



NEW YORKERS FOR RESPONSIBLE LENDING

c/o New Economy Project / 176 Grand Street / New York, NY / 10013
Tel: (212) 680-5100 / Fax: (212) 680-5104 / nyrl@nedap.org

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Brian Montgomery
Associate Counsel
Financial Frauds and Consumer Protection Division
NYS Department of Financial Services
One State Street
New York, New York 10004

RE: Regulation of force-placed insurance, proposed revised 11 NYCRR 227 (Insurance Regulation 202)

Dear Mr. Montgomery:

The 25 undersigned members of the New Yorkers for Responsible Lending coalition (NYRL) are pleased to submit comments to the Department of Financial Services (DFS) regarding its request for comment on proposed revised force-placed insurance regulations. The proposed regulations will provide critically needed protections for homeowners in New York State, and will eliminate the kickbacks force-placed insurers pay to mortgage servicers that inflate the cost of force-placed insurance and push New York homeowners into foreclosure. Our groups strongly support the proposed regulations, and believe that they should be strengthened to further reduce the pervasive abuses in the force-placed insurance market.

NYRL is a 164-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 \$970 million from struggling homeowners across New York State over the last nine years. Many New York homeowners have gone into foreclosure or have been put at risk of foreclosure because of the substantially higher monthly mortgage payments that result from abusive force-placed insurance practices.

As DFS documented in its May 2012 hearing on force-placed insurance, mortgage servicers' market power enables them to demand illegal kickbacks from force-placed insurers. Force-placed insurance policies are chosen by mortgage servicers but paid for by homeowners, many of whom are low or moderate income or live in communities of color. As a result, mortgage servicers choose force-placed insurance policies based on the kickbacks and incentives they

receive rather than on price or value for homeowners. This practice creates a perverse incentive for mortgage servicers to aggressively place homeowners, many of whom are in foreclosure or struggling to keep up with their mortgage payments, into force-placed insurance policies, often without providing adequate notice.

For example, before DFS entered into settlement agreements with force-placed insurers prohibiting the practice, affiliates of mortgage servicers often unnecessarily reinsured force-placed insurance policies to share in potential underwriting profits. Since the loss ratios for force-placed insurance are extremely low, 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, reinsured 75% of the force-placed insurance premiums it collected from homeowners through its subsidiary Banc One.¹

As another example, force-placed insurers have routinely set up business deals with affiliated mortgage servicing companies which saddle homeowners with costly policies that provide inadequate coverage. Ms. J's experience illustrates this problem:

Ms. J, a Staten Island homeowner, experienced significant hardship as a result of having an abusive and self-dealing force-placed insurance policy imposed by her loan servicer. After she fell behind on her homeowners insurance payments, Ms. J's servicer began charging her for a force-placed insurance policy provided by an affiliated insurance company. Shortly thereafter her home was damaged by Super Storm Sandy.

When Ms. J attempted to file an insurance claim, she learned that her force-placed insurance policy covered only the balance of her loan, \$10,283, but had a deductible of \$10,000. As a result, the largest claim Ms. J could file was for only \$283. Ms. J, however, was charged nearly three times as much as her largest possible claim, \$834, in force-placed insurance premiums. Adding insult to injury, the force-placed insurer refused to provide Ms. J access to the paperwork and personnel needed to file a claim for the little money she could recover from the policy.

Compensation for mortgage servicers unnecessarily inflates the cost of force-placed insurance, which can cost substantially—from 2 to 10 times—more than a homeowner's insurance policy in the voluntary market. From 2004 through 2012, force-placed insurance policies written in New York State had an average loss ratio of just 34.5%, compared to typical homeowner's insurance loss ratios of about 60% nationally, clearly indicating that the price for force-placed insurance is excessive. There is absolutely no legitimate explanation for this enormous gap in loss ratios other than extreme price gouging.

We strongly support the DFS' revisions to its previously proposed force-placed insurance rules, particularly the full ban on kickbacks paid to mortgage servicers by force-placed insurers. Expanding the ban to not only prohibit insurers from doing business with affiliated mortgage servicers, entering into reinsurance deals or paying any sort of commissions to servicers or their affiliates, but also to prohibit insurers from providing free or reduced cost insurance tracking

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

services will protect New York homeowners from the well-documented harmful consequences of force-placed insurance. We also support the proposed rules specifying coverage limits, sufficiency of demonstration and timely premium refunds. The proposed coverage limits strike the right balance between protecting homeowners from overcharges and from being exposed to unexpected risk as a result of inadequate insurance coverage.

Our groups make the following recommendations to DFS to improve the already strong proposed rules:

1. Require Insurers to Report Detailed Data to DFS Examiners to Facilitate Meaningful Enforcement of the New Rules

We strongly support the proposed regulations' ban on all forms of force-placed insurance kickbacks. However, to better facilitate enforcement of the rules, we urge DFS to require force-placed insurers to report to DFS examiners data on any payments made and services provided to servicers or their affiliates.

2. Strengthen Minimum Loss Ratio Requirements

The proposed regulations' requirements that force-placed insurers file rates with an expected 62% minimum loss ratio, re-file rates immediately if insurers report loss ratios less than 40%, and re-file rates supported by data and actuarial analysis every three years are critical to address force-placed insurers' long-standing practice of price-gouging. During the past nine years, force-placed insurers in New York State have enjoyed a loss ratio of only 34.5% despite two recent catastrophic storms. Requiring a minimum loss ratio of 62% will bring force-placed insurance loss ratios in line with voluntary homeowner's insurance loss ratios and should, in conjunction with the proposed regulations' anti-kickback provisions, substantially decrease the price of force-placed insurance in New York.

DFS should further improve this critical protection by increasing the minimum loss ratio required to 80%. Force-placed insurers face substantially lower administrative and underwriting expenses than insurers that sell voluntary homeowner's insurance policies and can reasonably be expected to file rates with an 80% minimum loss ratio.² The resulting lower force-placed insurance prices would substantially increase the chances that New Yorkers in foreclosure who have force-placed insurance imposed will be able to secure affordable loan modifications or reinstate their mortgages.

3. Expand the Proposed Regulations to Cover Mortgage Servicers as well as Force-Placed Insurers

The proposed regulations effectively address force-placed insurers' role in gouging homeowners who require force-placed insurance coverage, but fail to address the abusive tactics mortgage servicers employ when homeowners fall behind on their insurance payments. Although many insurance-related servicing tasks are in fact carried out by force-placed insurers or their affiliates

² See testimony of Center for Economic Justice at 5/17/12 NYS Department of Financial Services hearing on force-placed insurance. Available: http://www.dfs.ny.gov/insurance/hearing/fp_052012/Birny_Birnbaum_Center_for_Economic_Justice_testimony.pdf

that will be covered by the proposed regulations, the rules should be expanded to include servicers. Specifically, DFS should use its authority to regulate mortgage servicers to protect homeowners from mortgage-servicer specific force-placed insurance abuses including servicers' unnecessary cancelation of homeowners' voluntary insurance policies, and retroactive billing.

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

DFS should expand the proposed regulations to require mortgage servicers to continue payments of homeowners' existing insurance policies or reestablish the policies, rather than canceling the policies, if homeowners without escrow accounts miss payments of hazard, homeowner's, wind, excess wind, flood or excess flood insurance premiums. The Consumer Financial Protection Bureau has issued rules that require mortgage servicers to advance insurance payments for homeowners with escrow accounts, but did not extend this protection to homeowners who do not have escrow accounts. DFS should close this gap for New Yorkers and require that if homeowners without escrow fall behind on their insurance payments, servicers must establish escrow accounts for those homeowners and advance their own funds to pay past due premiums and reinstate the homeowners' insurance coverage. DFS should make clear that servicers must exhaust all options to keep homeowners' existing insurance policies in place before resorting to force-placed insurance.

Requiring servicers to maintain homeowners' voluntary insurance policies 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 help many New York families reduce both defaults that occur as a direct result of excessive force-placed insurance charges, and foreclosures that occur when force-placed premiums block homeowners from affordable loan modifications.

Further strengthen notice requirements and 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 homeowner's 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 more than \$1,400, when his servicer failed to notify him for a full year that it had put force-placed insurance on his home. Although Mr. W paid his annual homeowner's 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. A year after buying his home, Mr. W was suddenly

billed for the past year's and the upcoming year's worth of force-placed insurance premiums, costing more than \$13,000. As a result, 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 insurance tracking vendors and for strict limits on retroactive billing. The proposed regulation's clarification that insurance tracking companies affiliated with force-placed insurers should follow the force-placed insurance notice provisions in the Real Estate Settlement Procedures Act (RESPA) will help ensure that homeowners receive informative notices about force-placed insurance, but RESPA fails to address abusive retroactive billing practices. DFS should improve on RESPA's notice requirement by requiring servicers or force-placed insurers and their affiliates to provide the first required notice within 15 days of a force-placed insurance policy coming into effect, and should not allow retroactive charges for more than 60 days' worth of force-placed insurance coverage. It is reasonable to expect that servicers (or their vendors) may fail to identify a lapse in insurance at the instant the lapse occurs or even for a short period of time following the lapse. It is unreasonable, however, to allow a servicer to delay sending notices in order to retroactively charge a borrower for a lengthy period of force placed insurance coverage.

DFS has demonstrated its commitment to cracking down on abusive force-placed insurance practices over the past two years, and the proposed regulations will go a long way towards addressing the rampant corruption and widespread abuses that characterize the force-placed insurance industry. We urge DFS to strengthen the proposed regulations further by expanding them to cover servicers, strengthening the minimum loss ratio requirements, and requiring insurers to routinely report data detailing their relationships with and payments to mortgage servicers.

Thank you for the opportunity to comment.

Sincerely,

Albany County Rural Housing Alliance, Inc.
Bedford-Stuyvesant Community Legal Services
Brooklyn Cooperative Federal Credit Union
CNY Fair Housing Council
Cypress Hills Local Development Corporation
District Council 37 Municipal Employees Legal Services
Empire Justice Center
Grow Brooklyn
Housing Resources of Columbia County
JASA/Legal Services for the Elderly in Queens
The Legal Aid Society
Legal Services NYC

Legal Services NYC – Bronx
Manhattan Legal Services
MFY Legal Services, Inc.
Nassau/Suffolk Law Services
New Economy Project
New York Public Interest Research Group
Pratt Area Community Council
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
SUNY Buffalo Law School Affordable Housing and Community Development Clinic
Westchester Residential Opportunities, Inc.
Western New York Law Center