September 11, 2024

Mr. Mark Radley
Department of Finance Canada
Consultations and Public Affairs Branch
14th Floor, 90 Elgin Street
Ottawa, Ontario K1A 0G5

Submitted by email to: consultationconsumeraffairs.consultationconsommation@fin.gc.ca.

Re: Consultation on Proposals to Strengthen Canada's Financial Sector - Criminal Rates of Interest include 'insurance charges'

Dear Mr. Radley,

On behalf of the Canadian life and health insurance industry, we appreciate the opportunity to provide feedback on the *Consultation on Proposals to Strengthen Canada's Financial Sector* ("the Consultation"). Among other things, the draft legislation will amend the definition of "interest" in the criminal interest rate in the Criminal Code (Canada) to include insurance charges within the meaning of interest.

Overall comments on process

We offer the following preliminary comments as notice of the industry's concerns that this has been a very short (30-day) consultation on important changes with potentially wide-ranging ramifications.

If the government's goal is to address high-interest lenders who use high-pressure tactics to sell products, the proposals go far beyond that aim and will have broad and unintended consequences on insurance products that provide important and legitimate protection to Canadians.

You will note that some comments below have been left at a high level. This is intentional since we have not had the time to properly investigate all of the potential impacts.

As such, we believe it would be prudent for the federal government to pause these proposed changes and engage further with industry and the insurance regulators for the provinces and territories and consider redrafting the amendments to ensure they are harmonized and suitable for all stakeholders involved, and do not negatively impact consumers.

Summary of feedback

We commend the measures announced in the 2024 Budget aimed at improving affordability at a time of unprecedented pressure on Canadian households

However, we do not support the proposed measures as they relate to including insurance charges for optional life and health insurance products in the amended definition of “interest” in the Criminal Code (Canada). The broad term “insurance charge being related to insuring the risk” is especially problematic. This could encompass important insurance products such as mortgage insurance, property and casualty coverages like property insurance and auto insurance and optional creditor life and health insurance which Canadians rely on to provide financial security

Like the government’s consumer protection measures, insurance products are designed to protect Canadians from financial stress when they need protection the most. Optional creditor life and health insurance (also known as Creditor’s Group Insurance or CGI) is offered to all debtors under a group policy and often without health examinations. It offers convenient access to protection for consumers, including vulnerable individuals, who might not qualify for individual life and health insurance.

The proposed measures will have the undesired effect of limiting access to these important insurance products and would result in outcomes contrary to the government’s affordability and consumer protection goals. As mentioned, we believe the government should pause these proposed changes until they have had time to properly consider the following, which we expand on in Appendix A.

1. **Creditor life and health insurance products provide important protections to Canadians** - limiting access to insurance can cause debt cycles rather than prevent them.
2. **These products are optional and voluntary** - their purchase is clearly disclosed and separate from the credit transaction.
3. **Consumer protection measures already exist –** marketing practices, consumer disclosure, complaint handling and the fair treatment of customers related to insurance are already well regulated and the proposed changes are inconsistent with the treatment of insurance in other existing consumer protection frameworks.
4. **The proposed wording is too wide and ambiguous –** it’s unclear how to determine whether the 35% criminal interest rate will be exceeded.
5. **Jurisdictional issues –** the business of insurance is a matter of exclusive provincial jurisdiction.

We would again express our appreciation for the opportunity to provide feedback and are happy to meet and discuss any questions you may have.

Yours Sincerely,

Luke O'Connor
Assistant Vice-President, Market Conduct Policy and Regulation

About the CLHIA

The CLHIA is the national trade association for life and health insurers in Canada. Our members account for 99 percent of Canada's life and health insurance business. The industry provides a wide range of financial security products such as life insurance, annuities, and supplemental health insurance. Canadian life insurers operate in more than 20 countries and three of our members rank among the top 15 largest insurers in the world by market capitalization.

Appendix A

1. Creditor life and health insurance products provide important protections to Canadians

As highlighted in the *Consultation on Fighting Predatory Lending by Lowering the Criminal Rate of Interest: "*When consumers who are already struggling to make ends meet take on additional debts, particularly with high borrowing costs, it may lead to a spiral of debt. These debts would further negatively affect borrower's financial resilience when they encounter challenging life events such as reduction in income or unemployment."

Including insurance products in the definition of interest could restrict access to optional insurance products for consumers who face barriers such as location or income. CGI can offer an affordable solution to secure protection for consumer debts and can provide valuable comfort. Depending upon the circumstances, approval for some creditor insurance products can be automatic without the need for underwriting, meaning CGI can provide crucial protection for vulnerable populations.

Optional insurance plays a vital role in protecting consumers from escalating debt, particularly in challenging circumstances such as job loss or reduced income and should be available to all Canadian consumers regardless of their circumstances.

If the cost of optional creditor insurance is to be included in the calculation of interest for purposes of determining compliance with the criminal rate of interest restrictions, this type of insurance may not be offered to certain customers depending on the structure of their credit product and their circumstance. This could lead to vulnerable customers (or their beneficiaries) not having access to resources to help cover their debt if they pass away, become ill, disabled, or lose their job.

This risk is exacerbated if lenders must include other forms of insurance, related to the credit product, in the interest calculation (such as property or auto insurance or mortgage default insurance where the lender is named as a loss payee in connection with a secured loan.)

2. These insurance products are optional, voluntary and separate from the credit transaction

It is essential to recognize that optional insurance products such as creditor's group insurance are distinct and separate from the core loan transaction. Consumers are not required to purchase these products; tied selling is prohibited. Consumers are offered CGI on a voluntary basis, and it can be cancelled at any time by the consumer.

Significant efforts have been undertaken to ensure that insurance premiums for creditor's group insurance are well disclosed, so they do not surprise customers. They are never hidden. Industry guidelines[1] are clear on the following:

- Disclosure to the customer must be clear and obvious that enrollment to any insurance product to protect the risk of death, disability, critical illness or job loss in connection with the extension of credit is optional and voluntary and can be cancelled at any time.
- Enrollment must be clearly distinct from the Credit Transaction, either through a separate Application for insurance or by other means that clearly separates the transactions.

As the insurance is provided under separate contracts, the transaction is with a third-party insurer that is separate from the credit granting entity. As a result, these optional group insurance products should be seen as similar to individual insurance policies that are unrelated to loan transactions, such as term, whole life or universal life insurance.

While consumers can opt to take out CGI, similarly someone who already has or is getting a loan could also purchase term, whole life or universal life insurance, intending to use the payout to reduce or pay off the loan if the insured event occurs and funds are needed for that purpose.

3. Consumer protection measures already exist, and the proposed changes are inconsistent with some consumer protection frameworks

<u>The conduct of the business of insurance is already well regulated provincially.</u>

CGI is provided by federally and/or provincially regulated companies who are already subject to strict fair treatment of customer requirements and federal consumer protection regulations.

The Canadian Council of Insurance Regulators' (CCIR) *Fair Treatment of Customers (FTC) Guidance* outlines key principles and expectations for insurers and intermediaries to ensure fair treatment throughout the conduct of insurance business.

The guidance set outs key consumer protection principles that insurers and intermediaries must adhere to, including prioritizing fair and respectful treatment of customers, providing clear and well-informed disclosures to ensure customers make informed decisions, and ensuring products are designed to meet the customer's needs.

The provinces are actively engaged in this space and a robust consumer protection framework already exists. If the government is concerned about the use of high-pressure tactics to sell insurance products, we would recommend the government engage further with industry and

[1] Guideline G7 Creditor's Group Insurance

with the insurance regulators for the provinces and territories. The approach should focus on enforcement of existing frameworks rather than introducing new measures.

<u>The proposed changes are inconsistent with some consumer protection frameworks</u>

Furthermore, the Financial Consumer Protection Regulations specifically exclude the cost of optional creditor insurance from the calculation of the cost of borrowing that is to be disclosed to consumers.

> *Section 48 (2) Charges not included in the cost of borrowing: The cost of borrowing for a loan does not include any of the following fees or charges:*
>
> a) *<u>Charges for insurance on the loan if</u>*
>   i) *<u>The insurance is optional</u>*
>   ii) *….*

Similarly, s.70 of Quebec's Consumer Protection Act also specifically excludes optional insurance when defining "credit charges":

> *Section 70. …Despite any provision to the contrary, the following do not constitute credit charge components: (a) the premium for insurance of persons if the merchant does not subject the entering into of the credit contract to subscribing to or participating in the insurance…*

The proposed amendment to include insurance charges in the definition of interest contradicts the regulations already in effect. As recognized in the cost of borrowing calculation, the costs associated with optional insurance should not be considered part of the loan's borrowing cost if the insurance is optional or voluntary.

4. **The proposed wording is too wide and ambiguous – and it's unclear how to determine whether the 35% criminal interest rate will be exceeded.**

<u>It is not clear whether optional life and health insurance products are captured.</u>

By including the definition of "insurance charges" in the definition of interest, it is unclear what insurance premiums are intended to be captured. If the requirement applies to optional insurance on high-cost loans, including payday loans, this should be specified. By leaving it as worded, a wide variety of products can be included, such as those for CGI, which for the reasons described above, is very concerning to our industry.

CGI products are not designed to be "credit default insurance" and are not intended to protect against credit risk. Rather, the products provide protection for a borrower in the event of their disability, critical illness or job loss. Although the proceeds are payable to the lender to pay off or pay down the loan, the ability to pay the loan is not the risk that is insured. The premium paid by the debtor for CGI coverage should not be considered an “insurance charge” under the definition proposed because it does not insure the credit risk.

Challenges with calculating interest that includes optional products

For some CGI products such as credit card balance protection insurance, premiums will fluctuate monthly based on factors including the amount owing and the customer’s age. If these premiums are included as “interest”, the interest rate charge will fluctuate in a manner that is difficult for both the creditor and the consumer to track and will be confusing to understand.

There are further variable inputs that will also change over time, e.g., inclusion of annual fees (some of which cover insurance coverages such as travel and medical), cash advance fees, etc. The fees will not be the same month-to-month, nor account to account.

It is unclear what the consequences would be if at some point during the life of a credit product the interest rate reaches the criminal interest rate because of a change in the cost of creditor insurance.

Would lenders be expected to ask insurers to cancel the customer’s insurance even if the customer states they need the insurance?

For creditor’s group insurance, unilateral cancelation of a particular customer’s coverage is normally not permissible unless a termination event set out in the certificate occurs (for example due to non-payment of premiums or if the underlying credit product is in arrears).

5. Jurisdictional issues

As noted earlier, the business of insurance products comes under the jurisdiction of the provincial and territorial governments. We recommend that the government pause these proposed changes to engage further with provincial and territorial insurance regulators to ensure the appropriate stakeholders have been involved in any legislative changes proposed and that negative impacts to consumers be avoided.