



November 3, 2020

Commissioner David Altmaier, Chair
Lender-Placed Insurance Model Act (C) Working Group
c/o Aaron Brandenburg
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

**Re: Real Property Lender-Placed Insurance Model Act (August 28, 2018
Draft as Exposed) – Comments of the Industry Trade Associations**

Dear Commissioner Altmaier:

The *American Bankers Association*, the *Consumer Credit Industry Association*, *The Council of Insurance Agents & Brokers*, *The National Association of Mutual Insurance Companies*, and the *American Property Casualty Insurance Association* (collectively “Industry”) write to reiterate our support for the adoption of the August 28, 2018 version of the Real Property Lender-Placed Insurance Model Act (the “Model Act”) as re-exposed by the Lender-Placed Insurance Model Act Working Group (the “LPI Working Group”) and urge a vote to adopt the Model Act as-is during the upcoming November 12, 2020 LPI Working Group meeting.

During the LPI Working Group’s most recent conference call on October 19, 2020 Industry was asked how Regulation X, which is enforced by the Consumer Financial Protection Bureau (“CFPB”), and the Servicing Guides, which are published by Fannie Mae and Freddie Mac (the “GSEs”), regulate and impact LPI. As discussed below, Regulation X and the GSEs’ Servicing Guides do not regulate LPI or the companies that issue LPI. Instead, Regulation X and the Servicing Guides impose standards regarding the manner in which mortgage servicers obtain LPI, but do not relate directly to LPI or the companies that issue LPI.

We respectfully suggest that the standards in Regulation X and the Servicing Guides are not relevant to the Model Act and that this and all the other relevant topics related to the Model Act have been thoughtfully discussed and addressed over the past several years by the LPI Working Group. Nonetheless, below is an explanation of the applicability of Regulation X and the GSE Servicing Guides and their applicability and effect on LPI.

Regulation X

Regulation X¹ is the implementing regulation for the Real Estate Settlement Procedures Act and is issued and enforced by the CFPB. The regulation is narrowly focused in the LPI context and simply sets forth certain standards that must be met by mortgage servicers before purchasing and charging borrowers for LPI premium. These standards are designed to give borrowers a sufficient opportunity to purchase their own insurance coverage. The regulation also addresses charges imposed by a mortgage servicer but excludes charges subject to state regulation as part of the business of insurance. Moreover, Regulation X does not impose any requirements on mortgage servicers to track insurance coverage. Insurance tracking remains a risk management tool for LPI issuers who use it to manage their own risk exposure. In sum, Regulation X imposes certain obligations on a mortgage servicer related to the obtainment of LPI² but does not regulate the terms and conditions of LPI or the processes of the companies that issue it.

Additionally, as the NAIC noted in its April 2018 Government Relations Issue Brief (attached as an exhibit), Congress explicitly limited the CFPB's authority over the business of insurance in the Dodd-Frank Act. The CFPB may not, and does not, regulate LPI or the companies that issue LPI. The NAIC provided the following:

“The Dodd-Frank Act places two general restrictions on the authority of the CFPB over the business of insurance. Title X of the Act prohibits the CFPB from enforcing the provisions of the Dodd-Frank Act against “any person regulated by a state insurance regulator” and it grants an exemption for the “business of insurance” from the list of financial products and services subject to CFPB's jurisdiction. In doing so, the CFPB authorizing statute **appropriately seeks to defer to the expertise and track record of state insurance regulators...**

As an agency primarily created to exercise consumer protection functions previously under the authority of federal banking regulators, **the CFPB does not have the necessary expertise to appropriately evaluate the conduct of insurers.**” (*emphasis added*)

Recognizing that the CFPB has no authority to regulate the business of insurance, Regulation X, and more specifically 12 C.F.R. § 1024.37, only addresses the standards a mortgage servicer must follow before it may charge a borrower for the cost of LPI procured by the mortgage servicer. Again, Regulation X does not impose any requirements on mortgage servicers to track insurance.

GSE Servicing Guides

The Servicing Guides issued by the GSEs also describe certain obligations that are the responsibility of mortgage servicers, but the Guides do not (nor the GSEs) regulate LPI or the companies that issue LPI. Moreover, the Servicing Guides do not require mortgage servicers to engage in insurance tracking. The Servicing Guides only require mortgage servicers to maintain “continuous coverage” on collateral for loans acquired by the GSEs and resold to investors. For example, the Fannie Mae Servicing Guide requires that a “servicer must ensure at all times that

¹ 12 C.F.R. Part 1024

² Regulation X permits mortgage servicers to rely on the LPI insurers' letter cycle process when deciding to place LPI. See 12 C.F.R. § 1024.37(b) (official interpretation).

any required property insurance coverage is maintained to protect Fannie Mae’s interest in the mortgage loan.”³ The required coverage must “protect against loss or damage from fire, windstorm, hurricane, hail, and other hazards covered by the standard extended coverage endorsement” and “provide for claims to be settled on a replacement cost basis.”⁴ Servicers are directed to obtain LPI coverage if acceptable voluntary coverage is not in place.⁵ Mortgage servicers satisfy their obligation and comply with these requirements to ensure “continuous coverage” by contracting with LPI insurers who cover the collateral upon any lapse in voluntary coverage for whatever reason at whatever time, known or unknown.

The purpose of requiring “continuous coverage” is to protect investors and to facilitate a uniform secondary mortgage market. This is critical, since most mortgages are now sold into the secondary market, providing borrowers with substantial savings.⁶

Again, Industry appreciates the LPI Working Group’s years of diligent effort in developing the Model Act and urges a vote to adopt it in the form as exposed.

Attachments:

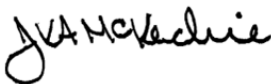
- NAIC Government Relations Issue Brief dated April 2018



Tom Keepers
Executive Director & EVP
Consumer Credit Industry Association
Association



Robert W. Woody
Vice President & Counsel
American Property Casualty Insurance



J. Kevin A. McKechnie
Senior Vice President and Executive Director
American Bankers Association
Office of Insurance Advocacy



Cate Paolino
Director of Public Policy
National Association
of Mutual Insurance Companies



Kate Jensen
NAIC/State Legislative & Regulatory Chief Counsel
The Council of Insurance Agents & Brokers

³ Fannie Mae Servicing Guide, Part B, Chapter B-2-01: Property Insurance Requirements Applicable to All Property Types. *See also* Freddie Mac Servicing Guide, § 8202.1 (“For as long as Freddie Mac owns a Mortgage, the Servicer must ensure that the Mortgaged Premises are covered by insurance[.]”). Similar requirements exist for flood insurance. *See* Fannie Mae Servicing Guide Chapter B-3; Freddie Mac Servicing Guide § 8202.3.

⁴ Fannie Mae Servicing Guide Chapter B-2-01; *see also* Chapter B-3; Freddie Mac Servicing Guide §§ 8202.2 and 8202.3.

⁵ Fannie Mae Servicing Guide Chapter B-6-01; *see also* Chapter B-3; Freddie Mac Servicing Guide § 8202.12.

⁶ Participation in the secondary mortgage market is a substantial advantage for borrowers because it saves borrowers approximately 2% in interest payments. *See e.g., Puentes v. Wells Fargo Home Mortg., Inc.*, 72 Cal. Rptr. 3d 903, 913 (Cal. Ct. App. 2008).