CONSUMER CREDIT INDUSTRY ASSOCIATION

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September 11, 2015

Carolyn Carter
National Consumer Law Center
7 Winthrop Square
Boston, MA 02110
(sent via email)

Re: Paper on Installment Lending, July 2015

Dear Ms. Carter,

I am submitting this material on behalf of the Consumer Credit Industry Association (CCIA). CCIA is a national trade association of insurance companies and other financial service providers selling or servicing consumer credit insurance, debt protection and other consumer credit protection products. Our member insurance companies write the great majority of the credit insurance premium volume nationally and administer much of the debt protection programs in the United States. For over 60 years, CCIA has worked to enhance consumer financial security by preserving the availability, value and integrity of these important products and services.

The CCIA supports efforts to protect consumers and their families from predatory lending practices and the harm it may cause to their financial stability. States should establish reasonable protections for consumers that do not unnecessarily limit their credit opportunities, or the ability to protect themselves and their family members from financial loss through the voluntary purchase of credit insurance or debt protection products.

A recent report[1] from the Consumer Financial Protection Bureau defines consumer financial well-being as a state where consumers have control over short-term finances, the capacity to absorb financial shock, are on track to meet their financial goals and have the financial freedom to make the choices that allow them to enjoy life. Payment protection products are critical voluntary products that directly enable consumers to achieve such financial well-being: when an unforeseen, adverse life event occurs, payment protection products cover consumer debt payments to help them effectively manage their cash flows and withstand financial shocks.

[1] Consumer Financial Protection Bureau, Financial Well Being: The goal of financial education, January, 2015

CCIA is compelled to dispel the inaccuracies and misleading statements made in the National Consumer Law Center® (NCLC) paper entitled: "Installment Loans - Will States Protect Borrowers from a New Wave of Predatory Lending" (July, 2015). We support the intentions of research firms to conduct objective studies and publish credible findings with a view toward educating stakeholders. However, the NCLC paper is unexpectedly riddled with inflammatory language and is based on inaccuracies and selective and dated data points. As a result, the NCLC's paper casts a negative, inaccurate analysis of the consumer value of payment protection programs and how these programs are sold to consumers. The programs are voluntary lending-related products designed to provide a financial safety-net for borrowers should the unexpected occur: loss of life, sickness or injury, job loss, or other unforeseen events.

Credit insurance and debt protection are voluntary

Regulations and credible research findings prove the products are voluntary in nature. Yet, the NCLC paper selectively cites a thirty year-old lawsuit to broadly assert these programs are involuntary: "...generally lenders achieve very high penetration rates—in some cases, nearly 100%." The NCLC paper also incorrectly asserts with no credible foundation or substantiating data that "lenders add the insurance into every loan" and "only remove them [the insurance] when the consumer objects" and that lenders are "…cramming unnecessary products, such as low-value insurance." There is no basis for any of these assertions.

Updated research data provides definitive proof that credit insurance and debt protection are voluntary products. In 2012, the University of Michigan Survey Research Center (SRC) conducted an independent study regarding consumer experiences with credit insurance and other payment protection products in the contiguous 48 states. Using longitudinal research findings spanning 30 years and including the 2012 data from this study, Thomas A. Durkin (now retired) and Gregory Elliehausen of the Federal Reserve Board's Division of Research and Statistics found that penetration rates have dropped significantly since 1985 and have remained fairly steady at 22% since 2001. Their findings reinforce the voluntary nature of the products:

> *The penetration rate on closed-end consumer installment credit was 22 percent in early 2012, about the same as in 2001...The rate both years was substantially below the corresponding rates of 64 and 65 percent found in 1977 and 1985, respectively, with similar research approaches. This decline is substantial and suggests that if widespread aggressive sales are being attempted, they are not very successful*
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> *None of these behaviors suggest the kind of unhappiness with a product that might arise if purchasers felt that they were being pushed into the purchase or that the product itself was not very useful.*[2]

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[2] Thomas A. Durkin (now retired) and Gregory Elliehausen of the Federal Reserve Board's Division of Research and Statistics, Federal Reserve Bulletin, "Consumers and Debt Protection Products: Results of a new Consumer Survey," December 2012, Vol. 98, No. 9).

Federal lending and state insurance laws require sellers to disclose payment protection product costs to consumers as a separate, voluntary fee associated with the loan, and inform prospective buyers that the purchase of payment protection is not required to obtain the loan. The Annual Percentage Rate (APR) is not intended to include the cost of voluntary products like credit insurance and debt protection. And yet the NCLC describes these costs as “flying under the [APR] radar” as a hidden cost of credit and that “…borrower never sees…the total cost of the loan…with and without credit insurance.” Voluntary payment protection products are not a cost of credit as they are not required to be purchased for the consumer to obtain a loan. The NCLC mischaracterizes these voluntary products as a “cost” when they are clearly not.

Maintaining voluntary payment protection products separate from the APR is a key requirement to assure consumers understand the true cost of credit. The APR is intended to compare the costs of loans of equal amounts and durations. From a practical perspective, if the cost of payment protection products were included in the APR for one loan and not included in another loan available to the consumer, then the consumer is not comparing “apples to apples” when evaluating loan options and costs.

Thomas A Durkin, former Senior Economist for the Federal Reserve Board, notes the intent of Congress to exclude fees – such as credit insurance and debt protection fees -- that are not a cost of credit from the finance charge was to protect the consumer:

> *“Beyond the fact that including a fee that is not a finance charge within the finance charge required for disclosure by government mandate is inappropriate for “Truth” in Lending purposes, there are specific disadvantages for consumers in attempting to do so. If sometimes the finance charge and APR contain certain fees and sometimes they do not, it becomes difficult for consumers to compare credit costs, as TILA intended. An "all-in” finance charge (or possibly, a “sometimes in, sometimes not there” approach to measuring the cost of credit that also includes other products and services) complicates credit shopping. This approach is inconsistent with the Congressional stated purpose of TILA and with the goal of credit shopping. Arbitrarily declaring them to be finance charges confounds the ability of consumers to shop effectively for credit costs, frustrating the basic purpose and intent of TILA in the first place. This is bad public policy.”* [3]

Credit insurance and debt protection are cost-efficient

The NCLC paper incorrectly asserts that consumers are sold more coverage than they need and payment protection products are “exorbitantly priced”. On the contrary, the very structure of the products generally does not allow a consumer to purchase more than the outstanding indebtedness. With payment protection products, consumers are not asked to purchase $100,000 of coverage for a $2,000 loan. Rather, the coverage is sized to the loan so the borrower only buys what they need.

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[3] Thomas A. Durkin, Conceptual Difficulties with the “All In” Finance Charge and APR Proposal from the Consumer Financial Protection Bureau, 67 Consumer Finance Law Quarterly Report 47 (2013)

State insurance regulators set credit insurance pricing based on industry experience and research shows the products are cost-efficient for consumers. A Fellow of the Society of Actuaries, Chris Hause conducted a study which found that:

> *...the concept of increased pricing efficiency with increased volume is not unique to credit insurance. In fact, my analysis shows that if term insurance were available at the low face amounts at which credit insurance is purchased, the premium cost for term life would actually be higher.*
>
> *Also, term life insurance is rated by age, gender and health status whereas credit life insurance is generally a single rate for all. So, the numerical relationships vary, but all comparisons suggest that credit insurance is an efficient vehicle for providing small amounts of life insurance." (emphasis added)* [4]

Said another way, an $8,000 credit life insurance policy – the typical exposure amount for such a product -- costs less than an ordinary term life insurance policy for the same amount. Thus, contrary to the NCLC's paper that repeatedly and inaccurately asserts "exorbitant" costs, payment protection is cost-efficient for many American consumers, including installment loan borrowers.

Consumers need accessible options to protect their financial well being

A sizable segment of American consumers are at risk. They have little in financial reserves to weather unexpected financial burdens:

- 55% of American households are savings-limited, meaning they can replace less than one month of their income through liquid savings[5]
- Nearly 50% of households since 1979 experience an income gain or drop of more than 25%[6]
- 70% of American households face at least one of the following challenges: savings-limited, debt-challenged, or income-constrained[7]
- 68% of Americans would find it difficult or somewhat difficult to meet their current financial obligations if their paycheck was delayed for one week[8]
- 67% of U. S. families have $10,000 or less in savings[9]
- 37% of adult Americans have no savings earmarked for emergencies.[10]

The 2015 report already cited from The Pew Charitable Trusts suggests the financial challenges of American households continue today: "…the data in this study reveal a striking level of financial fragility."

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[4] Christopher H. Hause, FSA, "Term Insurance Versus Credit Life: Which Rates are Lower?" (June 23, 2010)
[5] The Pew Charitable Trusts, "The Precarious State of Family Balance Sheets," (January, 2015)
[6] Ibid
[7] Ibid
[8] American Payroll Association, "Getting Paid in America" Survey, (2012).
[9] USA Today, "More Families Have No Savings," (May 14, 2012)
[10] Consumer Federation of America, "2012 Household Financial Planning Survey: A Summary of Key Findings," (July 23, 2012).

The significant cash flow exposure is exacerbated by the fact that many Americans lack protection from adverse life events:

- 4 out of 10 Americans –almost 130 million citizens -- do not own life insurance.[11]
- Only 35% of low-income households and 54% of moderate-income households hold a term or whole life insurance policy[12]
- 68% of Americans working in the private sector have no long-term disability insurance.[13]
- Over 95% of disabling accidents and illnesses are not work related,[14] and thus are not covered by workers' compensation.
- Employer provided disability coverage provides at most two-thirds of income prior to disability and is generally reduced by Social Security Disability benefits.[15]

Perhaps this lack of coverage may be related to consumers often finding the purchase of life or disability insurance a daunting task. Payment protection products are available at point-of-loan, often with little or no underwriting. Unlike term insurance, the cost will not increase as the consumer ages. Therefore, for many who cannot afford individual term life insurance due to age, or whole life insurance or individual disability insurance because of health conditions, smoking habits or dangerous occupations, payment protection products may be the best or only option.

Senator Elizabeth Warren has made key observations on the financial needs of consumers. One could argue she has accurately summed up the financial challenges of many Americans today. As a Professor in 2009, Ms. Warren observed: "Tens of millions of once-secure middle income families now live paycheck to paycheck, watching as their debts pile up and worrying about whether a pink slip or a bad diagnosis will send them hurtling over an economic cliff."[16] More recently, upon introducing the Equal Employment for All Act in August, 2015, Senator Warren stated: "A bad credit rating is far more often the result of unexpected medical costs, unemployment, economic downturns, or other bad breaks than it is a reflection on an individual's character or abilities…families have not fully recovered from the 2008 financial crisis, and too many Americans are still searching for jobs."

Payment protection products help protect against unplanned adverse impacts to consumer cash flows impacted by the very challenges cited that are facing American families: the products cancel their outstanding debt obligation or a series of monthly payments they might have

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[11] LIMRA, "Facts from LIMRA," (September, 2015)
[12] American Counsel of Life Insurers Fact Book (2012)
[13] Social Security Basic Facts, April 2014
[14] As reported by Council for Disability Awareness member companies. CDA member companies represent over 75 percent of the commercial disability insurance marketplace. The 2012 Council for Disability Awareness Long-Term Disability Claims Review, http://www.disabilitycanhappen.org/research/CDA_LTD_ClaimsSurvey_2012.pdf
[15] Social Security Administration, Disabled Worker Beneficiary Statistics,ssa.gov
[16] The Huffington Post, December 2, 2009

otherwise owed, should they lose their life, become disabled, involuntarily lose their job, or experience other unforeseen adverse life events. As a result, millions of consumers each year purchase optional payment protection to provide themselves and their families with a financial safety net. Consumers opt to purchase payment protection because it covers events that have real economic impact on their ability to make loan payments.

Hurricane Katrina is a perfect of example of why these products are necessary. Credit insurance coverage provided much needed help for loss of life and property, as well as protection against unemployment or disability for families impacted by Hurricane Katrina as recognized by Mississippi State Representative Alex Mansour in an April, 2013 floor debate over Senate Bill 2571. In his testimony, he praised the $66 million in credit insurance coverage relief provided to affected families.[17]

Strangely, the NCLC paper asserts multiple times that payment protection products are "unnecessary."

Consumers value payment protection programs

Consumers have indicated in over thirty years of studies[18] that they value payment protection products like credit insurance and debt protection:

- Over 85% of consumer purchasers on closed-end consumer credit considered the purchase "good" or "good with some degree of satisfaction" (not only in the 2012 survey, but also in the 2001 survey)
- 79% of consumers purchasing on installment loans had a favorable attitude about their protection
- More than 70% of consumer purchasers said that they would purchase the protection again.

Clearly, these nationwide surveys indicate that purchasers of payment protection products are overwhelmingly satisfied with their purchase and would do so again in a future loan or credit transaction.

Consumers benefit from payment protection programs

Insurance provides consumers with peace of mind. Most consumers purchase insurance and related products hoping never to use them. No one wants to die, become disabled, involuntarily lose their job, have their car stolen, lose or damage their phone, experience an auto accident, or run into an engine problem with their car. Rather, consumers purchase insurance and related

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[17] See Mississippi College School of Law Archives
http://law.mc.edu/legislature/bill_details.php?id=1438&session=2013

[18] Thomas A. Durkin (now retired) and Gregory Elliehausen of the Federal Reserve Board's Division of Research and Statistics, Federal Reserve Bulletin, "Consumers and Debt Protection Products: Results of a new Consumer Survey," December 2012, Vol. 98, No. 9).

products for the peace of mind that comes with the financial protection from unplanned adverse life events.

When that event occurs, the creditor and borrower are both beneficiaries under a credit insurance policy, contrary to the NCLC paper asserting the creditor is the primary beneficiary of the coverage. The creditor benefits by receiving the claims payments and the borrower benefits by having his/her payment obligations met by the credit insurance. For example, a person takes out a $1,000 loan with their lawn mower as collateral, and then the lawn mower gets destroyed by a garage fire and the borrower defaults on the loan. Here, voluntary credit property insurance would pay the creditor. Instead of having to buy a new lawn mower, repair the garage and pay the loan back, the borrower is relieved of the loan obligation. Credit insurance helps protect the borrower from having a bad personal event turn into a financially devastating one.

Consumers are benefiting more than creditors and benefiting greatly. In 2014, consumers that purchased credit insurance received 133% more than creditors in the form of benefits.[19] From credit insurance alone, almost $1.6 billion claims were paid to consumers in that same year.[20]

Payment protection programs are highly regulated

Credit insurance

The underpinnings of today's robust state regulation stem from decades of regulatory and industry experience and the National Association of Insurance Commissioners (NAIC) Consumer Credit Insurance Model Act and Model Regulation. The Model Act defines the products and the Model Regulation addresses policy forms, premium rates, benefits, eligibility and disclosures for both closed-end and open-end credit transactions. All states have adopted some form of the Model Act and the Model Regulation, creating a strong regulatory framework for credit insurance.

Product Pricing. Premium rates for credit insurance are strictly regulated by the states. Every year, each state insurance department requires credit insurers to file an experience report of consumer credit insurance written during the calendar year. State insurance departments regularly review the losses paid by insurance companies and the premium rates or prices currently approved in that state. The department sets pricing using industry experience as compared to the mandated target loss ratio for the state.

Product Structure. States define permissible product features including coverage terms, maximum limits, eligibility requirements, premium calculation and refunding methods. Insurance companies must file consumer forms and have any variations in product features approved.

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[19] NAIC Credit Insurance Experience Exhibit, 2014

[20] CCIA Factbook, 2015. Consumer benefits are significantly understated above due to the inclusion of credit insurance only. Debt protection data is excluded because the data is not recorded in a way that is conducive to industry-wide reporting and analysis.

State insurance laws allow consumers to cancel their credit insurance at any time and provide the formula to calculate any refund due. Additionally, state laws provide each consumer with a "free look period" which typically is 30 days – meaning that any consumer can cancel coverage within 30 days and receive a full refund of any premiums charged. Refunding methods set by the state are well aligned with and actuarially justified for an insurance exposure that decreases with the term of the installment loan.

Consumer Disclosures. State laws and regulations provide for very specific protections for credit insurance consumers. Consumers electing credit insurance must receive evidence of coverage. This requires the delivery of a policy or certificate and proscribes the details that such forms must contain, including: a full description of the coverage; any limits, exceptions and exclusions; the term of the insurance; the premium charged; who receives the benefits and how benefits are obtained.

Credit insurance must also adhere to the federal Truth-In-Lending Act (TILA), implemented by the Federal Reserve Board's Regulation Z, 12 CFR Part 226. TILA also requires disclosures to the consumer during the loan transaction, including provisions regulating the purchase of credit insurance. The following disclosures are required before the consumer can purchase credit insurance:

- That the purchase of credit insurance is voluntary and not required to obtain credit;
- That there is an additional, separate charge for the coverage and that charge is disclosed; and
- Additional details about the product terms and costs, depending on the specific terms and conditions of coverage.

To obtain coverage, the consumer must acknowledge understanding and agreement with these disclosures by signing or initialing the document.

*Market Conduct***.** State statutes or regulations provide for the licensing of producers of credit insurance, and that an insurer is responsible for conducting periodic reviews of their producers to ensure compliance with the insurance laws and regulations of the state. State insurance departments conduct rigorous market conduct and financial examinations of credit insurance underwriters to assure underwriters and their producers comply with the required state laws and regulations.

Debt Protection

As a lending product, debt protection is regulated by the Office of Comptroller of the Currency (OCC) through 12 CFR 37, the Consumer Financial Protection Bureau (CFPB) via examinations and published guidance[21] and prudential regulators such as NCUA and the FDIC. The OCC rules

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[21] CFPB Bulletin 2012-03: Service Providers; CFPB Bulletin 2012-06: Marketing of Credit Card Add-on Products

and CFPB guidelines have been adopted in some form by prudential regulators. States also regulate these products through their banking regulators, often following the OCC regulations.

Informed Choice and Fair Dealing. The regulations are designed to facilitate consumers' express and informed choice about whether to purchase voluntary debt protection agreements, to discourage unfair or abusive sales and service practices and to promote lenders' ability to offer the agreements on a safe and sound basis.

Consumer Disclosures. Rules and regulations require lenders to provide the standardized disclosures of critical information to the customer at the time of solicitation and before the purchase of a debt protection agreement. Lenders are required to highlight or emphasize the importance of critical disclosures to customers on consumer agreements and applications, such as:

- Debt protection is optional (voluntary) and not a condition of securing credit
- The consumer's rights to a refund if they cancel the agreement, including a clear explanation of how to do so.
- A requirement to obtain a consumer's written affirmative election to purchase debt protection
- That a change a consumer's agreement can be made only with their permission unless the change is in their favor.
- Sufficient records must be maintained by the lender to document compliance with these sales and disclosure requirements for each consumer that purchased debt protection.

The CFPB also addressed the sale of add-on products for creditors and their providers through Bulletin 2012-03 and Bulletin 2012-06. While Bulletin 2012-06 applied to credit cards, in practical terms the industry interpreted the guidance to apply to all loan types and has undertaken initiatives to comply accordingly. Rigorous CFPB examinations take into consideration such guidance, which spans the following requirement areas:

- Dodd-Frank Act and the prohibition against deceptive sales practices
- Truth-In-Lending Act and its implementing Regulation Z, including disclosure of payment protection fees
- Equal Credit Opportunity Act and its implementing Regulation B to assure fair lending and its application to add-on products such as payment protection
- CFPB expectations regarding marketing materials, sales practices, employee scripts, employee incentives, compliance manage programs including audits.

Safety and Soundness. Section 37.8 of the OCC's 12 CFR 37 regulations also provides clear direction to the banks that they must use safe and sound banking principles to manage the risks associated with debt protection agreements by establishing and maintaining effective risk management and control processes that include appropriate recognition and reporting of related income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. The banks are directed to assess the adequacy of internal

controls and risk mitigation for such agreements. In sum, expected safe and sound banking practices applicable for any bank product.

Conclusion

Payment protection products are critical to millions of American consumers' financial well-being. A sizable segment of American consumers are at financial risk, needing accessible options to protect their finances. Payment protection programs are voluntary, affording value independent of the credit transaction. Payment protection programs are price-efficient, in many cases costing less than individually-underwritten insurance products. In the case of disability and unemployment, the products provide coverage not otherwise available to individuals. Purchasing consumers consistently value the products, as evidenced by high satisfaction scores. Consumers benefit from the programs, whether that benefit is simply peace of mind from the purchase itself, or having debt reduced or eliminated due to an unforeseen adverse life event. Payment protection programs are subject to a robust regulatory framework to the benefit of purchasing consumers.

Given the value that payment protection programs provide to so many American consumers, CCIA is obligated to set the record straight and correct inaccurate assertions regarding the programs. Rather than severely restrict or ban consumer access to credit insurance and debt protection as the NCLC paper suggests, to the contrary, efforts should be undertaken to assure the programs are made more widely available to American consumers that need accessible and affordable financial protection options.

While we are happy to provide this material to you in this letter, we would also welcome the opportunity to discuss them with you and your team. As I offered in my phone and email messages to you in early August, our team stands ready to discuss payment protection products with you at your convenience.

Thank you for your consideration.

Sincerely,

Tom Keepers