October 14, 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 support the adoption of the August 28, 2018 draft of the Real Property Lender-Placed Insurance Model Act (the "Model Act") as re-exposed on October 2, 2020 by the Lender-Placed Insurance Model Act Working Group (the "LPI Working Group") in advance of the LPI Working Group's conference call on October 19, 2020.

The Industry would like to thank the LPI Working Group for the comprehensive work and analysis over the past several years. To reiterate, the most recently exposed version of the Model Act is a product of years of regulatory diligence by state insurance regulators, primarily demonstrated via the comprehensive multistate market conduct examinations of real property lender-placed insurers ("LPI Insurers") and the associated Regulatory Settlement Agreements entered into in connection with such examinations (the "Multistate"). The Multistate included 50 subscribing jurisdictions (of which 11 members of this Working Group participated) and was the culmination of more than two years of regulatory examination, substantial inquiry, thoughtful consideration, and lengthy communication between regulators and LPI Insurers.

The Industry recommends that the LPI Working Group adopt the most recently exposed version of the Model Act without change, as this version appropriately codifies, and provides further clarity to, the existing regulatory structure related to rates/filing, prohibited practices, etc.

that applies to LPI Insurers; a structure that provides significant protection for consumers while also maintaining the viability of the critically important real property LPI market. Over the past several years the LPI Working Group has weighed commentary from Industry and interested parties which has culminated in the Model Act as exposed. To that end, the Industry reasserts the points raised in its April 30, 2018 letter submitted to the LPI Working Group and its June 2, 2017 letter submitted to the CPI Working Group, each of which is attached as an exhibit.

The Center for Economic Justice ("CEJ") provided redlined comments on the Model Act dated March 9, 2018 (the "CEJ Model Additions"). The CEJ's comments are problematic on several fronts as they introduce flawed concepts supported by inaccurate statements and would cause the Model Act to improperly overstep the authority of the NAIC and DOIs in the regulation of lenders and servicers (which are already regulated by state and federal banking laws and associated regulators including the Consumer Financial Protection Bureau). The CEJ Model Additions fail to acknowledge the work of DOIs in regulating the LPI market and the significant protections provided consumers in the exposed version of the Model Act and, in fact, would serve as a detriment to consumers, the exact opposite of the purported goal of the CEJ.

While directing the LPI Working Group to the comments previously provided by Industry, we would emphasize the following for the LPI Working Group's consideration:

I. <u>The CEJ Model Additions and Recent Communications with the NAIC Include Reasoning that is Factually Inaccurate</u>

The most notable and clear-cut example of this is the CEJ's discussion on "insurance tracking", which is materially incorrect. The CEJ, in support for the position of excluding expenses incurred by insurers for "insurance tracking" from LPI rates states that:

> "*Insurance tracking is a servicer responsibility for a number of reasons discussed in prior CEJ Comments. Insurance tracking is also a significant expense for the servicer – for which the servicer is paid by the lender or investor*." And later states: "…*since a servicer is responsible for insurance tracking*…"

This is inaccurate. Both the Mortgage Bankers Association ("MBA") and the American Bankers Association ("ABA") have authoritatively addressed this topic in earlier submissions to the Working Group because of the materiality of this issue and the inaccurate and detrimental impact of the CEJ's unfounded and unsupported logic. The MBA, in its letter to the Working Group dated April 24, 2019 (which is attached as an exhibit), specifically and clearly states:

> "*To clarify, mortgage servicers <u>do not</u> have responsibility for insurance tracking and, consequently, they <u>are not</u> compensated for performing this function*."

The ABA, in its letter to the Working Group dated April 4, 2019 (which is attached as an exhibit), also clearly states that:

> "*The ABA understands that certain interested parties have represented that mortgage servicers are paid by mortgage loan owners/investors for 'insurance tracking' and that 'insurance tracking' is the sole duty of mortgage servicers. <u>This is simply not the case</u>."*

And later reiterates: *"A servicer is not compensated by investors for 'insurance tracking.'"*

In their submissions, ABA and MBA also note that the ultimate goal of the Model Act would be undermined if "the Model Act fails to accurately reflect the roles and responsibilities of mortgage servicers versus insurance carriers." This would be the result if the CEJ Model Additions were adopted. It is not appropriate for this Model Act, or any model act, to regulate a non-NAIC regulated entity, in this case mortgage servicers.

II. The Model Act Should Not Interfere with a State's Ability and Right to Control its Rate-Making Authority and Process.

Several of the CEJ Model Additions aim to dictate and supersede an individual state's ability and right to control its rate-making authority and process. This runs contrary to the stated purpose of NAIC model laws. A Model Act is meant to be a baseline document in which rate-making determinations are not included.

For example, the CEJ Model Additions seek to dictate how states should assess LPI rate submissions by prejudicing the components of those rates, i.e. that exposure management expenses be excluded from LPI rates. As it has been thoroughly explained and supported in prior submissions to the Working Group and as laid out above, the Model Act correctly excludes this type of rate making mandate from its scope, just as this type of rate making mandate was omitted from the Multistate. Exposure management – accomplished through insurance tracking, *i.e.*, determining which properties within a servicer's portfolio are insured through the LPI provider due to a lack of borrower obtained insurance coverage – is performed by LPI Insurers on their own behalf to diligently manage their own exposure. As the LPI Working Group is aware, LPI has no underwriting – accepting any and all risk, at any time, within a servicer's portfolio – and, therefore, an insurer must recognize and manage its exposure to ensure it maintains proper capital reserves, surplus, and reinsurance, as well as to meet other statutory filing requirements, all via insurance tracking. The omission of this type of rate making mandate from the Model Act is a key element that the Industry believes is necessary in efforts to adopt an accurate Model Act and to ensure the scope of the Model Act is correct and not overreaching.

Again, the Industry appreciates the LPI Working Group's diligent efforts, over the past years to develop the Model Act and urges the LPI Working Group to move forward with adoption as exposed. It is the culmination of laborious efforts by regulators and interested parties and a reflection of existing best practices, which benefit consumers and help promote a healthy real property LPI market. Notably, it includes the prescriptive measures that are appropriate for the protection of consumers and the viability of the LPI market.

[Signatures on next page.]

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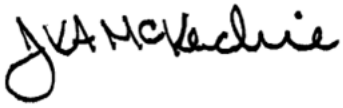
Consumer Credit Industry Association



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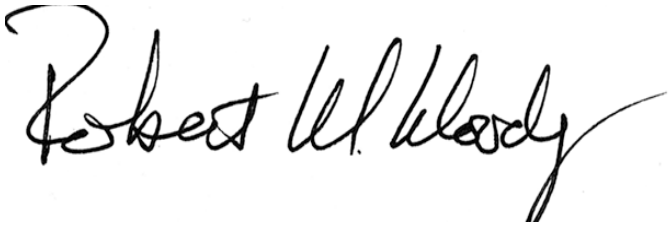

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Attachments

1. Mortgage Bankers Association – Letter to Working Group dated April 24, 2019
2. American Bankers Association – Letter to Working Group dated April 4, 2019
3. Joint Industry Trades Comment Letter dated April 30, 2018
4. Joint Industry Trades Comment Letter dated June 2, 2017