National Consumer Law Center

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November 12, 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

Dear Commissioner Altmaier:

Please accept these brief comments from the National Consumer Law Center, on behalf of its low-income clients, for the pending review of the Lender Placed Insurance (LPI) Model Act.

The National Consumer Law Center has extensive expertise in mortgage lending and mortgage servicing. Our staff has testified before Congress and met with regulatory agency staff numerous times regarding aspects of these subjects. We also publish a series of treatises on mortgage lending issues.[1]

Lender placed insurance is an important topic for homeowners. The high cost of LPI is a significant burden that contributes to financial distress and foreclosure. NCLC has advocated reform in this area for many years.[2] We now write to strongly support the comments submitted by the Center for Economic Justice (CEJ)[3] and to clarify the record regarding an important aspect of this debate: responsibility for insurance tracking.

In reviewing the comments submitted by industry, some have mistakenly suggested that insurers, rather than loan servicers, are responsible for monitoring the status of homeowner insurance policies (i.e. insurance tracking). Instead, it is standard for loan servicers to have a contractual responsibility for insurance tracking. The owner of the mortgage (commonly called "the investor") pays servicers for all of their work, including insurance tracking. As explained more thoroughly in CEJ's comments, insurers should not be allowed to provide free tracking and recoup its cost through inflated LPI premiums.

The clearest statements regarding who is responsible for insurance tracking come from Fannie Mae and its regulator, the Federal Housing Finance Administration (FHFA). Most mortgages in the United States are owned by Fannie Mae or Freddie Mac (the government sponsored enterprises or GSEs). So they set the industry standard.

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[1] Mortgage Lending (3d ed. 2019); Mortgage Servicing and Loan Modifications (2019); and Home Foreclosures 2019).

[2] NCLC, CEJ, The Consumer Financial Protection Bureau Should Rein in Mortgage Servicers' Use of Force-Placed Insurance (May 2012), https://www.nclc.org/images/pdf/regulatory_reform/ib-force-placed-insurance.pdf.

[3] https://content.naic.org/sites/default/files/call_materials/cej_comments_naic_lpi_201103.pdf

Companies servicing GSE owned loans are subject to the GSEs' servicing guidelines. The GSEs (like all other loan owners) pay servicers a fee for their work—including insurance tracking. The cost of LPI is important to the company owning the loan because the servicing contract requires the owner to reimburse servicers for any LPI premiums not paid for by the homeowner. That reimbursement is in addition to the basic servicing fee paid by the investor. So, if the cost of tracking is hidden in the LPI premium, the investor is being double-billed for tracking.

The GSEs and FHFA have issued a number of documents over the years (in addition to the servicing guidelines cited by CEJ), that clearly prove that servicers are responsible for insurance tracking. Several of these statements also express their concern over double-billing for tracking. For example:

- In March 2012, Fannie Mae issued an RFP for the direct purchase LPI insurance tracking.[4] The RFP's description of "the current situation" stated—
  - "Servicers are responsible for providing tracking services, per Fannie Mae Guidelines."
  - The RFP further stated: "Fannie Mae is often paying twice for Insurance Tracking services; once via the servicing fee that Fannie Mae pays to Servicers, and again via the Lender Placed Insurance premiums, since those premiums may include or subsidize the costs of tracking services . . . . (to the extent that insurers are providing such services)."

- Servicing Guide Announcement SVC-2012-04 (March 14, 2012) stated "Fannie Mae is clarifying its requirement for reasonable reimbursable expenses for lender-placed insurance. Any servicer request for reimbursement of lender-placed insurance premiums must exclude . . . Insurance Tracking."

- The FHFA Office of Inspector General has also clearly stated—
  - "The Enterprises' mortgage servicers are responsible for ensuring that borrowers maintain hazard insurance on their properties."[5] and
  - "The Enterprises contract with servicers to ensure the homes that secure their mortgages are covered continuously by hazard insurance."[6]

It is important to recognize that the loan servicer is responsible for tracking insurance on behalf of the loan's owner. Servicers are paid for tracking. The current practice of allowing insurers to provide free tracking and recoup the cost from LPI premiums is unfair and should be prohibited by the revised Model Act.

Thank you for your consideration of these comments.

Respectfully submitted,

Andrew G. Pizor
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National Consumer Law Center

[4] This plan was ultimately cancelled.
[5] FHFA OIG, FHFA's Oversight of the Enterprises' Lender-Placed Insurance Costs at 1 (June 25, 2014), https://www.fhfaoig.gov/Content/Files/EVL-2014-009.pdf.
[6] *Id.* at 8.