



**Comments of the Center for Economic Justice to the
NAIC Creditor-Placed Insurance Model Drafting Working Group
Regarding Revisions to Sections 4 and 5**

February 15, 2016

In response to the working group's request for narrative comments on Sections 4 and 5 of the Creditor-Placed Insurance Model Act, the Center for Economic Justice (CEJ) submits the following comments.

Sections 4 and 5 are entitled "Terms of Insurance Policy" and "Calculation and Payment of Premiums," respectively. Generally, these sections muddle – and not separate – the roles of creditor and insurer. The premium for creditor-placed insurance (CPI) is charged by an insurance company to the policyholder who is the creditor (or servicer of the loan). The amount charged, if any, for CPI to the creditor (or servicer) to the borrower is not an insurance premium. This is easily demonstrated by the following:

No borrower pays a premium to an insurance company for CPI. No insurance company pays a refund to any borrower when the CPI coverage is canceled. No CPI coverage is canceled because a borrower fails to make a CPI payment to a creditor or servicer. If the CPI charges by a creditor or servicer to a borrower were insurance premiums, these three characteristics would have been present. CPI is a commercial insurance policy between the CPI insurer and the creditor. The creditor is the policyholder and the insured. The creditor pays the premium for the CPI to the CPI insurer. The CPI rates filed by CPI insurers are for premium charges to creditors or servicers. CPI insurers do not charge rates or premiums for CPI to individual borrowers.

The fact that CPI charges to borrowers by servicers are not insurance premiums is clearly shown by contrast with insurance premium charges to borrowers for optional, voluntary insurance, such as credit insurance. The table below shows the differences between CPI and credit life insurance which demonstrate why CPI charges by the servicer to borrowers are not insurance premiums.

Criteria to Determine Whether a Charge is an Insurance Premium

Criteria	CPI	Credit Life
Who pays premium to insurance company?	Creditor/Servicer	Borrower
Is coverage canceled if borrower fails to make required payment?	No	Yes
To whom is refund paid if coverage is canceled?	Servicer	Borrower
Commercial Lines Insurance?	Yes	No
State Insurance Regulation?	Creditor/Servicer Not Regulated by Insurance Department	Creditor Regulated as Licensed Insurance Agent by Insurance Department

Understanding that a charge for CPI by a creditor to a borrower is not an insurance premium is important for developing a model law that, one, clearly separates creditors from insurers, and, two, recognizes the relevant jurisdictional authorities over creditor and insurers, respectively. Stated differently, and referencing a point made in earlier comments by the AIA, insurance regulators have no authority over the charges a creditor or servicer makes to a borrower in connection with the loan agreement.

Our next comment is that the definition of “creditor” needs to be expanded to include the owner of the loan and/or any entity servicing the loan on behalf of the creditor. It is necessary to include this definition now to avoid repeating “creditor or servicer”

With a clear separation of the roles of creditor and insurer, most of Section 4 is unnecessary or inappropriate. Sections 4 and 5 should be renamed and reworked as follows. The following is submitted as narrative for discussion purposes and is not intended as final proposed language for a model law.:

4. Separation of Creditor and Insurer

- A. A creditor shall have financial interest in the placement of creditor-placed insurance other than the protection of the property serving as collateral for the loan, including, but not limited to the following prohibited arrangements:
 - 1. A creditor-placed insurance insurer or its affiliate shall not provide free or below-cost services unrelated to the provision of creditor-placed insurance to the creditor or its affiliate, including but not limited to insurance tracking, loss draft, new loan boarding, payment of voluntary insurance premium and escrow-related activities;

2. A creditor-placed insurance insurer or its affiliate shall not pay a commission or fee to any producer affiliated with the creditor;
 3. A creditor-placed insurance insurer or its affiliate shall not make cash payments to a creditor or its affiliate, other than payments of premium refunds, for expense reimbursement or any other reason;
 4. A creditor-placed insurance insurer or its affiliate shall not enter into a reinsurance arrangement or agreement with any affiliate of a creditor; and
 5. A creditor-placed insurance insurer or its affiliate shall not issue creditor-placed insurance to any creditor affiliated with the creditor-placed insurer.
- B. Creditor-placed insurance policy forms, rate manuals, rating rules shall not contain any provisions regarding charges by the creditor to debtors.
- C. Authority and jurisdiction regarding requirements for notification related to absence or required insurance or charges for creditor-placed insurance by creditor by the creditor shall be with the agency or agencies responsible for oversight of the creditor with the exception of activities performed by persons licensed or overseen by the Commissioner of Insurance.

Drafting note: Such separation of regulatory authority may not be needed in states where insurance and banking regulation is within a single agency.

5. Premium Charges by Insurer to Creditor

- A. Premium charges by a creditor placed insurance insurer shall be made according rates files and approved by the Commissioner.
- B. Schedule rating is permitted subject to the following requirements:
1. The schedule rating criteria are filed and approved by the Commissioner;
 2. The maximum change in base rates due to scheduled rating is plus or minus ten percent;
 3. The schedule rating criteria may not include factors that could reasonably be included as rating factors in the insurer's rating manual, including, but not limited to source of loans, geographic distribution of loans, method of determining coverage amount, percentage of loans with escrow for insurance and average delinquency rate.

6. Charges by Creditor to Debtor

- A. A creditor shall not establish unreasonable requirements for voluntary insurance necessary to protect the creditor's interest in the property serving as collateral for the loan.
- B. A creditor shall not charge a debtor any amounts for creditor-placed insurance before meeting the notification requirements of Section X.
- C. A creditor may, but is not required to, charge a debtor for creditor placed insurance placed on the property collateralizing the borrower's loan. Such charge may not exceed the premium amount paid by the creditor to the creditor-placed insurance insurer for the coverage, with the following exception;

1. A creditor may retroactively charge for no more than 60 days coverage from the date of lapse of voluntary insurance until the date of the first notice of absence of required insurance by the creditor to the borrower.
- D. A creditor shall charge a debtor an amount for coverage only for the period for which the debtor did not have required insurance in place.
- E. A creditor shall not charge a borrower any amount for coverage for any period in which
 1. The borrower has acceptable voluntary insurance in force;
 2. The date the collateralized property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;
 3. The date of loss for an event rendering the collateralized property to be a total loss; or
 4. The date the debt is completely extinguished
- F. A creditor is prohibited from charging a debtor any amount for creditor-placed insurance that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date.

7. Notifications to Debtors

- A. If a state or federal regulatory agency has established notification requirements for a creditor related to creditor-placed insurance, those requirements shall preempt the remainder of this section.
- B. [Insert notice requirements similar to those required by the CFPB]