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May 2, 2011

Jennifer J. Johnson
Secretary of the Board
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: <u>**Docket No. R-1406**</u> **/ RIN No. 7100-AD 65**
Regulation Z - Truth in Lending
Proposed Amendments implementing Dodd-Frank Act (H.R. 4173)
76 *Federal Register* 11598 (March 2, 2011)

Ladies and Gentlemen:

The American Insurance Association ("AIA")[1] appreciates the opportunity to comment on the Board's proposed amendments to Truth in Lending-related Regulation Z ("Proposed Rule" or "proposal") resulting from the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] provisions contained in Title XIV, addressing mortgage servicing under Sections 1461 and 1462, which amend the Truth in Lending Act ("TILA") by adding new disclosure requirements.[3]

AIA believes that the language the Board proposes in section 226.20(d)(2)(vi) goes beyond the statute and therefore should not be adopted as proposed. Rather, the Board should reflect the language Congress used in Section 1462 of the Dodd-Frank Act.

As amended by the Dodd-Frank Act, TILA Section 129(j)(2)(C) states that the disclosure that is to be provided to the consumer under TILA Section 129D(j)(1) include the following:

> A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced

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[1] AIA represents major U.S. insurance companies that provide all lines of property-casualty insurance to U.S. consumers and businesses, writing more than $117 billion annually in premiums.
[2] Public Law 11-203 (2010).
[3] 76 *Fed. Reg.* 11598 (March 2, 2011).

> placement of insurance by the creditor or servicer and the **potentially higher cost** (including any potential commission payments to the servicer) **or reduced coverage** for the consumer in the event of any such creditor-placed insurance. (Emphasis added)

The Board acknowledged the statutory language in its *Federal Register* preamble to the proposed rule as follows:

> TILA Section 129D(j)(2)(C) requires an explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance and the **potentially higher cost or reduced coverage** for the consumer for such insurance. Proposed Sec. 226.19(f)(2)(ii)(F) would implement TILA Section 129D(j)(2)(C) by providing examples of the possible consequences of a failure to pay home-related costs, such as a decision by the creditor to require an escrow account, to add the home-related costs to the loan balance, or to purchase “forced-placed” insurance.[4]

Notwithstanding the statutory language, the Board’s preamble then provides that proposed Section 226.20(d)(2)(vi) would require a statement that the creditor or servicer could require the consumer to pay for insurance that the creditor or servicer buys on the consumer's behalf and a statement that this insurance would *likely* be more expensive and provide fewer benefits than traditional homeowner's insurance. Thus the Board’s proposed rule provides as follows:

> (vi) Consequences of failure to pay home-related costs. . . .
> A statement that the creditor or servicer could also require the consumer to pay for insurance that the creditor or servicer buys on the consumer's behalf and **a statement that this insurance likely would be more expensive and provide fewer benefits than traditional homeowner's insurance.**[5]

The Board presents no explanation as to why the proposed regulatory language does not follow the express language of the Dodd-Frank Act amendment to TILA, as directed by Congress. That is, why does the Board propose to require creditors and servicers to provide a statement that this insurance “likely would be more expensive and provide fewer benefits than traditional homeowner's insurance” rather than state that the insurance may be made available at potentially higher cost or reduced coverage?

AIA is concerned that such a departure represents an unwarranted intrusion by the Board into the area of insurance disclosure that Congress has reserved to the states. Section 1462 of the Dodd-Frank Act does not confer on the Board authority over the business of insurance. In fact,

[4] 76 *Fed. Reg.* at 11603 (Emphasis added).
[5] 76 *Fed. Reg.* at 11620(Emphasis added).

no broad or general authority over the business of insurance is granted under the Act. Accordingly, the proposed language may conflict with the McCarran-Ferguson Act, which recognizes Congressional delegation to the states of the primary authority to regulate the business of insurance.[6]

Further, as noted, the proposed disclosures wander beyond the clear language of the statute. The language of the rule should not go beyond the language Congress specified in the Dodd-Frank Act. Today, insurance consumers receive disclosures, many mandated under state insurance laws, relating to a great variety of issues. Indeed, some states already have disclosure requirements directly relating to forced-placed insurance. Of these, some follow an approach set forth in the National Association of Insurance Commissioners ("NAIC") Creditor-Placed Insurance Model Act.[7] This NAIC Model requires a creditor to provide "adequate disclosure" of the requirement to maintain insurance before imposing charges for creditor-based insurance.[8] Other states' laws or regulations on forced-placed insurance take approaches deviating from the NAIC Model. For example, some outline sample language to be included in the notice.[9]

Generally, the balance of the Dodd-Frank Act suggests a reading that, to the extent the Board is authorized to act, it should be well-coordinated and not inconsistent with state regulatory efforts. Being mindful of state requirements will help avoid duplicative and/or conflicting disclosures, which would frustrate the purpose of the disclosure requirements and would only serve to confuse customers. For these reasons, AIA respectfully urges the Board to adopt a rule that reflects the language used by Congress in Section 1462 of the Dodd-Frank Act.

Respectfully submitted,

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6 15 U.S.C. § 1012.

7 *See* NAIC Model 375-1. AIA understands that the NAIC has identified at least four states that have adopted this model: Arkansas (Ark. Code §23-101-101, *et. seq.*), Michigan (Mich. Comp. Laws §500.1601, *et seq.*), Mississippi (Miss. Code §83-54-1, *et. seq.*), and Tennessee (Tenn. Code §56-49-101, *et. seq.*).

8 NAIC Model 375-1 § 13(A).

9 Our research indicates that the states outlining language to which the notice about forced-placed insurance must be substantially similar include: Illinois (815 Ill. Comp. Stat. §180/10(3)), Missouri (Mo. Rev. Stat. §427.120(3)), and West Virginia (W. Va. Code §46A-3-109a(3)).