QBE FIRST

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May 28, 2013

Mr. Edward J. DeMarco, Acting Director
Federal Housing Finance Agency
Office of Housing and Regulatory Policy, Constitution Center
400 Seventh Street SW., Ninth Floor
Washington, DC 20024

Subject: Federal Register No. 2013-N-05, Notice of Lender Placed Insurance, Terms and Conditions ("Notice")

Dear Mr. DeMarco:

QBE FIRST Insurance Agency, Inc. and its immediate parent, QBE Financial Institution Risk Services, Inc. (collectively, "QBEF"), appreciate the opportunity to comment on the Federal Housing Finance Agency's ("Agency") Notice. QBEF is the financial institution services division of QBE North America, a division of QBE Insurance Group Ltd., one of the world's top 20 insurance groups. Through this letter we hope to provide industry perspective on the captioned Notice with respect to the lender-placed insurance ("LPI") planned practice limitations ("Planned Practice Limitations"). QBEF is a significant provider of property insurance tracking, LPI and real estate owned (REO) insurance coverage, and property tax determination and payment services to mortgage originators and servicers. QBEF clients collectively service approximately 20 million residential and commercial mortgages.

We respectfully submit the following comments on the two Planned Practice Limitations contained in the Notice:

1. ***Certain Sales Commissions.* The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with placing coverage with or maintaining placement with particular insurance providers.**

QBEF believes that the Enterprises should not prohibit sellers and servicers ("Servicers") from engaging in lawful, state-regulated activities. Oftentimes, Servicers engage affiliates (and less frequently, non-affiliated) insurance agencies or brokers to provide the servicer with a variety of valuable services to assist the in the selection and management of lender-placed tracking and insurance providers ("LPI Providers") with insurance placement determinations. Of the millions of loans tracked, only a small percentage will actually become eligible for coverage under the LPI program. When an LPI Provider pays a commission to an insurance agency in such a context, whether or not the agency is owned by or affiliated with the Servicer, the amount of commission is generally consistent with industry norms and with commission rates that are paid to agents and brokers on other lines of property and casualty insurance. The commissions can cover a number of services, including establishing and evaluating characteristics of an LPI Provider that best suits the Servicer's needs, monitoring the LPI program to ensure compliance with applicable federal/state laws and investor requirements; reviewing and handling consumer complaints; customer service related to lender-placed insurance; collection of premiums; and monitoring and reporting on service levels. These services benefit all parties involved, including the Enterprises, as they can help mitigate litigation, compliance and regulatory risks. Servicers should not be prohibited from receiving compensation for performing such important, lawful services.

We believe that proscribing commission and other remuneration to affiliated agencies and brokers, while permitting them for non-affiliates, works to the distinct disadvantage of the Servicer, who should be free to select its advisors; such advisors have every reasonable expectation of being paid for their services, so long as the payments are consistent with industry norms and commensurate with the level of service provided.

Assuming that the Agency determines that it will implement such a prohibition, QBEF wants to confirm its understanding of this Planned Practice Limitation. QBEF understands that the Agency is looking to limit activities associated with commissions payments (e.g., advanced or contingent) made directly or indirectly to sellers or servicers associated with force placed insurance for GSE loans. However, the use of the word remuneration is not standard terminology in the insurance industry and the provision itself is not expressly limited to force placed insurance associated with GSE loans. As a result, QBEF recommends that the Agency revise this Planned Practice as follows:

> 1. *Certain Sales Commissions.* The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, commissions associated with placing force placed insurance coverage with or maintaining such placement with particular insurance providers associated with GSE loans. As used herein, commissions means moneys paid to an insurance agent, producer or broker, calculated as a percentage of the policy premium produced by such agent, producer or broker.

If the Agency is looking to limit activities beyond the various forms of commission payments, QBEF would like to understand the scope of that prohibition and then have the opportunity to provide further comments.

2. ***Certain Reinsurance Activities*. The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with an insurance provider ceding premiums to a reinsurer that is owned by, affiliated with or controlled by the sellers or servicer.**

As stated above, QBEF believes that the Enterprises should not prohibit sellers and servicers from engaging in lawful, state-regulated activities. Captive reinsurance agreements in the LPI industry, when properly structured, provide the servicer with an important risk management tool.

A captive reinsurer is a reinsurance entity created and owned, directly or indirectly, by an affiliate of the servicer, the purpose of which is to provide reinsurance cover for risks of the affiliated servicer (the "Captive"). In the financial services and many other industries, the use of such Captives is an important risk-management tool allowing greater control over the management of insurance risk. In the LPI industry, such captive reinsurance structures typically involved LPI insurance companies agreeing to cede on a quota share basis a certain percentage of the LPI premiums (typically 95% or more, with the balance being retained by the LPI insurer as a "cede fee" for the cost of issuing the policies) generated under the servicer's LPI program to the Captive in exchange for the Captive agreeing to reinsure 100% of the losses. Consequently, these types of captive reinsurance structures provide <u>real transfer of risks</u> between the ceding LPI insurer and the Captive. This simple division of risk is integral to the insurance industry and is a government regulated activity through the state departments of insurance.

Conclusion

For the reasons stated above, QBEF does not believe that the Agency should implement either of these Planned Practice Limitations as written. While QBEF appreciates that the Agency's responsibility, as the Conservator for the Enterprises, is to oversee the operations of the Enterprises and to preserve and conserve their assets, and that the primary purpose of implementing these Planned Practice Limitations is to keep "lender placed insurance costs to the Enterprises as low as possible," QBEF believes that the Agency should defer to the authority given by the McCarran Ferguson Act[1] to each state's department of insurance to regulate insurance costs, many of which are reviewing premium rates and seeking adjustments. As written, QBEF is concerned that the Planned Practice Limitation would lead to the Agency effectively acting as a federal regulator of insurance.

QBEF appreciates the opportunity to provide this letter. We are very willing to discuss proposed revisions and work together to generate ideas to achieve the Agency's objectives. We believe that industry input, as well as the Agency's recognition and accounting for such input, is a critical component in the regulatory process and in maintaining a competitive environment.

Sincerely,

James P. Novak
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[1] 15 USC § 6701