COMMENTS

to the

Consumer Financial Protection Bureau

12 CFR Part 1026

[Docket No. CFPB-2013-0013]

RIN 3170–AA37

Truth in Lending Act – Regulation Z

Loan Originator Compensation Requirements; Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date

by the

National Consumer Law Center

(on behalf of its low income clients),

Center for Economic Justice,

National Association of Consumer Advocates and

National Fair Housing Alliance

May 24, 2013

The **National Consumer Law Center**[1] ("NCLC"), on behalf of its low-income clients, the **Center for Economic Justice,**[2] the **National Association of Consumer Advocates**[3] and the **National Fair Housing Alliance**[4] submit the following comments.

CEJ, NCLC and NACA oppose the delay in the effective date for the credit insurance protections created in the Dodd Frank Act. In discussions with credit union representatives and review of comments submitted to date, we have not seen a single example of an unclear feature of the Dodd Frank Act or CFPB rule provisions regarding financing of credit insurance premiums and debt cancellation contract fees. Instead, many of the comments attempt to defend the credit union practice of financing credit insurance premiums and debt cancellation contract fees. It is unfair to consumers to further delay this important consumer protection based on vague and unsubstantiated claims about "lack of clarity" and creditor inability to modify systems in the three years since Dodd Frank was signed into law. Financing credit insurance premiums and debt cancellation contract fees has long been recognized as a predatory lending practice. The prohibition against such financing should be implemented on June 1, 2013 as set out in the CFPB's current rule.

A delay in implementation would reward creditors for coming to the CFPB weeks before the effective date of the consumer protection claiming uncertainty and lack of time to prepare. The statutory language is clear and was passed in 2010. The final rule, issued almost five months before the June effective date, is also clear and fully aligns with the statutory language. There has been

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[1] Since 1969, the nonprofit **National Consumer Law Center®** (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.

[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.

[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.

[4] Founded in 1988, the **National Fair Housing Alliance** ("NFHA") is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout theUnited States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents in the nation.

ample time for creditors to update systems to comply with the requirements regarding financing of credit insurance.

The Bureau's notice of proposed delay provides no specific issues justifying a delay. Rather, the notice states,

> *Since publication of the final rule, industry stakeholders have expressed concern that the regulation text and preamble left substantial uncertainty about whether, and under what circumstances, premiums for certain credit insurance products can be charged on a periodic basis in connection with a covered consumer credit transaction secured by a dwelling. These stakeholders have requested clarification on § 1026.36(i)'s applicability to these credit insurance products and also have expressed concern regarding their ability to comply timely, given that the Final Rule provided an effective date for § 1026.36(i) of June 1, 2013. In light of the interpretive questions that have arisen since publication of the Final Rule, the Bureau intends to publish a new proposal to seek further notice and comment on the provision in June 2013. In that proposal, among other things, the Bureau plans to (1) seek public comment, including from industry stakeholders and consumers, regarding the applicability of the prohibition to transactions in which credit insurance premiums are charged periodically; and (2) propose a new effective date for § 1026.36(i), under which the provision would take effect some time after finalization of that proposal.*

The CFPB's proposal fails to cite any specific example of an issue requiring clarification. Moreover, in our discussions with credit union representatives and our review of comments submitted on the proposed implementation delay, we have not heard or seen a single specific example of an unclear feature of the Dodd Frank or regulatory provisions regarding financing of credit insurance premiums and debt cancellation contract fees. The arguments put forth by the numerous credit unions commenters fall into two categories – a generic claim that the rule needs clarity without reference to any specific unclear feature of the rule and a claim that financing credit insurance premiums is good for consumers. For example, comments include:

> *I DO NOT support the prohibition against adding monthly premiums to the borrower's mortgage loan balance. Although there is a small additional interest charge assessed to the borrow as a result of adding the monthly to the mortgage balance, this amount is relatively small. The required monthly loan payment is increased enough to compensate for the additional premium such that the loan still pays off on schedule. This is a convenient way for the borrower to obtain and pay for coverage that they may find valuable.*[5]

> *ALLOW monthly posting to the Mortgage Loan directly for Credit Disability and Credit Life Insurance (CD/CL): We facilitate the sale of Credit Disability Ins. and Credit Life Ins. to members who have a Mortgage Loan with us. This is very inexpensive and the loan payment is higher (1) to Amortize the loan in the prescribed time and (2) pay the CD/CL.*[6]

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[5] Comment of Ken Payne, Freedom Credit Union.
[6] Comment of Dennis Murray, Premier Services Credit Union.

> *It would be severely detrimental to Maine Highlands FCU members to disallow monthly insurance premiums as part of their home equity lines of credit. Our members live paycheck to paycheck. To ask them to pay these insurance premiums outside of their loan would create a hardship.*[7]

Financing credit insurance premiums is not inexpensive and is an abusive lending practice. Below, we show the very high cost of financing credit insurance premiums. At an even more basic level, the fact that credit unions disagree with the provisions of Dodd-Frank is not a basis for delaying implementation of that consumer protection provision.

The language of the Dodd Frank Act with regard to the prohibition against financing credit insurance premiums and debt cancellation contract fees with certain types of loans is crystal clear.

> *(d) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any 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, except that—*
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> *(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and*
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> *(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.*

The CFPB rule simply repeats the language of the statute. In the one area where additional interpretation would have been useful – what constitutes a reasonable premium for credit unemployment insurance – the CFPB was silent:

> (i) Prohibition on financing single-premium credit insurance. *(1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.*
> *(2) For purposes of this paragraph (i), "credit insurance":*
> *(i) Means 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, but*
> *(ii) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance*

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[7] Comment of Rhonda Taylor, Maine Highlands FCU.

> *premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.*

In the proposal for delay, the CFPB notes that it received no comments from creditors or credit insurers on the purported ambiguity of the credit insurance requirements.[8] If creditors and credit insurers had no comments about the lack of clarity of the language of the proposed rule or the language of Dodd-Frank from which the proposed rule's credit insurance financing provision was taken, there is no basis for those same creditors or credit insurers to be suddenly perplexed by the nearly identical language in the rule the CFPB adopted.

As with other provisions in Dodd-Frank, enhanced consumer protections require changes in how loans have been sold in the past and related changes in computer systems. The statute and regulations built significantly delayed effective dates into implementation to account for this. Further delay is unwarranted. Accommodation of last minute challenges to the clarity and viability of core consumer protections will encourage further chiseling away at pending rules aimed at longtime abusive practices. Particularly because the regulatory language echoes the statute, and was issued months before concerns were raised, there is no basis for extending the effective date of the rule at this late date.

The final Bureau rule provides significant detail in the supplementary information not only on single-premium credit insurance but also on rules that apply to monthly premiums. Thus, already-clear statutory and regulatory language is further clarified by the additional examples discussed by the Bureau in the final rule announcement. Moreover, while the proposal identifies the delay as "temporary," the effect of the delay will be that homeowners seeking loans in the next few months will not have the benefit of Dodd-Frank's credit insurance protections, rules which could have taken effect even six months earlier, in January 2013, if the Bureau has not undertaken the additional rulemaking that reiterated the statutory language. The costs of this permanent delay in implementation will be borne by consumers while creditors continue to reap profits from an abusive practice clearly prohibited by the Dodd Frank Act.

The Bureau's supplemental information regarding the credit insurance rule only highlights the obvious—that adding credit insurance premiums to the outstanding balance each month violates the provision that premiums must be calculated and *paid in full* on a monthly basis. Level monthly premium products are not calculated on a monthly basis and, consequently, also violate the Dodd Frank provision. If a credit insurance premium or debt cancellation contract fee is calculated and paid in full on a monthly basis, the monthly premium must decline if the outstanding balance is also declining.

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[8] 78 Fed. Reg. 27308, 27309 (May 10, 2013). "The Bureau did not receive any public comments from the credit insurance industry. The Bureau received some limited comments from creditors concerning the general prohibition, but these comments did not address the applicability of the provision to transactions in which premiums are charged periodically."

Tables 1 and 2 illustrate the predatory nature of financing creditor insurance premiums and the type of consumer harm the CFPB will allow to unnecessarily continue. Tables 1 and 2 also show that, contrary to the claims of credit union commenters, adding monthly credit insurance premiums and debt cancellation contract fees to the loan balance is very expensive for consumers.

The tables below show how adding the credit insurance premium – calculated monthly – to the outstanding principal balance impacts the total amounts paid by the borrower and the length of time to pay off the loan. We have seen this practice by credit unions in connection with real-estate secured loans. We analyze a $20,000 loan at 6% interest with terms of 60 and 120 months. Credit insurance premiums are based on a rate of $0.50 per $100 of outstanding balance per month. For each loan, we compared the total cost to the borrower and the number of months to amortize the loan when the credit insurance premium was calculated and paid in full each month versus the credit insurance premium calculated each month, but added to the loan balance.

Loan 1: 60 Month Term

	Credit Ins Paid In Full Monthly	Credit Ins Added to Remaining Balance	Difference
Months to Amortize	60	74	14
Total Interest Paid	$3,199.37	$4,149.94	$950.57
Total CI Premium Paid	$3,199.36	$4,149.94	$950.58
Total Principal Paid	$20,000.00	$24,149.94	$4,149.94
Total Amount Paid	$26,398.74	$32,449.82	$6,051.08

Loan 2: 120 Month Term

	Credit Ins Paid In Full Monthly	Credit Ins Added to Remaining Balance	Difference
Months to Amortize	120	233	113
Total Interest Paid	$6,644.89	$15,773.76	$9,128.87
Total CI Premium Paid	$6,644.89	$15,773.76	$9,128.87
Total Principal Paid	$20,000.00	$35,773.76	$15,773.76
Total Amount Paid	$33,289.78	$67,321.28	$34,031.50

The tables show that adding the monthly credit insurance premium to the loan balance, instead of being paid in full each month, causes the borrower to pay much more interest and much more credit

insurance premium, greatly increases the principal amount to be repaid and extends the time to pay off the loan.

In the 60-month loan example, adding the monthly credit insurance premium to the loan balance instead of paying the monthly credit insurance premium in full each month increases the amount of interest paid and the amount of credit insurance premium paid by 30%, the amount of principal paid by 21% and the total amount paid and the number of months to pay off the loan by almost 23%.

The predatory nature of this form of financing credit insurance premiums grows exponentially with higher interest rates and longer loan terms. Loan 2 is the same as Loan 1 with the single difference of a change in loan term from 60 to 120 months. In the 120-month loan example, adding the monthly credit insurance premium to the loan balance instead of paying the monthly credit insurance premium in full each increase the amount of interest paid and the amount of credit insurance premium paid by 138%, the amount of principal paid by 79% and the total amount paid by 102% and the number of months to pay off the loan by 94%.

If a home equity line of credit monthly payment is calculated on a term of 180 months, the borrower would never pay off the loan because the monthly credit insurance premium added to the loan balance each month exceeds the portion of the monthly payment reducing the loan principal.

The disconnect between the actual impact of financing the monthly credit insurance premium or debt cancellation contract fee by adding these amounts to the loan balance and the claims by credit union commenters that such practices are inexpensive and beneficial to consumers is irreconcilable. The damage is clear and the industry defense of such practices makes the timely implementation on June 1, 2013 rule on financing premiums that much more important.

The comment from Maine Highlands FCU is of particular concern. If a credit union is making a loan and selling credit insurance with that loan, sound lending practice would dictate a smaller loan amount if the monthly payment of the loan plus the monthly credit insurance premium posed a burden on the borrower. The credit union is arguing that it should be able to sell add-ons that a consumer cannot afford, but will not recognize, because the premium is financed on a monthly basis. Putting aside the fact that credit insurance and debt cancellation contracts are generally very poor values for borrowers, the fact that a credit union wants to continue to engage in unsound lending practices that are clearly prohibited by Dodd Frank is simply not a basis for delaying implementation of the consumer protection. Rather, the comments of this and other credit unions should ring a loud bell for the CFPB that the sooner the premium financing prohibitions are effective, the better.

We now turn to a few other issues. One question is what the impact of the rule is if the credit insurance premium is calculated and charged on a monthly basis, but not necessarily paid by the borrower each month, and outstanding premium charges are not added to the loan balance. Under this scenario, it appears that the creditor is creating a de-facto escrow for the credit insurance

premium. First, escrow is not appropriate for a monthly premium credit insurance product that must be calculated and paid in full on a monthly basis. Second, at some point the escrow amounts due will be added to the loan balance and, consequently, financed.

On the issue of level monthly premiums, the Dodd Frank language is crystal clear that the only instance, other than for credit unemployment under certain circumstances, in which a credit insurance premium or debt cancellation contract fee is not financed is if the premiums are calculated and paid in full on a monthly basis. It is equally clear that a level monthly premium is not calculated on a monthly basis because calculating a credit insurance premium on a monthly basis must result in a declining monthly premium as the outstanding balance of the loan declines because credit insurance rates do not vary by age of the insured. The credit life, credit disability or credit unemployment rate for a 20-year old is the same as for a 60-year old, despite the fact that a 60-year old poses a higher mortality risk than a 20-year old. Credit insurance rates have historically been, and now debt cancellation rates are, one rate regardless of age.

Any suggestions that a level monthly premium is "actuarially sound" because the increase in risk as the borrow ages is offset by the declining outstanding balance is not recognized in any approved credit insurance rates. In addition, there can be no general assertion about increasing mortality risk as the insured ages versus lower risk of reduced outstanding balance because mortality risk does not increase linearly with age and reduction of outstanding balance varies across a variety of factors unrelated to mortality risk of the insured. The mortality risk of a 25 year-old increases far less over a ten-year period than that of a 55 year-old.

Some have argued that even if a level monthly premium product is a form of financing credit insurance, it is the insurer providing the financing and not the creditor. Consequently, the argument goes, the statute would not prohibit an insurer from financing the credit insurance premium. This argument fails for at least two reasons. The first is that having an insurer finance a credit insurance premium equates to the creditor indirectly financing that premium. This is a result of the reverse-competitive market structure of credit insurance markets in which credit insurers compete for the creditors' business. Consequently, creditors could demand, and credit insurers would be forced to pass along, the additional earnings from financing credit insurance to creditors in the form of additional commissions or profit-sharing. Second, insurance companies are prohibited by state insurance laws from financing credit insurance premiums.

Thank you for the opportunity to comment on the Bureau's proposed delay of the credit insurance rule. The regulation and statute are clear and industry has had substantial time to get its house in order to comply with the requirements. Delay will expose consumers to the perpetuation of known abuses relating to credit insurance and debt cancellation contracts.