van Wagenen Financial Services

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:

van Wagenen Financial Services, Inc. ("van Wagenen") welcomes the opportunity to comment on the Federal Housing Finance Agency ("FHFA") notice, No. 2013–N–05, regarding proposed approaches to certain lender placed insurance practices ("Notice"). van Wagenen is a national leader in the insurance tracking and lender placed insurance market, with more than 750 clients and over 10 million accounts currently being tracked for insurance. van Wagenen's clients include community banks, credit unions, mortgage lenders, mortgage servicers, regional and national banks, consumer and commercial finance companies, and auto finance/leasing companies.

It is important to understand the critical benefits insurance tracking and lender placed insurance provide to the lending industry and the average American borrower. Without the ability to identify and procure insurance on uninsured collateral;

- Lenders would be forced to pass the risk on to all borrowers, including those who have purchased insurance in accordance with the loan agreement.
- Small and regional lenders would be unable to provide credit in the same capacity, as their risk concentration would become too high.
- Borrowers would be charged higher rates and find it more difficult to obtain a loan.
- Localized (hail storms, tornados & earthquakes) and regional (hurricanes & flooding) events could cause the collapse of both large and small financial institutions.

Lender placed insurance allows financial institutions to move risk from the lender to an insurer, enabling the lender to provide stable credit to its borrowers.

While there are many benefits to lender placed insurance, there are perceived negatives as well, including the forced placement of insurance on a borrower. The goal of insurance tracking is to encourage all borrowers to procure their own insurance and identify the need for coverage in advance of a costly disaster. Following best practices in insurance tracking, in those cases where a borrower fails to provide appropriate coverage after multiple contacts insurance is placed only as a last resort. When insurance tracking is done well, lender placed insurance impacts an extremely small percentage of borrowers, often fewer than 1% of all borrowers in a given portfolio. When insurance tracking is done poorly, not only is insurance placed at a higher frequency, but insurance is often placed when it shouldn't be.

The FHFA Notice addresses one final issue, the cost of the lender placed insurance. van Wagenen applauds the FHFA for addressing factors that impact the cost of the insurance that the various state regulators may not be able to address themselves, including but not limited to: Sales Commissions, Reinsurance Activities, Tracking Rate Subsidization, and Other Services Subsidization. van Wagenen further encourages review of Admitted and Approved vs. Surplus Lines Carriers and the importance of creating healthy Competition. While van Wagenen agrees that the FHFA should not be in the business of regulating insurance, we do not believe the recommendations in this notice create such a case.

I. Certain Sales Commissions

van Wagenen strongly supports fair dealing when it comes to compensating licensed agents who manage insurance programs, manage tracking programs and issue insurance on behalf of insurance companies. While van Wagenen acknowledges that mortgage sellers and servicers perform work as it relates to lender placed insurance, van Wagenen also agrees with and supports the FHFA position that those expenses were intended to be covered by the servicing compensation the lender or servicer already receives and do not warrant additional commission from lender placed insurance policies. van Wagenen further acknowledges that such commission can result in higher premium rates. Often this is an issue facing the largest financial institutions and not regional and community lenders.

van Wagenen would like to draw a distinction between products that are offered to consumers through insurance agencies owned by financial institutions and products that are procured on behalf of the borrower, albeit to cure a loan deficiency. Commission payments are appropriate for products freely chosen by a consumer on the open market, but not appropriate on products purchased on behalf of the borrower. van Wagenen continues to strongly support the compensation of licensed agents who manage and sell insurance products directly to borrowers.

II. Certain Reinsurance Activities

van Wagenen supports the reinsurance of lender placed insurance, as it helps to spread risk and create more competition in the lender placed insurance market, but does draw a distinction between companies who are in the business of lending versus companies in the business of risk management and mitigation. van Wagenen supports the FHFA proposal to restrict mortgage 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 seller or servicer." By procuring lender placed insurance on behalf of the borrower, the seller or servicer is endeavoring to move collateral risk from its institution to a proper insurance entity. By engaging in reinsurance, the financial institution has voided the benefit of procuring the insurance and may also be exposing itself to failure in the event that its portfolio is subject to a catastrophic event.

van Wagenen supports the ability of financial institutions, servicers and sellers to reinsure risk through affiliates on products that are offered directly to consumers through their licensed insurance agencies.

III. Tracking Rate Subsidization

van Wagenen supports the efforts of the FHFA to prescribe rules that will provide for an equal playing field, and help reduce rates for lender placed insurance by eliminating expenses that are not regulated by state departments of insurance. van Wagenen supports the elimination of Certain Commissions and Certain Reinsurance Activities, but contends that there are other more costly expenses embedded into some lender placed insurance rates.

The first and most widely practiced is the dramatic subsidization of insurance tracking fees or providing insurance tracking at no cost. Because sellers and services are not prohibited from receiving insurance tracking at a subsidized rate, this has become a common practice. Not only does this create an unfair competitive advantage for the two largest lender placed insurance companies, it also means that higher lender placed premiums must be charged to support the far more expensive insurance tracking process. Additionally, when tracking rates are subsidized, only a small percentage of borrowers are paying for a service that is performed on all accounts in the seller or servicer's mortgage portfolio By eliminating this rate subsidization, the FHFA could not only reduce premium rates, it would simultaneously create a more competitive market by allowing smaller insurance companies and insurance agencies who specialize in insurance tracking to compete with the current duopoly created by the two largest insurance carriers in the market.

IV. Other Services Subsidization

A growing concern in the lender placed insurance industry is that many services beyond insurance tracking, some related but many unrelated, are either being tied to lender placed insurance or their costs are being subsidized by the lender placed insurance premium. This of course raises several issues: first and foremost, that this may cause insurance rates to be artificially inflated; second is that again, a small number of borrowers are paying for services being performed on all accounts in the portfolio; and third, is the restriction on competition.

In addition to eliminating the subsidization of tracking fees, van Wagenen suggests that the FHFA consider prohibiting the tying and/or subsidization of others services, such as Tax Services, Escrow Services, Flood Zone Determinations, Loss Draft Services, etc., to/by lender placed insurance.

V. Admitted and Approved vs. Surplus Lines

van Wagenen encourages the FHFA and state regulatory authorities to look at practices regarding the use of surplus lines insurance in the lender placed industry. Except for a few, very limited circumstances there are admitted and approved lender placed insurance products for nearly every portfolio in the market. While surplus lines may still be needed in a few circumstances, it should draw a red flag when used. Surplus lines can quickly become a vehicle for inflated insurance premiums.

VI. Competition

van Wagenen encourages the FHFA to look at rules that foster competition not only amongst insurance carriers, but amongst insurance tracking companies as well. Not only does domination of the lender placed insurance market by two carriers hurt the public and the GSEs, the monopolization of insurance tracking would serve to the same end. Businesses should be encouraged to innovate and compete to perform the highest quality service at the best price, instead of the lowest quality service that produces the highest amount of premium. By taking the steps outlined above, along with continuing to find ways to foster competition in this market, the FHFA will provide the framework for an industry that can be regulated by competition and will be prepared for any future GSE model.

VII. Conclusion

A thriving lending environment supports growth and prosperity. We have reached a point where change is needed in order to encourage healthy competition and uphold the best interests of borrowing consumers. A well thought out plan for improvement can achieve these goals naturally without over-regulation. FHFA notice No. 2013–N–05 makes positive strides to this end. Bringing an inclusive group of parties to the table will ensure that critical issues are addressed and that clear distinctions and definitions are outlined to ensure a positive outcome for all. We are pleased to have this opportunity to participate in the process and look forward to continued cooperation with all parties.

Sincerely,

Randall J. Rempp

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Vice President
van Wagenen Financial Services