NEW YORKERS FOR RESPONSIBLE LENDING

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May 28, 2013

Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

RE: Lender Placed Insurance, Terms and Conditions; FHFA Number 2013-N-05

Dear Federal Housing Finance Agency:

The undersigned members of the New Yorkers for Responsible Lending coalition (NYRL) are pleased to submit comments to the FHFA regarding its request for comment on proposed practice limitations that would prohibit servicers of Fannie Mae and Freddie Mac loans from receiving sales commissions from and entering into reinsurance deals with force-placed insurers.

NYRL is a 162-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy groups. Coalition members have detailed knowledge of the abusive force-placed insurance practices that have drained more than $700 million from struggling homeowners across New York State over the last eight years. Many New York homeowners have gone into foreclosure or have been put at risk of foreclosure as a result of abusive force placed insurance practices.

The FHFA should take the opportunity to build on the recent force-placed insurance enforcement actions in New York State to protect both homeowners and the Enterprises (as well as taxpayers) from the price gouging and kickbacks that are prevalent in the force-placed insurance market. As FHFA's request for comment makes clear, the industry is rife with unscrupulous business arrangements between servicers and force-placed insurers.

These clear conflicts of interest create a perverse incentive for mortgage servicers to aggressively place homeowners into force-placed insurance policies, often without providing adequate notice. Compensation for mortgage servicers unnecessarily inflates the cost of the insurance, which can cost substantially—from 2 to 10 times—more than a homeowners insurance policy in the voluntary market. From 2004 through 2011, force-placed insurance policies written in New York State had an average loss ratio of just 22.1%, compared to typical homeowners insurance loss ratios of 61.5% nationally and 65% in New York State, clearly indicating that the price for force-placed insurance is excessive.

Our groups make the following recommendations to FHFA as the agency takes steps to prohibit the unconscionable charges assessed to homeowners and the Enterprises as a result of collusion between mortgage servicers and force-placed insurers.

1. Require servicers to advance payment for property insurance for all homeowners whose insurance policies are canceled for non-payment

The FHFA should require mortgage servicers to continue payments of homeowners' existing insurance policies or reestablish the policies if homeowners miss payments of hazard, homeowners, wind, excess wind, flood or excess flood insurance premiums. The FHFA should require that, if homeowners fall behind on their insurance payments, servicers must advance their own funds to pay past due premiums and reinstate the homeowners' insurance coverage. If homeowners do not have existing escrow accounts, servicers must establish escrow accounts to pay future premiums. The FHFA should make clear that servicers must exhaust all options to keep homeowners' existing homeowners insurance policies in place before resorting to force-placed insurance.

Adopting this policy would substantially reduce the need for force-placed insurance and would help prevent foreclosures. Voluntary premiums are far less expensive than force-placed insurance, and requiring servicers to advance these premiums rather than impose force-placed insurance would reduce the Enterprises' potential losses in two ways. First, excessive force-placed insurance charges can themselves cause foreclosures – either when homeowners fall behind on their mortgage payments as a result of the escrow shortage, or when homeowners in default cannot secure an affordable loan modification due to inflated arrears or excessive monthly insurance charges resulting from high-cost force-placed insurance. Second, the escrow shortages incurred would be smaller than those incurred when force-placed insurance is imposed, effectively reducing the size of reimbursements servicers would require from the Enterprises after foreclosure sales.

2. Ban all forms of kickbacks and non-monetary compensation for force-placed insurance

The FHFA must ensure that when force-placed insurance is necessary for loans purchased or guaranteed by the Enterprises, the cost is reasonable and that all premiums paid are applied exclusively to the actual cost of the force-placed insurance coverage and not diverted to cover routine servicing costs or to enrich servicers. The proposed limitations go a long way toward meeting this goal by banning commissions and reinsurance deals, but miss other kickbacks that inflate the cost of force-placed insurance.

We strongly support the proposed ban on reinsurance deals and commissions. Affiliates of mortgage servicers often unnecessarily reinsure force-placed insurance policies to share in potential underwriting profits. Since the loss ratios for force-placed insurance are extremely low, averaging just 22.1% in New York State over the past eight years, using affiliates to reinsure force-placed insurance policies is a low-risk way for the banks that own mortgage servicing companies to further gouge homeowners by claiming a portion of the exorbitant premiums

charged for force placed insurance. JPMorgan Chase, for example, reinsures 75% of the force-placed insurance premiums it collects from homeowners through its subsidiary Banc One.[1]

The FHFA's proposed ban on reinsurance deals and commissions is an important step, but mortgage servicers also enjoy free or reduced cost insurance tracking and other administrative services and have, in the past, purchased force-placed insurance from affiliated entities. Both of these practices must also be prohibited to ensure that struggling homeowners and, later, the Enterprises are not overcharged for the benefit of mortgage servicers.

The FHFA should expand its proposed guidance to make clear that no mortgage servicers or affiliated entities servicing loans purchased or guaranteed by the Enterprises are permitted to receive any fee, commission, kickback, reinsurance contract, service such as insurance tracking or administration, or other thing of value in exchange for purchasing force-placed insurance. The FHFA should develop an audit protocol that includes regular data collection and reporting to ensure that servicers are complying with these standards.

3. Limit retroactive charges

Mortgage servicers are responsible for tracking insurance coverage on the loans they service. When there is a lapse in a homeowner's insurance coverage, the servicer, typically through an insurance tracking vendor, notifies the force-placed insurer. It is the servicer's responsibility to identify lapses in insurance and notify homeowners of these lapses in a timely fashion.

Servicers often delay notifying homeowners about force placed insurance for months, unfairly piling thousands of dollars of debt onto homeowners who are unaware that their homeowners insurance policies have been canceled. For example, Mr. W, a Bronx homeowner, was forced into foreclosure because he did not receive timely notice of force-placed insurance:

Mr. W, who lives in the Bronx with his wife and two children, fell behind on his mortgage after his monthly payments suddenly increased by over $1,400 because his servicer charged him for two over-priced force-placed insurance policies at once. Although Mr. W paid his annual homeowners insurance premium at closing and made timely mortgage and escrow payments, his insurance was canceled for non-payment because his servicer never made insurance payments from his escrow account. Mr. W was not notified of the cancellation and continued paying his loan and escrow payments, but the servicer imposed a force-placed insurance policy anyway without notice, and failed to bill Mr. W for the cost of the policy. About a year later, the force-placed policy was renewed and he was suddenly billed for two years' worth of force-placed insurance premiums, costing more than $13,000. Once his servicer increased his payments by $1,400 per month to cover the alleged shortfall, Mr. W was no longer able to pay his mortgage. To make matters worse, Mr. W. was not immediately informed that he had the option to purchase his own insurance at a lower cost even after numerous phone calls to his servicer to inquire about the increase in his mortgage payments. When he realized that he could do so, he searched and found a far less expensive policy. Mr. W is now in foreclosure as a direct result of the force-placed insurance.

Mr. W's experience with force-placed insurance illustrates the pressing need for timely notice by servicers and strict limits on retroactive billing.

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[1] See testimony of Banc One and Select Portfolio Servicing at 5/17/12 NYS Department of Financial Services hearing on force placed insurance Available: http://www.dfs.ny.gov/insurance/hearing/fp_052012_trans_err.htm

4. The Enterprises should purchase force-placed insurance and insurance tracking directly rather than reimbursing servicers

In addition to implementing standards banning kickbacks and reinsurance deals, the Enterprises should purchase force-placed insurance and insurance tracking services directly from insurers. According to research conducted by Fannie Mae, purchasing force-placed insurance for Fannie Mae loans directly could save the Enterprises as much as $300 million in force-placed insurance charges each year. Extending that plan to Freddie Mac could result in even more substantial savings.

Requiring direct purchasing by the Enterprises, along with strong servicing standards requiring servicers to advance voluntary premiums, prohibiting kickbacks and limiting retroactive charges will not only protect homeowners from egregious price gouging but will also save the Enterprises, and by extension taxpayers, hundreds of millions of dollars each year.

Thank you for the opportunity to comment.

Sincerely,

Cypress Hills L.D.C.
District Council 37 (AFSCME) Municipal Employees Legal Services
Empire Justice Center
Legal Services NYC
Legal Services NYC - Bronx
Long Island Housing Services, Inc.
NEDAP
Neighborhood Preservation Coalition of NYS, Inc.
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
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