PATTON BOGGS LLP

2550 M Street, NW
Washington, DC 20037
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

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Via Email: LPIinput@fhfa.gov

Edward DeMarco
Acting Director
Federal Housing Finance Agency
400 Seventh Street S.W., Ninth Floor
Washington, D.C. 20024

RE: Lender Placed Insurance, Terms and Conditions

Dear Acting Director DeMarco:

We appreciate the opportunity to provide the Federal Housing Finance Agency (FHFA) with comments regarding its proposed approach to address certain practices relating to lender placed insurance, its terms and conditions.[1]

Patton Boggs represents a broad base of insurers and reinsurers involving a wide range of legal, regulatory, and coverage questions. Our clients work with insurance professionals and regulators throughout the United States to improve market access, including in the U.S. surplus lines market and the U.S. lender-placed insurance. As such, we have a unique perspective on the importance of protecting property values while maintaining competitive insurance prices.

We applaud the FHFA's efforts to prohibit certain practices by sellers and servicers related to sales commissions and particular reinsurance activities. We agree with the FHFA's proposal to prohibit practices that may potentially raise or provide incentives to raise costs in regards to lender-placed insurance. However, we caution the FHFA against proposals that may result in unintended consequences such as reduced competition and availability of coverage in the marketplace. These unintended consequences may also have the opposite effect than that intended by the FHFA, leading to upward pressure for higher insurance rates.

[1] 78 Fed. Reg. 19,263 (Mar. 29, 2013).

I. Lender-Placed Insurance Business in the United States

Our clients have developed substantial underwriting expertise in the lender-placed insurance business. Some of the risks in lender-placed insurance portfolios are hard to place, either due to the fact they are catastrophe exposed, or there is little property-level information available to properly price the risk on an individual basis. Our clients' participation in the surplus lines market in the United States sees many difficult-to-place risks able to be insured, by accessing specialist underwriting expertise not available in the admitted markets in the United States.

Despite the essential role that surplus line carriers play in the U.S. market, public debate on lender-placed insurance to date has focused on the dominance of one or two major admitted insurers in the market, and has ignored the surplus lines carriers' important work in diversifying this market. The surplus lines market serves as a market of 'second resort' for risks which are unable to be placed in the admitted markets, either due to lack of appetite or lack of appropriate underwriting expertise. Although the surplus lines market represents a relatively small portion of the overall market for lender-placed insurance, it is a vital source of capacity, particularly in certain geographical areas.

II. Reducing Competition and the Availability of Coverage May Lead to Increased Insurance Rates

We appreciate the FHFA's efforts in regulating the lender-placed insurance market to ensure that premium rates remain competitively priced and commercially reasonable. However, we are concerned that, in ignoring the important role that surplus line carriers play in the market, the FHFA's policies may result in grave unintended consequences that increase market uncertainty and undermine openess and competitiveness in the marketplace.

Particularly, we submit that policies that restrict lender-placed insurance to the admitted insurance market only and limit surplus line carriers' lender-placed coverage, could have the practical effect of reducing the competitiveness of rates, and restricting the availability of coverage in certain areas of the country. Indeed, restricting lender-placed coverage to the admitted market could lead to lenders being unable to secure coverage for certain groups of properties, or some locations being entirely excluded from coverage. In turn, this would have a detrimental effect on the U.S. housing market by leaving large groups of properties exposed to risks, which the admitted market is unwilling to cover.

For example, admitted insurers writing lender placed policies may be unwilling to cover flood risks on properties in high risk regions. The Federal Insurance Office (FIO), as required by the Biggert-Waters Flood Insurance Reform Act of 2012 (the "Act"), is currently conducting a study on the creation of a viable private flood insurance market.[2] Legislative history regarding the Act clearly shows Congress' intent to allow surplus lines insurers to participate in the private flood insurance market.[3] It would be inconsistent to prohibit surplus lines insurers from writing lender placed flood coverage while permitting them to provide conventional flood coverage for difficult-to-place risks. Such a result would work to disadvantage consumers by reducing competition and limiting the availability of coverage.

Importantly, these unintended consequences of reduced competitiveness and availability of coverage in the market could have the opposite effect than that intended by the FHFA, leading to upward pressure on lender-placed insurance rates. For these reasons, we urge the FHFA to carefully examine the effects of its policies on surplus line carriers in general, and the potential unintended consequences of its lender-placed insurance regulations on market competition and availability of coverage in particular.

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We thank the FHFA for the opportunity to provide input on this important matter and appreciate its attention to the concerns highlighted in this letter. If you have any questions, please do not hesitate to contact the undersigned at msgreen@pattonboggs.com or (202) 457-5258.

Very truly yours,

Micah S. Green
Patton Boggs LLP

[2] 78 Fed. Reg. 24310 (April 24, 2013).

[3] Senator Johnson (SD) Statement Regarding "Private Flood Insurance," *Congressional Record* 158:120, p. S6051 (Sept. 10, 2012).