



American Insurance Association

May 28, 2013

Via Electronic Mail (LPIinput@fhfa.gov)

Federal Housing Finance Agency
Office of Housing and Regulatory Policy (OHRP)
Constitution Center
400 Seventh St SW, 9th Floor
Washington, DC 20024

Re: Federal Housing Finance Agency Notice Regarding Lender Placed Insurance: Terms and Conditions (No. 2013-N-05)

Ladies and Gentlemen:

AIA represents approximately 300 leading U.S. property-casualty insurance companies. In the U.S., AIA members write more than \$117 billion annually in premiums, including for homeowners insurance and lender-placed insurance. AIA members have a wealth of experience with these insurance segments and their regulation. We agree with the Federal Housing Finance Agency's (FHFA) acknowledgement of the important role that lender-placed insurance plays in helping to protect against property losses through insurance. AIA members have a strong interest in making certain that federal governmental action – whether in the nature of regulation or in the government's perceived role as market participant – preserves and enhances market competition and does not interfere with state authority to regulate the business of insurance, as reflected by the McCarran-Ferguson Act. Because of this interest, we appreciate the opportunity to provide our perspective on the FHFA's proposed action to prohibit sellers and servicers from receiving, directly or indirectly, "remuneration associated with [1] placing coverage with or maintaining placement with particular insurance providers" and [2] "an insurance provider ceding premiums to a reinsurer that is owned by, affiliated with or controlled by the sellers or servicer."¹

As discussed below, we believe that that the FHFA should not take any action that will interfere with state regulation of the business of insurance. Accordingly, it is very important that the FHFA carefully consider how its actions may conflict with state insurance law or encroach upon the jurisdiction of state insurance authorities to oversee the activities of insurance companies. As the FHFA is undoubtedly aware, the McCarran-Ferguson Act entrusted states with the authority to regulate the business of insurance absent federal law that specifically relates to the business of insurance. The McCarran-Ferguson Act is crucial to fostering competition in the

¹ 78 Fed. Reg. 19263, 19264 (March 29, 2013).

property-casualty insurance sector, by balancing antitrust policy with regulatory oversight. It establishes this balance by applying federal antitrust laws to the business of insurance to the extent that such business is not regulated by state law. As such, McCarran reflects a Congressional judgment that insurers and other industry participants should not be subject to dual enforcement through the federal courts, so long as states exercise the regulatory authority delegated by Congress. McCarran does not grant insurers blanket immunity from federal antitrust laws, and it does not shield insurers from federal and state laws that prohibit them from engaging in boycotts, intimidation or coercion. However, it was carefully crafted to provide the regulatory framework for private market competition to thrive.

Under the regulatory regime that arose from McCarran, thousands of property-casualty insurers across the country must conduct their business subject to a comprehensive and pervasive regime of state-based regulation and enforcement. States regulate virtually every aspect of insurance. With respect to lender-placed insurance, the FHFA readily acknowledges that state regulators have been engaged and are in the process of exercising existing authority and pursuing enhanced regulation. In this context, the FHFA must be careful that any actions taken in its role as conservator and market participant do not upset the delicate balance established by McCarran. This is particularly true with respect to actions that bear on rates charged by insurers and which are subject to state regulatory scrutiny. In this instance, AIA would strongly urge the FHFA to defer to the states and forbear from imposing any prohibitions or restrictions on lender-placed insurance commissions (or other unspecified, contemplated actions), and permit state regulation to manage the various regulatory and public policy concerns that arise from the issue.

The FHFA's justification for such a proposal is to reduce costs for the Enterprises, but such a standard fails to incorporate a prudential perspective and raises other unintended risks when price is the sole focus. Specifically, the FHFA states in its notice that its objective is to "keep lender placed insurance costs to the Enterprises as low as possible."² Yet, insurance regulators would never focus solely on price. For example, state insurance regulators examine and balance such issues as consumer protection and solvency. In particular, the state insurance rate review process includes such components as commissions, profits, expenses, and underwriting losses, which cannot be examined in isolation to each other. However, the FHFA's narrow focus on cost reduction for the Enterprises ignores the basic framework for prudent insurance regulation.

In addition, the FHFA's action will not produce the intended result in reducing costs and the FHFA has not demonstrated that such actions will have any impact on the Enterprises. The FHFA acknowledges that "some states have already required or have considered rate reductions of 30 percent or more."³ Florida, which accounts for 35% of the lender-placed insurance in the nation, has seen recent settlements⁴ and state insurance regulatory actions.⁵

² *Id.* at 19263.

³ *Id.*

⁴ Brian Bandell, "Miami law firms reach \$19M settlement with Wells Fargo over force-placed insurance," South Florida Business Journal (May 17, 2013), available at <http://www.bizjournals.com/southflorida/news/2013/05/16/miami-law-firms-reach-19m-settlement.html>.

State insurance regulators in California⁶ and New York⁷ have taken similar actions to reduce rates. Collectively, these three states represent more than 50% of the lender-placed insurance and other state insurance regulators are taking action as well. Coupled with the actions of the Bureau of Consumer Financial Protection (Bureau) to severely restrict the use of lender-placed insurance when an escrow account is present,⁸ we question whether the proposal would materially reduce costs when others have already taken action in this area.

In addition, while not directed by the Dodd-Frank Act,⁹ the FHFA's notice of proposed action should be considered in the context of Title X of the Act. Accordingly, any action by the FHFA should be consistent with both the language of the Act and Congressional intent, including Congress's recognition that the regulation of insurance has been delegated to the states. This deference is reflected in the Act by excluding insurance from the scope of consumer financial products and services otherwise covered by Title X of the legislation. The Dodd-Frank Act contains numerous references that regulation of insurance has been delegated to, and remains with the states.¹⁰ Indeed, section 1463 (m) specifically states that the Bureau has no jurisdiction over force-placed insurance "charges" that are subject to state regulation as the "business of insurance." The FHFA should not take action as a conservator that federal law has determined should not be taken by the Bureau in its regulatory capacity over mortgage servicers.

⁵ Florida Office of Insurance Regulation, "Office Announces Public Rate Hearing for American Security Insurance Company's Lender-Placed Insurance Program," (May 9, 2013), available at <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2006>. See also, Florida Office of Insurance Regulation, "Office Approves Praetorian Insurance Company's Second Rate Filing for Lender-Placed Insurance," (Feb. 11, 2013), available at <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2000>.

⁶ California Department of Insurance, "Insurance Commissioner Dave Jones Calls on 'Forced-Placed' Mortgage Insurers to Reduce Rates," (March 14, 2012), available at <http://www.insurance.ca.gov/0400-news/0100-press-releases/2012/release024-12.cfm>; California Department of Insurance, "CDI Announces \$1 Million Rate Reduction For Policyholders Of 'Force-Placed' Mortgage Insurance," (Nov. 29, 2012), available at <http://www.insurance.ca.gov/0400-news/0100-press-releases/2012/release163-12.cfm>; California Department of Insurance, "Insurance Commissioner Dave Jones Announces \$42.7 Million Rate Reduction For Policyholders Of 'Force-Placed' Mortgage Insurer," (Oct. 22, 2012), available at <http://www.insurance.ca.gov/0400-news/0100-press-releases/2012/release149-12.cfm>.

⁷ New York Department of Financial Services, "Cuomo Administration Settles With Country's Second Largest 'Force-Placed' Insurer, Leading Nationwide Reform Effort And Saving Millions For Homeowners And Investors," (Apr. 18, 2013), available at <http://www.dfs.ny.gov/about/press2013/pr1304181.htm>; New York Department of Financial Services, "Cuomo Administration Settles With Country's Largest Force-Placed Insurer, Leading Nationwide Reform Effort And Saving Homeowners, Taxpayers, And Investors Millions Of Dollars," (March 21, 2013), available at <http://www.dfs.ny.gov/about/press2013/pr1303211.htm>.

⁸ Bureau of Consumer Financial Protection, 12 C.F.R. Part 1024, Docket No. CFPB-2012-0034, RIN 3170-AA14, "Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)," 78 Fed. Reg. 10696 - 10899 (Feb. 14, 2013).

⁹ Pub. L. 111-203, 124 Stat. 2182.

¹⁰ See, e.g., Pub. L. 111-203, § 1002(15)(C)(i) (excluding "the business of insurance" from the term "financial product or service"); *id.* at §§ 501-2 (establishing the Federal Insurance Office and reserving insurance regulation to the states); *id.* at §§ 511-27 (establishing the Nonadmitted and Reinsurance Reform Act).

AIA appreciates the opportunity to provide input on the FHFA's proposed actions on lender-placed insurance. We would be pleased to address any questions you might have regarding our comments or our recommendations.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Zielezienski', with a long horizontal line extending to the right.

J. Stephen ("Stef") Zielezienski
Senior Vice President & General Counsel
American Insurance Association
2101 L Street, N.W., Suite 400
Washington, DC 20037
202-828-7100