

## The Center For Economic Justice

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May 30, 2001

The Honorable Kathleen Sebelius  
Commissioner  
Kansas Department of Insurance  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612-1678

By Electronic Mail and Fax: (785)-296-2283

Re: **A Comprehensive Approach to Regulation of Credit Insurance and Near-Credit Insurance Products:**

**NAIC Comments on Proposed Regulations by the OCC Regarding Debt Cancellation and Debt Suspension Products;**

**Adding Credit-Related Insurance Products to CARFRA**

Dear Commissioner Sebelius:

The Office of the Comptroller of the Currency (OCC) has issued a proposed regulation regarding the sale of debt cancellation contracts (DCC) and debt suspension agreements (DSA) and requested comments on the proposed regulation by June 18, 2001.

Although the proposed regulation adds some consumer protections,<sup>1</sup> it fails to establish any minimum benefits standards, fails to establish a requirement that charges be reasonable in relation to premium and allows banks to issue DCCs and DSAs that are non-cancelable by the consumer. Because DCCs and DSAs are substitutes for credit insurance, the deficiencies in the OCC's proposed regulation would lead to the sale of DCCs and DSAs that undermine state credit insurance regulation.

We respectfully request that the NAIC submit comments to the OCC that any DCC or DSA regulation should include:

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<sup>1</sup> The proposed regulation establishes a number of consumer disclosures, require banks issuing DCCs or DSAs to establish reserves, require an affirmative selection by the consumer, prohibits tying of DCC and DSA sales to the underlying loan and prohibits misleading practices.

1. Approval by the OCC of DCC and DSA contract agreements and fees prior to their use by banks;
2. Notice to state insurance regulators and the public of submission of proposed DCC and DSA contract agreements and fees to the OCC for approval and the opportunity for state insurance regulators and the public to comment on proposed agreements and fees;
3. Creation of a standard of 60% as the minimum reasonable relationship of expected benefits to fees charged;
4. Requirement that consumers be allowed to cancel any DCC or DSA at any time after purchase and that refunds be based upon a formula at least as favorable to consumers as the rule of anticipation; and
5. Submission of annual DCC and DSA experience reports to the OCC that are available to the public for inspection.

Of equal importance to commenting to the OCC, we urge the NAIC to make a commitment to dramatically improve the uniformity and efficiency of state credit insurance regulation by adding credit insurance products to CARFRA. If the NAIC asks the OCC to better regulate DCCs and DSAs – as we hope you will do – then it is only reasonable for the NAIC to make a commitment to insurers, lenders, consumers and the OCC to make state regulation of credit insurance more consistent with the requested OCC regulation of DCCs and DSAs.

We are asking the NAIC to work with the OCC to develop a comprehensive system for the regulation of credit insurance and near-credit insurance products.

We are aware that there is disagreement among the states whether DCCs and DSAs are, in fact, the business of insurance and subject to the jurisdiction of state insurance departments. We agree with a number of states that DCCs and DSAs are insurance and should be subject to state insurance regulation. Such an approach would be efficient and rational since DCCs and DSAs are credit insurance substitutes. However, an alternative approach to consumer protection is required because the OCC has determined that DCCs and DSAs are not the business of insurance.

Even if states disagree whether DCCs and DSAs are insurance, the states should be in agreement that any OCC regulation of DCCs and DSAs must be consistent with – and not undermine – state regulation of credit insurance.

The NAIC Statement of Intent: The Future of Insurance Regulation starts with “Our primary goal is to protect insurance consumers, which we must do proactively and aggressively.” Because of reverse competition in credit insurance markets, strict regulation of credit insurance necessary to protect consumers. The rationale for credit insurance regulation is well described by New York State Insurance Department Regulation 27A (11NYCCR 185)

185.0(b) In the marketing of credit insurance, the inferior bargaining position of the debtor creates a "captive market" in which, without appropriate regulation of such insurance, the creditor can dictate the choice of coverages, premium rates, insurer and agent, with such undesirable consequences as: excessive coverage (both as to amount and duration); excessive charges (including payment for nonessential items concealed as unidentifiable extra charges under the heading of insurance); failure to inform debtors of the existence and character of their credit insurance and the charges therefor, and consequent avoidance of the protection provided the debtor by such coverage.

(c) In the absence of regulation, premium rates and compensation for credit insurance tend to be set at levels determined by the rate of return desired by the creditor in the form of dividends or retrospective rate refunds, commissions, fees, or other allowances, instead of on the basis of reasonable cost. Such "reverse competition," unless properly controlled, results in insurance charges to debtors that are unreasonably high in relation to the benefits provided to them.

These statements – with the substitution of “debt cancellation and debt suspension agreements” for “credit insurance” – perfectly describe the market for DCCs and DSAs and the need for regulatory activity to ensure consumer protections.

If the opening declaration of the *Statement of Intent* is to have any meaning, the NAIC must weigh in strongly on behalf of all state insurance regulations and urge the OCC to adopt DCC and DSA regulations that both protect consumers and are consistent with state regulation of credit insurance.

The failure of the OCC to promulgate DCC and DSA regulations that are consistent with state regulation of credit insurance will lead to regulatory arbitrage by lenders who will choose the product – DCCs and DSAs – that offer the regulatory climate with the fewest consumer protections. If the NAIC were to acquiesce on an issue of such obvious consumer protection like credit insurance, what kind of fight for consumer protections through state insurance regulation can we expect on other lines of insurance?

We ask the NAIC to submit comments to the OCC on the proposed DCC regulations urging the OCC to include benefit and premium standards that are consistent with state insurance regulation.

We also urge the NAIC to demonstrate its commitment to improving the uniformity of state credit insurance regulation by adding credit insurance products to CARFRA. By adding credit insurance products to CARFRA, the NAIC will be committing to developing national standards and streamlined regulatory review of credit insurance products. Credit insurance products are top candidates for CARFRA because banks and other lenders often seek to offer credit insurance on a multi-state or national basis. For example, national banks often offer credit insurance in connection with credit cards.

By adding credit insurance products to CARFRA, the NAIC will be demonstrating a real commitment to working with the OCC to develop a comprehensive plan for effective regulation of credit-related insurance and near-insurance products. This effort by the NAIC will also demonstrate to banks, lenders and credit insurers a commitment by state regulators to make the regulation of credit insurance more uniform and more efficient across the country.

Given the June 18, 2001 deadline for comments to the OCC, we urge the NAIC's consideration of our requests at the New Orleans Summer National Meeting.

Sincerely,



Birny Birnbaum  
Center for Economic Justice



J. Robert Hunter  
Consumer Federation of America

cc NAIC Members  
Cathy Weatherford, Executive Vice President, NAIC  
NAIC Consumer Representatives