NAIC/CONSUMER LIAISON COMMITTEE

NAIC/Consumer Liaison Committee September 21, 2009 Minutes
Birnbaum CFPA Presentation September 21, 2009 (Attachment One)

W:\Sep09\Cmte\Consumer\Contents.doc

NAIC/Consumer Liaison Committee
Washington, DC
September 21, 2009

The NAIC/Consumer Liaison Committee met in Washington, DC, Sept. 21, 2009. The following Committee members participated: Morris J. Chavez, Chair (NM); Scott J. Kipper, Vice Chair (NV); Jim L. Ridling (AL); Jay Bradford represented by Alice Jones (AR); Steve Poizner represented by Leone Tiffany (CA); Marcy Morrison represented by Peg Brown (CO); Thomas R. Sullivan represented by Barbara Spear (CT); Gennet Purcell represented by John Wallace (DC); Karen Weldin Stewart represented by Gene Reed (DE); Kevin McCarty (FL); Carol Cutter and Doug Webber (IN); Sandy Praeger (KS); Ralph S. Tyler represented by Dudley Ewen (MD); John M. Huff and Mary Kempker (MO); Roger Sevigny represented by Barbara Richardson (NH); Darlene Gomez (NM); James J. Wrynn represented by John Chaskey (NY); Wayne Goodwin represented by Bob Lisson (NC); Joel Ario (PA); Joseph Torti, III, represented by Chris Keller (RI); Kent Michie represented by Tanji Northrup and Suzette Green-Wright (UT); Alfred W. Gross represented by Mary Bannister (VA); Mike Kreidler (WA); and Jane Cline represented by Andrew R. Pauley (WV).

Other attendees were: Betty Ahrens (Iowa Citizen Action Network); Birny Birnbaum (Center for Economic Justice); Pamela J. Bolton (Texas Watch); Brendan Bridgeland (Center for Insurance Research); Brenda Cude (University of Georgia); Evelyn Ducalos Gay (Georgia Legal Services Elder Rights Project); Bonita Kallestad (Mid-Minnesota Legal Assistance); Karroll Kitt (The University of Texas at Austin); Sonja L. Larkin-Thorne; Kevin Lucia (Georgetown University Health Policy Institute); Sally McCarty (National Hemophilia Foundation); S. Colleen Repetto (Fair Insurance Rates in Monroe); Daniel Schwarcz (University of Minnesota Law School); Gregory D. Squires (George Washington University); and Howard Goldblatt (Coalition Against Insurance Fraud).

1. Consumer Disclosures

Mr. Schwarcz said that behavioral economics examines the ways in which consumers' market behavior departs systematically from the "rational actor" that populates standard economic models. He said that federal financial regulators are increasingly incorporating the findings into their regulatory approaches. Mr. Schwarcz said that the lessons of behavioral economics are particularly relevant for understanding insurance markets, as researchers often use insurance problems to test consumers' approaches to risks that are associated with consumer biases that effect their insurance-buying decisions. He said that its most obvious lessons are related to consumer disclosures, which could more effectively achieve their goals if they were attuned to the ways in which ordinary consumers make insurance decisions. Studies show, for example, that consumers prefer policies with excessively low deductibles; are inclined to cancel catastrophe coverage that they have not recently used; and are more willing to insure against emotionally laden risks. Mr. Schwarcz said a more comprehensive approach to consumer disclosures is in order and that there is a wealth of research regarding behavioral economics that insurance regulators can harness to devise more effective product disclosures.

Jan Pappalardo, special guest speaker from the Federal Trade Commission (FTC), said effective competition is achieved by presenting key features to consumers in an unbiased way by giving them just the facts, plus some advice, plus "a little nudge" toward the right choice, as consumers will choose the default in most cases. Based on the results of an FTC quantitative survey online, Ms. Pappalardo said consumer disclosures might not be necessary or feasible and could cause more harm than good. While trying to determine a benchmark on which data to measure subjective consumer decisions, Ms. Pappalardo said that the FTC study found that 85% to 90% of consumers who were not given a disclosure made the correct loan choices, while only 66% of consumers who were given a disclosure made the correct loan choices.

Ms. Cude recommended the development of future best practices that would take a more comprehensive approach toward consumer disclosure that includes consideration of market situations and the use of behavioral economics for insurance regulation as a 2010 charge for this Committee

2. Credit-Based Insurance Scoring

Ms. Larkin-Thorne and Mr. Birnbaum gave presentations on credit-based insurance scoring, noting that companies have indicated that there has been no change in premium cost based on insurance scoring due to the current economic downturn; however, media reports indicate that the rate of home mortgage foreclosures are skyrocketing, as foreclosures are now hitting unemployed homeowners who have good credit. The foreclosure rate is currently one in eight, affecting 1.4 million homes and projected to increase to 1.8 million homes by year-end. Ms. Larkin-Thorne said that catastrophes, death, job loss and disability are having — and will continue to have — a direct and meaningful effect on the foreclosure rate. She said that the current models are confusing, have no affect on the industry and place the burden of proof on consumers by requiring them to request a change in advance. Ms. Larkin-Thorne indicated that fewer than 15 states have rate-approval authority at this time and recommended that other states follow their example by eliminating rate discrimination.

Mr. Birnbaum said that forced insurance is routinely placed by lenders if the lender determines that the homeowner does not have adequate coverage. He said that this urgent situation is caused by either credit scores making insurance less affordable or it is due to unemployment. Mr. Birnbaum said that the NAIC's position on health insurance is to ban pre-existing conditions and that the NAIC's position on insurance should be to ban credit scoring; however, this is not the NAIC's position and Mr. Birnbaum asked why that is the case.

Commissioner Kreidler asked why regulators keep "surrogate underwriting" in place. Ms. Larkin-Thorne said that California's Proposition 103 limits surrogate underwriting or does not allow a lot of surrogates to exist at all. Commissioner Ario said it is feasible that availability and affordability concerns are not as serious in the automobile insurance industry as it is in the health care insurance industry.

3. Consumer Financial Protection Agency

Mr. Birnbaum and Ms. Larkin-Thorne gave a presentation regarding the Consumer Financial Protection Agency (CFPA) (Attachment One). Mr. Birnbaum said that the Obama Administration has put forth a regulatory reform for financial services that includes the creation of a new federal agency that would serve to protect consumers of financial services, similar to the Consumer Product Safety Commission. The proposed CFPA would have regulatory authority over credit-related insurance products, including credit insurance, title insurance and mortgage-guarantee insurance. Mr. Birnbaum provided four reasons why credit-related products should be included under the oversight of the CFPA, and he also recommended the creation of a consumer advocacy agency dedicated to this issue.

Ms. Larkin-Thorne said additional oversight of credit-related products and the creation of a dedicated consumer advocate for this issue are needed; however, she recommended that it be under state control and use federal funds. Commissioner Ario said that the states should have additional oversight of credit-related products. Mr. Squires said that additional oversight is needed, regardless of which regulatory body has responsibility for it.

4. Health Care Reform

Ms. McCarty, Ms. Ahrens, Mr. Lucia and Ms. Kallestad gave presentations on health care reform, indicating that the two issues of vital importance in health care reform are 1) limiting the use of pre-existing condition exclusions; and 2) limiting the use of lifetime caps. Ms. McCarty expressed her appreciation for the NAIC's endorsement of the prohibition against pre-existing conditions and lifetime caps.

Ms. McCarty stressed the importance of subsidies as part of a workable health care reform package and asked for input from the regulators. Commissioner Kreidler said that it would be better if subsidies could be increased or expressed as a cap based on a percentage of income.

Ms. McCarty said that the most important issue at hand is how premium rates will be controlled and the affordability of insurance within the proposed health care reform proposal, yet maintaining as much state flexibility as possible, keeping the NAIC in the discussion process. She stated that co-ops might or might not work as an alternative to a public option, as long as state flexibility is retained — and that it would depend on whether the co-op is formed at the state level, where the states would have some control over how they are set up.

Commissioner Praeger said that health insurance reform is only "one piece of the puzzle" and that reform is needed in the entire area of health care, especially health care costs. She stated that reform is not about keeping premiums down — it is about getting costs, and the cause thereof, under control. She said the current system rewards more procedures to keep income and costs up; i.e., the system rewards doing more, rather than doing what is right. Commissioner Ario agreed, stating that the ways in which health care is provided needs to change, so that incentives are created for physicians to focus on the quality of care, instead of the volume of care.

Having no further business, the NAIC/Consumer Liaison Committee adjourned.

W:\Sep09\Cmte\CONSUMER\Consumer Liaison Committee\09.09-Consumermin.doc

The Consumer Financial Protection Agency and Insurance

Birny Birnbaum
Center for Economic Justice
September 21, 2009

1. What is the proposed Consumer Financial Protection Agency (CFPA)?

Michael Barr, Assistant Treasury Secretary:

"One agency for one marketplace with one mission – to protect consumers."

"Its market-wide jurisdiction will put an end to regulatory arbitrage and unregulated corners that inevitably weaken standards across the board."

"A dedicated consumer protection agency for financial services is the only effective response to inherent weaknesses in our existing oversight regime. The financial crisis revealed the alarming failure of this regime to protect responsible consumers – and keep the playing field level for responsible providers."

"Despite best intentions, "regulatory arbitrage" inevitably weakens protections for consumers and feeds bad practices."

"The CFPA will have the sole mission of protecting consumers; it will be the agency that sees the world through their eyes. It will write regulations, supervise institutions and providers for compliance, and lead enforcement efforts – for the whole marketplace. The implications of our proposal for consumer protection and fair competition are enormous. It will bring higher and more consistent standards; stronger, faster responses to problems; the end of regulatory arbitrage; a more level playing field for all providers; and more efficient regulation."

2. Products Covered Under the Proposed CFPA

Financial Activities, including extending credit and servicing loans.

Credit-Related Insurance Products

- Credit Insurance
- Title Insurance
- Mortgage Guaranty Insurance

3. Credit-Related Insurance Products Should Be Included in the CFPA's Authority

- Products Already Affected by Federal Lending and Credit Laws (TILA, HOEPA)
- Products Whose Markets Are Characterized by Reverse Competition
- Products Where Regulatory Arbitrage Harms Consumers – Credit Insurance vs. Debt Cancellation Contracts / Debt Suspension Agreements
- Products for Which State and Federal Regulators Have Done a Poor Job Protecting Consumers

4. State Regulation of Credit Insurance -- Excessive Rates / Low Loss Ratios

While some states do a good job of protecting credit insurance consumers, most states do a poor job.

- Credit Life – countrywide, states and companies (Tables 1 & 2)
- Credit Disability – countrywide, states and companies (Tables 3 & 4)
- Credit Involuntary Unemployment – countrywide, states and companies (Tables 5 & 6)
- Credit Life, Disability and IUI by State, 2004-08 (Table 7)
- Credit Family Leave – countrywide, 2004-08 (Table 8)
- Creditor-Placed Insurance – countrywide, 2004-08 (Table 9)

5. Most States Have Dropped the Ball on Credit Insurance

- California has still not promulgated a regulation for credit unemployment and credit property insurance required by a 1999 law to be completed in 2000.
- Texas allows a 30% surcharge on credit life and disability rates
- NCOIL adopted a resolution urging the NAIC to repeal the minimum loss ratio standard in the credit personal property model act
- States did and continue to do nothing to address problems with financed single premium credit insurance
- States approving unreasonable component rating methodologies

6. Federal Regulation of Debt Cancellation Contracts – Worse Than Credit Insurance

- No minimum benefit standards
- No minimum loss ratio or rate standards
- No data collection for public to monitor bank product performance

7. The OCC's Poke In the Eye to Consumers

Days before the DCC rule takes effect and months after the rule was promulgated, the OCC removes the most important consumer protection feature – if a single fee DCC is offered, a monthly-pay product must also be offered – because of complaints from auto dealers.

8. The CFPA Should Be Authorized to Advocate on Behalf of Insurance Consumers on Other Lines of Insurance Before State Regulators.

The CFPA's insurance regulatory authority should be limited to credit-related insurance but should have the authority and resources to advocate on behalf of insurance consumers for personal lines of insurance with the authority to request and receive information from insurers.

Consumers need a funded and staffed advocacy agency and data on insurer market performance.

Insurers' unlimited resources to participate in the regulatory process create a bias against consumer interests.

- IIPRC standard setting, rulemaking
- Collection and publication of market performance data
- Unfair Risk Classifications

9. The Proposed National Insurance Supervisory Commission

- Creates the same bias against consumers as the IIPRC
- Illustrates the Need for the CFPA to be a National Insurance Consumer Advocate

10. If Consumer Protection is the NAIC's Top Priority, NAIC Support of the CFPA is a No-Brainer.

The proposed CFPA addresses consumer protection problems that states have been unable to solve because of state and federal conflict and because of limited or no consumer advocacy.

Hundreds of consumer groups support the CFPA because we know the CFPA will improve consumer protection.

If the NAIC fails to support the CFPA, state regulators will demonstrate that protecting turf is a higher priority than consumer protection.

Countrywide Credit Life

Year	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
1999	3,447	41.5%
2000	3,244	40.8%
2001	2,997	40.9%
2002	2,412	41.4%
2003	1,896	42.9%
2004	1,766	43.1%
2005	1,726	41.3%
2006	1,690	43.1%
2007	1,638	42.8%
2008	1,463	44.0%
2004-08	8,283	42.8%

Credit Life, Selected States, 2004-08

State	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
LA	327	25.1%
PR	364	28.8%
NV	72	28.9%
SD	43	30.6%
NE	72	33.3%
TX	869	38.0%
FL	554	43.4%
NC	351	47.0%
PA	343	53.0%
OR	89	55.3%
NY	237	56.5%
VA	217	57.0%
ME	34	58.0%
VT	18	61.7%

Selected Writers of Credit Life, 2004-2008

	Gross WP ($ Million)	*Inc / Earn Loss Ratio*
Countrywide	8,283	42.8%
Cuna Mutual	1,164	55.6%
American Health & Life (Citigroup)	837	51.9%
American Bankers Life Assurance (Assurant)	728	44.7%
Life of the South	444	29.7%
Central States H & L	383	39.2%
Protective Life	354	32.6%
Carribean American (Assurant)	317	26.2%
American National	301	36.2%
Life Investors (Aegon)	278	34.2%
Resource Life	176	27.0%
Service Life	170	23.2%

Countrywide Credit Disability

Year	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
1999	3,220	44.2%
2000	3,210	46.4%
2001	3,062	50.0%
2002	2,640	49.3%
2003	2,115	47.2%
2004	2,045	46.9%
2005	1,943	40.4%
2006	1,868	39.4%
2007	1,829	36.8%
2008	1,629	38.3%
2004-08	9,320	40.6%

Credit Disability, Selected States, 2004-08

State	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
NV	59	16.3%
AK	26	24.1%
SD	51	27.2%
DC	17	28.1%
GA	446	28.7%
IL	402	33.1%
TX	990	36.3%
NC	447	46.0%
NY	332	52.5%
VT	29	55.2%
PA	421	58.9%
PA	421	58.9%
WV	62	65.2%
ME	54	65.8%

Selected Writers of Credit Disability, 2004-2008

	Gross WP ($ Million)	***Inc / Earn Loss Ratio***
Countrywide	9,320	40.6%
Cuna Mutual	2,030	46.6%
American Health & Life (Citigroup)	1,012	53.9%
American Bankers Life Assurance (Assurant)	578	29.3%
Household Life (Household)	484	44.9%
Protective Life	290	36.3%
Central States L & H	271	36.3%
American Bankers (Assurant)	193	22.1%
Resource Life	182	33.2%
Life of the South	165	23.4%
Union Security (Assurant)	145	28.0%
Central States Indemnity	108	22.0%
Service Life	102	25.0%

Countrywide Credit IUI

(Involuntary Unemployment)

Year	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
1999	1,342	7.6%
2000	1,350	6.0%
2001	1,295	8.8%
2002	1,093	13.7%
2003	811	13.5%
2004	659	9.6%
2005	599	10.4%
2006	534	8.1%
2007	508	14.2%
2008	489	13.1%
2004-08	2,788	10.9%

Credit IUI, Selected States, 2004-08

State	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
VT	1	1.0%
AR	18	2.1%
UT	22	2.2%
DC	6	2.2%
HI	24	2.5%
CA	333	6.0%
FL	150	7.8%
OH	134	8.3%
NC	180	14.8%
TX	205	17.9%
MN	23	26.7%
PA	85	29.7%
CO	30	30.8%
NY	40	40.6%
VA	33	43.8%

Selected Writers of Credit IUI, 2004-2008

	Gross WP ($ Million)	*Inc / Earn Loss Ratio*
Countrywide	2,788	10.9%
American Bankers (Assurant)	675	11.6%
Triton (Citigroup)	514	24.7%
American Security (Assurant)	458	4.7%
Central States Indemnity	229	5.2%
Wesco IC	202	11.0%
Yosemite IC (AIG)	165	15.8%
Balboa (Countrywide/Citigroup)	62	3.9%
Stonebridge Casualty (Aegon)	58	7.3%

Total Credit Life, Disability and IUI Experience By State, 2004-08

State	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*	*State*	*Gross WP ($ Million)*	*Inc / Earn Loss Ratio*
AK	51	27.5%	MT	82	34.8%
AL	379	39.5%	NC	978	42.1%
AR	190	34.4%	ND	75	35.3%
AZ	209	36.1%	NE	181	30.4%
CA	906	30.2%	NH	97	35.0%
CO	208	33.2%	NJ	318	36.2%
CT	134	31.0%	NM	166	42.0%
DC	29	27.0%	NV	151	19.7%
DE	77	30.1%	NY	608	53.3%
FL	1,089	34.3%	OH	726	41.7%
GA	845	34.2%	OK	298	34.7%
HI	109	25.7%	OR	234	43.1%
IA	330	34.9%	PA	849	54.4%
ID	107	31.8%	PR	619	29.4%
IL	768	32.6%	RI	41	37.7%
IN	482	40.9%	SC	549	38.7%
KS	245	30.1%	SD	101	26.7%
KY	438	33.7%	TN	675	38.7%
LA	628	27.7%	TX	2,064	35.5%
MA	200	34.1%	UT	147	28.6%
MD	246	44.8%	VA	546	50.9%
ME	95	60.1%	VT	48	55.9%
MI	712	42.6%	WA	293	39.4%
MN	292	36.9%	WI	503	42.6%
MO	485	39.3%	WV	165	43.9%
MS	329	33.4%	WY	64	35.9%
			Countrywide	20,391	37.7%

Countrywide Credit Family Leave

Year	*Earned Premium*	*Claims Paid*	*Loss Ratio*
2004	$50,396,018	$82,163	0.2%
2005	$39,851,001	$93,388	0.2%
2006	$29,179,076	$63,975	0.2%
2007	$25,486,677	$55,849	0.2%
2008	$22,508,468	$52,978	0.2%
2004-08	$144,912,772	$295,375	0.2%

Countrywide Creditor-Placed Auto

Year	Gross WP ($ Millions)	Inc / Earn Loss Ratio
2004	1,549	37.9%
2005	1,724	36.4%
2006	1,390	31.5%
2007	2,269	33.1%
2008	1,993	40.5%
2004 - 08	8,925	36.0%

Countrywide Creditor-Placed HO

Year	Gross WP ($ Millions)	Inc / Earn Loss Ratio
2004	$1,485	33.1%
2005	$1,832	53.5%
2006	$2,153	28.3%
2007	$3,058	20.5%
2008	$3,987	23.2%
2004 - 08	$12,515	29.0%

Consumer Federation of America

Center For Economic Justice

July 29, 2009

The Honorable Christopher Dodd
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member
Senate Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

The Honorable Barney Frank
Chairman
House Committee on Financial Services
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
House Committee on Financial Services
Washington, DC 20515

Dear Chairman Dodd, Chairman Frank, Ranking Member Shelby and Ranking Member Bachus:

On July 15, 2009, thirteen insurance industry trade organizations[1] sent you a letter asking that no insurance products or practices be included in the proposal to create a Consumer Financial Protection Agency (CFPA). The arguments made in opposition to including insurance in CFPA are self-serving, misleading and inaccurate and should be rejected by Congress.

Indeed, the current Treasury Department proposal for creation of CFPA does not go far enough to protect insurance consumers in America.

The CFPA legislation proposed by the Administration and introduced by Chairman Frank would only give the new agency jurisdiction over three credit-related insurance products: credit insurance, title insurance and mortgage insurance. (See Appendix 1 for a description of the various types of credit insurance.) All of these products are sold in connection with a credit transaction and are intertwined with loans. For this reason, we believe the CFPA should have the same authority over these products that it has over other credit-related financial products.

[1] Association of Advanced Life Underwriting, American Council of Life Insurers, Agents for Change, American Insurance Association, American Land Title Association, Consumer Credit Industry Association, The Council of Insurance Agents and Brokers, National Association of Insurance and Financial Advisors, National Association of Mutual Insurance Companies, National Association of Independent Life Brokerage Agencies, NAVA – The Association of Insured Retirement Solutions, Professional Insurance Agents and Property Casualty Insurers Association of America.

Under the legislation, the agency would not have jurisdiction over either investment-type products, such as annuities, or other personal insurance products, such as personal auto, residential property, and other consumer property and casualty insurance products. In general, CFA believes this is the appropriate division of responsibility, with three exceptions:

- The CFPA should have the same authority for forced place insurance, also known as creditor-placed insurance and another type of credit-related insurance, as proposed for credit insurance, title insurance and mortgage insurance..

- The authorization for the CFPA should be clear that all forms of payment protection products authorized by federal regulators – including debt cancellation contracts and debt suspension agreements – are considered activities associated with the extension of credit to prevent regulatory arbitrage.. From a consumer's perspective, credit insurance and payment protection products are equivalent products; there should not be gaps in consumer protection because of differences in terminology. (For additional information on payment protection products, see Appendix 2.)

- The CFPA should have the authority to advocate for and represent consumers of personal insurance products (such as auto or homeowners and other property insurance) before the state insurance regulators. Some have said that this consumer advocacy authority might rest with the proposed new Insurance Office within the Department of Treasury, but CFA believes consumer advocacy is better placed in CFPA, an agency whose mission is to protect consumers.

<u>Problems for Consumers Buying Insurance Products Related to Lending Transactions: Why Credit Related Product Consumers Need CFPA Coverage</u>

Reverse Competition Hurts Consumers: The dominant characteristic of insurance markets related to credit transactions throughout the country is *reverse competition.* The consumer who pays for the product does not select the insurer; rather, the parties receiving compensation for the insurance select the insurer. For example, an insurer might sell a credit insurance group policy to a lender. The lender then sells the credit insurance to the borrower on behalf of the credit insurer and issues a certificate of insurance under the group policy to the borrower. This market structure leads insurers to bid for the lender's business by providing higher commissions and other compensation to the lender. As a result, greater competition for the lender's business leads to higher, often unfair prices of credit insurance to the borrower. In fact, CFA's Director of Insurance, J. Robert Hunter, was once at a credit insurance hearing in Virginia at which Prudential was asked why they wrote so little credit insurance in the state. The Prudential witness said they were non-competitive because their rates were "too low." The same sort of system holds in title insurance and mortgage guarantee insurance, which are covered under the President's plan, and forced-place insurance, which is not.

In addition to raising prices, reverse competition also harms consumers by limiting consumer choice, often to products that offer little real value to consumers. This results from the fact that, in a reverse-competitive market, the consumer is unable to effectively exert normal competitive pressure on the original seller of the product. In credit insurance, mortgage guarantee insurance, title and forced place insurance (but not mortgage insurance), the lender is almost always involved in the selection of the insurer, while the ultimate consumer – the borrower – is effectively limited to accepting or rejecting the package offered. If a consumer purchases a product and finances the purchase at one store or auto dealer, he or she cannot decide to go elsewhere to purchase the credit-related insurance for that loan. There is no marketplace for the insurance separate from the lender financing the purchase. As a result, lenders are able to dictate the terms of the credit insurance sale, determining what coverages will be offered, for example. Because the credit-related insurance transaction is typically a minor aspect (to the borrower) of a larger transaction – the loan to purchase a car, jewelry or furniture – consumers are willing to go along, particularly if they believe they must purchase the credit-related insurance to get the financing to buy the product they want.

As a result of this market dynamic, lenders rather than borrowers are the primary beneficiaries of credit-related insurance sales. First, the lender's loan is protected against events that impair the borrower's ability to repay. With credit-related insurance in place, the lender need not incur any costs to force payment from the surviving spouse or relative of a deceased borrower or from a borrower who has become disabled or unemployed. Second, the lender often gets substantial commission and other revenue from the insurance premium. Commissions and other compensation are typically 40 percent or more of the premium. Third, for financed single premium products, the lender gets additional interest income from financing the insurance premium.

Consumers, on the other hand, often obtain little if any benefit. The best measure of overall value of credit insurance to consumers is the loss ratio – the ratio of benefits paid on behalf of the consumer to the premiums paid by consumers. Consumer groups have advocated regulation to ensure that consumers receive a loss ratio of at least 60 percent, meaning that, on average, at least 60 percent of the premiums paid by borrowers should be ultimately paid out in claim benefits on behalf of borrowers.

While the vast majority of states regulate credit insurance rates, most have done a poor job. The table below shows countrywide loss ratios over the past ten years for the three major credit insurance coverages – credit life, credit disability and credit unemployment. Credit life loss ratios have been in low 40s, dropping into the mid 30s for credit disability and ranging from only 6% to 14% for credit unemployment. Using the modest 60% loss ratio standard, credit insurance consumers have been overcharged by billions of dollars.[2]

[2] The credit-related insurance loss ratios were compiled from Credit Insurance Experience Exhibit data submitted by credit insurers annually to state insurance regulators and published by the National Association of Insurance Commissioners (NAIC). The NAIC is not responsible for the calculations.

For many years, mortgage guaranty products had a very low loss ratio, less than 25 percent, until the ratio rose to 135 percent in 2007 in the midst of the current mortgage crisis. Similarly, title insurance loss ratios have been under 10 percent for many years. One study found, for example, that between 1995 and 2004, title insurance loss ratios averaged 4.6 percent and the loss ratio was below five percent eight out of ten years.[3] In 2008, the loss ratio "jumped" to 11.7 percent.[4]

In short, all of these products represent remarkably poor value for consumers. State regulators have, with a handful of exceptions,[5] utterly failed to rein in reverse competition and end the wholesale consumer abuse the practice represents. The special interest determination to hold off reform at any cost has proven highly effective. For these reasons, we believe America's consumers need CPFA to cover credit-related insurance products.

	Credit Life Premium ($Millions)	Loss Ratio	Credit Disability Premium ($ Millions)	Loss Ratio	Credit Unemploy-ment Premium ($ Millions)	Loss Ratio
1999	2,255	41.5%	2,457	44.2%	1,143	7.6%
2000	2,206	40.8%	2,374	46.4%	1,108	6.0%
2001	2,243	40.9%	2,382	50.0%	1,077	8.8%
2002	2,110	41.4%	2,199	49.3%	911	13.7%
2003	1,857	42.9%	1,933	47.2%	727	13.5%
2004	1,624	43.1%	1,797	46.9%	551	9.6%
2005	1,559	41.3%	1,679	40.4%	477	10.4%
2006	1,442	43.1%	1,570	39.4%	431	8.1%
2007	1,348	42.8%	1,514	36.8%	395	14.2%
2008	1,257	44.0%	1,410	38.3%	383	13.1%

3 "Title Insurance Cost and Competition," Testimony of J. Robert Hunter, Director of Insurance, Before House Committee on Financial Services, Subcommittee on Housing and Community Opportunity, April 26, 2006.

4 Missouri Department of Insurance, Financial Institutions and Professional Regulation, at http://www.insurance.mo.gov/reports/lossratio

5 Examples include Iowa, which has successfully reformed title insurance, and New York and Maine, which have gotten considerable control of credit insurance costs through effective and reasonable maximum loss ratio regulation.

Some states do much better than the average, but most states do a poor job of protecting credit insurance consumers. In 2008, the best and worst states for these coverages were:

2008		Credit Life Loss Ratio		Credit Disability Loss Ratio		Credit Unemployment Loss Ratio
Worst	NV	24.6%	SD	20.7%	AR	0.0%
2nd Worst	LA	27.4%	NV	22.8%	MI	0.0%
2nd Best	RI	67.3%	VT	66.0%	PA	33.2%
Best	ME	69.8%	ME	72.8%	VA	39.7%

One of the worst examples of the failure of state regulators to protect credit insurance consumers is with a coverage called credit family leave, which is supposed to make monthly payments on the consumer's loan in the event the consumer goes on an approved family leave. In the five years since data has been collected for this product, the loss ratio has been almost zero: about 2 (two) dollars in benefits paid for every $1,000 dollars of premium collected. Consumer groups have alerted insurance regulators to these egregious results since 2005, yet regulators continue to allow insurers to sell a worthless product, a product which insurers told regulators would pay out at least 50 cents on the dollar in benefits.

Credit Family Leave

	Premium	Claims Paid	Family Credit Leave Loss Ratio
2004	$50,396,018	$82,163	0.2%
2005	$39,851,001	$93,388	0.2%
2006	$29,179,076	$63,975	0.2%
2007	$25,486,677	$55,849	0.2%
2008	$22,508,468	$52,978	0.2%
2004-08	$144,912,772	$295,375	0.2%

State regulators have also done a poor job with creditor-placed insurance, which lenders purchase, force place on charge to the borrower in the event the borrower does not maintain the required auto or property insurance for the vehicle or property loan. This type of insurance is big business: over $600 million in creditor-placed auto and almost $2 billion in creditor-placed property insurance. The loss ratios in 2007 and 2008 have been dismal, in the low 20s.

	Creditor Placed Auto		Creditor Place Home		Credit Personal Property	
	Premium ($Millions)	Loss Ratio	Premium ($Millions)	Loss Ratio	Premium ($Millions)	Loss Ratio
2007	500	24.3%	1,402	20.5%	183	14.2%
2008	628	21.2%	1,991	23.2%	328	7.8%

These creditor-placed premiums are inflated by commissions paid to lenders and by other unreasonable expenses, which state regulators have endorsed instead of limiting. Lenders get a commission or other forms of compensation that create a significant profit center from virtually every force-placed policy, despite the fact that the policy is being placed to protect the lender. Moreover, the premium often includes expenses for tracking consumer loans to ensure insurance is in place, including for the borrowers that are not forced-placed and would never be, because their insurance is paid out of escrow. Thus, two to three percent of the borrowers who are forced-placed pay for the escrow tracking for 100 percent of the lender's portfolio. In a market in which consumers do not choose to purchase the product, state regulators' failure to protect these consumers is powerful evidence of the need for some insurance responsibility residing with the CFPA

The chart above also shows the results for credit personal property insurance – a coverage sold in connection with loans for consumer goods which pays to repair or replace the property serving as collateral for the loan if that property is damaged or lost. The table shows extremely low loss ratios for 2007 and 2008 for this coverage, which is typically sold in connection with high-cost loans targeted at low-income consumers.

Title insurance loss ratios are truly dismal. Over the 20 years prior to 2007, title insurance paid out benefits averaging 6.1 percent of premium. Over the decade prior to 2007, the number dropped to 4.9 percent.[6] In 2008, the loss ratio "jumped" to 11.7 percent.[7]

In summary, state regulation of credit-related insurance products has, for most consumers, failed to protect them from unreasonable prices and practices. There is great variation among the states, with some states doing a good job on some products, but most states doing a poor job on most products.

The main reason that states have done, on average, such a poor job protecting credit insurance consumers is the powerful lobbying of the business interests who benefit from the sale of these products – lenders, auto dealers and credit insurers. Now, these special interests are determined to hold off reform at the federal level by defeating the CFPA. We urge Congress to stand up for consumers who don't have the resources to lobby for favorable treatment and create a strong consumer advocate on selected insurance issues within the CFPA to begin to balance the influence of insurers and dealers in both the

---

6 Source: "U.S. Title – 2007 Market Review, A. M. Best Special Report, October 13, 2008, Page 4.
7 Missouri Department of Insurance, Financial Institutions and Professional Regulation, at http://www.insurance.mo.gov/reports/lossratio

marketplace and the regulatory arena. For these reasons, we believe America's consumers need CPFA to cover credit-related insurance products.

The agency should study credit-related insurance products to determine exactly what actions are needed to protect consumers from the ravages of reverse competition. The agency should, for example, establish minimum benefits and rate standards to ensure consumer protection in these reverse-competitive- markets. If a state fails to achieve these minimum standards then the agency would have the authority to bring a legal action to seek to accomplish the needed relief. The agency should be able to prohibit the use of products that are inherently unfair, abusive or deceptive to consumers. The agency should also be advocating for the states to develop real (as opposed to reverse) competition in these lines of insurance and should develop ideas for accomplishing this. Possible approaches might include: educating consumers about their rights to shop for alternative sources of coverage; breaking up the cartel-like control over information about who needs such insurance so that other providers of coverage could contact consumers in time to compete for the sale; and abolishing the kickback arrangements that leave low-priced competitors unable to sell their products.

Why the Proposal from the Insurance Trade Organizations to Exclude all Insurance Products from CFPA should be Ignored

The distinction raised by trades between credit-related insurance products and credit products is irrelevant for purposes of consumer protection. Credit-related insurance products are tied to specific credit transactions and related to the sale of loans. The fact that debt cancellation (a banking product) and credit insurance (an insurance product) are functionally identical means that failure to include credit insurance while including debt cancellation will create the same type of regulatory arbitrage that prompted banks to move from credit insurance to debt cancellation.

The industry is simply wrong when it claims that the CFPA is simply overlaid on top of the state regulatory system and would result in a duplicative regulatory regime with insurers, producers and consumers caught in the middle, causing different and inconsistently-applied consumer protection standards for all insurers and producers. There will be no duplication of regulation -- the CFPA will ensure minimum standards in the same way that HIPAA has worked with state-based regulation. There is no duplication of regulation, but the creation of a consumer voice that, in the majority of states, simply does not exist for these insurance products.

State-based regulation is already inconsistent with regards to credit-related insurance products. If anything, the actions of the CFPA will provide greater uniformity by developing meaningful consumer protection floors that will move a number of states to uniformity with one another -- in the same manner as NARAB or HIPAA. The insurers, who have long called for greater uniformity in insurance regulation, demonstrate that they only seek uniformity that lowers consumer protection as they oppose uniformity that might actually help consumers.

State-based regulation of credit-related insurance products has been poor; consider the extremely low loss ratio statistics cited earlier. Despite each state having laws that require the commissioner to disapprove credit insurance products that do not provide reasonable benefits in relation to premiums or which have misleading or unfair provisions, state insurance regulators have in almost every state approved products that in 2000, the Departments of Housing and Urban Development (HUD) and Treasury described as abusive and unfair to consumers. To this day, the problems with financed single premium credit insurance have not been addressed in any manner by state insurance regulators. Despite presenting evidence to insurance regulators in 2005 that credit family leave was a bogus product -- virtually no claims paid, a 0% loss ratio -- states have done nothing to rectify that. From 2004 through 2008, the benefits paid for this product were essentially zero. Other examples can be supplied: California legislation in 1999 required minimum loss ratios and regulation of credit unemployment and personal property. To this day, the California Department of Insurance has failed to implement that statute and loss ratios for these coverages have continued to languish at remarkably inefficient levels that abuse consumers.

The credit-related insurance markets are all characterized by reverse competition. For some products, states regulate ineffectively, with credit insurance is an example. In other products, states by and large do not regulate at all, with title insurance is an example.

Insurers have been accused of redlining and unfair discrimination for decades; HUD first cited insurers for redlining in the mid-1970s. Yet state insurance regulators have rarely required insurers to report data allowing the regulators, let alone the public, to monitor the market performance of insurers. Insurers routinely go to court to prevent public release of data even though the data sought may be far more aggregated than Home Mortgage Disclosure Act (HMDA) data. A recent example is insurance credit scoring -- all objective data point to insurance credit scoring discriminating on the basis of race and penalizing consumers who are victims of predatory lending, the financial crisis and terrible economic conditions. Yet, not one state has collected data to even examine these issues. Instead, state regulators ask insurers if their practices are harming low income or minority consumers. Imagine if the banking regulators had to rely on banks to report their market performance on an ad hoc basis instead of banking regulators and the public relying on HMDA data.

The insurer argument that, because they do not collect information on race or ethnicity, their underwriting and rating cannot discriminate on these bases is simply absurd. For years, insurers argued that their use of age and value of the home was objective -- older and lower-valued homes were charged more for insurance. In fact, communities with older homes and lower-valued homes were systematically redlined -- predominantly minority communities. Insurers have historically used proxies for race and income and insurance scoring is the latest tactic, along with education, occupation, prior liability limits and other factors tied to socio-economic status. While there may be a legitimate debate over the reasonableness of some of these practices, there can be no serious objection to the collection of data to evaluate the availability and affordability of insurance.

The trades argue that a good regulatory system should foster conditions that encourage investment, competition and innovation, and not perpetuate duplication, inconsistency, and waste. First, not all competition is beneficial to consumers. The credit-related insurance products are characterized by reverse competition that harms consumers. The creation of a federal consumer protection agency does not duplicate existing regulation since most states have no consumer insurance advocacy. Competition and regulation are not only compatible; the recent financial market problems have shown that meaningful competition *requires* a strong regulatory framework that empowers consumers. CFA's comprehensive study of auto insurance regulation found that well-conceived regulation and enhanced competition serves consumers best. California's comprehensive auto insurance regulation, adopted by the people of California in 1988 under Proposition 103, produced the lowest price increases since then, as well as reasonable insurer profits. California also has the fourth most competitive market in the nation, as measured by the HHI.[8]

We urge Congress to include insurance in CFPA, expanding the scope of the current Administration's approach to include forced-placed insurance, and to give consumers an advocate before every state in personal lines (auto and home) insurance.

Sincerely,

J. Robert Hunter
Director of Insurance
Consumer Federation of America

Birny Birnbaum
Executive Director
Center for Economic Justice

8 www.consumerfed.org/pdfs/state_auto_insurance_report.pdf

Appendix 1: Description of Consumer Credit Insurance Coverages

Credit insurance refers to a group of insurance products sold in conjunction with a loan or credit agreement. Credit insurance makes payments for the consumer to the lender for a specific loan or credit agreement in particular circumstances. The common types of credit insurance sold include:

- *Credit Life* pays off the consumer's remaining debt on a specific loan or credit card account if the borrower dies during the term of the coverage.

- *Credit Accident and Health,* also known as *Credit Disability,* pays a limited number of monthly payments on a specific loan or credit card account if the borrower becomes disabled during the term of coverage.

- *Credit Involuntary Unemployment* pays a limited number of monthly payments on a specific loan or credit card account if the borrower becomes involuntarily unemployed during the term of coverage.

- *Credit Personal Property* typically pays to repair or replace property that is serving as collateral for a loan.

- *Creditor-Placed Insurance* is auto or property insurance placed by a lender if the consumer fails to maintain the insurance required by the terms of the auto or home loan.

- *Credit Family Leave* makes monthly payments if the borrower goes on an approved family leave.

- *Credit GAP* pays the difference – or gap – between the amount owed on the auto loan and the amount paid by the insurance company on the auto insurance policy in the event there is an accident resulting in a total loss to the vehicle and the amount of insurance payoff is less than the amount owed on the loan. GAP is sometimes used as acronym for Guaranteed Auto Protection.

- *Non-Filing* pays the lender in the event loan documents have not been correctly filed.

- *Mortgage Guaranty* pays the lender in the event the borrower defaults on the mortgage loan.

Appendix 2: Properly Regulating Insurance "Look Alike" Products

Many insurance products are perfect or near-perfect substitutes for financial products; it is logical for the CFPA to represent consumers on all substantively similar products.

Consumer credit insurance products are – from the consumer's perspective – equivalent to debt cancellation contracts and debt suspension agreements – products which federal banking regulators have declared to be banking products.

Debt Cancellation Contracts (DCCs) and related products like Debt Suspension Agreements (DSAs) are products sold in connection with a consumer loan and which promise to provide some debt relief to the consumer if certain events occur. The events triggering the benefit under the DCCs/DSAs are typically events that impair the borrower's income or place a financial burden on the borrower. DCCs/DSAs are part of the group of payment protection products that include credit insurance and which promise, among other things, to preserve the borrower's credit rating in adverse circumstances.

Since 2000, lenders have shifted their payment protection product offerings from credit insurance to DCCs/DSAs, initially in connection with credit cards and more recently in connection with closed-end loans. One of the earliest forms of DCC sold in connection with a closed-end loan was GAP Waiver sold in connection with auto loans.

To a consumer, DCCs and credit insurance are very similar – or even identical – products. For a one-time or monthly fee, DCC will cancel the debt or make monthly payments if certain events occur – just as credit insurance performs. For example, a credit card credit insurance program containing credit life, credit disability and credit involuntary unemployment coverages provides the identical benefits for a consumer as a DCC program for death, disability and involuntary unemployment.

The major difference between credit insurance and DCC is in regulatory oversight. Federal banking regulators have declared DCC to be a banking product and, consequently, not subject to state insurance regulation if sold by banks or credit unions with federal charters. Although state insurance regulators challenged these decisions, claiming that DCC was an insurance product, banks who sought the federal oversight of DCC and the federal agencies have prevailed in legal challenges. State regulation of DCCs offered by state-chartered financial institutions has generally followed the federal rules.

The rationale for not regulating DCC as an insurance product is that, unlike credit insurance, where a borrower, a lender and an insurance company are involved, there are only two parties involved with DCC – the borrower and the lender. The DCC is an addendum to the loan contract that states that, under certain circumstances, the lender will cancel the debt or the monthly payment. So, in theory, no insurance company need be involved.

In practice, DCC programs are administered in almost the same manner as credit insurance programs. Credit insurance companies provide the same administrative and sales services as with credit insurance. The lender purchases a contractual liability policy from the credit insurance company, and this policy pays any claims made under the DCC program offered by the lender. Credit insurance companies, including CUNA Mutual, now sell and administer DCC programs as well as credit insurance programs.

The difference in regulatory oversight of DCC versus credit insurance is dramatic. With credit insurance, the products (policy forms) must be approved by state insurance regulators prior to use and the rates subject to prima facie maximum rate regulation. A credit insurer wishing to offer a national program must obtain approvals in all states and comply with different rates in all states as well as variations in product requirements among the states. Under rules promulgated by the Office of the Comptroller of the Currency (OCC) and other federal financial regulators, lenders can offer a single DCC product nationally. Lenders have moved from credit insurance to DCC for several reasons:

- No oversight or limitations on fees charged
- Few limitations on product design and benefit provisions – no restrictions on bundling, flexibility in product design
- Ability to use one product nationally
- No agent licensing requirements
- No form or rate filing requirements
- No premium taxes

DCCs and DSAs generally provide much worse value to consumers than credit insurance – higher prices, fewer benefits and fewer consumer protections. In prior reports and testimony, CFA has estimated the loss ratio for DCCs and DSAs to be less than 5%. In addition to lower benefit payouts, the administrative costs for DCCs are lower than for credit insurance because of the ability to utilize a single program across the states, the absence of product filings and approvals, and the absence of a premium tax.

Failure to allow the CFPA to represent insurance consumers will lead to regulatory arbitrage – the shifting of banking products to insurance products.

When the federal banking regulators declared debt cancellation contracts to be banking products – and not subject to state insurance regulation – lenders started changing their products from credit insurance to debt cancellation or debt suspension to take advantage of the more favorable (to lenders) regulatory structure for the debt cancellation and debt suspension products. This is one example of regulatory arbitrage – regulated entities playing off competing regulators for the most advantageous – to the regulated entities – regulatory regime. Failure to include credit-related insurance products under the jurisdiction of the CFPA would reverse that trend, encouraging financial institutions to shift from use of regulated bank products to less regulated insurance products. Consumers would be the losers.

