph (i), "credit insurance":
> (i) Includes <u>credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract</u>; but
> (ii) Excludes credit unemployment insurance for which . . . .

E. Provide Guidance on "Reasonable" Credit Unemployment Insurance Premiums

A second issue for which a regulatory provision or staff commentary would be useful involves the exceptions in 15 U.S.C. § 1639c(d)(2) and proposed 12 C.F.R. § 1026.36(i)(2)(ii) for the financing of credit unemployment insurance. Credit unemployment insurance may be financed in connection with a real-estate secured loan only if, among other things, the "unemployment insurance premiums are reasonable." The CFPB should define "reasonable" as a loss ratio of 80% or higher. (Credit unemployment insurance loss ratio means incurred claims divided by earned premiums.)

It is important to note that defining "reasonable" unemployment insurance premiums under 15 U.S.C. § 1639c(d)(2) to require a minimum loss ratio is *not* regulating the business of insurance or setting insurance rates or loss ratios. Products with a lower, "unreasonable" premiums or with creditor compensation are not prohibited, but the *creditor* – whom the CFPB regulates – cannot finance such premiums.

The rates for credit insurance, including credit involuntary unemployment insurance ("IUI"), are regulated by the states. The National Association of Insurance Commissioners – the standards setting organization of state insurance regulators – has a model law[46] and a model regulation[47] covering credit IUI. Section 8 of the model law requires that premium rates be reasonable in relation to benefits provided. The vast majority of states' statutory requirements for consumer credit insurance require benefits be reasonable in relation to premium charged and the majority of states utilize a minimum loss ratio standard to implement the reasonableness requirement.

Section 4 of the model regulation states, "Benefits provided by consumer credit insurance must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than sixty

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[46] Model Law 360, "Consumer Credit Insurance Model Act," attached as Exhibit 2.
[47] Model Law 370, "Consumer Credit Insurance Model Regulation," attached as Exhibit 3.

percent (60%)."[48] However, this low loss ratio assumes compensation paid to the creditor. The Dodd-Frank credit insurance provision prohibits any compensation to the lender for the sale of credit IUI that is financed. Section 5A of the NAIC credit insurance model regulation includes a limitation on creditor compensation of 25%. (The actual average creditor compensation is even higher because most states do not regulate creditor compensation for credit insurance). Thus, conservatively estimating creditor compensation at 25%, once the creditor compensation is taken off the top, the 60% loss ratio actually translates into an 80% loss ratio for the insurer (60%/75%).

Consequently, we suggest that the reasonableness standard be defined as a premium rate that is expected to develop a loss ratio of not less than 80%. Insurers and creditors can choose either to maintain existing rates but improve the benefits to achieve an 80% loss ratio, or to reduce the premium by the amount of the creditor compensation that is no longer being paid to achieve an 80% loss ratio. It is important to keep in mind that benefits paid by the insurer – the numerator of the loss ratio – are amounts paid to the <u>creditor</u> on the borrower's behalf. Consequently, if a creditor and insurer opted to maintain existing rates and improve benefits, the additional benefits paid would flow through to the creditor.

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[48] *Id.* § 4(A).

EXHIBIT I

RESOURCE LIFE INSURANCE COMPANY

FOUNDED IN 1963

D - NO
f105 form

L015
C084

RECEIVED
SEP 28 2001
LIFE HEALTH
STATE OF VERMONT
DEPT. OF INSURANCE

September 19, 2001

Vermont Division of Insurance
State Office Building
89 Main Street, Drawer 20
Montpelier, Vermont 05620-3101

Attn: Life and Health Division

Re: Resource Life Insurance Company NAIC #: 61506 FEIN #: 47-0482911
Form CELL-VT (8/01), Closed End Monthly Levelized Premium Credit Life Rate Sheet
Fixed Monthly Premium Credit Life Actuarial Memorandum

Enclosed for your consideration and approval are duplicate copies of the above listed credit life rate sheet and supporting actuarial memorandum. These rates are being submitted as an alternative method for the calculation of credit life insurance using a fixed monthly premium.

The enclosed rates will be used with policy forms CA-LDCE-VT (3/01),et al, which were approved for use by your Department May 22, 2001, under your file number 102224. We propose to use these rates to write single or joint credit life insurance on a closed end monthly levelized premium basis for fixed period loans secured by real estate.

Life rates were derived using prima facie MOB rates with a loan termination factor built into the calculation. Historically, a percentage of credit life insurance written on real estate loans will not stay in force for the entire term period of the loan. A percentage of loan customers will pay off their loan early, refinance the loan or cancel coverage prior to the expiration of the loan.

The required filing fees are enclosed, along with a postage paid envelope for use in returning our copy of the approved filing. If there are any questions regarding this rate calculation filing, please call me toll free at (877) 481-4272. You may reach me by fax at (817) 481-4674 or by email at elms0@gte.net.

Sincerely,

Deborah Elms
Deborah Elms
Senior Regulatory Analyst

Enclosures

453

I034159

1345 River Bend Drive — Dallas, Texas 75247 — [214] 634 7014 — Fax [214] 638 3410

Resource Life Insurance Company

Monthly Levelized Premium Credit Life Insurance
Premium Rate Schedule

for the
State of Vermont

Single Coverage Credit Life Rate per $1,000 per month:	$0.53
Joint Coverage Credit Life Rate per $1,000 per month:	$0.796

RESOURCE LIFE INSURANCE COMPANY

ACTUARIAL MEMORANDUM

POLICY FORM: Fixed Monthly Premium (FMP) – Credit Life Insurance

POLICY FORM NUMBER: CA-LDCE-VT (3/01), et al

BENEFITS:

This is a group credit life product that covers the principal balances of the loan. The amount of death benefit is the principal balance plus the accrued interest from the date of the last payment of the date of death subject to the maximum amount of coverage. If the principal balance on the effective date is greater than the maximum coverage amount permitted, the death benefit is the amount described above multiplied by the ratio of the maximum amount to the principal balance as of the effective date. Joint coverage is also available.

BASIS OF PREMIUMS:

Life FMP premium rates were derived from the state prima facie MOB rates. The FMP rates were developed so that the sum of the FMP premiums is equal to the sum of the MOB premiums that would be charged on a pool of business. This was accomplished via the following formula:

$$P_1 \sum_{t=1}^{M} FMP * N_t = \sum_{t=1}^{M} MOB * P_t * N_t$$

Where: P_t = principal balance remaining at time t, $P_1 = 1{,}000$
N_t = number of insured loans at time t, $N_1 = 1{,}000$
M = duration of coverage (equals term of loan)
MOB = prima facie monthly outstanding balance rate
FMP = fixed monthly premium rate equivalent to MOB

For joint coverage, the rates are based on the multiple of the single life rate permitted by the state.

Factor development is detailed on the attached.

Gregory W. Hintz, FSA, MAAA
Senior Vice President & Chief Actuary
Aon Integramark

Resource Life Insurance Company
Fixed Monthly Premium Rate Development

State	Vermont	
MOB Rate	0.550	
Amortization Term	360	
Amount Financed	$1,000	
Interest Rate	10%	
Payoff Rate	2%	per month
Sum of # Insureds	49965	
Total MOB Premium	$26,506	
Level Monthly Rate	$0.530	per $1000 of initial balance
Monthly Payment	$8.78	per $1000 of initial balance

Month	Remaining Term	Number of Insureds	Paid Off	Balance	Total Balance	MOB Premium	Fixed Mo. Premium
1	360	1000	20	$1,000	$1,000,000	$550.00	$ 530.50
2	359	980	19.6	$999.56	$979,566	$538.76	$ 519.89
3	358	960.4	19.208	$999.11	$959,547	$527.75	$ 509.49
4	357	941.192	18.82384	$998.66	$939,932	$516.96	$ 499.30
5	356	922.36816	18.44736	$998.21	$920,715	$506.39	$ 489.31
6	355	903.9208	18.07842	$997.75	$901,888	$496.04	$ 479.53
7	354	885.84238	17.71685	$997.29	$883,442	$485.89	$ 469.94
8	353	868.12553	17.36251	$996.82	$865,369	$475.95	$ 460.54
9	352	850.76302	17.01526	$996.36	$847,663	$466.21	$ 451.33
10	351	833.74776	16.67496	$995.88	$830,315	$456.67	$ 442.30
11	350	817.07281	16.34146	$995.41	$813,320	$447.33	$ 433.45
12	349	800.73135	16.01463	$994.93	$796,668	$438.17	$ 424.78
13	348	784.71672	15.69433	$994.44	$780,355	$429.20	$ 416.29
14	347	769.02239	15.38045	$993.95	$764,372	$420.40	$ 407.96
15	346	753.64194	15.07284	$993.46	$748,713	$411.79	$ 399.80
16	345	738.5691	14.77138	$992.96	$733,372	$403.35	$ 391.81
17	344	723.79772	14.47595	$992.46	$718,342	$395.09	$ 383.97
18	343	709.32177	14.18644	$991.96	$703,616	$386.99	$ 376.29
19	342	695.13533	13.90271	$991.45	$689,190	$379.05	$ 368.77
20	341	681.23262	13.62465	$990.93	$675,056	$371.28	$ 361.39
21	340	667.60797	13.35216	$990.42	$661,209	$363.67	$ 354.16
22	339	654.25581	13.08512	$989.89	$647,643	$356.20	$ 347.08
23	338	641.1707	12.82341	$989.37	$634,353	$348.89	$ 340.14
24	337	628.34728	12.56695	$988.84	$621,332	$341.73	$ 333.34
25	336	615.78034	12.31561	$988.30	$608,576	$334.72	$ 326.67
26	335	603.46473	12.06929	$987.76	$596,079	$327.84	$ 320.14
27	334	591.39544	11.82791	$987.22	$583,835	$321.11	$ 313.73
28	333	579.56753	11.59135	$986.67	$571,840	$314.51	$ 307.46
29	332	567.97618	11.35952	$986.11	$560,089	$308.05	$ 301.31
30	331	556.61665	11.13233	$985.56	$548,577	$301.72	$ 295.28
31	330	545.48432	10.90969	$984.99	$537,298	$295.51	$ 289.38
32	329	534.57463	10.69149	$984.43	$526,249	$289.44	$ 283.59
33	328	523.88314	10.47766	$983.85	$515,424	$283.48	$ 277.92
34	327	513.40548	10.26811	$983.28	$504,819	$277.65	$ 272.36

35	326	503.13737	10.06275	$982.69	$494,430	$271.94	$	266.91
36	325	493.07462	9.861492	$982.11	$484,253	$266.34	$	261.57
37	324	483.21313	9.664263	$981.52	$474,282	$260.85	$	256.34
38	323	473.54887	9.470977	$980.92	$464,514	$255.48	$	251.22
39	322	464.07789	9.281558	$980.32	$454,944	$250.22	$	246.19
40	321	454.79633	9.095927	$979.71	$445,570	$245.06	$	241.27
41	320	445.7004	8.914008	$979.10	$436,386	$240.01	$	236.44
42	319	436.7864	8.735728	$978.48	$427,389	$235.06	$	231.71
43	318	428.05067	8.561013	$977.86	$418,575	$230.22	$	227.08
44	317	419.48965	8.389793	$977.24	$409,940	$225.47	$	222.54
45	316	411.09986	8.221997	$976.60	$401,482	$220.81	$	218.09
46	315	402.87786	8.057557	$975.97	$393,195	$216.26	$	213.72
47	314	394.82031	7.896406	$975.32	$385,078	$211.79	$	209.45
48	313	386.9239	7.738478	$974.68	$377,125	$207.42	$	205.26
49	312	379.18542	7.583708	$974.02	$369,335	$203.13	$	201.16
50	311	371.60171	7.432034	$973.36	$361,703	$198.94	$	197.13
51	310	364.16968	7.283394	$972.70	$354,227	$194.83	$	193.19
52	309	356.88629	7.137726	$972.03	$346,904	$190.80	$	189.33
53	308	349.74856	6.994971	$971.35	$339,730	$186.85	$	185.54
54	307	342.75359	6.855072	$970.67	$332,701	$182.99	$	181.83
55	306	335.89852	6.71797	$969.99	$325,817	$179.20	$	178.19
56	305	329.18055	6.583611	$969.29	$319,072	$175.49	$	174.63
57	304	322.59694	6.451939	$968.59	$312,466	$171.86	$	171.14
58	303	316.145	6.3229	$967.89	$305,994	$168.30	$	167.71
59	302	309.8221	6.196442	$967.18	$299,654	$164.81	$	164.36
60	301	303.62566	6.072513	$966.47	$293,444	$161.39	$	161.07
61	300	297.55314	5.951063	$965.74	$287,360	$158.05	$	157.85
62	299	291.60208	5.832042	$965.02	$281,400	$154.77	$	154.69
63	298	285.77004	5.715401	$964.28	$275,563	$151.56	$	151.60
64	297	280.05464	5.601093	$963.54	$269,844	$148.41	$	148.57
65	296	274.45354	5.489071	$962.80	$264,243	$145.33	$	145.60
66	295	268.96447	5.379289	$962.04	$258,755	$142.32	$	142.68
67	294	263.58518	5.271704	$961.28	$253,380	$139.36	$	139.83
68	293	258.31348	5.16627	$960.52	$248,115	$136.46	$	137.03
69	292	253.14721	5.062944	$959.75	$242,957	$133.63	$	134.29
70	291	248.08427	4.961685	$958.97	$237,905	$130.85	$	131.61
71	290	243.12258	4.862452	$958.19	$232,957	$128.13	$	128.98
72	289	238.26013	4.765203	$957.39	$228,109	$125.46	$	126.40
73	288	233.49493	4.669899	$956.60	$223,361	$122.85	$	123.87
74	287	228.82503	4.576501	$955.79	$218,709	$120.29	$	121.39
75	286	224.24853	4.484971	$954.98	$214,153	$117.78	$	118.96
76	285	219.76356	4.395271	$954.16	$209,691	$115.33	$	116.58
77	284	215.36829	4.307366	$953.34	$205,319	$112.93	$	114.25
78	283	211.06092	4.221218	$952.51	$201,038	$110.57	$	111.97
79	282	206.8397	4.136794	$951.67	$196,843	$108.26	$	109.73
80	281	202.70291	4.054058	$950.83	$192,735	$106.00	$	107.53
81	280	198.64885	3.972977	$949.97	$188,711	$103.79	$	105.38
82	279	194.67587	3.893517	$949.11	$184,770	$101.62	$	103.27
83	278	190.78236	3.815647	$948.25	$180,909	$99.50	$	101.21
84	277	186.96671	3.739334	$947.37	$177,128	$97.42	$	99.18
85	276	183.22737	3.664547	$946.49	$173,424	$95.38	$	97.20
86	275	179.56283	3.591257	$945.61	$169,796	$93.39	$	95.26

87	274	175.97157	3.519431	$944.71	$166,242	$91.43	$	93.35
88	273	172.45214	3.449043	$943.81	$162,761	$89.52	$	91.49
89	272	169.0031	3.380062	$942.90	$159,352	$87.64	$	89.66
90	271	165.62303	3.312461	$941.98	$156,013	$85.81	$	87.86
91	270	162.31057	3.246211	$941.05	$152,743	$84.01	$	86.11
92	269	159.06436	3.181287	$940.12	$149,539	$82.25	$	84.38
93	268	155.88307	3.117661	$939.18	$146,402	$80.52	$	82.70
94	267	152.76541	3.055308	$938.23	$143,329	$78.83	$	81.04
95	266	149.71011	2.994202	$937.27	$140,319	$77.18	$	79.42
96	265	146.7159	2.934318	$936.31	$137,371	$75.55	$	77.83
97	264	143.78158	2.875632	$935.33	$134,484	$73.97	$	76.28
98	263	140.90595	2.818119	$934.35	$131,656	$72.41	$	74.75
99	262	138.08783	2.761757	$933.36	$128,886	$70.89	$	73.25
100	261	135.32608	2.706522	$932.36	$126,173	$69.40	$	71.79
101	260	132.61956	2.652391	$931.36	$123,516	$67.93	$	70.35
102	259	129.96716	2.599343	$930.34	$120,914	$66.50	$	68.95
103	258	127.36782	2.547356	$929.32	$118,366	$65.10	$	67.57
104	257	124.82047	2.496409	$928.29	$115,869	$63.73	$	66.22
105	256	122.32406	2.446481	$927.25	$113,425	$62.38	$	64.89
106	255	119.87757	2.397551	$926.20	$111,031	$61.07	$	63.59
107	254	117.48002	2.3496	$925.14	$108,686	$59.78	$	62.32
108	253	115.13042	2.302608	$924.08	$106,389	$58.51	$	61.08
109	252	112.82781	2.256556	$923.00	$104,140	$57.28	$	59.85
110	251	110.57126	2.211425	$921.92	$101,938	$56.07	$	58.66
111	250	108.35983	2.167197	$920.82	$99,780	$54.88	$	57.48
112	249	106.19264	2.123853	$919.72	$97,668	$53.72	$	56.33
113	248	104.06878	2.081376	$918.61	$95,599	$52.58	$	55.21
114	247	101.98741	2.039748	$917.49	$93,572	$51.46	$	54.10
115	246	99.94766	1.998953	$916.36	$91,588	$50.37	$	53.02
116	245	97.948706	1.958974	$915.22	$89,645	$49.30	$	51.96
117	244	95.989732	1.919795	$914.07	$87,742	$48.26	$	50.92
118	243	94.069938	1.881399	$912.91	$85,878	$47.23	$	49.90
119	242	92.188539	1.843771	$911.75	$84,053	$46.23	$	48.91
120	241	90.344768	1.806895	$910.57	$82,265	$45.25	$	47.93
121	240	88.537873	1.770757	$909.38	$80,515	$44.28	$	46.97
122	239	86.767115	1.735342	$908.18	$78,800	$43.34	$	46.03
123	238	85.031773	1.700635	$906.98	$77,122	$42.42	$	45.11
124	237	83.331138	1.666623	$905.76	$75,478	$41.51	$	44.21
125	236	81.664515	1.63329	$904.53	$73,868	$40.63	$	43.32
126	235	80.031224	1.600624	$903.29	$72,292	$39.76	$	42.46
127	234	78.4306	1.568612	$902.04	$70,748	$38.91	$	41.61
128	233	76.861988	1.53724	$900.78	$69,236	$38.08	$	40.77
129	232	75.324748	1.506495	$899.52	$67,756	$37.27	$	39.96
130	231	73.818253	1.476365	$898.24	$66,306	$36.47	$	39.16
131	230	72.341888	1.446838	$896.95	$64,887	$35.69	$	38.38
132	229	70.89505	1.417901	$895.64	$63,497	$34.92	$	37.61
133	228	69.477149	1.389543	$894.33	$62,136	$34.17	$	36.86
134	227	68.087606	1.361752	$893.01	$60,803	$33.44	$	36.12
135	226	66.725854	1.334517	$891.68	$59,498	$32.72	$	35.40
136	225	65.391337	1.307827	$890.33	$58,220	$32.02	$	34.69
137	224	64.08351	1.28167	$888.97	$56,969	$31.33	$	34.00
138	223	62.80184	1.256037	$887.61	$55,743	$30.66	$	33.32

139	222	61.545803	1.230916	$886.23	$54,544	$30.00	$	32.65
140	221	60.314887	1.206298	$884.84	$53,369	$29.35	$	32.00
141	220	59.10859	1.182172	$883.43	$52,219	$28.72	$	31.36
142	219	57.926418	1.158528	$882.02	$51,092	$28.10	$	30.73
143	218	56.767889	1.135358	$880.60	$49,990	$27.49	$	30.12
144	217	55.632532	1.112651	$879.16	$48,910	$26.90	$	29.51
145	216	54.519881	1.090398	$877.71	$47,853	$26.32	$	28.92
146	215	53.429483	1.06859	$876.25	$46,817	$25.75	$	28.34
147	214	52.360894	1.047218	$874.77	$45,804	$25.19	$	27.78
148	213	51.313676	1.026274	$873.29	$44,812	$24.65	$	27.22
149	212	50.287402	1.005748	$871.79	$43,840	$24.11	$	26.68
150	211	49.281654	0.985633	$870.28	$42,889	$23.59	$	26.14
151	210	48.296021	0.96592	$868.76	$41,957	$23.08	$	25.62
152	209	47.330101	0.946602	$867.22	$41,046	$22.58	$	25.11
153	208	46.383499	0.92767	$865.67	$40,153	$22.08	$	24.61
154	207	45.455829	0.909117	$864.11	$39,279	$21.60	$	24.11
155	206	44.546712	0.890934	$862.53	$38,423	$21.13	$	23.63
156	205	43.655778	0.873116	$860.95	$37,585	$20.67	$	23.16
157	204	42.782662	0.855653	$859.34	$36,765	$20.22	$	22.70
158	203	41.927009	0.83854	$857.73	$35,962	$19.78	$	22.24
159	202	41.088469	0.821769	$856.10	$35,176	$19.35	$	21.80
160	201	40.2667	0.805334	$854.46	$34,406	$18.92	$	21.36
161	200	39.461366	0.789227	$852.81	$33,653	$18.51	$	20.93
162	199	38.672138	0.773443	$851.14	$32,915	$18.10	$	20.52
163	198	37.898696	0.757974	$849.45	$32,193	$17.71	$	20.11
164	197	37.140722	0.742814	$847.76	$31,486	$17.32	$	19.70
165	196	36.397907	0.727958	$846.05	$30,794	$16.94	$	19.31
166	195	35.669949	0.713399	$844.32	$30,117	$16.56	$	18.92
167	194	34.95655	0.699131	$842.58	$29,454	$16.20	$	18.54
168	193	34.257419	0.685148	$840.83	$28,805	$15.84	$	18.17
169	192	33.572271	0.671445	$839.06	$28,169	$15.49	$	17.81
170	191	32.900825	0.658017	$837.27	$27,547	$15.15	$	17.45
171	190	32.242809	0.644856	$835.48	$26,938	$14.82	$	17.10
172	189	31.597953	0.631959	$833.66	$26,342	$14.49	$	16.76
173	188	30.965994	0.61932	$831.83	$25,759	$14.17	$	16.43
174	187	30.346674	0.606933	$829.99	$25,187	$13.85	$	16.10
175	186	29.73974	0.594795	$828.13	$24,628	$13.55	$	15.78
176	185	29.144945	0.582899	$826.26	$24,081	$13.24	$	15.46
177	184	28.562047	0.571241	$824.37	$23,546	$12.95	$	15.15
178	183	27.990806	0.559816	$822.46	$23,021	$12.66	$	14.85
179	182	27.430989	0.54862	$820.54	$22,508	$12.38	$	14.55
180	181	26.88237	0.537647	$818.60	$22,006	$12.10	$	14.26
181	180	26.344722	0.526894	$816.65	$21,514	$11.83	$	13.98
182	179	25.817828	0.516357	$814.68	$21,033	$11.57	$	13.70
183	178	25.301471	0.506029	$812.69	$20,562	$11.31	$	13.42
184	177	24.795442	0.495909	$810.69	$20,101	$11.06	$	13.15
185	176	24.299533	0.485991	$808.67	$19,650	$10.81	$	12.89
186	175	23.813542	0.476271	$806.63	$19,209	$10.56	$	12.63
187	174	23.337272	0.466745	$804.57	$18,777	$10.33	$	12.38
188	173	22.870526	0.457411	$802.50	$18,354	$10.09	$	12.13
189	172	22.413116	0.448262	$800.42	$17,940	$9.87	$	11.89
190	171	21.964853	0.439297	$798.31	$17,535	$9.64	$	11.65

191	170	21.525556	0.430511	$796.19	$17,138	$9.43	$	11.42
192	169	21.095045	0.421901	$794.05	$16,750	$9.21	$	11.19
193	168	20.673144	0.413463	$791.89	$16,371	$9.00	$	10.97
194	167	20.259681	0.405194	$789.71	$15,999	$8.80	$	10.75
195	166	19.854488	0.39709	$787.52	$15,636	$8.60	$	10.53
196	165	19.457398	0.389148	$785.30	$15,280	$8.40	$	10.32
197	164	19.06825	0.381365	$783.07	$14,932	$8.21	$	10.12
198	163	18.686885	0.373738	$780.82	$14,591	$8.03	$	9.91
199	162	18.313147	0.366263	$778.55	$14,258	$7.84	$	9.72
200	161	17.946884	0.358938	$776.26	$13,932	$7.66	$	9.52
201	160	17.587947	0.351759	$773.96	$13,612	$7.49	$	9.33
202	159	17.236188	0.344724	$771.63	$13,300	$7.31	$	9.14
203	158	16.891464	0.337829	$769.29	$12,994	$7.15	$	8.96
204	157	16.553635	0.331073	$766.92	$12,695	$6.98	$	8.78
205	156	16.222562	0.324451	$764.54	$12,403	$6.82	$	8.61
206	155	15.898111	0.317962	$762.13	$12,116	$6.66	$	8.43
207	154	15.580148	0.311603	$759.71	$11,836	$6.51	$	8.27
208	153	15.268546	0.305371	$757.26	$11,562	$6.36	$	8.10
209	152	14.963175	0.299263	$754.80	$11,294	$6.21	$	7.94
210	151	14.663911	0.293278	$752.31	$11,032	$6.07	$	7.78
211	150	14.370633	0.287413	$749.80	$10,775	$5.93	$	7.62
212	149	14.08322	0.281664	$747.28	$10,524	$5.79	$	7.47
213	148	13.801556	0.276031	$744.73	$10,278	$5.65	$	7.32
214	147	13.525525	0.27051	$742.16	$10,038	$5.52	$	7.18
215	146	13.255014	0.2651	$739.57	$9,803	$5.39	$	7.03
216	145	12.989914	0.259798	$736.96	$9,573	$5.27	$	6.89
217	144	12.730116	0.254602	$734.32	$9,348	$5.14	$	6.75
218	143	12.475513	0.24951	$731.67	$9,128	$5.02	$	6.62
219	142	12.226003	0.24452	$728.99	$8,913	$4.90	$	6.49
220	141	11.981483	0.23963	$726.29	$8,702	$4.79	$	6.36
221	140	11.741853	0.234837	$723.56	$8,496	$4.67	$	6.23
222	139	11.507016	0.23014	$720.82	$8,294	$4.56	$	6.10
223	138	11.276876	0.225538	$718.05	$8,097	$4.45	$	5.98
224	137	11.051338	0.221027	$715.26	$7,905	$4.35	$	5.86
225	136	10.830312	0.216606	$712.44	$7,716	$4.24	$	5.75
226	135	10.613705	0.212274	$709.60	$7,532	$4.14	$	5.63
227	134	10.401431	0.208029	$706.74	$7,351	$4.04	$	5.52
228	133	10.193403	0.203868	$703.85	$7,175	$3.95	$	5.41
229	132	9.9895347	0.199791	$700.94	$7,002	$3.85	$	5.30
230	131	9.789744	0.195795	$698.01	$6,833	$3.76	$	5.19
231	130	9.5939491	0.191879	$695.05	$6,668	$3.67	$	5.09
232	129	9.4020701	0.188041	$692.07	$6,507	$3.58	$	4.99
233	128	9.2140287	0.184281	$689.06	$6,349	$3.49	$	4.89
234	127	9.0297481	0.180595	$686.02	$6,195	$3.41	$	4.79
235	126	8.8491532	0.176983	$682.96	$6,044	$3.32	$	4.69
236	125	8.6721701	0.173443	$679.88	$5,896	$3.24	$	4.60
237	124	8.4987267	0.169975	$676.77	$5,752	$3.16	$	4.51
238	123	8.3287522	0.166575	$673.63	$5,611	$3.09	$	4.42
239	122	8.1621771	0.163244	$670.47	$5,473	$3.01	$	4.33
240	121	7.9989336	0.159979	$667.28	$5,338	$2.94	$	4.24
241	120	7.8389549	0.156779	$664.07	$5,206	$2.86	$	4.16
242	119	7.6821758	0.153644	$660.83	$5,077	$2.79	$	4.08

243	118	7.5285323	0.150571	$657.56	$4,950	$2.72	$	3.99
244	117	7.3779616	0.147559	$654.26	$4,827	$2.65	$	3.91
245	116	7.2304024	0.144608	$650.94	$4,707	$2.59	$	3.84
246	115	7.0857944	0.141716	$647.59	$4,589	$2.52	$	3.76
247	114	6.9440785	0.138882	$644.21	$4,473	$2.46	$	3.68
248	113	6.8051969	0.136104	$640.80	$4,361	$2.40	$	3.61
249	112	6.669093	0.133382	$637.36	$4,251	$2.34	$	3.54
250	111	6.5357111	0.130714	$633.90	$4,143	$2.28	$	3.47
251	110	6.4049969	0.1281	$630.41	$4,038	$2.22	$	3.40
252	109	6.276897	0.125538	$626.89	$3,935	$2.16	$	3.33
253	108	6.151359	0.123027	$623.33	$3,834	$2.11	$	3.26
254	107	6.0283318	0.120567	$619.75	$3,736	$2.05	$	3.20
255	106	5.9077652	0.118155	$616.14	$3,640	$2.00	$	3.13
256	105	5.7896099	0.115792	$612.50	$3,546	$1.95	$	3.07
257	104	5.6738177	0.113476	$608.83	$3,454	$1.90	$	3.01
258	103	5.5603413	0.111207	$605.13	$3,365	$1.85	$	2.95
259	102	5.4491345	0.108983	$601.39	$3,277	$1.80	$	2.89
260	101	5.3401518	0.106803	$597.63	$3,191	$1.76	$	2.83
261	100	5.2333488	0.104667	$593.83	$3,108	$1.71	$	2.78
262	99	5.1286818	0.102574	$590.01	$3,026	$1.66	$	2.72
263	98	5.0261082	0.100522	$586.15	$2,946	$1.62	$	2.67
264	97	4.925586	0.098512	$582.26	$2,868	$1.58	$	2.61
265	96	4.8270743	0.096541	$578.33	$2,792	$1.54	$	2.56
266	95	4.7305328	0.094611	$574.38	$2,717	$1.49	$	2.51
267	94	4.6359221	0.092718	$570.39	$2,644	$1.45	$	2.46
268	93	4.5432037	0.090864	$566.36	$2,573	$1.42	$	2.41
269	92	4.4523396	0.089047	$562.31	$2,504	$1.38	$	2.36
270	91	4.3632928	0.087266	$558.22	$2,436	$1.34	$	2.31
271	90	4.276027	0.085521	$554.10	$2,369	$1.30	$	2.27
272	89	4.1905064	0.08381	$549.94	$2,305	$1.27	$	2.22
273	88	4.1066963	0.082134	$545.74	$2,241	$1.23	$	2.18
274	87	4.0245624	0.080491	$541.52	$2,179	$1.20	$	2.14
275	86	3.9440711	0.078881	$537.25	$2,119	$1.17	$	2.09
276	85	3.8651897	0.077304	$532.95	$2,060	$1.13	$	2.05
277	84	3.7878859	0.075758	$528.62	$2,002	$1.10	$	2.01
278	83	3.7121282	0.074243	$524.25	$1,946	$1.07	$	1.97
279	82	3.6378856	0.072758	$519.84	$1,891	$1.04	$	1.93
280	81	3.5651279	0.071303	$515.40	$1,837	$1.01	$	1.89
281	80	3.4938254	0.069877	$510.92	$1,785	$0.98	$	1.85
282	79	3.4239489	0.068479	$506.40	$1,734	$0.95	$	1.82
283	78	3.3554699	0.067109	$501.84	$1,684	$0.93	$	1.78
284	77	3.2883605	0.065767	$497.25	$1,635	$0.90	$	1.74
285	76	3.2225933	0.064452	$492.62	$1,588	$0.87	$	1.71
286	75	3.1581414	0.063163	$487.95	$1,541	$0.85	$	1.68
287	74	3.0949786	0.0619	$483.24	$1,496	$0.82	$	1.64
288	73	3.033079	0.060662	$478.49	$1,451	$0.80	$	1.61
289	72	2.9724174	0.059448	$473.70	$1,408	$0.77	$	1.58
290	71	2.9129691	0.058259	$468.87	$1,366	$0.75	$	1.55
291	70	2.8547097	0.057094	$464.00	$1,325	$0.73	$	1.51
292	69	2.7976155	0.055952	$459.10	$1,284	$0.71	$	1.48
293	68	2.7416632	0.054833	$454.15	$1,245	$0.68	$	1.45
294	67	2.6868299	0.053737	$449.15	$1,207	$0.66	$	1.43

295	66	2.6330933	0.052662	$444.12	$1,169	$0.64	$	1.40
296	65	2.5804315	0.051609	$439.05	$1,133	$0.62	$	1.37
297	64	2.5288228	0.050576	$433.93	$1,097	$0.60	$	1.34
298	63	2.4782464	0.049565	$428.77	$1,063	$0.58	$	1.31
299	62	2.4286815	0.048574	$423.57	$1,029	$0.57	$	1.29
300	61	2.3801078	0.047602	$418.32	$996	$0.55	$	1.26
301	60	2.3325057	0.04665	$413.03	$963	$0.53	$	1.24
302	59	2.2858556	0.045717	$407.70	$932	$0.51	$	1.21
303	58	2.2401384	0.044803	$402.32	$901	$0.50	$	1.19
304	57	2.1953357	0.043907	$396.90	$871	$0.48	$	1.16
305	56	2.151429	0.043029	$391.43	$842	$0.46	$	1.14
306	55	2.1084004	0.042168	$385.92	$814	$0.45	$	1.12
307	54	2.0662324	0.041325	$380.36	$786	$0.43	$	1.10
308	53	2.0249077	0.040498	$374.75	$759	$0.42	$	1.07
309	52	1.9844096	0.039688	$369.10	$732	$0.40	$	1.05
310	51	1.9447214	0.038894	$363.40	$707	$0.39	$	1.03
311	50	1.905827	0.038117	$357.65	$682	$0.37	$	1.01
312	49	1.8677104	0.037354	$351.85	$657	$0.36	$	0.99
313	48	1.8303562	0.036607	$346.01	$633	$0.35	$	0.97
314	47	1.7937491	0.035875	$340.12	$610	$0.34	$	0.95
315	46	1.7578741	0.035157	$334.18	$587	$0.32	$	0.93
316	45	1.7227166	0.034454	$328.19	$565	$0.31	$	0.91
317	44	1.6882623	0.033765	$322.14	$544	$0.30	$	0.90
318	43	1.654497	0.03309	$316.05	$523	$0.29	$	0.88
319	42	1.6214071	0.032428	$309.91	$502	$0.28	$	0.86
320	41	1.588979	0.03178	$303.72	$483	$0.27	$	0.84
321	40	1.5571994	0.031144	$297.47	$463	$0.25	$	0.83
322	39	1.5260554	0.030521	$291.18	$444	$0.24	$	0.81
323	38	1.4955343	0.029911	$284.83	$426	$0.23	$	0.79
324	37	1.4656236	0.029312	$278.43	$408	$0.22	$	0.78
325	36	1.4363111	0.028726	$271.97	$391	$0.21	$	0.76
326	35	1.4075849	0.028152	$265.46	$374	$0.21	$	0.75
327	34	1.3794332	0.027589	$258.90	$357	$0.20	$	0.73
328	33	1.3518445	0.027037	$252.28	$341	$0.19	$	0.72
329	32	1.3248076	0.026496	$245.61	$325	$0.18	$	0.70
330	31	1.2983115	0.025966	$238.88	$310	$0.17	$	0.69
331	30	1.2723453	0.025447	$232.09	$295	$0.16	$	0.67
332	29	1.2468984	0.024938	$225.25	$281	$0.15	$	0.66
333	28	1.2219604	0.024439	$218.35	$267	$0.15	$	0.65
334	27	1.1975212	0.02395	$211.40	$253	$0.14	$	0.64
335	26	1.1735708	0.023471	$204.38	$240	$0.13	$	0.62
336	25	1.1500993	0.023002	$197.31	$227	$0.12	$	0.61
337	24	1.1270974	0.022542	$190.18	$214	$0.12	$	0.60
338	23	1.1045554	0.022091	$182.99	$202	$0.11	$	0.59
339	22	1.0824643	0.021649	$175.74	$190	$0.10	$	0.57
340	21	1.060815	0.021216	$168.42	$179	$0.10	$	0.56
341	20	1.0395987	0.020792	$161.05	$167	$0.09	$	0.55
342	19	1.0188067	0.020376	$153.62	$157	$0.09	$	0.54
343	18	0.9984306	0.019969	$146.12	$146	$0.08	$	0.53
344	17	0.978462	0.019569	$138.56	$136	$0.07	$	0.52
345	16	0.9588928	0.019178	$130.94	$126	$0.07	$	0.51
346	15	0.9397149	0.018794	$123.26	$116	$0.06	$	0.50

EXHIBIT II

CONSUMER CREDIT INSURANCE MODEL ACT

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BE IT ENACTED BY THE STATE OF [insert state].

[adapt caption and formal portions to local requirements and statutes]

Section 1. Purpose

The purpose of this Act is to promote the public welfare by regulating consumer credit insurance. Nothing in this Act is intended to prohibit or discourage reasonable competition. The provisions of this Act shall be liberally construed.

Section 2. Scope and Definitions

A. Citation and Scope

(1) This Act may be cited as the "Consumer Credit Insurance Act."

(2) All consumer credit insurance issued or sold in connection with loans or other credit transactions for personal, family or household purposes shall be subject to the provisions of this Act, except:

(a) Insurance written in connection with a credit transaction that is:

(i) Secured by a first mortgage or deed of trust; and

(ii) Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;

(b) Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor.

(c) Insurance for which no identifiable charge is made to the debtor.

(d) Insurance on accounts receivable.

B. Definitions

For the purpose of this Act:

(1) "Commissioner" means the insurance supervisory authority of the state;

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

(2) "Compensation" means commissions, dividends, retrospective rate credits, service fees, expense allowances or reimbursements, gifts, furnishing of equipment, facilities, goods or services, or any other form of remuneration resulting directly from the sale of consumer credit insurance;

(3) "Consumer credit insurance" is a general term used in this Act to refer to any or all of credit life insurance, credit accident and health insurance, credit unemployment insurance or any other insurance specifically defined in this Act;

(4) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(5) "Credit life insurance" means insurance on a debtor or debtors, pursuant to or in connection with a specific loan or other credit transaction, to provide for satisfaction of a debt, in whole or in part, upon the death of an insured debtor;

(6) "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services or properties sold or leased, is to be made at a future date or dates;

(7) "Credit unemployment insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy;

(8) "Creditor" means the lender of money or vendor or lessor of goods, services or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them;

(9) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;

(10) "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor;

(11) "Identifiable charge" means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance; it includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service or other similar charge made to debtors who are in like circumstances except for the insured or non-insured status of the debtor or of the property used as security for the credit transaction;

(12) "Insurer" means insurer as defined in [insert section of Code];

(13) "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned finance charges;

(14) "Open-end credit" means credit extended by a creditor under an agreement in which:

(a) The creditor reasonably contemplates repeated transactions;

(b) The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(c) The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

Drafting Note: The definition of open-end credit should be controlled by applicable lending laws in each state and the definition contained in this bill should be consistent with that contained in the applicable lending law. This definition is consistent with that contained in Federal Truth-in-Lending Regulation Z, which applies in most states. In a state having a controlling lending law containing an inconsistent definition, the definition in this bill should be modified to be consistent with the definition in that state's lending law.

Drafting Note: A concern has been raised that the definition of "consumer credit insurance" not be so broad as to exclude coverage of consumer credit insurance under the various state guaranty funds. Specifically, the NAIC's Post-Assessment Property and Liability Insurance Guaranty Model Act specifically excludes coverage for "credit insurance, vendor's single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction." That model further comments that: ""Credit insurance" as used here is intended to mean insurance on accounts receivable." The use of the phrase "consumer credit insurance" in this Consumer Credit Insurance Model Act is intended to differentiate typical forms of insurance made available to consumers from those coverages excluded from the model property and casualty guaranty fund act.

Drafting Note: The definitions in Paragraphs (6), (8), and (9) include terms to allow the writing of Consumer Credit Insurance on leases. States may wish to reword these definitions with the references to leases removed if they feel Consumer Credit Insurance should not be written on leases.

Section 3. Types of Consumer Credit Insurance

The types of consumer credit insurance defined in Section 2 may each be written separately or in combination with other types of consumer credit insurance on an individual policy or group policy basis. The Commissioner may by regulation prohibit or limit any combination.

Drafting Note: States may wish to consider including provisions which call for discounts when policies are sold on a package basis.

Section 4. Amount of Consumer Credit Insurance

A. Credit Life Insurance

(1) The amount of credit life insurance shall at no time exceed the greater of the actual net debt or the scheduled net debt.

(2) If the coverage is written on the actual net debt, then the amount payable at the time of loss may not be less than the actual net debt less any payments more than two (2) months overdue.

(3) If the coverage is written on the scheduled net debt, then the amount payable at the time of loss shall be:

(a) If the actual net debt is less than or equal to the scheduled net debt, then the scheduled net debt;

(b) If the actual net debt is greater than the scheduled net debt but less than or equal to the scheduled net debt plus two (2) months of payments, then the actual net debt; or

(c) If the actual net debt is greater than the scheduled net debt plus two months of payments, then the scheduled net debt plus two months of payments.

Note: If desired, the following provisions may be added as Paragraphs (4),(5), (6), (7) and (8).

(4) If a premium is assessed to the debtor on a monthly basis and is based on the actual net debt, then the amount payable at the time of loss shall be the actual net debt on the date of death. When such premium is computed on the basis of a balance which does not include accrued past due interest, then the amount payable at the time of loss shall not be less than the actual net debt less any accrued interest more than two (2) months past due.

(5) Notwithstanding the provisions of Paragraph (1) of this subsection, insurance on agricultural loan commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a non-decreasing or level term plan.

(6) Notwithstanding the provisions of Paragraph (1) of this subsection, insurance on educational loan commitments may be written for net unpaid indebtedness plus any unused commitment.

(7) Coverage may be written for less than the net debt by the following methods:

(a) The amount of insurance may be the lesser of a stated level amount and the amount determined by Paragraph (2) of this subsection;

(b) The amount of insurance may be the lesser of a stated level amount and the amount determined by Paragraph (3) of this subsection;

(c) The amount of insurance may be a constant percentage of the amount determined by Paragraph (2) of this subsection;

(d) The amount of insurance may be a constant percentage of the amount determined by Paragraph (3) of this subsection; or

(e) In the absence of any preexisting condition exclusions, the amount of insurance payable in the event of death due to natural causes may be limited to the balance as it existed six (6) months prior to the date of death if:

(i) There has been one or more increase in the outstanding balance during the six-month period, other than those due to the accrual of interest or late charges; and

(ii) Evidence of individual insurability has not been required during the six-month period.

(8) Other patterns of insurance may be used which are not inconsistent with the rest of this subsection.

Drafting Note: States allowing consumer credit insurance on leases may want to consider adding language to this section which specifically defines acceptable amounts of insurance for leases. Some possible variations would include:

1. Coverage providing for the payment in a lump sum of the remaining lease payments;

2. Coverage providing for the payment in a lump sum of the remaining lease payments plus a stated amount for which the leased property may be purchased at the end of the lease;

3. Coverage providing for the payment as they come due of the lease payments; or

4. Coverage providing for the payment as they come due of the lease payments plus payment at the end of the lease of a stated amount which purchases the leased property.

B. Credit Accident and Health Insurance and Consumer Credit Unemployment Insurance

(1) The total amount of periodic indemnity payable by credit accident and health insurance or credit unemployment insurance in the event of disability or unemployment, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the gross debt; and the amount of each periodic indemnity payment shall not exceed the original gross debt divided by the number of periodic installments.

(2) Notwithstanding the provisions of Paragraph (1), for credit accident and health insurance or credit unemployment insurance written in connection with an open-end credit agreement, the amount of insurance shall not exceed the gross debt which would accrue on that amount using the periodic indemnity. Subject to any policy maximums, the periodic indemnity must not be less than the creditor's minimum repayment schedule.

Section 5. Term of Consumer Credit Insurance

A. Effective Date of Coverage

(1) For consumer credit insurance made available to and elected by the debtor before or contemporaneous with a credit transaction to which the insurance relates, the term of the insurance shall, subject to acceptance by the insurer,

commence on the date when the debtor becomes obligated to the creditor except that when evidence of individual insurability is required and such evidence is furnished more than thirty (30) days after the date when the debtor becomes obligated to the creditor, the term of the credit insurance may commence on the date on which the insurance company determines the evidence to be satisfactory.

(2) For insurance coverage made available to and elected by the debtor on a date subsequent to the date of the consumer credit transaction to which the insurance relates, the insurance shall, subject to acceptance by the insurer, commence on a date not earlier than the date the election is made by the debtor nor later than thirty (30) days following the date on which the insurance company accepts the risk for coverage, according to an objective method such as one related to a particular date within a billing or repayment cycle or a calendar month.

Drafting Note: A state may wish to review its existing laws to determine if prompt underwriting action is required of insurers when evidence of insurability is submitted. If no other law imposes such a requirement, one may be inserted as a new paragraph in Subsection 5A.

(3) Notwithstanding the provisions of Paragraphs (1) and (2) of this subsection, when a group policy provides coverage with respect to debts existing on the policy effective date, the insurance relating to the debt shall not commence before the effective date of the group policy.

(4) In no event shall a charge for insurance be made to the debtor and retained by the creditor or insurer for any time prior to commencement of the consumer credit insurance to which the charge is related.

B. Termination Date of Coverage

(1) The term of any consumer credit insurance shall not extend beyond the termination date specified in the policy. The termination date of insurance may precede, coincide with or follow the scheduled maturity date of the debt to which it relates, subject to any other requirements and restrictions of this Act.

(2) The term of any consumer credit insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the debt except when extended without additional cost to the debtor or except when extended pursuant to a written agreement, signed by the debtor, in connection with a variable interest rate credit transaction or a deferral, renewal, refinancing or consolidation of debt.

(3) If the debt is discharged due to renewal, refinancing or consolidation prior to the scheduled termination date of the insurance, any insurance in force shall be terminated before any new insurance may be written in connection with the renewed, refinanced or consolidated debt.

(4) In all cases of termination of insurance prior to the scheduled termination of the insurance, an appropriate refund or credit to the debtor shall be made of any unearned insurance charge paid by the debtor for a term of insurance after the date of the termination, except that no refund is required of a charge made for insurance if the insurance is terminated by performance of the insurer's obligation with respect to the insurance.

(5) An insured debtor may terminate consumer credit insurance at any time by providing advance request to the insurer. The individual policy or group certificate may require that the request be in writing or that the debtor surrender the individual policy or group certificate, or both. The debtor's right to terminate coverage may also be subject to the terms of the credit transaction contract.

Section 6. Disclosure to Debtors and Provisions of Policies and Certificates of Insurance

A. Pre-purchase disclosure. Before the debtor elects to purchase consumer credit insurance in connection with a credit transaction, the following shall be disclosed to the debtor in writing;

(1) That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval;

(2) If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverages only as a package;

(3) The conditions of eligibility;

(4) That, if the consumer has other insurance that covers the risk, he or she may not want or need credit insurance;

(5) That within the first thirty (30) days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premium paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation;

(6) A brief description of the coverage, including a description of the amount, the term, any exceptions, limitations and exclusions, the insured event, any waiting or elimination period, any deductible, any applicable waiver of premium provision, to whom the benefits would be paid and the premium rate for each coverage or for all coverages in a package;

(7) That if the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.

B. The disclosures required in Section 6A shall be provided in the following manner:

(1) In connection with consumer credit insurance offered contemporaneously with the extension of credit or offered through direct mail advertisements, disclosure shall be made in writing and presented to the consumer in a clear and conspicuous manner;

(2) In conjunction with the offer of credit insurance subsequent to the extension of credit by other than direct mail advertisements, disclosure may be provided orally so long as written disclosures are provided to the debtor no later than the earlier of:

(a) Ten (10) days after the offer, or

(b) The date any other written material is provided to the debtor.

C. All consumer credit insurance shall be evidenced by an individual policy or a group certificate of insurance which shall be delivered to the debtor.

D. The individual policy or group certificate shall, in addition to other requirements of law, set forth the following:

(1) The name and home office address of the insurer;

(2) The name or names of the debtor or debtors, or, in the case of a group certificate, the identity by name or otherwise of the debtor or debtors;

(3) The premium or amount of payment by the debtor separately for each kind of coverage or for all coverages in a package, except that for open-end loans, the premium rate and the basis of premium calculation (e.g., average daily balance, prior monthly balance) shall be specified;

(4) A full description of the coverage or coverages including the amount and term thereof, and any exceptions, limitation and exclusions;

(5) A statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid debt and, whenever the amount of insurance benefit exceeds the unpaid debt that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor, or to the debtor's estate; and

(6) If the scheduled term of insurance is less than the scheduled term of the credit transaction, a statement to that effect on the face of the individual policy or group certificate in not less than ten-point bold face type.

E. Unless the individual policy or group certificate of insurance is delivered to the debtor at the time the debt is incurred, or at such other time that the debtor elects to purchase coverage, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium rate or amount of payment by the debtor for the insurance and the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time the debt is incurred or the election to purchase coverage is made. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty (30) days of the date upon which the debt is incurred or the election to purchase coverage is made, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in Section 5.

F. The application, notice of proposed insurance or certificate may be used to fulfill all of the requirements of Subsection A and Subsection D if it contains all of the information required by those subsections.

G. The debtor has thirty (30) days from the date that he or she receives either the individual policy or the group certificate to review the coverage purchased. At any time within the 30-day period, the debtor may contact the creditor or insurer issuing the policy or certificate and request that the coverage be cancelled. The individual policy or group certificate may require the request to be in writing or that the policy or certificate be returned to the insurer or both. The debtor shall, within thirty (30) days of the request, receive a full refund or credit of all premiums or insurance charges paid by the debtor.

H. If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and, if the amount of premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made within thirty (30) days. If no insurer accepts the risk, then all premiums paid shall be refunded or credited within thirty (30) days of application to the person entitled thereto.

I. For the purpose of Subsection E of this section, an individual policy or group certificate delivered in conjunction with an open-end consumer credit agreement or any consumer credit insurance requested by the debtor after the date of the debt shall be deemed to be delivered at the time the debt is incurred or election to purchase coverage is made if the delivery occurs within thirty (30) days of the date the insurance is effective.

J. An individual policy or group certificate delivered in conjunction with an open-end credit agreement shall continue from its effective date through the term of the agreement unless the individual policy or group certificate is terminated in accordance with its terms at an earlier date.

Section 7. Filing, Approval and Withdrawal of Forms

A. All policies, certificates of insurance, notices of proposed insurance, disclosure notices, applications for insurance, endorsements and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Commissioner before being used.

Drafting Note: Some states may want to have advertising filed, but states should consider relying on safe harbor provisions.

B. The Commissioner shall within thirty (30) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, disclosure notices, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided are not reasonable in relation to the premium charged, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated thereunder. If the Commissioner does not disapprove a filing within thirty (30) days, it may be deemed approved.

C. If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for the insurer to issue or use the form. In such notice, the Commissioner shall specify the reason for disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of thirty (30) days after it has been so filed, unless the Commissioner shall give prior written approval.

D. The Commissioner may, at any time after a hearing held not less than twenty (20) days after written notice to the insurer, withdraw approval of any such form on any ground set forth in Subsection B above. The written notice of hearing shall state the reason for the proposed withdrawal.

E. It is not lawful for the insurer to issue forms or use them after the effective date of such withdrawal.

F. If a group policy of consumer credit insurance

(1) Has been delivered in this state before the effective date of this Act; or

(2) Has been or is delivered in another state before or after the effective date of this Act

then the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in Subsections C and E of Section 6 of this Act and such forms shall be approved by the Commissioner if they conform with the requirements specified in these subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the Commissioner; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the date this Act becomes operative as provided in Section 12. However, all other forms specified in Section 7A shall also be filed as specified in this section unless the group policy has been or is delivered in another state which has adopted statutes, regulations, or other provisions similar to this statute. In that event, the forms should be filed for informational purposes. However, the insurer shall be prohibited from using any form filed for informational purposes if the Commissioner subsequently determines that the form is not in substantive compliance with the requirements of this statute.

G. Any order or final determination of the Commissioner under the provisions of this section shall be subject to judicial review.

Drafting Note: This regulatory format applies only to states with a file and use regulatory system. Appropriate modifications will need to be made in states requiring a prior approval, use and file, or no file system.

Section 8. Premiums and Refunds

A. An insurer may revise its schedules of premium rates from time to time, and shall file the revised schedules with the Commissioner. No insurer shall issue any consumer credit insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then on file with the Commissioner. The Commissioner shall have the authority to promulgate regulations to assure that the premium rates are reasonable in relation to the benefits provided, including the authority to regulate the compensation component of the premium rates.

Drafting Note: In the event that a state wishes to develop a regulatory framework allowing for component rating, the following is suggested language:

Alternative Section 8A:

A. An insurer may revise its schedules of premium rates from time to time, and shall file the revised schedules with the Commissioner. No insurer shall issue any consumer credit insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then on file with the Commissioner. The Commissioner shall have the authority to promulgate regulations to assure that the premium rates are reasonable in relation to the benefits provided, including the authority to regulate the compensation component of the premium rates. In determining whether the premium rates are reasonable in relation to the benefits provided, the Commissioner shall consider and provide for: actual and expected loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation, investment income, the manner in which premiums are charged, and other acquisition costs, reserves, taxes, regulatory license fees and fund assessments, reasonable insurer profit and other relevant data, consistent with generally accepted actuarial standards.

Drafting Note: The NAIC, as a whole, neither endorses nor opposes component rating as the appropriate methodology for developing rates for consumer credit insurance products.

B. Each individual policy or group certificate shall provide for a refund in the event of termination of the insurance prior to the scheduled maturity date of the insurance and upon notice to the insurer. The refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided however, that the Commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. Refund formulas which any insurer desires to use must develop refunds which are at least as favorable to the debtor as refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue. The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

Drafting Note: The above refund requirement can be satisfied by a method commonly referred to as either the Rule of Anticipation or the Actuarial Method. The Commissioner may wish to consider other refund methodologies which meet the above requirement.

C. If a creditor requires a debtor to make any payment for consumer credit insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account or issue a refund.

D. The amount charged to a debtor for any consumer credit insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

Note: Where a state prohibits payments for insurance by the debtor in connection with credit transactions, the following paragraph may be included.

E. Nothing in this Act shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

Section 9. Issuance of Policies

All policies of consumer credit insurance shall be delivered or issued for delivery in this state only by an insurer authorized to engage in the business of insurance therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.

Section 10. Claims

A. All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

B. All claims shall be paid either by draft drawn upon the insurer, by electronic funds transfer, or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

C. No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts, checks, or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

D. All claims for consumer credit insurance shall be subject to Section [insert code section for the Unfair Claims Settlement Practices Act].

Section 11. Existing Insurance—Choice of Insurer

When consumer credit insurance is required as additional security for any debt; the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

Section 12. Duties of an Insurer

Except as otherwise prohibited by law, duties imposed upon an insurer within this Act may be carried out by a creditor if the creditor is acting as a common law or statutory agent on behalf of the insurer.

Section 13. Enforcement

The Commissioner may, after notice and hearing, issue such rules and regulations as the Commissioner deems appropriate for the supervision of this Act. Whenever the Commissioner finds that there has been a violation of this Act or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, he or she shall set forth the details of the findings together with an order for compliance by a specified date. The order shall be binding on the insurer and other person authorized or licensed by the Commissioner on the date specified unless sooner withdrawn by the Commissioner or a stay thereof has been ordered by a court of competent jurisdiction. The provisions of Sections 5 through 11 of this Act shall not be operative until ninety (90) days after the effective date of this Act, and the Commissioner in his or her discretion may extend by not more than an additional ninety (90) days the initial period within which the provisions of the specified sections shall not be operative. The Commissioner may set forth by regulation *prima facie* reasonable premium rates, together with corresponding safe-harbor benefit provisions, which premium rates shall be conclusively presumed reasonable in relation to the benefits provided when used for policies containing such benefit provisions.

Section 14. Judicial Review

Any party to the proceeding affected by an order of the Commissioner shall be entitled to judicial review by following the procedure set forth in [insert applicable section].

Section 15. Penalties

In addition to any other penalty provided by law, any person, firm or corporation which violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of [insert state] a sum not to exceed $[insert amount] which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $[insert amount]. The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in Section 13 of this Act.

Section 16. Severability Provision

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Legislative History (all references are to the Proceedings of the NAIC).

1958 Proc. I 105, 106-112, 169 (adopted).
1959 Proc. I 119, 126-130 (amended).
1961 Proc. I 294, 300-305, 306 (amended).
1968 Proc. II 499, 508-512, 567 (reprinted and amended) (1961 version reprinted 508-512).
1979 Proc. I 44, 47, 373, 449-450, 451 (amended to limit to 5 years or less)
1988 Proc. I 9, 21-22, 828, 851-853, 854-859 (amended and reprinted).
1988 Proc. II 5, 14, 758, 785-787, 788-791 (technical amendments).
1993 Proc. 4th Quarter 16, 19, 69-78 (amended).
1995 Proc. 4th Quarter 11, 33, 98, 108, 111 (amended).

CONSUMER CREDIT INSURANCE MODEL ACT

This state page does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the laws cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional adoptions and subsequent bill status.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. ADMIN. CODE r. 482-1-117 (1999).
Alaska	ALASKA STAT. §§ 21.57.010 to 21.57.160 (1966/1995).	
American Samoa	NO ACTION TO DATE	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-1602 to 20-1616.01 (1961/2002).	
Arkansas	ARK. CODE ANN. §§ 23-87-101 to 23-87-119 (1959/2003).	
California	CAL. INS. CODE §§ 779.1 to 779.27 (1959/1993).	
Colorado	COLO. REV. STAT §§ 10-10-101 to 10-10-118 (1963/2001).	
Connecticut	CONN. GEN. STAT. §§ 38a-645 to 38a-658 (1959).	
Delaware	DEL. CODE ANN. tit. 18, §§ 3701 to 3713 (1953/1996).	
District of Columbia	D.C. CODE §§ 31-5101 to 31-5112 (1981/2004).	
Florida		FLA. STAT. §§ 627.676 to 627.684 (1982/1989).
Georgia	GA. CODE ANN. §§ 33-31-1 to 33-31-12 (1960/2005).	
Guam		GUAM GOV'T CODE §§ 4101 to 4203 (1981).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Hawaii	HAW. REV. STAT. §§ 431:10B-101 to 431:10B-114 (1988/2003).	
Idaho	IDAHO CODE ANN. §§ 41-2301 to 41-2316 (1961/2005).	
Illinois	215 ILL. COMP. STAT. 5/155.51 to 5/155.65 (1959/1979).	
Indiana	IND. CODE §§ 27-8-4-1 to 27-8-4-14 (1961/1995).	IND. CODE §§ 24-4.5-102 to 24-4.5-103 (1986).
Iowa		IOWA CODE §§ 509.16 to 509.17 (1973/1990).
Kansas		KAN. STAT. ANN. §§ 16a-4-101 to 16a-4-203 (1973/1988) ("Consumer Credit Insurance").
Kentucky	KY. REV. STAT. ANN. §§ 304.19-010 to 304.19-140 (1970/1984).	
Louisiana		LA. REV. STAT. ANN. § 6:969:25 (1999).
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 2851 to 2865 (1970/2001).	
Maryland	MD. CODE ANN., INS. §§ 13-101 to 13-117 (1970/1997).	
Massachusetts		MASS. GEN. LAWS ch. 255, § 12G (1989).
Michigan	MICH. COMP. LAWS §§ 550.601 to 550.624 (1958/1987).	
Minnesota	MINN. STAT. §§ 62B.01 to 62B.14 (1967/1999).	
Mississippi	MISS. CODE ANN. §§ 83-53-1 to 83-53-47 (1986/1989).	
Missouri	MO. REV. STAT. §§ 385.010 to 385.080 (1977/1992).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Montana	MONT. CODE ANN. § 33-21-101 to 33-21-207 (1959/1993).	
Nebraska	NEB. REV. STAT. §§ 44-1701 to 44-1713 (1959/1997).	
Nevada	NEV. REV. STAT. §§ 690A.010 to 690A.280 (1971/2008).	
New Hampshire	N.H. REV. STAT. ANN. §§ 408A:1 to 408A:15 (1959/1985).	
New Jersey	N.J. REV. STAT. §§ 17B:29-1 to 17B:29-13 (1971/1982).	
New Mexico	N.M. STAT. ANN. §§ 59A-25-1 to 59A-25-14 (1985).	
New York	NO ACTION TO DATE	
North Carolina		N.C. GEN. STAT. §§ 58-57-1 to 58-57-115 (1975/2005).
North Dakota	N.D. CENT. CODE §§ 26.1-37-01 to 26.1-37-16 (1985/2001).	
Northern Marianas	NO ACTION TO DATE	
Ohio	OHIO REV. CODE ANN. §§ 3918.01 to 3918.99 (1959).	
Oklahoma		OKLA. STAT. tit. 14A, § 4-201 to 14A § 4-203 (1969).
Oregon	OR. REV. STAT. §§ 743.371 to 743.380 (1967/1989) (portions of model).	
Pennsylvania	40 PA. STAT. ANN. §§ 63-101 to 63-115 (1961/1974).	
Puerto Rico	P.R. LAWS ANN. tit. 26, §§ 1801 to 1812 (1959).	

CONSUMER CREDIT INSURANCE MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Rhode Island	R.I. GEN. LAWS §§ 27-30-1 to 27-30-17 (1959/2009).	
South Carolina		S.C. CODE ANN. §§ 37-4-101 to 37-4-210 (1976/1999).
South Dakota		S.D. CODIFIED LAWS §§ 58-19-1 to 58-19-35 (1966/2001) (portions of model).
Tennessee		TENN. CODE ANN. §§ 56-7-901 to 56-7-913 (1980/1998).
Texas		TEX. INS. CODE ANN. §§ 1153.001 to 1153.007 (2003); §§ 1153.051 to 1153.055 (2003).
Utah	UTAH CODE ANN. §§ 31A-22-801 to 31A-22-809 (1986/2004) (portions of model).	
Vermont	VT. STAT. ANN. tit. 8, §§ 4101 to 4115 (1959).	
Virgin Islands	NO ACTION TO DATE	
Virginia	VA. CODE ANN. §§ 38.2-3717 to 38.2-3738 (1993/1999) (portions of model).	
Washington	WASH. REV. CODE §§ 48.34.010 to 48.34.900 (1961/1983) (portions of model).	
West Virginia	W. VA. CODE R. §§ 114-6-1 to 114-6-7 (1969/1971) (portions of model).	
Wisconsin		WIS. STAT. §§ 424.101 to 424.209 (1971/1994).
Wyoming	WYO. STAT. ANN. §§ 26-21-101 to 26-21-114 (1961/1983).	

CONSUMER CREDIT INSURANCE MODEL ACT

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the NAIC model in a uniform and substantially similar manner. This requires states to adopt the model in its entirety but does allow for minor variations in style and format.

RELATED STATE ACTIVITY: States that have citations identified in this column have **not** adopted the NAIC model in a uniform and substantially similar manner. Examples of Related State Activity include: An older version of the NAIC model, portions of the NAIC model, legislation or regulation derived from other sources, Bulletins and Administrative Rulings.

NO ACTION TO DATE: No state activity on the topic as of the date of the most recent update.

EXHIBIT III

CONSUMER CREDIT INSURANCE MODEL REGULATION

Table of Contents

Section 1. Purpose and Authority

The purpose of this regulation is to protect the interests of debtors and the public in this state by providing a system of rate, policy form, and operating standards for the transaction of credit life, credit accident and health, and credit unemployment insurance. This rule interprets and implements the [insert state] Statutes, including but not limited to the following sections: [insert sections].

Section 2. Definitions

As used in this regulation:

A. "Affiliate" has the same meaning as defined in Section [insert reference to state's insurance holding company registration act].

B. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.

C. "Control" has the same meaning as defined in Section [insert reference to state's insurance holding company registration act].

D. "Evidence of individual insurability" means a statement furnished by the debtor, as a condition of insurance becoming effective, that relates specifically to the health status or to the health or medical history of the debtor.

E. "Loss ratio" means incurred claims divided by the sum of earned premiums and imputed interest earned on unearned premiums.

Drafting Note: Although this definition of loss ratio represents a change from the prior method, the (EX) Committee on Credit Insurance has determined that this definition represents the most appropriate option. While the crediting of imputed interest means that single premium rates will be slightly lower (for a specified loss ratio) under this definition than under the prior methodology, for most states the reduction in single premium rates will be approximately five percent (5%) due to the implementation of this definition.

F. "Open-end credit" means credit extended by a creditor under an agreement in which:

(1) The creditor reasonably contemplates repeated transactions;

(2) The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(3) The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

Drafting Note: The definition of open-end credit here is identical to the definition in the Consumer Credit Insurance Model Act. There is generally no need to restate a definition from the Act in this regulation; however, since the definition here of closed-end credit is dependent on the definition of open-end credit, it seems appropriate to include it here as well. States should consider their own drafting procedures to determine where the definitions should be located.

G. "Person" has the same meaning as defined in Section [insert reference to state's insurance holding company registration act].

H. "Preexisting condition" means any condition for which the insured debtor received medical advice, consultation or treatment within six (6) months before the effective date of the coverage and from which the insured debtor becomes disabled within six (6) months after the effective date of this coverage.

Section 3. Rights and Treatment of Debtors

A. Multiple Plans of Insurance. If a creditor makes available to the debtors more than one plan of consumer credit insurance, every debtor must be informed of each plan for which the debtor is eligible and of the premium or insurance charge for each.

B. Substitution. When a creditor requires insurance as additional security for a debt, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

C. Termination of Group Consumer Credit Insurance Policy.

(1) If a debtor is covered by a group consumer credit insurance policy providing for the payment of single premiums to the insurer, or any other premium payment method which prepays coverage beyond one month, then provision shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which the premium has been paid.

(2) If a debtor is covered by a group consumer credit insurance policy providing for the payment of premiums to the insurer on a monthly basis, then the policy shall provide that, in the event of termination of the policy, termination notice shall be given to the insured debtor at least thirty (30) days prior to the effective date of termination except where replacement of

the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The insurer shall provide or cause to be provided this required information to the debtor.

D. Remittance of Premiums. If the creditor adds identifiable insurance charges or premiums for consumer credit insurance to the debt, and any direct or indirect finance, carrying, credit or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within sixty (60) days after it is added to the debt.

E. Refinancing of the Debt. If the debt is discharged due to refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the refinanced debt. In all cases of termination prior to scheduled maturity, a refund of all unearned premium or unearned insurance charges paid by the debtor shall be paid or credited to the debtor as provided in Section 9. In any refinancing of the debt, the effective date of the coverage as respects any policy provision shall be deemed to be the first date on which the debtor became insured under the policy with respect to the debt which was refinanced, at least to the extent of the amount and term of the debt outstanding at the time of refinancing of the debt.

F. Maximum Aggregate Provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments must apply only to that individual policy or group certificate.

Drafting Note: It should be noted that the maximum amount which can be paid for coverage for a single consumer credit transaction may be subject to statutory limitations.

G. Prepayment of Debt. If a debtor prepays the debt in full, then any consumer credit insurance covering the debt shall be terminated and an appropriate refund of the consumer credit insurance premium shall be paid or credited to the debtor in accordance with Section 9. However, if the prepayment is a result of death or any other lump sum consumer credit insurance payment, no refund shall be required for the coverage under which the lump sum was paid. If a claim under credit accident and health coverage or credit unemployment coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit accident and health benefits are payable or during any period of unemployment for which credit unemployment benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period or at the end of the unemployment period.

H. If a creditor has opened a line of credit for a debtor and, under Section 4A(5) or 4A(6) of the Consumer Credit Insurance Model Act, is charging for this line of credit rather than the amount of debt in the event of the death of the debtor, the insured amount due is the amount of the established amount of credit against which premium was last charged.

Section 4. Determination of Reasonableness of Benefits in Relation to Premium Charge

A. Benefits provided by consumer credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than sixty percent (60%). With the exception of deviations approved under Section 11, the rates shown in Sections 6 and 7, as adjusted pursuant to Section 10, shall be presumed to satisfy this standard. Anticipated losses that develop or are expected to develop a loss ratio of not less than sixty percent (60%) shall be presumed reasonable. Any insurer filing a deviation in accordance with Section 11 must satisfy the sixty percent (60%) loss ratio standard on their total consumer credit insurance business, including that of affiliated insurers, for each type of insurance defined in Section [insert section referring to definitions in state Consumer Credit Insurance Model Act] of the [insert state] Statutes for which the deviation is being filed.

Drafting Note: In the event that a state wishes to develop a regulatory framework allowing for component rating, the following is suggested language which should be used in conjunction with suggested language for Section 10B:

Alternative Section 4A:

A. Benefits provided by consumer credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than sixty percent (60%) or such lower loss ratio as designated by the Commissioner to afford a reasonable allowance for actual and expected loss experience, general and administrative expenses, reasonable creditor compensation, investment income, the manner in which premiums are charged and other acquisition costs, reserves, taxes, regulatory license fees and fund assessments, reasonable insurer profit and other relevant actuarial data. With the exception of deviations approved under Section 11, the rates shown in Sections 6 and 7, as adjusted pursuant to Section 10, shall be conclusively presumed to satisfy the loss ratio standard. Any insurer filing a deviation in accordance with Section 11 must satisfy the loss ratio standard designated by the Commissioner pursuant to Section 10 on their total consumer credit insurance business, including that of affiliated insurers, for each type of insurance defined in Section [insert section referring to definitions in state Consumer Credit Insurance Model Act] of the [insert state] Statutes for which the deviation is being filed.

Drafting Note: The NAIC, as a whole, neither endorses nor opposes component rating as the appropriate methodology for developing rates for consumer credit insurance products.

B. Nonstandard Coverage. If any insurer files for approval of any form providing coverage different than that described in Sections 6 through 8, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for such coverage are: (a) reasonably expected to develop a loss ratio of not less than sixty percent (60%), or (b) actuarially consistent with the rates used for standard coverages.

Section 5. Limitation on Compensation [Optional]

A. An insurer shall not pay compensation in excess of thirty percent (30%) of the net written *prima facie* premium of which not more than twenty-five percent (25%) of net written *prima facie* premium may be paid to a creditor.

B. For the purpose of Subsection A, *prima facie* premium means premium using the premium rates set out in Sections 6 and 7, or actuarially consistent premium rates for plans not described in Sections 6 and 7, without any adjustment pursuant to Section 10.

Drafting Note: This is an optional provision subject to the statutory provisions of the state or jurisdiction. Once a state has established a *prima facie* rate based upon a sixty percent (60%) loss ratio, a state may wish to consider that this provision be deleted.

Section 6. Credit Life Insurance Rates

A. Premium Rate. Subject to the conditions and requirements in Section 6B and Section 11, the *prima facie* rates shown below are considered to meet the requirements of Section 4, and may be used without filing additional actuarial support.

(1) Monthly outstanding balance basis: __________ per month per $1,000 of outstanding insured debt on single life and ________ per month per $1,000 of outstanding insured debt on joint life if premiums are payable on a monthly outstanding balance basis.

(2) Single premium basis: If the premium is charged on a single premium basis, the rate shall be computed according to the following formula or according to a formula approved by the commissioner which produces rates substantially the same as those produced by the following formula:

$$Sp = \sum_{t=1}^{n} \left(\frac{O_p}{10} \times \frac{I_t}{I_i} \times (v^{t-1}) \right)$$

$$v = \frac{1}{1 + (dis)}$$

S_p = Single Premium per $100 of initial consumer credit life insurance coverage.

O_p = _____, the *prima facie* consumer credit life insurance premium rate for monthly outstanding balance coverage from Paragraph 1.

I_t = The scheduled amount of insurance for month t.

I_i = Initial amount of insurance. For a net insurance policy, I_i equals the initial principal balance of the loan.

dis = .0036, representing an annual discount rate of 4 percent for interest plus 0.4 percent for mortality.

Drafting Note: The 4 percent discount for interest reflected current rates at the time this model was drafted. States should set the discount rate in their regulation to equal the average of the rates being paid on 3 year United States Treasury Notes as reported in the Wall Street Journal on the last day of sale in the most recent 3 calendar years.

n = The number of months in the term of the insurance.

(3) If the benefits provided are other than those described in the introduction to this subsection, premium rates for such benefits shall be actuarially consistent with the rates provided in Paragraphs (1) and (2).

Note: Credit life insurance premium rates have not been included in the model regulation. Each state should adopt rates which reflect the experience developed within that state or regionally if a state lacks sufficient credible data. A state may also establish rates by creditor class of business wherever warranted. For those states addressing the issue of delinquencies, the prima facie rates included in Sections 6 and 7 and any other rates approved for use, restricted to premium rates that are computed by formulae such as that contained in Paragraph 6A(2), are presumed sufficient to provide for up to two months of delinquencies. Therefore, the amount of insurance shall not be increased to accommodate such delinquencies.

B. The premium rates in Subsection A shall apply to contracts providing credit life insurance that are offered to all eligible debtors, that do not require evidence of individual insurability from any eligible debtor electing to purchase coverage within thirty (30) days of the date the debtor becomes eligible and that contain the provisions below:

(1) Coverage for death by whatever means caused, except that coverage may exclude death resulting from:

(a) War or any act of war;

(b) Suicide within six (6) months after the effective date of the coverage; or,

(c) Subject to the provisions of Section 6B(2), a preexisting condition or conditions.

(2) For the purpose of Section 6B(1)(c),

(a) Preexisting condition means any condition for which the debtor received medical advice or treatment within six (6) months preceding the effective date of coverage;

(b) No preexisting condition exclusion shall apply unless death is caused by or substantially contributed to by the preexisting condition and unless death occurs within six (6) months following the effective date of coverage; and,

(c) A preexisting condition exclusion shall apply only if and to the extent that the amount of coverage to which it would otherwise apply (in the absence of this limitation) exceeds $1,000.

(3) For the exclusions listed in Section 6B(1) and (2) above, the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account is the date on which the advance or charge occurs.

(4) At the option of the insurer and in lieu of a preexisting condition exclusion on insurance written in connection with open-ended consumer credit, a provision may be included to limit the amount of insurance payable on death due to natural causes to the balance as it existed six (6) months prior to the date of death if there has been one or more increases in the outstanding balance during the six-month period and if evidence of individual insurability has not been required in the six-month period prior to the date of death. This provision applies only if and to the extent that the amount of coverage to which it would otherwise apply (in the absence of this limitation) exceeds $1,000.

(5) An age restriction providing that no insurance will become effective on debtors on or after the attainment of age sixty-six (66) and that all insurance will terminate upon attainment by the debtor of age sixty-six (66).

Note: These provisions are intended only to be provisions that correspond to the use of the rates provided for in Subsection 7A. Consistent with the commissioner's authority in the Model Bill, they are neither required provisions nor minimum standards. They are no more than safe harbor provisions. All other policy provisions must be judged based solely on the standard in the Model Bill that prohibits provisions that are unfair, unjust, inequitable, misleading, deceptive or encourage misrepresentation of the coverage or that are contrary to statute or administrative rule.

The suicide provision exemplifies this. Subsection 7B provides for use of a six-month exclusionary period for suicide in contracts to which the *prima facie* rate is applied. However, a suicide exclusionary period of one or two years is consistent with statutes enacted in several states. Thus, the use of a suicide exclusionary period exceeding six (6) months is not prohibited by the mere fact that a six-month period is set out as a provision corresponding to the use of *prima facie* rates. The use of a longer exclusionary period may, however, require the use of reduced premium rates.

C. Application of Rates:

(1) If the insurer, its agent, or the application form for credit life insurance does not request or require that the debtor provide evidence of insurability, then the premium rates deemed reasonable will be the prima facie rates in Section 6A.

(2) Except as provided in Section 6C(3), if the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is $15,000 or less, then the premium rates deemed reasonable will be the rates in Section 6A multiplied by 90 percent (.90).

(3) If the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is above $15,000 or the applicant elects to purchase coverage more than thirty (30) days after the date the debtor became eligible under a group plan of insurance, then the premium rates deemed reasonable will be the *prima facie* rates in Section 6A. For policies insuring open lines of credit, the insurer may require evidence of insurability for advances which increase the outstanding debt above $15,000.

D. Insurers may use the same application forms for credit life insurance whether or not underwriting questions are asked pursuant to Section 6C. The commissioner will presume that any application form for which all relevant underwriting questions have been left unanswered represents a policy which has not been underwritten and for which *prima facie* rates are permissible. A form for which any relevant underwriting questions have been answered or filled in represents a policy for which premium decreases pursuant to Section 6C are required. Insurers should maintain in their files their rules for those circumstances where underwriting questions shall be asked. Those rules shall be communicated to and followed by the insurer's agents or other producers.

Section 7. Credit Accident and Health Insurance Rates

A. Premium Rate. Subject to the conditions and requirements in Section 6B and Section 11, the *prima facie* rates shown below are considered to meet the requirements of Section 4, and may be used without filing additional actuarial support.

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the *prima facie* rate per $100 of initial insured debt for single accident and health is as set forth in the table below (rates for monthly periods other than those listed shall be interpolated or extrapolated):

Original Number of Equal Monthly Installments	14 Day retroactive policies	14 Day non-retroactive policies	30 Day retroactive policies	30 Day non-retroactive policies
6				
12				
24				
36				
48				
60				
72				
84				
96				
108				
120				

Drafting Note: Consistent with Subsection 6A(2), pursuant to which credit life single premiums are discounted for interest and mortality, credit disability single premiums in the table above should incorporate similar discount for interest (but not for mortality, since on death a refund of the unearned credit disability premium is required to be made).

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured gross debt, these premiums shall be computed according to the following formula or according to a formula approved by the commissioner which produces rates actuarially consistent with the single premium rates in Subsection 7A(1):

$$OP_n = \frac{10\ SP_n}{\left\{\sum_{t=1}^{n} \left(v^{t-1} \times \frac{(n-t+1)}{n}\right)\right\}}$$

$$\text{where } v = \frac{1}{1 + (dis)}$$

Where SP_n = Single Premium Rate per $100 of initial insured debt repayable in n equal monthly installments as shown in Subsection 7A(1).

OP_n = Monthly Outstanding Balance Premium Rate per $1,000.

n = The number of months in the term of the insurance.

dis = .0033, representing an annual discount rate of 4 percent for interest.

Drafting Note: The 4 percent discount for interest reflected current rates at the time this model was drafted. States should set the discount rate in their regulation to equal the average of the rates being paid on 3-year United States Treasury Notes as reported in the Wall Street Journal on the last day of sale in the most recent 3 calendar years.

(3) If the coverage provided is a constant maximum indemnity for a given period of time, the actuarial equivalent of Section 7A(1) and 7A(2) shall be used.

(4) If the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in even amounts per month, an appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in even amounts per month shall be used.

(5) The outstanding balance rate for credit accident and health insurance may be either a term-specified rate or may be a single composite term outstanding balance rate.

B. Subject to the conditions and requirements in Section 7C and Section 11, the *prima facie* rates for credit accident and health insurance shown below are considered to meet the requirements of Section 4 in the situation where the insurance is written on an open-end loan. These *prima facie* rates and the formulae used to calculate them may be used without filing additional actuarial support. Other formulae to convert from a closed-end credit rate to an open-end credit rate may be used if approved by the commissioner.

(1) If the maximum benefit of the insurance equals the net debt on the date of disability, the term of the loan is calculated according to the formula: 1/(minimum payment percent). The *prima facie* rate is determined by applying the calculated term to the rates shown in Section 7A. A composite minimum payment percentage may be used in place of the minimum payment percentage for a specific credit transaction.

(2) If the maximum benefit of the insurance equals the outstanding balance of the loan on the date of disability plus any interest accruing on that amount during disability, the term of the insurance (n) is estimated by using the following formula:

$$n = \ln\{1-(1000i/x)\}/\ln(v)$$

where:

i = interest rate on the account or a composite interest rate used for the type of policy;

x = monthly payment per \$1000 of coverage consistent with the term calculated above; and,

$v = 1/(1 + i)$.

The calculated value of the term is used to look up an initial rate in Section 7A. The final *prima facie* rate is calculated by multiplying the initial rate by:

the adjustment n/a_n

where:

n is the term calculated above; and

$a_n = (1 - v^n)/i$.

C. If the accident and health coverage is sold on a joint basis (involving two people), the rate for the joint coverage shall be filed with the commissioner prior to use.

D. If the benefits provided are other than those described in Section 7A or 7B above, rates for those benefits shall be actuarially consistent with rates provided in Section 7A and 7B.

E. The premium rates in Subsection A shall apply to contracts providing credit accident and health insurance that are offered to all eligible debtors, that do not require evidence of individual insurability from any eligible debtor electing to purchase coverage within thirty (30) days of the date the debtor becomes eligible and that contain the provisions below:

(1) Coverage for disability by whatever means caused, except that coverage may be excluded for disabilities resulting from: (a) normal pregnancy; (b) war or any act of war; (c) elective surgery; (d) intentionally self-inflicted injury; (e) sickness or injury caused by or resulting from the use of alcoholic beverages or narcotics (including hallucinogens) unless they are administered on the advice of and taken as directed, by a licensed physician other than the insured; (f) flight in any aircraft other than a commercial scheduled aircraft; (g) a preexisting condition.

(2) For the exclusion listed in Section 7B(1)(g) above, the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account is the date on which the advance or charge occurs.

(3) A definition of disability providing that for the first twelve (12) months of disability, total disability shall be defined as the inability to perform the essential functions of the insured's own occupation. Thereafter, it shall mean the inability of the insured to perform the essential functions of any occupation for which he or she is reasonably suited by virtue of education, training or experience.

(4) No employment requirement more restrictive than one requiring that the debtor be employed full-time on the effective date of coverage and for at least twelve (12) consecutive months prior to the effective date of coverage. "Full time" means a regular work week of not less than thirty (30) hours.

(5) An age restriction providing that no insurance will become effective on debtors on or after the attainment of age sixty-six (66) and that all insurance will terminate upon attainment by the debtor of age sixty-six (66).

(6) A daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

Note: These provisions are intended only to be provisions that correspond to the use of the rates provided for in Subsection 7A. Consistent with the commissioner's authority in the Model Bill, they are neither required provisions nor minimum standards. They are no more than safe harbor provisions. All other policy provisions must be judged based solely on the standard in the Model Bill that prohibits provisions that are unfair, unjust, inequitable, misleading, deceptive or encourage misrepresentation of the coverage or that are contrary to statute or administrative rule.

The preexisting condition exemplifies this. Subsection 7B contemplates that a six (6) month exclusionary period for preexisting conditions will be used in contracts to which the *prima facie* rates are applied. This alone does not, however, prohibit the use of a longer exclusionary period for preexisting conditions. A longer exclusionary period could be prohibited only if it is reasonably determined to be unjust or unfair, etc. Use of a longer exclusionary period would, however, remove the presumption that the *prima facie* rates are acceptable for use in connection with that form and use of lower rates may be required to reflect the difference in expected claims.

F. Application of Rates:

(1) If the insurer, its agent, or the application form for credit life insurance does not request or require that the debtor provide evidence of insurability, then the premium rates deemed reasonable will be the prima facie rates in Section 7A.

(2) Except as provided in Section 7F(3), if the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is $15,000 or less, then the premium rates deemed reasonable will be the rates in Section 7A multiplied by 90 percent (.90).

(3) If the insurer, its agent, or the application form for credit life insurance requests or requires that the debtor provide evidence of insurability and the initial amount of insurance is above $15,000 or the applicant is a elects to purchase coverage more than thirty (30) days after the date the debtor became eligible under a group plan of insurance, then the premium rates deemed reasonable will be the prima facie rates in Section 7A. For policies insuring open lines of credit, the insurer may require evidence of insurability for advances which increase the outstanding debt above $15,000.

G. Insurers may use the same application forms for credit accident and health insurance whether or not underwriting questions are asked pursuant to Section 7F. The commissioner will presume that any application form for which all relevant underwriting questions have been left unanswered represents a policy which has not been underwritten and for which *prima facie* rates are permissible. A form for which any relevant underwriting questions have been answered or filled in represents a policy for which premium decreases pursuant to Section 7F are required. Insurers should maintain in their files their rules for those circumstances where underwriting questions shall be asked. Those rules shall be communicated to and followed by the insurer's agents or other producers.

Section 8. Credit Unemployment Insurance Rates

A. Each insurer filing rates for credit unemployment insurance shall include in its rate filing with the commissioner the appropriate rate formula upon which its rates are based, including a provision for anticipated losses. Anticipated losses that develop or are expected to develop a loss ratio of not less than sixty percent (60%) shall be presumed reasonable. Anticipated losses may include an amount for fluctuation in loss due to catastrophe based on the experience of at least the latest nine (9) policy years or as long as the company has been writing this line of business.

B. Credit unemployment insurance policies must contain benefits at least as favorable to insureds as the provisions below:

(1) Coverage for unemployment for any reason, except that coverage may be excluded for: (a) voluntary forfeiture of salary, wage or other employment income; (b) resignation; (c) retirement; (d) general strike; (e) illegal walk out; (f) war; (g) separation from the military; (h) willful misconduct or criminal misconduct or unlawful behavior; and (i) disability caused by injury, sickness or pregnancy.

Drafting Note: State laws may vary on whether strikes or labor disputes may qualify an individual for unemployment insurance benefits.

(2) For credit unemployment insurance which provides for a monthly benefit in the event of unemployment, benefits must start after a waiting period of not longer than thirty (30) days but need not be retroactive to the first day of unemployment and must have a maximum benefit period that is no shorter than six (6) months.

C. Credit unemployment insurance policies may not contain eligibility requirements more restrictive than the restrictions below:

(1) Exclusion from qualification for coverage: (a) self employed individuals; (b) workers in seasonal or temporary jobs, defined as jobs designed to last six (6) consecutive months or less; and, (c) debtors who have been notified either orally or in writing of any layoff or of employment termination either now or within the next sixty (60) days. This exclusion must be disclosed to all prospective insureds.

Drafting Note: States may wish to adjust the time period that defines temporary and seasonal workers to be appropriate for the types of businesses in their state.

(2) No employment requirement more restrictive than one requiring that the debtor be employed full-time on the effective date of coverage for at least twelve (12) consecutive months prior to the effective date of coverage. "Full time" means a regular work week of not less than thirty (30) hours.

(3) An age restriction providing that no insurance will become effective on debtors on or after the attainment of age sixty-six (66) and that all insurance will terminate upon attainment by the debtor of age sixty-six (66).

Section 9. Refund Formulas

A. In the event of termination, no charge for consumer credit insurance may be made for the first fifteen (15) days of a month and a full month may be charged for sixteen (16) days or more of a month.

Drafting Note: States should verify that the use of 15 days in the above section does not conflict with their banking laws.

B. The requirements of the consumer credit insurance law that refund formulas be filed with the commissioner shall be considered fulfilled if the refund formulas are set forth in the individual policy or group certificate filed with the commissioner.

C. No refund of $5 or less need be made.

Section 10. Experience Reports and Adjustment of *Prima Facie* Rates

A. Each insurer doing insurance business in this state shall annually file with the commissioner and the National Association of Insurance Commissioners (NAIC) Support and Services Office a report of consumer credit insurance written on a calendar year basis. The report shall utilize the Credit Insurance Supplement—Annual Statement Blank as approved by the NAIC, and shall contain data separately for each state, rather than an allocation of the company's countrywide experience. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

B. The commissioner will, on a triennial basis, review the loss ratio standards set forth in Section 4 and the *prima facie* rates set forth in Sections 6 and 7 and determine therefrom the rate of expected claims on a statewide basis, compare such rate of expected claims with the rate of actual claims for the preceding three (3) years determined from the incurred claims and earned premiums at *prima facie* rates reported in the Annual Statement Supplement or other available source, and publish the adjusted actual statewide *prima facie* rates to be used by insurers during the next triennium. The rates will reflect the difference between (a) actual claims based on experience; and (b) expected claims based on the loss ratio standards set forth in Section 4 applied to the *prima facie* rates set forth in Sections 6 and 7.

C. The commissioner will, on a triennial basis, review the discount rates for interest included in the formulae in Sections 6A and 7A, and adjust those discount rates to equal the average of the rates being paid at that time on three-year United States Treasury Notes as reported in the Wall Street Journal on the last day of sale in the most recent three (3) calendar years.

Drafting Note: This contemplates automatic adjustment of premium and discount rates every three years, based on statewide experience. The need for notice and public hearing will be dictated by the provisions of the Administrative Procedures Acts in the various states. It is contemplated that the rate adjustments, as a purely administrative procedure, should generally require only notice, without formal hearings.

Drafting Note: States should verify that the wording in Section 10C is specific enough to allow the commissioner to change the interest rate in an administrative action, rather than by having to readopt the regulation.

Section 11. Use of Rates - Direct Business Only

A. Use of *Prima Facie* Rates.

An insurer that files rates or has rates on file that are equivalent to the *prima facie* rates shown in Sections 6 and 7, to the extent adjusted pursuant to Section 10, may use those rates without further proof of their reasonableness.

B. Use of Rates Higher Than *Prima Facie* Rates.

An insurer may file for approval of and use rates that are higher than the *prima facie* rates shown in Sections 6 and 7, to the extent adjusted pursuant to Section 10, as long as the filed rates are consistent with the provisions of Section 4 of this regulation.

If rates higher than the *prima facie* rates shown in Sections 6 and 7, to the extent adjusted pursuant to Section 10, are filed for approval, the filing shall specify the account or accounts to which the rates apply. The rates may be:

(1) Applied uniformly to all accounts of the insurer; or

(2) Applied on an equitable basis approved by the commissioner to only one or more accounts of the insurer for which the experience has been less favorable than expected; or

(3) Applied according to a case-rating procedure on file with the commissioner.

C. Approval Period of Deviated Rates.

(1) A deviated rate will be in effect for a period of time not longer than the experience period used to establish the rate (i.e. one year, two years or three years). An insurer may file for a new rate before the end of a rate period, but not more often than once during any twelve-month period.

(2) Notwithstanding the provision of Subsection A of this section, if an account changes insurers, the rate approved to be used for the account by the prior insurer is the maximum rate that may be used by the succeeding insurer for the remainder of the rate approval period approved for the prior insurer or until a new rate is approved for use on the account, if sooner.

D. Use of Rates Lower than Filed Rates.

An insurer may at any time use a rate for an account that is lower than its filed rate without notice to the commissioner.

E. Glossary of Terms and Definitions as Used in Section 11.

(1) "Experience" means "earned premiums" and "incurred losses during the experience period.

(2) "Experience period" means the most recent period of time for which earned premiums and incurred losses are reported, but not for a period longer than three (3) full years.

(3) "Incurred losses means total claims paid during the experience period, adjusted for the change in claim reserve.

Section 12. Supervision of Consumer Credit Insurance Operations

A. Each insurer transacting credit insurance in this state shall be responsible for conducting a thorough periodic review of creditors with respect to their credit insurance business with such creditors, to assure compliance with the insurance laws of this state and the regulation promulgated by the commissioner.

B. Written records of such reviews shall be maintained by the insurer for review by the Insurance Commissioner.

Note: The states may wish to specify the minimum time in accordance with their respective statutes.

Section 13. Prohibited Transactions

The following practices, when engaged in by insurers in connection with the sale or placement of credit insurance, or as an inducement thereto, shall constitute unfair methods of competition and shall be subject to the Unfair Trade Practices Act of this State.

A. The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of agent's commissions;

B. Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities which otherwise would be required of the creditor by the bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement; and

C. Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor, bank or financial institution to other depositors of like amounts for similar durations. This subsection shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business.

Section 14. Readability [Optional]

The commissioner shall not approve any form unless the policy or certificate is written in non-technical, readily understandable language, using words of common everyday usage:

A. Each insurer is required to test the readability of its policies or certificates by use of the Flesch Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing,* (1949, as revised 1974);

B. A total readability score of forty (40) or more on the Flesch scale is required;

C. All policies or certificates within the scope of this section shall be filed with the commissioner, accompanied by a certification setting forth the Flesch score and certifying the compliance with the guidelines set forth in this Section.

Drafting Note: This optional section should be included only in those states which have not enacted a policy language simplification act.

Section 15. Severability

If any provision or clause of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared severable.

Section 16. Effective Date

A. This regulation shall take effect [insert date] as to premium rates.

B. Approval of all forms not in compliance with this regulation is hereby withdrawn as of [insert date]. No such form may be issued after said date unless it has been submitted to and approved by the commissioner subsequent to [30 days prior to effective date], or unless a rider approved subsequent to such date has been attached bringing the form into compliance with this regulation.

C. Any deviations thought to be appropriate by an insurer as a result of promulgation of this regulation shall be filed in accordance with the provisions of Section 11 no later than [insert date].

D. Certificates, notices of proposed insurance and premium rates in connection with existing group policies shall conform to the requirements of this regulation not later than the anniversary date of the group policy next following the effective date of this regulation.

E. Any group policy issued to replace an existing group policy of consumer credit insurance or an amendment to an existing group policy of consumer credit insurance shall be ignored for the purposes of determining the anniversary date if the change is made on or after [insert the date of publication of notice].

Drafting Note: This section should be drafted in accordance with the state statutes regarding approval and disapproval of forms.

Legislative History (all references are to the Proceedings of the NAIC).

1960 Proc. I 176 (implementation recommendations for model bill: 50% loss ratio benchmark recommended).
1966 Proc. II 402-403 (Richmond resolution expanding on 50% loss ratio benchmark).
1968 Proc. II 575 (interpretation of Richmond resolution) (Las Vegas resolution).
1969 Proc. II 770-772 (Richmond resolution amended) (Neff amendment).
1971 Proc. I 295-296 (Richmond resolution amended) (O'Hare resolution).
1971 Proc. I 288-293 (Richmond resolution amended to eliminate accident and health insurance, with deviation and credibility methods).
1971 Proc. II 478-487 (New York resolution with deviation and credibility methods).
1972 Proc. I 582 (amended New York resolution).
1973 Proc. II 18, 21, 471, 481, 485-531 (model adopted).
1974 Proc. II 501 (corrected).
1979 Proc. II 31, 10, 326, 409 (established 60% loss ratio for credit accident and health).
1980 Proc. I 34, 38, 406, 473, 475-484 (amended and reprinted).
1981 Proc. I 47, 51, 421, 488-489, 490-498 (amended).
1988 Proc. I 9, 21-22, 828, 851-853, 859-871 (amended and reprinted).
1988 Proc. II 5, 14, 758, 785-787, 788-791 (adopted technical amendments).
1994 Proc. 2nd Quarter 13, 39, 44, 73-91 (amended and reprinted).
1995 Proc. 4th Quarter 11, 33, 98, 108, 111-112 (amended).

CONSUMER CREDIT INSURANCE MODEL REGULATION

This state page does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the laws cited should be consulted. The NAIC attempts to provide current information; however, due to the timing of our publication production, the information provided may not reflect the most up to date status. Therefore, readers should consult state law for additional adoptions and subsequent bill status.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. ADMIN. CODE r. 482-2-117 (1999).
Alaska		ALASKA ADMIN. CODE tit. 3, §§ 28.310 to 28.405 (1981/2007); ORDER 81-1.
American Samoa	NO ACTION TO DATE	
Arizona	ARIZ. ADMIN. CODE § 20-6-604 (1983).	
Arkansas		12 ARK. CODE R. (1968/1986).
California		CAL. CODE REGS. tit. 10, §§ 2248 to 2248.14 (1978/2006); §§ 2249.1 to2249.17 (1978/2006).
Colorado		4 COLO. CODE REGS. § 9-2 (1992/2010).
Connecticut		BULLETIN NO. C-1 to C-4 (1959/1983).
Delaware		18 DEL. CODE REGS.§ 1701 (1970/2003); BULLETIN NO. 75-13 (Experience Information Forms); Circular Letter 82-3 (1982).
District of Columbia	NO ACTION TO DATE	
Florida		FLA. ADMIN. CODE ANN. r. 69O-163.0015 to 69O-163.013 (1974/2009).
Georgia		GA. COMP. R. & REGS. 120-2-27 (1977/1993).

CONSUMER CREDIT INSURANCE MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Guam	NO ACTION TO DATE	
Hawaii	HAW. CODE R. §§ 16-6-1 to 16-6-16 (1981/1988).	
Idaho	IDAHO ADMIN. CODE r. 18.01.61.000 to 18.01.61.024 (1992/2009).	
Illinois		ILL. ADMIN. CODE. tit. 50, §§ 951.10 to 953.10 (1959/1996) (Credit life).
Indiana		760 IND. ADMIN. CODE 1-5.1-1 to 1-5.1-13 (2003/2009).
Iowa	IOWA ADMIN. CODE r. 191-28.1 to 191-28.17 (1991).	
Kansas		KAN. ADMIN. REGS. §§ 40-5-102 to 40-5-110 (1966/2001); § 40-5-12 (1993).
Kentucky		806 KY. ADMIN. REGS. 19:010 to 19:060; BULLETIN NO. 14 (1962) and 81-DM-009 (1981).
Louisiana	NO ACTION TO DATE	
Maine		220 ME. CODE R. §§ 1 to 16 (1979/2006).
Maryland		MD. CODE REGS. 31.13.01.01 to 31.13.01.27 (1978/2001).
Massachusetts	MASS. GEN. LAWS ch. 175 § 117C (1989) (portions of model).	
Michigan	MICH. ADMIN. CODE r. 550.201 to 550.221 (1987/1995).	BULLETIN 82-7 (1982); BULLETIN 87-07 (1987).
Minnesota		MINN. R. §§ 2760.0100 to 2760.9920 (1968/2008); §§ 2761.0100 to 2761.1200 (1995) (Credit unemployment insurance).

CONSUMER CREDIT INSURANCE MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Mississippi	86-102 MISS. CODE R. (1986); 89-103 (1989); 88-103 (1988); 89-102 (1989); 94-103 (1995); 94-103 (1995).	
Missouri		MO. CODE REGS. ANN. tit. 20, § 600-2.100 (1975/1982).
Montana		MONT. ADMIN. R. 6.6.1101 to 6.6.1111 (1975/1996).
Nebraska		210 NEB. ADMIN. CODE § 22 (1976/1994).
Nevada	NEV. ADMIN. CODE §§ 690A.8 to 690A.17 (2007).	
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. 1201.01 to 1201.19 (1982/2002).	
New Jersey		N.J. ADMIN. CODE §§ 11:2-3.1 to 11:2-3.19 (1959/2001).
New Mexico		N.M. CODE R. §§ 13.18.2.1 to 13.18.2.43 (1997/1998); BULLETIN 2005-002 (2005).
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 185.0 to 185.16 (Regulation 27-A)(1980/2003).
North Carolina		11 N.C. ADMIN. CODE §§ 12.0701 to 12.0711 (1989/2002).
North Dakota		N.D. ADMIN. CODE §§ 45-07-01.1-01 to 45-07-01.1-13 (2003).
Northern Marianas	NO ACTION TO DATE	
Ohio		OHIO ADMIN. CODE § 3901-1-14 (1983/2008).
Oklahoma		OKLA. ADMIN. CODE §§ 365:10-5-60 to 365:10-5-74 (1982/1997).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Oregon		OR. ADMIN. R. 836-60-000 to 836-60-060 (1983/2001).
Pennsylvania		31 PA. CODE §§ 73.103 to 73.143 (1998/2006); BULLETIN 7-15-2006.
Puerto Rico	NO ACTION TO DATE	
Rhode Island	27-9 R.I. CODE R. §§ 001 to 013 (1984).	
South Carolina		S.C. CODE ANN. REGS. 69-11.1 (1977).
South Dakota		S.D. ADMIN. R. 20:06:06:01 to 20:06:06:08 (1977/1990).
Tennessee		TENN. COMP. R. & REGS. 0780-1-4-.01 to 0780-1-4-.15 (1974/1995).
Texas		3 TEX. ADMIN. CODE §§ 5001 to 6011 (1980/2003); BULLETIN B-0040-06.
Utah	UTAH ADMIN. CODE r. 590-91 (1983/2007).	
Vermont	I-84-1 VT. CODE R.(Revised) (1967/1988).	
Virgin Islands	NO ACTION TO DATE	
Virginia	VA. CODE ANN. §§ 38.2-3726 to 38.2-3735 (1993) (portions of model); 14 VA. ADMIN. CODE 5-230-10 to 5-230-110 (1983).	
Washington	NO ACTION TO DATE	
West Virginia		W. VA. CODE R. §§ 114-6-1 to 114-6-7 (1969/1995).
Wisconsin		WIS. ADMIN. CODE INS. § 3.25 (1979/1996).

CONSUMER CREDIT INSURANCE MODEL REGULATION

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Wyoming		WYO. CODE R. § 52 (1967/1997).

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the NAIC model in a uniform and substantially similar manner. This requires states to adopt the model in its entirety but does allow for minor variations in style and format.

RELATED STATE ACTIVITY: States that have citations identified in this column have **not** adopted the NAIC model in a uniform and substantially similar manner. Examples of Related State Activity include: An older version of the NAIC model, portions of the NAIC model, legislation or regulation derived from other sources, Bulletins and Administrative Rulings.

NO ACTION TO DATE: No state activity on the topic as of the date of the most recent update.

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