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Electronic Delivery to:
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Federal Housing Finance Agency,
Office of Housing and Regulatory Policy (OHRP)
Constitution Center
400 Seventh Street SW., 9th Floor
Washington, D.C. 20024

Agency: Federal Housing Finance Agency

Billing Code: 8070-01p

Re: Submission for Lender Placed Insurance, Terms and Conditions Proposal, Comment Request [No. 2013-N-05]

I. INTRODUCTION

Thank you for soliciting feedback from interested parties via this Request for Public Comment (the "Request") addressing certain common practices associated with lender placed insurance ("LPI"). It is important that all stakeholders, particularly those with extensive expertise and knowledge of the LPI industry, have the ability to contribute to the discussion(s) around standards that may be adopted by the Federal National Mortgage Association ("FNMA") and/or the Federal Home Loan Mortgage Corporation ("FHLMC"), as recommended by the Federal Housing Finance Agency ("FHFA"). As one of those stakeholders, American Security Insurance Company ("ASIC") greatly appreciates the opportunity to respond with this comment and offers to be a resource for the FHFA in subsequent dialogue(s) around LPI.

ASIC is a subsidiary of Assurant, Inc., a Fortune 500 insurance holding company and a member of the S&P 500, with more than $26 billion in assets, $8 billion in annual revenue, and approximately 15,000 employees worldwide. As a leading provider of LPI (and related services) to the mortgage servicing industry, ASIC is uniquely able to provide insight into the possible benefits and detriments of prospective changes to Servicer practices and standards relating to LPI. Although the LPI industry is comprehensively regulated by states as the business of insurance, ASIC recognizes that limited elements of LPI are directly tied to the operations of mortgage lenders, sellers and servicers (collectively "Servicers"), which are responsible to FNMA and FHLMC (the "Enterprises"), and therefore indirectly to the FHFA, as the conservator for those entities.

II. COMMENTS

A. Regulation of Insurance Entities

The McCarran-Ferguson Act[1] explicitly acknowledges that the regulation of insurance is the provenance of states unless there is explicit statutory authority to the contrary. While the Dodd-Frank Act[2] extensively addresses LPI, it does so via oversight of Servicers, rather than LPI carriers or other insurance entities associated with the LPI process. As such, the drafters of Dodd-Frank seemed to implicitly recognize that states, rather than the federal government, are in the best position to regulate those elements of the LPI process that are purely between insurance entities and/or are already subject to state insurance regulation.[3] Such state authority provides a robust regulatory scheme; including oversight of the insurance rates (and the components thereof)[4], commissions paid to agents, and reinsurance transactions. Notably, a number of states' departments of insurance have recently reviewed, or are in the process of reviewing, LPI rates pursuant to such authority, resulting in revised LPI rates.

ASIC is appreciative of the FHFA's recognition that the revised practices and standards being contemplated by the Request are subject to this principle;[5] however, ASIC feels the proposed changes should be clarified to more directly reflect the McCarran-Ferguson Act. Specifically, transactions between a state-licensed and regulated insurance carrier and either a state licensed and regulated insurance agent or reinsurer should be noted to be outside of "remuneration received, directly or indirectly, by Servicers".

B. LPI Commissions & Reinsurance

ASIC would also like to note that paying commissions to licensed agents and purchasing reinsurance are common and widespread practices throughout the insurance industry, and are permissible under state insurance law (including in conjunction with LPI).

In the context of LPI, agents, including those who may be affiliated with Services, perform a number of critical functions. In performing these functions they incur expenses, and therefore are entitled to reasonable compensation. Among other things, these functions include activity throughout the life of the relationship between a Servicer and its LPI carrier(s).[6] While these

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[1] 15 U.S.C. §§ 1011-1015

[2] Pub.L. 111–203

[3] For example, the requirements around charges relating to LPI do not extend to "charges subject to State regulation as the business of insurance". 12 USC § 2605(m).

[4] Specifically that rates are not excessive, inadequate, unreasonable, or unfairly discriminatory.

[5] Footnote 2 of the Request (Actions by the Enterprises only affect loans that they purchase or guarantee; their seller-Servicer guides have no effect on practices of insurers expect for dealings with the Enterprises.")

[6] This consists of assisting the Servicer in selecting its LPI program (including the formulation of RFP criteria, identification of markets, negotiation with the LPI carrier, etc.), on-going management of the program (including continued advisement on: insurance and risk management strategies; coverage specifics; interpretation of regulations and statutes; and the integration of new assets, assistance in billing collecting premium, etc.), and control issues (including serving as the liaison between the servicer and LPI carrier, conducting and administering annual reviews of claims and premium, etc.).

functions may vary slightly from the functions of an agent in the general insurance industry, they are no less important and no less deserving of compensation.

A number of Servicers are subsidiaries of large and varied financial institutions. Insurers may also be subsidiaries of these financial institutions. Some of these affiliated insurers may participate in the reinsurance marketplace, and are willing to accept risk associated with LPI transactions of their affiliated Servicers. In such circumstances ASIC may cede some of its risk, and a commensurate amount of premium, to the reinsurer. The reinsurer is accountable for a pro rata amount of the losses from the "first dollar," and therefore receives no benefit, other than as a participant in the LPI business (including in both profits and losses), and is treated no differently than any non-Servicer affiliated reinsurer would be by ASIC.

C. Transparency and Consumer & Investor Protections

The Request also broadly solicits feedback on LPI generally. Because it is not possible for ASIC to know or predict what other concerns the FHFA may have, it is important to re-emphasize that ASIC is willing to serve as a resource to the FHFA in its review of LPI in a broader context, and/or any other specific LPI concerns. It is critical that the FHFA have a full understanding of the LPI industry based on factual knowledge, rather than anecdotal information, prior to making significant changes to LPI standards or practices.

ASIC would like to note a few of its suggested best practices that benefit consumers and/or investors. First, and directly related to the subject matter of the Request, note that some Servicers may voluntary choose to cease using an affiliated agent or having the business reinsured through an affiliated insurer. In those instances, ASIC believes the cost savings to the LPI carrier should be reflected in a decreased rate for the LPI and ultimately less being charged to the borrower. Accordingly, ASIC has taken steps to incorporate this flexibility in its LPI program by revising its LPI product(s) to provide rate credits where commission or reinsurance is reduced or forgone. ASIC has already filed and received approval of this revision in most states, with approval pending in others.[7]

Further, ASIC believes that as a general rule, and if possible, the coverage amount of LPI should be based on the coverage amount of the last known acceptable borrower obtained policy. This is the best approximation of the replacement cost value ("RCV") of the collateral, and ensures that in the event of a loss, including a total loss, the borrower is afforded coverage and the insurance proceeds provide sufficient payment so as to provide for proper repair of the property. For many borrowers the equity in their home is their primary savings/investment and placing at RCV protects it. Placing at RCV ensures that borrowers will be better able to rebuild their lives after a catastrophic event. Similarly, ASIC believes that as a general rule, deductibles should be reasonable and consistent with what is commonly selected by borrowers when they obtain their own coverage. To the extent deductibles are excessive; borrowers may be precluded from being able to repair their property. Such a scenario would not only be to the detriment of the borrower, but also the investor. As with

[7] It should be noted that the formalized process that ASIC must comply with in subjecting its LPI product and associated rates to each state for review and approval supports the concept that states are in the best position to regulate the insurance aspects of LPI.

coverage amount, the deductible standards around LPI should not materially differ from the standards that borrowers are held to in maintaining their own coverage.

Lastly, ASIC supports the existing structure of the LPI industry. It is the insurance provider that is on the risk of loss in an LPI program for all known and unknown uninsured properties. Because the tracking of insurance is primarily a function that LPI carriers do to manage their exposure by ensuring they are aware of all properties they are obligated to provide coverage on, it should be a responsibility that is generally borne by the LPI carrier. Therefore the issuance of LPI and the tracking of insurance should not be separated. This has had the effect of keeping premium rates lower over time, by effectively charging premium for all uninsured properties and only those who are uninsured, by increasing placement accuracy. Additionally, based on the rapid increase in regulation of Servicers around oversight of third party vendors, it is Servicers that are in best position to manage their LPI providers. Servicers have developed robust vendor management processes and procedures and are the entity directly transacting with LPI carrier.

III. CONCLUSION

ASIC appreciates the opportunity to provide FHFA with feedback on this issue and respectfully submits the comments above in the hopes of ensuring that any guidance from the FHFA takes into account the fact that certain aspects of LPI are statutorily the provenance of states while providing appropriate ongoing clarity and certainty around Servicer practices. We look forward to the opportunity to continue to provide assistance to our Servicer clients, as well as the FHFA, in the development of appropriate defined practices and standards relating to LPI.

Please feel free to contact me if ASIC can be of further assistance.

Sincerely,

John Frobose
President
American Security Insurance Company