Supplemental Comments from the Center for Economic Justice

To the NAIC Lender Place Insurance Model Act Working Group

November 9, 2020

CEJ writes to supplement our November 3, 2020 comments to working group with two points.

First, we ask that our comments as well as those of regulators and other stakeholders, be given a fair hearing in the same manner that stakeholder comments have been presented and discussed for other NAIC work products. For example, for amendments to the annuity suitability model regulation, the artificial intelligence principles, the group capital calculation and the amendments to the anti-rebating provisions of the Unfair Trade Practices Model Act – to name just a few – working group members considered individual stakeholder-suggested edits and gave stakeholders the opportunity to present those suggestions.

Given that at least one working group member wanted to adopt the draft during the most recent call – despite over two years from the last call and no discussion of specific proposed language – we are concerned that discussion of the many controversial and anti-consumer provisions of the draft model may not be forthcoming. Our concern is heighted by industry claims that "all the relevant topics related to the Model Act have been thoughtfully discussed and addressed over the past several years." While the draft codifies current anti-consumer industry practices, there has been no discussion for over two years and the prior discussion did not "thoughtfully" consider all issues raised by consumer stakeholders and regulators.

We ask for the opportunity to present each of our suggested changes to the draft.

Second, we respond to the industry misdirection and misinformation in their November 3, 2020 comment letter. Industry argues that neither Regulation X nor the Fannie Mae/Freddie Mac servicing guidelines are relevant to the working group's consideration. But that is incorrect as both are directly relevant to the issue of reasonable expenses in LPI rates.

Regulation X and the Fannie/Freddie servicing guidelines – as well as the statutes and treatises cited in CEJ's November 3, 2020 comments – make clear that the activities that comprise insurance tracking are the responsibility of servicers for which servicers are compensated by borrowers and mortgage owners through the servicing fee servicers deduct from borrowers' mortgage payments. Despite industry claims to the contrary, there is no reasonable dispute about these facts and the complete lack of evidence provided by industry to support its arguments makes this clear.

Industry argues that the working group should ignore all these statutes, regulations, servicing guidelines and treatises because they are not promulgated by insurance regulators and address the roles and responsibilities of lenders and servicers. This is, of course, an absurd argument regarding what expenses insurance regulators should consider reasonable for LPI rates. By the twisted industry logic, insurance regulators should not regulate LPI because continuous insurance coverage is required by statutes, regulations and guidelines directed at servicers.

The relevant issue is whether tracking costs are a legitimate expense to include in LPI rates and premiums and, consequently, charged to borrowers. Regulation X and the servicing guidelines mandate a list of activities for servicers regarding insurance required to protect the mortgage collateral. These statutes, regulations and servicing guidelines list the activities that comprise insurance tracking and clearly make those activities the responsibility of the loan servicer. Borrowers and mortgage owners pay the loan servicer for insurance tracking and other duties by letting the servicer retain a portion of the borrower's loan payment each month (a "servicing fee" usually ranging from 25 to 50 basis points).

If, for some reason, the working group members have any doubt that insurance tracking activities are the responsibility of servicers and for which servicers are already compensated, then CEJ suggests the working group reach out to Fannie Mae, Freddie Mac, the Federal Housing Finance Authority or the Consumer Financial Protection Bureau to confirm the facts CEJ has presented.

As pointed out in our November 3, 2020 comments, the inclusion of insurance tracking expenses in LPI rates inflates LPI charges to borrowers by a substantial amount and unfairly penalizes the most financially-vulnerable borrowers.