



December 23, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20511

Re: Docket No. R-1390 (credit protection products)

Dear Ms. Johnson:

The American Financial Services Association (AFSA) is grateful for the opportunity to comment on the Federal Reserve Board's ("Board") proposed rule amending Regulation Z with respect to credit protection products ("Proposed Rule"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers.

AFSA members recognize the need to enhance consumer protection in the residential mortgage loan process, but feel that the proposal to amend the disclosures for credit protection products goes too far. To this end, AFSA members offer the following comments in response to the Board's request for comments on the Proposed Rule:

- I. Overarching concern – as noted in more detail below, the proposal is slanted and biased against a legitimate consumer product that is authorized and heavily regulated under state law. Disclosures should be designed to educate the public, not to present a lop-sided view of a legitimate product that many consumers voluntarily purchase, use and benefit from.**

AFSA members are extremely concerned that the proposed credit protection product disclosures are slanted and biased against credit protection products. And, as discussed later in this letter, AFSA members believe the proposed disclosures are also misleading. The Proposed Rule would cover credit life insurance, credit disability insurance, credit involuntary unemployment insurance, debt cancellation contracts, debt suspension agreements (e.g., creditor cancels the consumer's outstanding balance or cancels or suspends the consumer's minimum payment in the event of the consumer's death, disability, or involuntary unemployment and sometimes other events such as divorce or military separation, etc), and GAP ("guaranteed asset protection") debt cancellation agreements offered by motor vehicle dealers in which the difference between the outstanding balance of the amount financed and the primary insurer's payment, subject to certain limitations, is waived in the event the vehicle is totaled or stolen and unrecovered. These products offer important benefits (such as waiving, paying off or making payments on a consumer's credit obligation in the event of death, disability, or loss of employment) to consumers who may not otherwise qualify for insurance outside of the context of a

credit transaction. Additionally, consumers that may not have the ability to pay cash for credit protection products have the ability to finance credit protection products as part of a credit transaction. Given the current economic climate, it is more important than ever that consumers be able to protect themselves in the event of unforeseen personal or financial hardships. Credit protection products offer this important protection to a wide spectrum of consumers. Indeed, a 2002 article by the Federal Reserve Board's Division of Research and Statistics reported that, based on consumer surveys, over 80 percent of consumers that purchased credit protection products were satisfied with the product they purchased.¹

These legitimate consumer products are authorized under most, if not all, state laws.² It is not appropriate for the Board to suggest language that appears to impose a negative judgment about the value of these products. This is particularly true where states have determined that credit protection products are legitimate and valuable products, and permit creditors to offer these products. As a general rule, disclosures should be designed to educate consumers and present unbiased information that will assist consumers in making an informed choice that best meets their needs. Disclosures should not present an unfair and slanted view that is designed to dissuade consumers from voluntarily obtaining a legitimate product that many consumers use and benefit from. AFSA members feel that the proposed disclosures display an unfair and slanted view that defeats the purpose of consumer disclosures.

II. General Comments on Disclosures

A. Board's Authority

AFSA members do not believe that the Board has authority to promulgate the Proposed Rule. Section 105 of TILA directs the Board to carry out the purposes of the Act through regulations. Section 106(b) of TILA provides:

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

- (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and
- (2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific

¹ Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance*, Federal Reserve Bulletin, April 2002 at 208—213.

² See, e.g. Arizona, Ariz. Rev. Stat. § 6-636(A); California, Cal. Fin. Code §§ 22314(f), 22455(e); Florida, Fla. Stat. Ann. § 627.679; Georgia, Ga. Code § 7-3-14; Illinois, 205 IL CS 670/15a; New York, NY Banking Law §§ 357(5) 352; Pennsylvania, 7 Pa. Stat. § 6213.N, 10 PA ADC § 41.3; Texas, Tex. Fin. Code § 342.402(a).

affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.³

TILA requires disclosures about credit insurance only for the purposes of excluding credit insurance premiums from the finance charge. Within that limited context, TILA requires only a disclosure that credit insurance does not affect whether the credit application will be approved, the cost of the insurance and written affirmation of consent by the consumer. The Proposed Rule goes far beyond the scope of credit protection product disclosures contemplated by TILA and Regulation Z. In addition to disclosing the voluntary nature of the product and obtaining the consumer's written consent, the Proposed Rule requires a litany of information about the specific product offered. Even more troublesome, the proposed disclosures have the appearance of a warning label. The strong and disapproving language presupposes that credit protection products are harmful to consumers. Instead of informing consumers about the product, the apparent goal is to convince consumers not to obtain these products at all. The Proposed Rule would also require creditors to determine age and employment eligibility prior to or at the time of enrollment in order to exclude the cost of credit protection products from the finance charge. TILA imposes no such requirement.

Section 106(b) does not contemplate the extensive proposed disclosures or the regulation of eligibility criteria, and certainly does not contemplate the Board passing judgment on the value of these products and attaching warning labels to consumer credit products. The proposal therefore exceeds the authority granted to the Board by TILA with respect to credit protection product disclosures.

B. Less Disclosure, Not More

AFSA Members are also concerned that the Proposed Rule adds to the rapidly growing number of disclosures that consumers see before consummation of the credit transaction. Over-disclosure serves only to further dilute the effectiveness of consumer disclosures as a whole.

The current disclosures provide consumers with all of the information required by Section 106(b) of TILA and Regulation Z and provide consumers with sufficient information to make an informed choice about credit protection products. Indeed, the Board's own consumer research shows that consumers understand the currently required disclosures. Thus, in addition to the fact that the Board does not appear to have authority to require the proposed disclosures, the disclosures are not necessary.

Further, states already require extensive disclosures related to credit protection disclosures. The proposed disclosures are different than what any state requires and will cause consumers to receive different and confusing disclosures about the same products, and in some cases, the proposed disclosures will actually conflict with state credit insurance disclosures. For example, the state of Georgia requires a one-page stand-alone credit insurance disclosure statement.⁴ Georgia allows creditors to require the purchase

³ 15 U.S.C. § 1605(b).

⁴ Attached as Appendix A.

of credit insurance in connection with a consumer installment loan. The Georgia disclosure includes an explanation that credit insurance is required in connection with the loan, a disclosure of the cost of the credit insurance on a unit basis, and a signed acknowledgment that the consumer understands the type of credit insurance purchased.

The aspects of the extensive new federal disclosures also are redundant of the disclosures required by Georgia and most other states. Most states already require a disclosure of the cost of the credit insurance and require the consumer to sign an acknowledgment. However, the proposed disclosure also conflicts with the Georgia disclosure in several important respects that could cause confusion for consumers. For example, creditors can disclose the cost of credit insurance on a unit-cost basis on the Georgia form, but would be required to disclose the cost of the premium based on the outstanding balance of the loan on the federal form. Thus, consumers would receive two different disclosures of the cost of the credit insurance with no way to reconcile the different amounts.

The current TILA disclosures on credit protection products, coupled with state laws provide sufficient protection for consumers in this space. Additionally, most states offer consumers a “free look” period in connection with these products during which consumers can reconsider their purchase and cancel the product if they choose. Some states require a sign to be posted at the point of sale indicating that the purchase of these products is voluntary.

Many other states currently require disclosures similar to the existing Regulation Z disclosures. If the Proposed Rule is adopted, creditors may have to give both these state required disclosures and the new federal disclosures. Such duplicative disclosures will not be helpful to consumers, and will probably be confusing. There also will be situations in which state and federal law may require duplicative customer authorizations, which would engender further confusion. Such duplicative disclosures would also defeat the general goal to reduce the disclosures and to focus only on disclosures that provide meaningful information to customers. Thus, if the Proposed Rules are eventually adopted, any effective date should be postponed so that states can make the necessary adjustment to their disclosure requirements.

C. Consumer Testing

AFSA members feel that the consumer testing underlying the Proposed Rule is woefully inadequate and does not fully account for the interests of consumers and creditors. AFSA members request that the Board conduct additional testing of a broader sample, preferably outside of the mortgage context, before acting on the Proposed Rule.

The consumer testing of the credit protection product disclosures involved only 18 consumers – ten consumers in the first round, and eight consumers in the second round. In contrast, the aforementioned Federal Reserve Board survey on credit protection products involved 1,006 consumer interviews.⁵ Eighteen consumers is not enough to comprise a representative sample of consumers and the Board should not rely on the

⁵ Thomas A. Durkin, *Consumers and Credit Disclosures: Credit Cards and Credit Insurance*, Federal Reserve Bulletin, April 2002 at 202, FN 2.

results from this small focus group to propose extensive disclosures that are not only misleading and inaccurate but also conflict with TILA.

Additionally, of the eight second round consumers tested, none reported having experienced a financial hardship in the past several years. Thus, the consumers tested were not likely to have an appreciation for the benefits of credit protection products and therefore did not provide an accurate representation of how consumers as a whole view these products.

Further, the credit protection product disclosures were tested in isolation from other important disclosures. Credit protection product disclosures are only one of many disclosures provided to a consumer before consummation of a credit transaction. Testing one disclosure in isolation ignores the fact that consumers are not devoting their undivided attention to that particular disclosure. Rather, consumers are presented with a large number of disclosures at closing and must make sense of them all at once. In order to effectively test whether consumers will understand the disclosure in a “real world” scenario, and to ensure that the Board strikes the correct balance between providing meaningful disclosures and avoiding informational overload, the credit protection disclosures should be tested in conjunction with the other required disclosures, not separately.

Finally, we note that the version of the credit protection product disclosures that appears in the Proposed Rule has not been tested on consumers. The Board revised the disclosures that it used in its consumer testing and did not test the revisions further before publishing them in the Proposed Rule. This oversight should be addressed as part of the more thorough testing regime recommended above.

In sum, the introduction of a new disclosure before consummation of a consumer credit transaction is problematic for a host of reasons. AFSA members ask that the Board reconsider the addition of an entirely new disclosure and engage in additional and more comprehensive consumer testing before taking any action on this Proposed Rule. Such testing should look at any proposed rules both in the context of mortgage loans and non-mortgage consumer credit transactions. The Board may find that consumers have different concerns and need different information when making decisions about whether credit protection is needed in these two very different credit contexts.

III. Comments on Specific Slanted, Biased and Misleading Language Contained in the Proposed Rule

AFSA members reiterate that the language used in the proposed disclosures is extremely slanted against credit protection products and misleading, to the point that the disclosures would serve as a cigarette-like warning label that suggests these products provide no value to consumers.

This biased point of view is apparent in various points throughout the disclosure, and we discuss each instance in more detail below.

Header: The use of “STOP” at the outset of the notice is overkill and not commensurate with the purpose and role of credit protection product disclosures. Compare this strong language with the Truth in Lending Act notice of right to rescind. The notice of right to rescind, which arguably has more significant implications for consumers, does not use language anywhere near this strong. This type of alarmist language is not justified in the context of credit protection product disclosures.

Do I need this product? The language in this portion of the disclosure effectively tells the consumer that they do not need the credit protection product. The proposed language is misleading, and it is improper for the Board to require disclosures that seem to encourage consumers not to obtain credit protection products that are authorized by state law.

The concept of “need” is not appropriate in this context. Loans and other types of credit transactions, credit protection products and even insurance in general are not actually necessary. Consumers can rent a house, pay cash for a used car or use public transportation. Similarly, consumers can decide not to obtain life insurance or collision or comprehensive insurance on their car. The decision to obtain a credit product or a credit protection product is about allocation of resources and not a needs-based decision. Therefore, it is disingenuous to imply that the decision to purchase a credit protection product is a needs-based analysis when the entire credit transaction is optional.

Telling consumers that they may not “need” a consumer protection product if they have existing insurance is misleading. Insurance existing prior to the credit transaction would not have been obtained in contemplation of the new debt that the consumer incurs. For example, term life insurance takes into account the consumer’s financial position at the time of application. If the consumer subsequently undertakes additional credit obligations, a previously purchased term life insurance product would not account for those additional debts. A credit protection product allows the consumer to obtain additional protection with respect to the debt that was not contemplated in the consumer’s term life insurance policy. The disclosure falsely implies that the consumer’s existing insurance will cover their obligation under the new debt. Actually, the opposite is true; if the consumer credit transaction is not covered by a credit protection product and the consumer experiences a “covered event,” then the consumer’s existing insurance would not cover as many other expenses as it would have otherwise had there been credit protection in place.

Further, the statement that other types of insurance can provide similar benefits at a lower cost is not always true, and in some cases is simply wrong. For example, AFSA members are unaware that involuntary unemployment insurance exists outside of the credit context anywhere in the United States. With respect to cost, many consumers are unable to pay the cost for a credit protection product up front in cash. If the consumer is required to finance the cost of a credit protection product outside of the credit transaction, the cost of doing so is generally much higher than financing the cost as part of a credit transaction. Similarly, consumers may not be eligible for other types of insurance products due to age, health condition or occupation. Credit protection products are designed to be available to a large number of consumers, some of whom are not eligible for more traditional insurance products. Discouraging consumers from obtaining credit

protection when they may not be able to procure similar protection elsewhere is unfair at best.

Also, studies show that American families are under-insured.⁶ Credit protection products provide a valuable safety net for consumers that lose their jobs or become too ill to work. A consumer's decision to obtain credit protection products as a hedge against future events is a rational decision. Coverage is particularly important in unpredictable economic times where consumers are less likely to be able to handle unexpected financial difficulties, such as lost employment. When Americans need more coverage, not less, discouraging consumers from purchasing these credit protection products is ill-advised and perhaps even irresponsible.

AFSA members acknowledge that purchasing a credit protection product is an important decision and that consumers should knowingly enter into such an agreement after careful consideration. However, it is possible to bring this information to consumers' attention in a more impartial fashion. AFSA members request that the Board adopt less objectionable language to focus consumers on making a conscious and informed decision to purchase a credit protection product. For example, "Think carefully before you buy this product . . ." is an objective and helpful phrase that instructs consumers to be thoughtful without discouraging consumers from obtaining the product.

Can I receive benefits? This language is extremely slanted, unfair and misleading. The proposed disclosure suggests to consumers that credit protection products are a rip off. First, this type of coverage is a benefit of and by itself because it offers peace of mind to the consumer. Second, similar to life insurance, homeowners' insurance or auto insurance, the consumer may never receive any benefits under a credit protection product unless a covered event happens. Does the Board also want to discourage consumers from obtaining those other types of insurance because consumers may never use the protection offered by the coverage?

In order to provide similar information to consumers in an accurate and objective way, AFSA members suggest that the Board consider adopting the disclosure language in the Office of the Comptroller of the Currency's debt cancellation rules regarding policy exclusions:

Eligibility requirements, conditions, and exclusions

There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [PRODUCT NAME].

[Either:] You should carefully read our additional information for a full explanation of the terms of [PRODUCT NAME] *or* You should carefully read the contract for a full explanation of the terms of [PRODUCT NAME].

⁶ LIMRA International recently reported that 50% of American households felt they needed more life insurance. Trends in Life Insurance Ownership, August 27, 2010, LIMRA International, Windsor, CT, reported in USA Today, http://www.usatoday.com/money/perfi/insurance/2010-12-03-1Alifeinsurance03_ST_N.htm?POE=click-refer.

At the very least, AFSA members request that the Board replace “Can” I receive benefits with “Will” I receive benefits. The use of “Will” creates less of an incorrect impression that the benefits are merely speculative.

IV. Comments on Practical Considerations That Make the Proposed Rule Confusing and Less Effective

Terminology: As a general matter, the model disclosure refers repeatedly to “loans.” In each instance, AFSA members request that the Board either substitute a more generic term that captures all types of credit transactions, or allow creditors flexibility to insert appropriate terminology such as “contract” or “account,” where necessary.

Formatting: The formatting requirements of the proposed disclosures are problematic, particularly for smaller creditors with less sophisticated systems. Smaller creditors have more difficulty complying with strict formatting requirements, such as boxes and headings. The Board assumes that all creditors use sophisticated computer systems with laser printers to prepare these forms. In fact, many creditors use very basic computer systems to produce disclosures and strict formatting requirements may be impossible for them to implement.

AFSA members request that the Board not adopt these kinds of strict formatting requirements in connection with any required disclosure.

Specificity: On a related note, the specificity required in the proposed disclosures will pose a problem even for larger and more sophisticated creditors. The level of detail that must appear in these disclosures will likely preclude them from appearing in form documents, such as retail installment sales contracts. However, if the new disclosures are provided in a separate, stand-alone document, assignees will have a difficult time ensuring compliance.

Website: Given that the proposed disclosure is so slanted against credit protection products, AFSA members are concerned that the website proposed by the Board would contain similarly biased information that would unfairly discourage consumers from obtaining credit protection products. Additionally, the content of the website may be inconsistent with the terms of the specific product that the consumer contemplates purchasing. In that case, the website could mislead consumers with respect to the terms and conditions of the specific product. AFSA members generally oppose directing consumers to a website maintained by the Board as part of the credit protection product disclosures.

Should the Board decide to proceed with the website, AFSA members request that the content of the website be published as part of this rulemaking so that the industry has an opportunity to comment on the content. Any future changes to the content of the website should similarly be published for public comment prior to posting. In fact, by mandating a reference to this website, the website essentially becomes a required model form and changes would have to be published for comment.

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

Do I need this product? The references to insurance in this portion of the form may not be applicable in all cases. As the Board recognizes in the debt cancellation and debt suspension contexts, credit protection products are not always insurance. AFSA members request that the Board revise these references to be more accurate with respect to non-insurance credit protection products. For example, the Board could reference "insurance or other similar coverage."

How much does it cost? It will be difficult to disclose the cost of the product as a statement of the maximum charge per period when a credit protection product is offered at the time of application because the amount financed or line of credit may not be known at that time.

Additionally, it is unclear how creditors would provide this disclosure when the credit protection product is offered at time of application. If the amount financed or line of credit is not known at that time, may the creditor use reasonable estimates? If a reasonable estimate is permitted, are there any requirements that creditors must follow in developing that estimate?

AFSA members propose that the Board preserve the unit cost basis disclosures and require a disclosure with a simple instructional statement or based on a sample. For example, the CCIA tested the following disclosure on 400 consumers:

The cost of this product is \$0.72 per \$1,000 of your outstanding loan balance each month. *To calculate the monthly cost of this product, divide your loan amount by 1,000 and then multiply by 0.72.*

Sixty-seven percent of consumers tested were able to correctly calculate the monthly premium for a \$25,000 loan. This is a significant number and, as such, shows that consumers can calculate the cost if the unit cost disclosure is given effectively.

We also offer two alternatives. First, we suggest an example such as, "The monthly cost of the product is \$1.25 per \$100 of your ending balance. If your ending balance is \$800, your cost will be \$10 for that month." Second, creditors could disclose a range of the minimum and maximum monthly cost.

What is the Maximum Benefit? For certain credit protection products, it will be difficult to disclose the maximum benefit amount in the manner the Proposed Rule requires. The responses in the model form appear to reflect a presumption that all credit protection products have a maximum benefit amount equal to a simple numerical amount. In fact, certain credit protection products determine the benefit amount in accordance with a mathematical calculation that may not be expressed as simple numerical amount. For example, certain optional GAP products sold by motor vehicle dealers provide that in

the event of total loss or theft of the vehicle the dealer will waive the difference between the outstanding balance and the consumer's insurance payment subject to certain limitations described in the GAP agreement. AFSA members recommend that additional optional text be inserted in the model form to accommodate such credit protection products. For example: "[Part of your outstanding balance may be [cancelled][waived] in accordance with the terms of this product.]"

Can I receive benefits? AFSA members oppose the Board's proposal that age and employment eligibility must be determined prior to or at the time of enrollment. Many creditors enroll consumers in credit protection products at point of service or on the telephone. Requiring separate evidence of employment eligibility would make POS and telephone enrollments impractical. AFSA members request that this requirement be eliminated when a creditor clearly discloses any eligibility requirements prior to enrollment. Alternatively, the Board should specifically provide that creditors may meet this requirement if the consumer states on the enrollment form that the consumer meets the specific age and/or employment eligibility criteria.

If the Board adopts the requirement that age and employment eligibility be determined as of the time of enrollment, AFSA members offer the following comments.

The Proposed Rule is internally inconsistent with respect to when the creditor must determine that the consumer meets any age or employment eligibility. For example, the Proposed Rule states that certain conditions including the eligibility determination must be met before the consumer enrolls in the credit protection product written in connection with the credit transaction. However, the Proposed Rule (as well as proposed comment 14 to Section 226.14(d)) also states that the creditor may make the eligibility determination "prior to or at the time of enrollment." Moreover, one of the required disclosures which must be provided prior to enrollment is a statement that the consumer meets the eligibility requirements. If the creditor does not make the eligibility determination until the time of enrollment, it will not be possible to make the required disclosure regarding the consumer's eligibility prior to enrollment. AFSA members request that the Board revise the Proposed Rule for consistency on this issue.

The language referencing age and employment eligibility in this portion of the disclosure may not be applicable in all cases. The Board incorrectly assumes that all credit protection products have an age or employment eligibility requirement, as evidenced by the fact that the first part of the sentence beginning "You meet the..." is not bracketed. In fact, there are credit protection products that do not have an age or employment eligibility requirement. Because the Proposed Rule only requires the creditor to determine age or employment eligibility requirements prior to or at the time of enrollment, a creditor offering a product without age or employment eligibility requirements would therefore not include any statement regarding the consumer's satisfaction of any eligibility requirement. AFSA members request that the Board address that possibility and clarify how to complete this portion of the disclosure. AFSA members suggest that if the credit protection product has no age or employment eligibility requirements but does have other eligibility requirements, the Board either adopt language similar to that required by the Comptroller of the Currency or permit a

disclosure that would read as follows: “There are eligibility requirements that you must meet in order to receive benefits.”

How long does the coverage last? Generally speaking, this disclosure is not problematic. However, many creditors do not offer credit protection products that extend beyond the term of the credit transaction. AFSA members request that the Board clarify that for these creditors this disclosure is unnecessary and can be deleted, which is the current rule for this disclosure. We also note that this would be one way to reduce the length and complexity of these disclosures. Alternatively, the Board should allow creditors to state in the disclosure that the product provides coverage for the term of the credit transaction.

Signature line: This portion of the proposed disclosures is redundant for several reasons and serves no apparent purpose other than to create potential liability for creditors.

There is no reason to require both a signature and a check box. One of these items sufficiently indicates the consumer’s consent to purchase the credit protection products. To require both introduces risk without any benefit, as creditors may have liability if the box is checked but the signature is not provided – or vice versa. As a practical matter, many small consumer creditors still use dot matrix printers and aligning the check box properly would be difficult, if not virtually impossible. To eliminate unnecessary risk, while ensuring that consumers understand the purpose of the signature, AFSA members suggest that the checkbox be eliminated, and that the signature line start with the words: “I WANT . . .” in all capitals.

Similarly, there is no reason to require a restatement of the cost in the signature line. This additional disclosure is redundant and complicates already excessive disclosures. It will also increase the possibility of mistakes for smaller creditors who complete these documents by hand. AFSA members request that the cost disclosure be eliminated from the signature line.

Choice of Multiple Credit Protection Products: It is unclear how to comply with the Proposed Rule when creditors offer multiple credit protection products, as is often the case in the non-mortgage consumer credit industry. Note that some state laws require creditors to give consumers options about the choice of credit protection products that are offered. More guidance and probably more consumer testing are required with regard to how disclosures about multiple credit protection options should be given.

The Proposed Rule seems to be unworkable when a creditor offers a full range of credit protection products. Some states require the cost of each product to be set forth separately and require the creditor to offer each product separately, so that the consumer can choose which coverage best fits his needs without purchasing additional coverage that he deems unnecessary. The Proposed Rule would appear to require creditors to disclose a monthly cost of the credit protection product based on the amount of credit made available. However, if a creditor has to provide separate disclosures for each different type of coverage, the creditor will not be able to calculate an accurate monthly cost for the individual coverages because the consumer’s selection of coverages could change the monthly cost for any individual coverage. For example, the monthly

premium for credit accident and health insurance is based on the total monthly payment the consumer must pay. This amount cannot be determined and disclosed on a form that only contemplates the sale of credit accident and health insurance because the purchase of any other coverage would change the monthly payment that must be covered by this insurance and thus the premium that must be paid. The Board needs to reconsider its Proposed Rule in light of how both the Board and the states require these products to be offered to consumers and develop a rule that creditors will be able to comply with.

Timing of Disclosures: AFSA members request that the Board revise Section 226.17(b) to acknowledge the special disclosure timing requirements applicable to credit protection products (similar to the special timing requirements that Section 226.17(b) currently acknowledges).

Additionally, it appears that the credit protection product disclosures would be subject to the delay for mail or telephone orders in 226.17(g). AFSA members request that the Board revise the Proposed Rule to expressly state that a creditor can delay the provision of the proposed disclosures applicable to credit protection products for mail or telephone orders.

V. AFSA Members take issue with the fact that the proposed rule for credit protection products, which applies to all types of credit, is buried in a proposed rule for home-secured credit. Many mortgage lenders do not offer credit protection products and will have little incentive to provide comments on this portion of the Proposed Rule. Credit protection products are more commonly offered as part of non-mortgage consumer credit transactions and any proposed revisions to the credit protection rules should be considered in the context of changes to non-mortgage consumer credit disclosure rules. This ensures a wider range of comments that will be better focused on this important issue.

As an initial matter, AFSA members take issue with the fact that the proposed rule to amend disclosures for credit protection products, which applies to all types of credit, is buried in a proposal to regulate home-secured credit. There may be some non-mortgage creditors, particularly small creditors that do not have the benefit of membership in a trade association, who as yet are unaware that this small piece of a sweeping mortgage proposal will drastically affect their business. These creditors will be unfairly deprived of their right to comment on this rule and the Board will be deprived of their valuable perspective in considering this Proposed Rule.

Additionally, it is the experience of AFSA members that many mortgage lenders do not offer credit protection products. On the other hand, credit protection products are very common in the non-mortgage consumer credit industry. Given that credit protection products are most prevalent in non-mortgage consumer credit transactions, it seems inappropriate to propose these sweeping changes in the context of mortgage lending. AFSA members do not believe that the interests of the non-mortgage consumer credit industry or the interests of their customers were adequately considered in developing this Proposed Rule.

In addition, under Section 509 of the Credit Card Accountability Responsibility and Disclosure Act of 2009, the Government Accounting Office is due to present to Congress this month a study of credit insurance and debt cancellation products as used in the credit card industry. The study will look at the terms, conditions, marketing, and value of such products and evaluate (1) the suitability of such for customers; (2) the predatory nature of such offers; and (3) specifically for debt cancellation or suspension agreements and credit insurance products, loss rates compared to more traditional insurance products. This study will be based on offers for these products that use the current Regulation Z disclosures. It would be prudent for the Board to defer any action on the credit insurance and debt cancellation portions of the Proposed Rule until the GAO study can be evaluated and any recommendations or findings considered and taken into account.

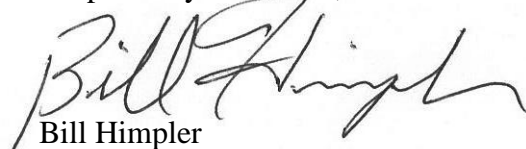
VI. All-in finance charge should not be adopted.

Finally, AFSA members would again like to express their opposition to the adoption of an “all-in” finance charge requirement. As noted in the AFSA comment letter to the August 2009 proposed rule⁷ regarding real estate-secured credit, there is no logical justification for this rule, it would have the unintended consequence of expanding the coverage of state high-cost mortgage loan laws, and it exceeds the Board’s authority under TILA.

AFSA members encourage the Board to retain the current finance charge calculation structure. At the very least, the Board should consider treating differently credit protection premiums where the premium or other charge is paid at closing in a single lump-sum from those where the premium or other charge is calculated and paid on a monthly basis. Congress recently recognized this distinction in the Dodd-Frank Wall Street Reform and Consumer Protection Act. In Section 1431 of the Act Congress revised the definition of points and fees under Section 1602(aa)(4) [now Section 1602(bb)(4)] to exclude premiums or other charges calculated and paid on a monthly basis. Most similar state laws that specifically consider credit protection products have made the same distinction. If single premium credit protection products are to be included in the finance charge for home secured products, the Board should follow this recent congressional example and exclude any premiums or cost calculated and paid on a monthly basis.

AFSA appreciates the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,



Bill Himpler
Executive Vice President
American Financial Services Association

⁷ 74 Fed. Reg. 43231 (Aug. 26, 2009).

APPENDIX A

CREDIT INSURANCE DISCLOSURE STATEMENT

We may require credit life insurance, credit accident and health insurance, and personal property insurance covering the collateral for this loan. If required, you may furnish this insurance through anyone you choose, you may provide it through an existing policy, or you may obtain it from Lender. If you purchase any of the insurance listed below from Lender, and you pay off your note early, you will have the option either to cancel or to retain your insurance coverage. You acknowledge that the Lender has a financial interest in the sale of such insurance by virtue of commission income or other income which it may receive. The Lender may retain a portion of the premium.

Credit Life Insurance	Premium/Cost to You	\$ _____
<hr/>		
Credit Accident & Health Insurance	Premium/Cost to You	\$ _____
<hr/>		
Personal Property Insurance	Premium/Cost to You	\$ _____
<hr/>		
Single Interest Vehicle Insurance	Premium/Cost to You	\$ _____
<hr/>		
	Total Premium/Cost to You	\$ _____

I acknowledge that I have read this Disclosure Statement and that I understand the types of insurance purchased with this loan. I choose to buy this insurance from Lender. I also acknowledge that I have received a copy of this Credit Insurance Disclosure Statement and understand that the original is to be retained by the Lender in the loan file.

Borrower

Borrower

Loan Closer for Lender

Date