May 28, 2013

Federal Housing Finance Agency
Office of Housing and Regulatory Policy
Constitution Center
400 Seventh Street, SW
Ninth Floor
Washington, DC 20024

Re: Lender Placed Insurance, Terms and Conditions (No. 2013-N-05)

To Whom It May Concern:

The American Financial Services Association ("AFSA") welcomes the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") notice setting forth an approach to address certain practices relating to lender placed insurance ("Notice"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

AFSA emphasizes that lenders/servicers must purchase insurance if they want to protect their interests. The premiums for lender placed insurance are usually higher than coverage available for purchase directly by borrowers. The FHFA proposes in its Notice to prohibit two practices: the servicer's receipt of "remuneration" on lender placed insurance, and the servicer's receipt of "remuneration" associated with an affiliate's reinsuring the lender placed coverage obtained by the servicer. We believe these prohibitions are unnecessary. Furthermore, we believe that the federal government should continue to leave insurance regulation to the state regulators.

I. Lenders/Servicers Must Purchase Insurance to Protect their Interests

AFSA is concerned with the effect that the Notice will have on the lender, servicer, or investor's ability to purchase insurance to protect their security interest in the collateral, which they are entitled to do. Borrowers are required to maintain property insurance as an express condition of their loan. If the borrower fails to do so, then the lender/servicer may need to take steps to protect the investment. In fact, the servicer may be compelled by a servicing agreement to obtain insurance. Guidelines promulgated by Fannie Mae and Freddie Mac call for continuous insurance coverage on mortgage loans that Fannie and Freddie have purchased or guaranteed. If borrowers abided by their contracts and obtained their own insurance, lenders would not have to shoulder that burden and expend resources to obtain insurance that they did not contract for in the beginning. Furthermore, in these cases the lender is required to put its money upfront. Without the lender obtaining this protection, the level of risk for lenders is increased significantly and when risk increases, lenders are forced to mitigate it by raising the cost of credit.

Lender placed insurance is not only a safety net for lenders. Investors who buy mortgages also have a stake, as do homeowners. Lender placed insurance is utilized only when homeowners do not maintain their own insurance coverage on their properties. Claims due to events such as fire and severe weather could be devastating for homeowners who, for whatever reason, had failed to carry insurance.

II. Premiums for Lender Placed Insurance Are Usually Higher

The Notice states that premiums for lender placed insurance are higher, or even significantly higher, than those for voluntary insurance. Premiums for lender placed insurance are usually higher than coverage available for purchase directly by borrowers. As a result, the increased cost for lender placed insurance is often necessary. Unlike conventional carriers, lender placed insurance puts policies in place with no individual risk underwriting, inspection, or evaluation of a property's condition. The insurer accepts all risks and offers coverage sight unseen. Many properties covered by lender placed insurance have negative factors from an insurance standpoint: a history of multiple losses; aging, poor, or vacant condition; or risk for certain other hazards based on location and other issues (e.g. hurricane-prone states, which make up a significant number of properties covered by lender placed insurance). As the level of risk increases, so do the costs. Borrowers are always welcome to cancel the lender placed insurance policy at any time and restore coverage through a different carrier.

AFSA reminds the FHFA that insurance rates are based on the cost of repairing or rebuilding the protected home, not the market value of that house or others in the area. The cost to rebuild a home may not significantly decline, even if the market values do. Regulators want to ensure that homeowners suffering damages receive the actual resources necessary to rebuild their homes. As a result, insurance rates do not decline as property values do.

III. The FHFA Should Not Restrict Sales Commissions

AFSA strongly supports fair dealing when it comes to compensating those licensed agents who manage insurance programs and refer business to insurance companies. It is fair and reasonable to pay some form of compensation because financial institutions offering insurance programs also have expenses such as advancement of funds, billing and collection of premiums, and systems costs. Commissions are generally comparable to the general insurance market, and lenders disclose any such compensation to borrowers.

IV. The FHFA Should Not Restrict Reinsurance Activities

The Notice prohibits "sellers and servicers" from receiving remuneration associated with an insurance provider ceding premiums to a reinsurer that is owned by, affiliated with or controlled by the sellers or servicer. AFSA believes that this approach will disadvantage lenders. Those who can provide brokerage services through a subsidiary should be able to do so, and receive the same consideration for their services as a non-affiliate. Affiliated agencies/brokerages are very involved in the process of selecting the insurer and monitoring the program performance.

AFSA suggests that instead of an outright prohibition, the FHFA consider stating that it will not reimburse commissions in excess of the typical market rate for non-affiliate brokers. Alternatively, the FHFA could simply cap the percentage of the premium it will reimburse at a fixed percentage.

V. Insurance Regulation by the FHFA is Unnecessary

We believe that the Notice is another unnecessary and duplicative attempt at bureaucratic lawmaking that seeks to address issues that state and federal rules already cover.[1]

State insurance regulators are charged with and sufficiently geared up to ensure that rates comply with state law. All states require that rates be neither inadequate nor excessive and not unfairly discriminatory. The state regulators have been, and are likely to remain, extremely active in regulating rates. California, Florida, New York, as well as other states have been taking action. The FHFA, as a federal agency, should limit its involvement in this area to ensuring that those within its jurisdiction do business with vendors/insurers who comply with state law. If the FHFA believes that lender placed insurance is too expensive, the FHFA should ask the insurance regulators to examine insurance pricing, as opposed to preventing lenders/servicers from taking steps to protect their collateral.

The Consumer Financial Protection Bureau ("CFPB") addressed the FHFA's concerns underlying the Notice by requiring that all charges assessed to a borrower that are related to lender placed insurance, be bona fide and reasonable. The CFPB's final rule defines a "bona fide and reasonable charge" as "a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service." The CFPB explained that this definition excludes "costs unrelated to the provision of force-placed insurance," and costs that "subsidize servicing activities unrelated to the provision of force-placed insurance." In other words, such unrelated and subsidizing costs would not be considered bona fide and reasonable. The CFPB also stated that it believes the final rule's provisions "provide adequate safeguards to borrowers."

Additionally, while writing the mortgage servicing rules, the CFPB received several comments that amounted to requests to prohibit lenders/servicers from receiving commissions/fees or other things of value in exchange for obtaining lender-placed insurance. After consideration of the comments submitted, the CFPB determined that it was inappropriate to prohibit lender/servicers from receiving such commissions/fees or other things of value in exchange. If the CFPB determined that such a prohibition was unnecessary, the FHFA should as well.

VI. Conclusion

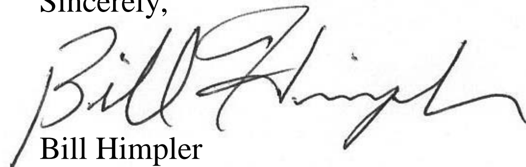
Lender-placed insurance is a service to homeowners, lenders, and investors alike. Customers always have the opportunity to carry insurance of their choice, but lender-placed insurance acts as a safety net when other insurance has lapsed. Without this coverage, homes and collateral are lost - a serious consequence not only for the individual, but also for America's banking system.

[1] "Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)," 12 CFR, Pt. 1024 (2013).

AFSA strongly urges that the FHFA not implement the planned practice limitations set forth in the Notice. If the FHFA ultimately concludes that the two prohibitions are necessary, we ask that the FHFA limit its restrictions on lender placed insurance to only those two prohibitions.

We look forward to working with the FHFA on this Notice. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
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