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LPAC

Lenders Protection Assurance Company
Risk Retention Group

May 28, 2004

Regualtion Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attn: No. 2004-xx

RE: Docket No. 2004-16

Dear Sir:

We appreciate the opportunity to comment on the proposed regulations implementing section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

Lenders Protection Assurance Company, Risk Retention Group, provides contractual liability coverage and administrative services to financial institutions for their debt cancellation contract (DCCs) programs.

Our comments on the proposed regulation are twofold. First, **we recommend that there be specific exceptions to the prohibition on the use of medical information rather than as subpart of the definition of " Eligibility" (what is not "eligibility").** A specific exceptions approach is more clear and concise.

Our second comment relates to the wording of exceptions (A) and (B) in Subpart D- Medical Information ___.30 (a)(2)(i) and in particular the inconsistent inclusion of debt cancellation contracts ("DCCs"), debt suspension agreements ("DSAs"), insurance and credit- insurance in these two exceptions In pertinent part exception (A) allows use of medical information for the qualification to be offered "... insurance products, or other non-credit products or services," Exception (B) allows use of medical information for the determination of triggering benefits and includes (among other products or programs) debt cancellation contracts, debt suspension agreements and credit insurance products. **DCC and DSA programs should be included in (A) which allows use of medical information for qualifications to offer certain products. The generic "insurance products" should be included in (B) which allows use of medical information for determining the triggering of benefits.**

DCC and DSA Programs

There is no apparent rationale and no stated reason as to why DCC and DSA programs are not included in both exclusions. The collection and use of medical information to determine eligibility of a consumer for a DCC or DSA is a legitimate business use of medical information by the financial institution for the evaluation of its risk associated with the sale of such a contract.

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Section 411 of the FACT Act gives the federal banking agencies and the NCUA the express power to except from the prohibition on the use of medical information transactions that are "necessary and appropriate to protect the legitimate operational, transactional, risk, consumer, and other needs". Consistent exceptions for use of medical information for determining "qualification for" and "triggering of provisions" of DCCs and DSAs is clearly within this authority.

Further authority is found in the Congressional record. The House Report accompanying the Act (House Report 108-263) specifically states that the use of medical information in connection with "credit-related debt cancellation agreements" is "necessary and appropriate use of medical information":

> The Committee recognizes that there are limited circumstances in which a creditor may require medical information in determining a consumer's eligibility or continued eligibility for credit, for example, to confirm the use of loan proceeds in connection with loans to finance a specific medical procedure or device, or to verify a consumer's death or disability in connection with credit-related debt cancellation agreements, and considers the limited use of medical information in these circumstances and **any similar circumstances the financial regulators may identify, to be a necessary and appropriate use of medical information for purposes of this section.** (at page 53) emphasis added.

In the Congressional Record of December 8, 2003, the introduction of the Act by the Chairman of the House Financial Services Committee and the Chairman of the Financial Institutions and Consumer Credit Subcommittee (who was an original sponsor of the House version of the Act) indicates that Congress did not intend any part of a DCC or DSA transaction to be subject to the prohibition on the use of medical information:

> The Federal banking agencies and the NCUA are directed to prescribe regulations that are necessary and appropriate to protect legitimate business needs with respect to the use of medical information in the credit granting process, including allowing appropriate sharing for verifying certain transactions as well as for debt cancellation contracts, debt suspension agreements, and credit insurance that are not generally intended to be restricted by this provision. (at page E2518)

DCC and DSA programs should be included in (A) which allows use of medical information for qualifications to offer certain products.

Insurance vs. Credit Insurance Programs
As with the treatment of DCC and DSA programs, there is no apparent rationale and no stated reason for including the broad term "insurance" in exclusion (A) and using the limiting term "credit insurance" in exclusion (B).). Beyond credit insurance, there may be many other types of insurance for which the medical information of the consumer is needed. "Credit Insurance" is a specifically defined type of insurance under most state statutes and regulations and does not include many of the insurance products offered by financial institutions nor would it include the financial institution's own insurance coverage. For example: the medical information which would be used by a financial institution to determine whether the provisions of one of its debt cancellation contracts is triggered would also need to be used for submission of a claim by that financial institution's to its contractual liability carrier.
The collection and use of medical information for determining the triggering of benefits other than credit insurance is a legitimate business use of medical information by the financial institution for it operational and transactional needs. The generic "insurance products" should be included in (B) which allows use of medical information for determining the triggering of benefits.

Therefore, we respectfully submit the following recommendations:

1. Move the exclusions contained within the definition of Eligibility to the Specific Exceptions section.
2. Whether the exclusion are moved or remain within the definition of Eligibility, change the wording of exclusions A and B and their applicability to DCCs and DSAs to be consistent and reflective of Section 411 of the FACT Act.

This would change the proposal language as follows:

Current ___.30 (d) (vii) "As otherwise permitted by order of the OCC" moved to a new (viii) and replaced with:

(vii) To the extent such information is obtained for purposes of

(A) The consumer's qualification or fitness to be offered employment, <u>debt cancellation contracts, debt suspension agreements, insurance</u> products, or other non-credit products or services;

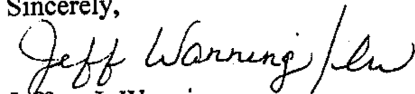
(B) Any determination of whether the provisions of a debt cancellation contract, debt suspension agreement, ~~credit~~ insurance product, or similar forbearance practice or program are triggered;

(C) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(D) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility or continued eligibility, for credit.

We appreciate your consideration of these recommendations.

Sincerely,



Jeffrey J. Wanning
Vice President