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Comments of the Center for Economic Justice

To the NAIC Creditor-Placed Insurance Model Act Review Working Group

June 5, 2017

CEJ offers the following comments on the April 17, 2017 draft revisions to the Creditor-Placed Insurance Model Act.

General Comment

As a preliminary comment, we thank the working group for the substantial changes in response to the revelations of systemic problems with lender-placed insurance (LPI) markets. Since 2010, we have seen:

- Investigative journalism by Jeff Horwitz exposed the financial interests of lenders and servicers in LPI;[1]
- Provisions in the National Mortgage Servicing Settlement to address unnecessary force-placement of insurance, inadequate and untimely disclosures to consumers and untimely refunds;
- Provisions in the Consumer Financial Protection Bureau's mortgage servicing rule to address content and timing of disclosures before a borrower can be charged for LPI and unnecessary force-placement;
- Investigations by the New York and Florida insurance departments revealing a "kickback" culture following by consent orders prohibiting the kickbacks;
- Changes in servicing guidelines by Fannie Mae and Freddie Mac to stop LPI insurer kickbacks to servicers
- Investigation and consent orders by the Minnesota Department of Commerce
- State insurance departments compelling LPI insurers to dramatically lower excessive rates; and
- A multi-state examination and settlement agreement

While it has taken the NAIC a long time to get to this point, there can be no doubt that the proposed revisions to the Creditor-Placed Model Law are reasonable and necessary.

[1] "Ties to Insurers Could Land Mortgage Servicers in More Trouble," *American Banker*, November 10, 2010

Section by Section Comments

Section 1:

CEJ supports the addition of purposes E and F in Section 1. We disagree with inserting "potential" before reverse competition in new 1.E. Reverse competition is a market structure as indicated by the definition added to Section 3 (which is the same as found in the NAIC Credit Personal Property Model):

> "Reverse competition" means competition among insurers that regularly takes the form of insurers vying with other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to the persons overwhelms any downward pressure consumers may exert on the price of insurance, thus causing prices to rise and remain higher than they would otherwise."

While there is potential for problems arising from a reverse-competitive market, a market is structurally reverse-competitive or not. The wording of proposed 1.E without the addition of "potential" is clear that a purpose is to address the potential for problems arising from a reverse-competitive market.

Section 2:

CEJ supports the proposed changes in Section 2.

To the extent "blanket" LPI is sold without a separate charge assessed to the borrower, that "blanket" coverage is exempt from the provisions of the Model Law. Consequently, there is no need to define "blanket" coverage.

We suggest a revision to the drafting note:

> **Drafting Note:** With the exception of violations of Section 12, n~~N~~othing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to bring an administrative or judicial proceeding to enforce this Act. Furthermore, nothing in this Act shall be construed to extinguish any debtor rights available under common law or other state statutes.

We understand the purpose of the drafting note is to prohibit private causes of action that would result in the court being asked to second guess the regulator and place the court in the position of regulator. This rationale is relevant for rate and form requirements, but the proposed edits now add prohibitions against kickbacks from LPI insurers and producers to creditors or servicers. Expressly permitting a private cause of action for violations of these anti-kickback provisions of the model does not infringe on regulatory authority and would not exclude private enforcement of the anti-kickback provisions. A private cause of action for Section 12 is reasonable and necessary.

Section 3:

CEJ supports the proposed changes in Section 3 with the following exceptions.

> "Insurance tracking" does ~~shall~~ not include:
> ~~(i)~~ Issuing or canceling force-placed insurance as directed by the creditor or servicer. ~~or monitoring the continuing need for force-placed insurance after voluntary hazared insurance covering residential real property has been lapsed or been cancelled or an insurer,insurance producer or affiliate has not received evidence of existing insurance coverage.~~
> ~~(ii) Performing administrative services associated with cancelling force-placed insurance on properties on which force-placed insurance is not required.~~

Proposed exclusion 1 is incorrect. Insurance tracking, generally, is the set of activities a creditor or servicer (or its vendor) must perform to monitor a borrower's insurance coverage to comply with the requirements of the loan contract for continuous insurance coverage. As Assurant explained succinctly in the cover letter to an LPI rate filing in Florida in 2013 from the largest writer of LPI, American Security Insurance Company, who wrote:

> Any type of real estate loan involving a commercial or residential structure requires the borrower to keep sufficient insurance coverage in force to satisfy the lender's interest should the structure (collateral) be destroyed or damaged. In order to make sure this requirement is met, most lenders have a department which keeps track of all the insurance policies covering properties for outstanding loans. If borrower provided coverage is cancelled or expired, the lender begins sending a series of follow-up letters to the borrower reminding the borrower of his obligation to keep insurance in force. If the borrower fails to comply, the lender will request issuance of the policy.

Proposed exclusion 1 excludes actual insurance tracking from insurance tracking, as that term is defined in the model:

> ~~(iii)~~(i) monitoring the continuing need for force-placed insurance after voluntary hazard insurance covering residential real property has been lapsed or been cancelled or an insurer, insurance producer or affiliate has not received evidence of existing insurance coverage.

Monitoring a loan for required insurance is insurance tracking – regardless of whether the borrower has voluntary or force-placed insurance. Just as a servicer performs insurance tracking to be able to disburse funds from a borrower's escrow to renew a voluntary insurance policy, so will the servicer perform insurance tracking to determine if a notice to the borrower is needed warning of a renewal force-placed coverage and to direct the LPI insurer to issue the renewal LPI coverage. Whatever the intent of exclusion 1, the practical impact will be, one, to make compliance and enforcement of the model's requirements vague and difficult because the exclusion clashes with the definition of tracking, and, two, to enable insurers to include broad insurance tracking expenses – free-services to the creditor or servicer – in proposed rates and neuter the intent of the prohibition against including insurance tracking expenses in LPI rates. .

Regarding exclusion 2, this provision is vague and overbroad. "Performing administrative services associated with cancelling force-placed insurance" is likely to be interpreted by LPI insurers to include activities on behalf of the servicer for crediting LPI charges to borrowers. It is reasonable for the LPI insurer to include in its rates those expenses associated with issuing and cancelling coverages under LPI master policies, including collecting and refunding premium <u>to the creditor or servicer paying the premium</u>. It would not be reasonable to include servicer activities, such as assessing or crediting LPI charges to borrowers because such activities are the responsibility of entities not licensed as an insurance company or producer.

A critical goal of the model is to clearly demarcate the activities of the creditor or servicer from those of the insurer. It may be reasonable for the LPI insurer to provide a variety of outsourced services to the creditor or servicer that are insurance-related (e.g., tracking insurance, loss drafts, customer call centers for insurance questions) and even for the LPI insurer to require that the creditor or servicer outsource one or more of these functions to the LPI insurer as a condition of offering the LPI. But the demarcation of creditor or servicer responsibilities to the investor/owners of the loans versus the responsibilities of the LPI insurer in providing LPI are crystal clear and only those expenses associated with the provision of LPI – a group master policy issued to the creditor or servicer – should be permitted in LPI rates.

CEJ suggests that the simplified language / edits proposed accomplish the goals of the exclusion without opening the door to ongoing kickbacks.

Single Interest Insurance

The proposed model is limited to those LPI products for which a separate charge is made to the borrower. With this change from the current version, CEJ suggests prohibiting single-interest coverage and requiring dual-interest coverage. The logic is simple – if a consumer is charged for insurance, the coverage should be dual interest to provide the consumer with the rights associated with his or her reimbursement of the creditor's or servicer's premium payment to the LPI insurer.

Definition of Master Policy and individual Certificates/Policies

CEJ suggests that it will be useful to include definitions of master policies and individual certificates/policies.

> Master Creditor-Placed Insurance Policy means a group policy issued to a creditor or servicer providing coverage for all loans in the creditor or servicer's loan portfolio as needed.
>
> Individual Creditor-Placed Insurance means coverage for an individual vehicle or property evidenced by a certificate of coverage under a master creditor-placed insurance policy or a creditor-placed insurance policy for an individual vehicle or property.

Section 4:

Section 4A deals with the effective date of creditor-placed insurance. The definition of creditor-placed insurance in 3G conflicts with section 4A because the 3G definition states that creditor-placed insurance is purchased "subsequent to the date of the credit transaction." This is an area where the distinction between a master policy and individual coverage will be helpful.

One of the key issues in ensuring separation of the creditor and insurer is to clearly distinguish between an insurer charging a servicer the premium for coverage that has been or will be in effect versus the non-premium charge a servicer assesses a borrower. Section 4A deals only with the effective date of individual coverage. Consequently, Section 4A(3), which presumably deals with retroactive billing, is misplaced.

Retroactive billing by the creditor or servicer of the borrower should be limited to 90 days. The CFPB's mortgage servicing rule effectively requires 45 days from the first notice letter to the borrower before a servicer may assess a LPI charge to the borrower. While there may be reasons why a creditor or servicer may not identify the lapse until after the lapse occurs, there should be a strict limit on the length of retroactive charges by the servicer to the borrower because a failure to identify a lapse in coverage reflects a problem with the servicer's insurance tracking and because excessive periods for retroactive billing denies the consumer timely receipt of notices warning about missing evidence of required coverage and the opportunity to take timely action to avoid the LPI placement and charge.

Dealing again with the issue of separation of creditor and insurer, Sections 5A and 5B deal with premium charges by an insurer to the creditor or servicer, while Section 5C deals with a non-premium charge by a servicer to a debtor. Consequently, we recommend moving a portion of 5C to Section 4.

CEJ recommends deletion of the portion of Section 5C starting with "unless," since it appears to be a predatory lending practice. We are not aware of the benefit to a consumer of a balloon charge at the end of the loan term and do not believe disclosure is sufficient consumer protection against predatory lending practices.

Section 4. Effective Date, Term of Coverage and Charges for Individual Creditor-Placed Insurance~~Term of Insurance Policy~~

A. Individual c~~C~~reditor-placed insurance shall become effective on the latest of the following dates:

(1) The effective date of the master creditor-placed insurance policy;

(2~~1~~) The date of the credit transaction;

(3~~2~~) The date prior coverage, including prior creditor-placed insurance coverage, lapsed;

~~(3) One year before the date on which the related insurance charge is made to the debtor's account;~~ or

(4) A later date provided for in the agreement between the creditor and insurer.

B. Individual c~~C~~reditor-placed insurance shall terminate on the earliest of the following dates:

(1) The termination date of the master creditor-placed insurance policy;

(2) The date other acceptable insurance becomes effective~~, subject to the debtor providing acceptable evidence of the other insurance to the creditor~~;

(3~~2~~) The date the collateralized property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;

(4~~3~~) The date the collateralized property is determined by the insurer to be a total loss;

(5~~4~~) The date the debt is completely extinguished; or

(6~~5~~) An earlier date specified in the individual policy or certificate of insurance.

C. A creditor or servicer shall not make an insurance charge ~~shall not be made~~ to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, nor may an insurance charge be made to the debtor for creditor-placed insurance before the effective date of the insurance.

D. If a the creditor or servicer makes a charge ~~is made~~ to a debtor for creditor-placed insurance coverage that exceeds a term of one year, the creditor or servicer shall notify the debtor ~~shall be notified~~ at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

E. A creditor or servicer may assess a charge for creditor-placed insurance for coverage of the individual creditor –placed insurance that is the lesser of:

(1) the premium paid by the creditor or servicer to the insurer for the individual creditor –placed insurance coverage; or

(2) the pro-rata portion of the premium paid by the creditor or servicer to the insurer for the individual creditor-placed insurance coverage for the period 90 days before the creditor or servicer assesses a charge to the borrower through the remaining term of coverage.

F. A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited.

Section 5:

See comments on Section 4

Section 7:

CEJ supports the additional guidance regarding contents of the certificate of insurance. We suggest some formatting and the following edits.

A. Individual c~~C~~reditor-placed insurance shall be set forth in an individual policy or certificate of insurance

B. A copy of the individual policy or~~,~~ certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

C. A cover letter shall accompany the individual policy or certificate of insurance coverage which includes the following disclosures:
   1) That the borrower may purchase insurance of the borrower's choice;
   2) That the force-placed insurance will be cancelled if the borrower provides evidence of insurance;
   3) That the force-placed coverage will be cancelled if and when the borrower obtains required insurance;
   4) That the borrower will receive a refund of the unearned portion of the LPI premium charge; and
   5) Instructions for submitting evidence of required insurance.

D. The individual policy or certificate of insurance coverage shall include the following information:
   1) ~~The certificate or other evidence of insurance coverage must specify, at a minimum~~ T~~t~~he address and identification of the insured property;~~, covered and~~
   2) The coverage amount or amounts if multiple coverages are provided;
   3) T~~, t~~he effective date of the coverage;
   4) The term of coverage;
   5) T~~, t~~he premium charge for the coverage;
   ~~1)~~6) ~~,information as how to terminate the coverage,information necessary to view the complete coverage details, and C~~Contact information for filing a ~~in the case of the~~ claim; and
   ~~2)~~7) A complete description of the coverage provided.

Section 8

CEJ offers an alternative approach for rate regulation that better reflects the nature of the CPI market. At the end of 2016, the top 100 mortgage servicers serviced about 80% of residential mortgage debt ranging from Wells Fargo at number 1 with (my rough estimate of) 9 million loans to First Citizens Bank of North Carolina at number 100 with (my rough estimate of) 50,000 loans. The remaining 20% of mortgages are serviced by many hundreds of smaller banks and credit unions.

The LPI market concentration is similar to that in the mortgage servicing market with Assurant and National General serving all or most of the largest mortgage servicers and a handful of managing general agencies serving the remaining hundreds of small and medium sized servicers.

The sale of LPI for the largest servicers is quite different from that for smaller servicers. Large servicers with a million or more loans will be paying tens or hundreds of millions of dollars a year for LPI and will outsource a number of servicing functions to the LPI vendor. These large services will have typically issue a request for bids to the very few LPI vendors with capacity to provide LPI and outsourced services for millions of loans on a nationwide basis.

In contrast, a small financial institution with, say, 10,000 mortgages, might only want LPI and will likely spend $100,000 to $200,000 on LPI. Such a financial institution might use an agent or broker to obtain the LPI.

We provide this background to suggest different costs for acquisition expenses for large versus small creditors or servicers. With a one-million loan servicer, the typical way an LPI vendor will acquire this $50 million book of business is to respond to a request for proposal from the servicer to provide LPI on a national basis. The LPI is a group policy with no underwriting of individual vehicles or properties with a single master policy issued in each state for all of the servicer's loans in that state. The program is managed by the LPI insurer on a national basis. In addition, for large servicers, the LPI insurer is likely to enter into a multi-year agreement for LPI.

The acquisition and underwriting expenses – commissions to producers, marketing/sales, underwriting, policy issuance – will be very low as a percentage of premium because of the nature of the LPI policy. If the provision for acquisition and general administrative expenses (including underwriting) were 10% of the rate, then the LPI vendor would earn $5 million a year but have no commission for producers and very limited marketing, underwriting and policy issuance costs. An expense provision of 10% for acquisition and general and administrative costs would be ample.

In contrast, an LPI insurer who has hundreds of creditor or servicer clients will incur the same or greater costs for marketing, underwriting and policy issuance while needing to pay a commission to agents to solicit and obtain the LPI business from dozens or hundreds of creditors or servicers who might have 5,000 to 10,000 mortgages or auto loans in their servicing portfolio – with each client producing a few hundred thousand dollars of LPI premium.

The point of this analysis is to suggest, one, that as a group insurance product, acquisition and general expenses should be significantly lower than for voluntary residential property insurance, and, two, these expense provisions (and, consequently, the LPI rates) should vary by the size of the client.

For example, the expense provisions – everything other than expected claim costs (including claims, claim settlement expense and net catastrophe reinsurance cost) and profit provision should be limited to

- 10% for clients with a nationwide expected LPI premium of $10 million or more,
- 15% for clients with a nationwide expected LPI premium of $5 million to $10 million;
- 20% for clients with a nationwide expected LPI premium of $1 million to $5 million; and
- 25% for clients with a nationwide expected LPI premium of less than $1 million,

Based on our proposal, the filed rates would include different rates by client size to reflect different expense loads caps.

We finish this section of our comments by reiterating the modest expenses associated with the acquisition, issuance and administration of a group LPI policy relative to residential property insurance. While there is great expense in insurance tracking and all the activities leading up to the point when a creditor or servicer directs the LPI insurer to issue or cancel coverage under the LPI master policy, all of those activities are a responsibility of the creditor or servicer and part of the creditor's or servicer's insurance tracking activities – and not part of administering a group LPI policy.

To further demonstrate this point, consider a group life insurance policy issued by a life insurer to an employer. The life insurer issues coverage under the group policy when directed by the employer who adds or removes employees from the group policy. No one would seriously argue that the employer's expenses for hiring or firing employees and adding or removing employees from the group policy are a reasonable cost of the insurer. Yet, that is the false argument LPI insurers – and the banking trade associations seeking to continue kickbacks – have been effectively arguing for LPI – that LPI insurers should be bearing the cost of creditors or servicers determining which properties require LPI and directing the LPI vendor to issue or cancel coverage from the group master policy.

Section 9

Once again, for purposes of separating the roles of the creditor or servicer and the insurer, an insurer issues a premium refund to the creditor or servicer while the creditor or servicer issues a refund of its LPI charge to the borrower. LPI insurers do not issue refunds to individual borrowers.

Section 9. Refund of Individual Creditor-Placed Insurance Charges~~Unearned Premiums~~

A. Within fifteen (15) calendar days after the termination of individual creditor-placed insurance coverage, and in accordance with the formulas approved by the commissioner, the creditor~~an insurer~~ shall refund ~~any~~ the pro-rata share of the charge for individual creditor-placed insurance for the unused portion of coverage for which the individual creditor-placed insurance charge to the debtor was originally made.~~unearned premium or other identifiable charges or fees of any kind. Any short rate cancellation table that develop return premiums that are less than 90% of the pro rata unearned premium is prohibited.~~

B. No later than the date of refund in Section 9 A, the creditor or servicer ~~Within fifteen (15) calendar days after the termination date of creditor-placed insurance coverage, the insurer~~ shall provide to the debtor a statement of refund disclosing the effective date of coverage, the termination date of coverage, the amount ~~of premium~~ being refunded and the amount ~~of premium~~ charged for the coverage provided. No statement shall be required in the event that the policy terminates pursuant to Section 4B(5~~4~~).

C. The entire amount of the charge for individual creditor-placed insurance, including any fees~~premiums, minimum premiums, fees or charges of~~ any kind shall be refunded if no coverage was provided.

Section 10

We will provide comments on this section at a later date

Section 11

We will provide comments on this section at a later date

Section 12

We offer the following suggested edits to Section 12. Specifically, we suggest deleting a number or provisions creating loopholes for the anti-kickback prohibitions in the model.

Section 12. Remittance of Premiums, Payment of Compensation, and Prohibited Practices

A. The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements. No commissions may be paid to, or retained by, a person or entity except a licensed and appointed insurance producer.

B. The retention by the creditor of unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges is prohibited.

C. Rebates to the creditor of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or producer. The listing of the following activities as prohibited rebates or inducements is not intended to be ~~restrictive~~exhaustive. ~~, and~~ T~~t~~he commissioner is authorized to prohibit additional practices as an inducement through rulemaking pursuant to the [state administrative procedures act]~~may identify an activity as prohibited by rule, regulation or order:~~

(1) Allowing insurers or producers to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration;

(2) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with a creditor as part of a creditor-placed insurance solicitation;

(3) Paying a commission to a person or entity affiliated with creditor or servicer or affiliate or the creditor or servicer;

(4) Paying a commission to a person or entity~~, including a creditor,~~ that is not appropriately licensed as a producer in this state;

(5) Paying a~~The payment of~~ contingent commission based on underwriting profitability or loss ratios.

~~(3) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with a creditor as part of a creditor-placed insurance solicitation.~~

~~D. Prohibited rebates or inducements do not include:~~

~~(1) The providing of insurance tracking and other services incidental to the creditor-placed insurance program excluding escrow services, if the cost of such services are reasonable in relation to the services provided to the debtor and creditor;~~

~~2) The paying of commissions and other compensation to a duly licensed and appointed insurance producer, unless the producer is a servicer or person or entity affiliated with a servicer on creditor-placed insurance obtained by that servicer. is not permitted;~~

~~(3) The paying to the creditor of amounts intended to reimburse the creditor or servicer for its expenses incurred incidental to the creditor-placed insurance program (such as costs of data processing, mail processing, telephone service, insurance tracking, billing, collections and related activities); provided that these payments are approved in a manner consistent with the procedures in Section 8 and are calculated in a manner that does not exceed an amount reasonably estimated to equal the expenses incurred by the creditor and are reasonable in relation to the services provided to the debtor and creditor.~~

B~~E~~. An insurer that pays commissions to producers for creditor-placed insurance shall be required to demonstrate the commissions are not unreasonably high in relation to the value of the services rendered to the debtor and creditor.

~~F. Nothing contained in this section shall prohibit or restrict an insurer or producer from maintaining a demand, premium deposit or other account or accounts with a creditor for which the insurer or producer provides insurance if the accounts pay the market interest rate and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.~~

~~G. No insurer may pay commissions to a servicer or a person or entity affiliated with a servicer on creditor-placed policies obtained by that servicer.~~

C~~H~~. An ~~No~~ insurer shall not~~may~~ issue creditor-placed insurance to any person or entity ~~on property serviced by a servicer~~ that is an affiliate of the insurer

D~~H~~. An ~~No~~ insurer shall not ~~may~~ reinsure creditor-placed insurance with any insurer affiliated with creditor or servicer to whom the creditor-placed insurance is issued. ~~captive insurer of any servicer.~~

I. An ~~No~~ insurer shall not ~~may~~ make ~~any incentive~~ payments of any kind to a creditor or servicer other than premium refunds, including, but not limited, to the payment of expenses, to servicers or their affiliates for the purpose of securing creditor-placed business.

Section 13

We suggest that the timing and content of disclosures track the provisions of the Consumer Financial Protection Bureau's mortgage servicing rule.

Section 13. Disclosures to the Debtor

A. A creditor shall not impose a creditor-placed insurance charge or ~~s, including premium costs and~~ related interest and finance charges~~,~~ on a debtor ~~for creditor-placed insurance coverage~~ unless the creditor or servicer

(1) has a reasonable basis to believe the debtor has failed to maintain required insurance;

(2).has sent the debtor a notice at least 45 days before charging a debtor; and

(3) has sent the debtor a second notice no earlier than 30 days after the first notice and no later than 15 days before charging a debtor.

~~adequate disclosure of the requirement to maintain insurance has been made to the debtor. Adequate disclosure is accomplished if the following occurs:~~

~~(1) The credit agreement sets forth the requirement that the debtor must maintain insurance on the collateral as provided for in Section 11;~~

~~(2) The creditor makes reasonable efforts to notify the debtor of the requirement to maintain insurance and allows a reasonable time for compliance with this requirement;~~

~~(3) A final notice as required by this Act is sent to the debtor; and~~

~~(4) If creditor-placed insurance coverage is issued, a copy of the policy or certificate is sent to the debtor as provided for in Section 7.~~

~~B. After adequate disclosure of the request to maintain insurance has been made to the debtor as required by this section, a creditor may proceed to impose charges~~

~~for creditor-placed insurance if the debtor fails to provide evidence of insurance. A creditor may impose charges no earlier than ten (10) calendar days after sending the final notice.~~

B~~C~~. A r~~R~~easonable basis to believe creditor-placed insurance is necessary for a debtor is ~~efforts to notify the debtor are~~ accomplished if:

(1) The creditor mails the ~~a~~ notices required by Section 13 A by first class mail to the debtor's last known address as contained in the creditor's records; ~~, stating that the creditor intends to charge the debtor for creditor-placed insurance coverage on the collateral if the debtor fails to provide evidence of the property insurance to the creditor;~~and

(2) The notices are substantially similar to the model notices in Appendix A~~The creditor allows the debtor at least twenty (20) calendar days to respond to the notice and provide evidence of acceptable insurance coverage before sending a final notice; and~~

~~(3) The creditor sends a final notice in compliance with this section by first class mail to the debtor's last known address as contained in the creditor's records at least ten (10) calendar days before the cost of insurance is charged to the debtor by the creditor. Proof of the mailing of the final notice shall be retained for at least three (3) years following the expiration or termination of the coverage or as otherwise required by law.~~

~~D. The initial notice shall be in a form determined by the creditor to remind the debtor of the requirement to maintain insurance on the collateral. The final notice shall be as complete as the following notice, printed in not less than twelve (12) point type, and modified where necessary to fit the nature of the credit transaction:~~

~~FINAL NOTICE~~

~~Your credit agreement with us requires you to have property insurance on the collateral until you pay off your loan. You have not given us proof you have insurance on the property. You can ask your insurance company or agent to give us proof of insurance or you can send us proof you have property insurance within ten calendar days after the date this letter was postmarked. If you do not, we will buy the insurance and charge the cost to you.~~

~~You must pay for the property insurance we buy. It may cost more than insurance you can buy on your own. The cost of the insurance we buy may be added to your loan balance and we may charge you interest on it. If we do, you will pay interest at the same rate you pay on your loan.~~

~~The insurance we buy will pay claims to us (the creditor) for physical damage to your property. It will not pay any claims made against you [and it may not pay you for any claims you make (delete if limited dual interest coverage)]. The insurance we buy will not give you any liability insurance coverage and will not meet the requirements of a state's financial responsibility law.~~

~~We may receive compensation for placing this insurance, which is included in the cost of coverage charged to you.~~

~~The property coverage we buy will start on the date shown in the policy or certificate, which may go back to the date of the loan or the date your prior coverage stopped. We will cancel the insurance we bought for you and give you a refund or credit of unearned charges if you give us proof you have bought property insurance somewhere else or if you have paid off the loan.~~

~~**Drafting Note:** States that have a residual market mechanism established to address high risk individuals may want to amend the notices under this section to include information on how to access those programs, including any available toll-free telephone number.~~

~~E. All creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. Not earlier than the sending of the final notice nor fifteen (15) days after a charge is made to the debtor for creditor-placed insurance coverage, the creditor shall cause a copy of the individual policy, certificate or other evidence of insurance coverage evidencing the creditor-placed insurance coverage to be sent, first-class mail, to the debtor's last known address.~~

C~~F~~. A creditor's compliance with or failure to comply with this Act shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor shall not be liable to the debtor or a third party as a result of its failure to purchase the insurance.

Model Notices

Model Form of First Notice

[Name and Mailing Address of Creditor or Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: Please provide insurance information for [property][vehicle]

[Address]

Dear [Borrower's Name]:

Our records show that your [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. Because [Insurance Type] insurance is required on your [property][vehicle], [we bought insurance for your [property][vehicle]] [we plan to buy insurance for your [property][vehicle]]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• May be more expensive than the insurance you can buy yourself.

• May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Model Form for Second Notice

[Name and Mailing Address of Creditor or Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: Second and final notice—please provide insurance information for [property][vehicle] Address]

Dear [Borrower's Name]:

This is your second and final notice that our records show that your [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. Because [Insurance Type] insurance is required on your [property][vehicle], [we bought insurance for your [property][vehicle]] [we plan to buy insurance for your [property][vehicle]]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

• May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Model Form for Second Notice Following Receipt of Inadequate Information

[Name and Mailing Address of Creditor or Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: Second and final notice—please provide insurance information for [[property][vehicle] Address]

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

Please provide us with insurance information for [Date Range] immediately.

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

• Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

• May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Model Form for Renewal or Replacement of Creditor-Placed Insurance

[Name and Mailing Address of Creditor or Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: Please update insurance information for [[property][vehicle] Address]

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the [property][vehicle] listed above, we bought insurance on your [property][vehicle] and added the cost to your [mortgage][vehicle] loan account.

The policy that we bought [expired] [is scheduled to expire]. Because [Insurance Type] insurance] is required on your [property][vehicle], we intend to maintain insurance on your [property][vehicle] by renewing or replacing the insurance we bought.

The insurance we buy:

• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

• May not provide as much coverage as an insurance policy you buy yourself.

If you buy [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Section 17:

The caps on penalties are too low. The penalties imposed by regulators in recent years far exceed these caps. Since the amounts included in the section are caps and the commissioner may impose a smaller penalty per violation, CEJ suggests the deletion of the aggregate caps and increasing the penalty for a single violation the Act other than violations of the requirements for forms and rates to $5,000 and $100,000. Since a single violation of the requirements for forms or rates may affect thousands of consumers, the penalty for such a violation should be left to the discretion of the commissioner commensurate with the harm resulting from the violation.