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May 23, 2013

Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
OHRP, Constitution Center
400 Seventh Street S.W., 9th Floor
Washington, DC 20024

Re: FHFA No. 2013-N-05: Lender Placed Insurance, Terms and Conditions

Dear Mr. DeMarco:

Thank you for the opportunity to provide comments to the Federal Housing Finance Agency Notice No. 2013-N-05 published in the March 29, 2013 issue of the Federal Register.

The March 29 notice states that FHFA has determined that two specific practices related to Lender Placed Insurance (LPI) pose risks to Fannie Mae and Freddie Mac (the Enterprises) or run contrary to the duties of the FHFA acting as Conservator for the Enterprises and raise concerns regarding conflicts between parties to the insurance agreement.

Certain Sales Commissions

The notice suggests that FHFA will require the Enterprises to prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with placing coverage with or maintaining placement with particular insurance providers.

State laws and regulations provide the regulatory framework for state insurance regulators to actively regulate the LPI industry. Rather than prohibiting these certain sales commissions, a better way to proceed may be for the FHFA and the Enterprises to limit the costs that are compensable rather than specifically prohibiting the payment of commissions. For instance, the FHFA could prescribe the conditions under which commissions are reimbursable and impose limits therefore, and/or the FHFA could impose a time limit beyond which it would not

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reimburse sellers/servicers for the costs of LPI. This would have the desired effect, to eliminate unnecessary costs. It may also have the added benefit of encouraging lenders to finish foreclosure proceedings in a timely manner whenever possible, or to negotiate a reasonable arrangement with distressed homeowners. It would not be an action that could be construed as regulation of the insurance companies.

Certain Reinsurance Activities

The notice suggests that FHFA will require the Enterprises to 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.

The notice appears intended to prohibit the use of "captive" reinsurance under certain circumstances. A traditional captive is an insurance company that is created and wholly owned by one or more non-insurance companies to insure the risks of its owner (or owners). Captives are essentially a form of self-insurance whereby the insurer is owned wholly by the insured. They are typically established to meet the risk-management needs of the owners or members. In the case mentioned by the FHFA, the captive is formed as reinsurer owned by the lender to share risk, which would be an acceptable purpose for forming a reinsurer, if the intended result were a legitimate risk transfer. In LPI captive reinsurance arrangements, it appears, based on information received in recent hearings, that some of these captive reinsurance arrangements may not actually transfer risk. If this bears out, and the reinsurance provides no risk transfer and therefore little or no benefit to policyholders, it will not be allowed in the rate according to state law. Like the FHFA, insurance regulators generally believe formation of captives solely to provide additional incentives for lenders to contract with a certain insurer and not to transfer risk is unacceptable. Insurers compare these costs to commissions paid to agents to obtain business. The costs would not necessarily be excessive if they could be fairly characterized as commissions or reinsurance, but state regulators are skeptical of this based on recent testimony in the New York and Florida hearings.

As with the commission prohibition discussed above, a better and more effective remedy may be for the FHFA to require the Enterprises to set limitations on reimbursements for the cost of reinsurance from a captive that is related to or owned by the lender or LPI insurer. This would require the Enterprises to collect information on the components of the rate which may lead them eventually to establish standards for reimbursement of costs based on related company transactions in general regardless of the characterization of the transaction by the insurer, not just affiliated reinsurance. Alternatively, a "pure premium" based on loss costs could be established and a maximum reimbursement of total expenses over that could be set. For example, *pure premium + X% for Y months* could be defined by rule as the maximum reimbursement for lender-placed insurance costs. In this manner, the Enterprises would not need to delve into the details of intercompany transactions but could limit their exposure to unnecessary premium costs.

Conclusion

We look forward to continued dialogue with the FHFA and other regulatory agencies. We appreciate the opportunity for input in the FHFA's decision-making process and look forward to joint efforts to further enhance consumer protection and consumer choice in a competitive insurance marketplace.

Should you wish to discuss this comment, or if we can assist in any other way, please do not hesitate to contact Belinda Miller, General Counsel, at (850) 413-5000 or Susanne Murphy, Senior Policy Advisor, at (850) 413-5083.

Sincerely,

Kevin M. McCarty
Florida Insurance Commissioner