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DISSEMINATION BRANCH

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Mortgage Insurance Companies of America

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Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention Docket No. 2000-68

Dear Sir or Madam:

The Mortgage Insurance Companies of America (MICA) is pleased to comment on the proposed inter-agency insurance sales practice guidelines, proposed in compliance with Section 305 of the Gramm-Leach-Bliley Act (GLBA).

MICA strongly supports effective consumer disclosures of all of the terms and conditions associated with the sale of financial products to consumers. Indeed, we have recently launched a major outreach campaign to be sure that mortgage borrowers understand mortgage insurance (MI) and how it affects their ability to obtain a mortgage with a high loan-to-value (LTV) ratio. Mortgage loans are among the most complex financial transactions in which consumers engage, and it is essential that they understand the commitment they make, the options available to them, and the costs associated with these choices.

However, disclosures alone are not sufficient to ensure an informed mortgage marketplace. It is also essential that the disclosures consumers receive be clear and easy to understand. As shall be detailed below, applying the proposed sales disclosures to the purchase of MI would duplicate disclosures already provided to consumers under other applicable banking and mortgage laws. If additional disclosures are added to those already provided, yet another set of confusing documents will be put before consumers, further increasing the likelihood that the sheer complexity of the mortgage disclosure process will lead some

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consumers to take out disadvantageous or even predatory loans.

Executive Summary

MICA urges the regulators to provide an explicit exclusion for mortgage insurance in the types of insurance products covered by this regulation. This is appropriate because:

- mortgage insurance is not comparable to annuities or the other investment products for which many of the rule's requirements apply;
- consumers receive complete disclosures about the costs and terms of mortgage insurance under the Truth-in-Lending Act; and
- consumers also receive disclosures giving them a chance to opt-out of MI coverage when a lender has a captive mortgage reinsurance relationship with an MI.

Specific Comments

1. MI Cannot Be Confused with an Insured Deposit

The agencies have asked for views on whether the term "insurance" should be defined for purposes of the sales practice rule. We believe it should be defined to ensure that the types of insurance covered are only those where Congress believed potential conflicts of interest at insured depositories could arise and where existing disclosure and anti-tying rules may be insufficient. Unlike the sale of annuities or similar products, MI raises none of the concerns expressed in the legislative history for Section 305.

MI is obtained by borrowers of high-LTV loans to provide additional protection for mortgage lenders and investors in such higher-risk loans. Unlike annuities, this is not any form of investment product, nor is the consumer the beneficiary of the mortgage insurance policy. As a result, there is no chance that the consumer will confuse a mortgage insurance policy with, for

example, a certificate of deposit insured by the FDIC. Further, MI is not analogous to credit life insurance, because the borrower is not the beneficiary of the insurance policy.

Mortgage insurance is also different from annuities or credit life insurance because it plays an important and long-recognized role in limiting credit risk for lenders, as well as for investors in mortgage-backed securities. The latter are often insured depositories, which hold large volumes of such instruments. To encourage lenders to obtain MI, the current risk-based capital standards provide for a 50 percent risk weight for "prudent" mortgage loans, e.g., high-LTV loans backed by MI. In contrast, high-LTV loans without MI carry a 100 percent risk weighting. Numerous other regulations, such as the limits on holdings of "high-risk" real estate loans, also explicitly recognize the credit risk mitigation benefits of mortgage insurance.

It is essential that consumer disclosure rules reinforce, not undermine, bank safety and soundness. If disclosure standards inappropriately apply to MI, consumers may be dissuaded from loans that carry it, fearing that they are somehow acquiring an insurance product disadvantageous to their own interests. Market reluctance to permit lenders to acquire MI for high-LTV borrowers could reduce the amount of third-party credit enhancement in place, adversely affecting the credit quality profile of mortgage lenders and MBS investors that are insured depositories.

2. Mortgage Insurance is a "Finance Charge"

MICA believes it is inappropriate and unnecessary to include mortgage insurance in the types of insurance products covered by the proposed new sales practice guidelines. Historically, MI has been treated as a finance charge under the rules that implement the Truth-in-Lending Act (TILA). Regulation Z includes as examples of finance charges: "premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss."

Thus, consumers receive complete and full disclosure of the costs and terms associated with MI, including their cancellation rights, when mortgage insurance is obtained. An additional disclosure stipulating that MI is not a service of the insured depository or an obligation of the U.S. government, as proposed in the sales practice rules, is not only not germane to the nature of this product, but could also create confusion as consumers review the discussion of MI contained in the TILA disclosures.

3. MI Does Not Raise Anti-Tying Concerns

It is also inappropriate and unnecessary to apply the proposed anti-tying disclosures to the sale of MI by lenders. In recent years, the growth of so-called captive mortgage reinsurance (CMR) arrangements has increased the instances in which a borrower obtains MI from a primary mortgage insurance company with which the lender has a relationship through a captive. However, any potential conflicts of interest that may arise are fully addressed by the Real Estate Settlement Procedures Act (RESPA). Relative to that law, lenders provide borrowers with a notice when MI is obtained from a company with a captive relationship with the lender, and customers are given a chance to opt-out from coverage offered by any such mortgage insurer.

The sale of mortgage insurance in cases where a CMR arrangement exists is also covered by the anti-tying prohibition in Section 106 of the Bank Holding Company Act, which bars the conditioning of an extension of credit on the decision by a customer to obtain certain products from an insured depository. Bank and thrift regulators have ample supervisory tools with which to determine if any sales of MI through CMR arrangements are being "tied," and there is no evidence in the supervisory record to date of any such cases throughout the entire industry.

Thus, requiring a separate disclosure related to tying of MI would only confuse consumers, who already receive a similar disclosure, without adversely affecting the ability of examiners to ensure that tying is not occurring.

4. Insurance Disclosures Should Not Further Complicate Mortgage Disclosures

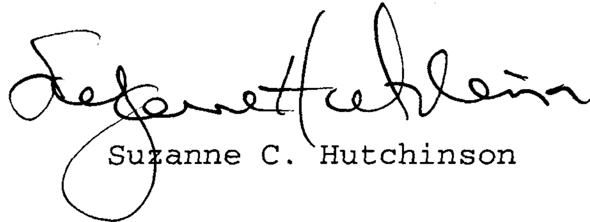
As you know, the amount of detailed disclosures provided to consumers during mortgage transactions is already so voluminous as to have sparked calls in Congress and among regulators for mortgage disclosure simplification. Indeed, the Federal Reserve has participated in an extensive project with HUD seeking ways to reduce the number of duplicative and confusing forms given to mortgage borrowers as they apply for and receive credit. The OTS has also recently referred to "information asymmetries" in the mortgage borrowing process, noting that the volume of forms and their complexity can sometimes lead consumers to become victims of predatory lenders. Testimony around the country during the Federal Reserve's recent series of hearings on predatory lending also expressed this concern.

While it may be difficult to decide which of the existing mortgage disclosures should be deleted it seems clear that no form duplicative of existing disclosures should be added to the thick pile now given prospective mortgage borrowers. Subjecting MI to the insurance sales practice rules would have this effect, since consumers would, in addition to the TILA and RESPA disclosures they now get, also be handed additional forms mandated by GLBA. This would not only fail to assist consumers, but actually be counter-productive.

In conclusion, MICA respectfully requests that the bank regulators clarify the definition of "insurance" for purposes of this sales practice rule to make it clear that primary mortgage insurance is not covered. Consumers already receive ample and complete information about MI from the disclosures mandated under the TILA and RESPA, and further disclosures would only serve to confuse the already complex mortgage lending process.

We would be pleased to provide whatever additional information would be useful to the regulators as you work towards a final rule.

Sincerely,



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