



**Comments of the Center for Economic Justice to the
NAIC Creditor-Placed Model Review Working Group**

Regarding Section 3: Definitions

July 21, 2016

CEJ submits the following comments regarding Section 3: Definitions of the Creditor-Placed Insurance Model Act.

We recommend an enhanced definition of *insurance tracking* to, one, more clearly separate the lender/servicer from the insurer, and, two, to better identify the activities whose expenses should not be included in FPI rates and/or in FPI charges to borrowers by a lender/servicer. The proposed definition builds on the definition in the New York FPI regulation.

We next recommend a definition of *Financial Interest in the Placement of Creditor-Placed Insurance Other Than Protection of the Vehicle or Property Serving As Collateral for the Loan* which would be used in connection with a provision elsewhere in the model prohibiting a lender or servicer from having a *Financial Interest in the Placement of Creditor-Placed Insurance Other Than Protection of the Vehicle or Property Serving As Collateral for the Loan*. We also provide a definition of the term *Affiliate* which is used in the prior definition. Alternatively, this definition could be re-framed as a separate section of the model as a prohibition: A servicer or lender shall have no financial interest in the placement of FPI other than protection of the vehicle or property serving as collateral for the loan, including, but not limited to [list in the definition].

The definition of *Blanket Insurance* appears incorrect. We understand blanket FPI policies to ones in which no separate charge is subsequently made to borrowers and for which the premium is based on either the total number of exposures or the total amount of exposure or coverage. Itemization of the exposures or amount of exposure may be a requirement for determining the premium for the blanket policy. We have previously provided references to numerous insurer websites describing blanket FPI coverage.

The model includes a definition of *Actual Cash Value*. Definitions of *Replacement Cost* and *Unpaid Principal Balance* are needed for subsequent provisions regarding coverage amounts for FPI on, at least, mortgage loans. The definition of *Net Debt* may be used for *Unpaid Principal Balance*. *Unpaid Principal Balance* is more commonly used than *Net Debt*, particularly on mortgage-related FPI.

The definition of *Creditor-Placed Insurance* includes, in the last sentence: “It shall be either single interest insurance or limited dual interest insurance.” It is unclear what the purpose of this sentence is other than to permit single interest insurance. If this provision or something like it remains, CEJ recommends that single interest insurance be permitted only when the lender or servicer does not impose a separate FPI charge on the borrower.

The definition of *Producer* seems tied to the concept of a servicer/lender or affiliate receiving compensation in the form of commissions to a servicer-affiliated producer. With a prohibition against such compensation to a lender/servicer or affiliate or the lender/servicer, it may be that defining producer by reference to the state insurance producer statute will be sufficient.

The definition of *Single Interest Insurance* seems inconsistent with single interest insurance for mortgage FPI. Rather, the model definition of *Single Interest Insurance* appears to be describing Real Estate Owned (REO) FPI for mortgage loans. At least historically, there has been FPI property single interest policies which simply name the lender/servicer as the named insured and have no provision for an additional insured (e.g., the borrower), but are otherwise not limited in the manner set out in the model’s definition. However, as discussed above, we recommend a prohibition against single interest insurance unless there is no separate charge by the lender/servicer to the borrower for such insurance.

Proposed Definitions

Insurance tracking means all activities related to determining whether a borrower has in place insurance that complies with the loan contract’s requirements to maintain insurance to protect the vehicle or property serving as collateral for the loan, including:

- (i) developing and maintaining a database used by a lender or servicer to track required insurance on borrowers’ loans;
- (ii) maintaining voluntary insurance information on behalf of a lender or servicer, including in a lender’s or servicer’s loan servicing system or in a system maintained by a third party contractor for the lender or servicer;
- (iii) inputting insurance information on new loans into an insurance tracking database or a lenders’ or servicer’s loan servicing system;
- (iv) all communications by or on behalf of a lender or servicer with a borrower’s voluntary insurer or voluntary insurance producer;

(v) all communications by or on behalf of a lender or servicer with a borrower concerning required insurance, including the written notices concerning charging the borrower's account for insurance;

(vi) monitoring the due date of and disbursing funds from a borrower's escrow for voluntary insurance;

(vii) all call center and other customer service operations related to the communications described in subparagraphs (1)(iv), (1)(v) and (1)(vi) of this paragraph; and

(viii) a lender or servicer directing a force-placed insurer to issue coverage under a force-placed insurance policy regardless of the degree of automation of such direction to issue coverage.

The term *insurance tracking* shall not include the administrative activities associated with a force-placed insurer issuing or cancelling coverage under a force-placed insurance policy following direction by the lender or servicer to issue or cancel such coverage.

Affiliate means any person or company that controls, is controlled by, or is under common control with another person or company

Financial Interest Other Than Protection of the Vehicle or Property Serving As Collateral for the Loan means any direct or indirect compensation or consideration paid by the force-placed insurer or affiliate of the force-placed insurer to the lender or servicer or affiliate of the lender or servicer including, but not limited to:

- i. A lender or servicer utilizing a force-placed insurer affiliated with the lender or servicer;
- ii. A force-placed insurer or affiliate paying any compensation to a lender or servicer or affiliate of the lender or servicer, including, but not limited to;
- iii. A force-placed insurer paying any compensation to an insurance producer or adjuster based on underwriting profitability or loss ratio;
- iv. Any sharing of force-placed insurance premiums or force-placed insurance risk between the lender or servicer or affiliate of the lender or servicer with the force-placed insurer or affiliate of the force-placed insurer
- v. Any payment of expenses by a force-placed insurer or affiliate of the force-placed insurer to a lender or servicer or affiliate of the lender or servicer in connection with securing force-placed insurance business.
- vi. The provision of free or below-cost services, including, but not limited to, insurance tracking, by a force-placed insurer or affiliate of the force-placed insurer to the lender or servicer or affiliate of the lender or servicer,