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September 17, 2018

To: The NAIC Lender Placed Insurance Model Act Working Group

Re: Edits to Draft Model Act

The California DOI strongly favors including the suggested edits to the Lender Placed Insurance Model Act submitted by the Center for Economic Justice and submitted on March 9 of this year (attached).

We believe Mr. Birnbaum’s edits address several issues that we have noted in connection with exams of both real-property LPI and collateral protection insurance (lender-placed auto), especially the various ways in which lenders/servicers and/or controlling producers are compensated, the role of “insurance tracking” and the relationship of the entity performing that function with the insured lender and the insurer, and the retroactive collection of premium for periods of non-coverage in the past.

We believe the purpose of conducting this redrafting of the model was to specifically address the consumer issues that have arisen from these practices. There are many reasons that consumers end up with lender placed coverage, we should do our best to make sure that the pricing and coverage practices of this important component of the insurance industry are as fair those for any other segment of the market.

--While we agree with the substance, we do have some minor editorial suggestions to the CEJ draft that we would like to suggest:

Section 3 – Definitions

“Affiliate” is defined to mean “a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified”. Should there be a definition of “person” to ensure that it encompasses both a single person, or persons (plural) or other entity?

Section 6 – Prohibited Practices

Section B.(1) seems difficult to read and not altogether grammatically correct. Perhaps something like:

~~An insurer or insurance producer shall not issue lender-placed insurance on~~

~~mortgaged property that is: (i) owned by or (ii) where servicing is done or (iii)~~

~~servicing rights are owned by the insurer or insurance producer or an Affiliate of the insurer or insurance producer.~~

An insurer or insurance producer shall not issue lender-placed insurance on mortgaged property when the insurer or insurance producer or an Affiliate of the insurer or insurance producer (i) owns, (ii) performs the servicing for, or (iii) owns the servicing rights to the mortgaged property.

Section 8 – Evidence of Coverage

There are many instances in Mr. Birnbaum’s version where he replaced “lender-placed insurance” with “forced-placed insurance” and “mortgagor” with “borrower”. Neither “force-placed insurance” nor “borrower” is defined, but both “lender-placed insurance” and “mortgagor” are. Suggest consistency throughout document.

Section 10 - Filing, Approval and Withdrawal of Forms and Rates

Regarding Section E, it’s not clear what the difference is between loss reserves and case reserves. Often in actuarial circles, the term “loss reserves” is used to refer to both case reserves and reserves for losses incurred but not reported. Suggest we either revise vi. to say “loss reserves, including case reserves and reserves for losses incurred but not reported” and eliminate the next two bullets OR we eliminate the “loss reserves” bullet, and leave in vi. “Case reserves” and vii. “Reserves for losses incurred but not reported.” To have all three in the list is confusing.

Section 13 - Judicial Review

Section C.(2): “Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review be dismissed.”

Section 14 - Penalties, Private Cause of Action

Section B: “An insurer that violates an order of the commissioner while the order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to ~~either or both~~ any or all of the following:…”

(There used to be two bullets in this list, now there are four.)

Thanks to the CEJ for its work on this issue and to the Working Group for considering these amendments.

Sincerely,

Joel Laucher

Chief Deputy Commissioner