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American Bankers Insurance Association
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Submitted via [*http://www.regulations.gov*](http://www.regulations.gov)

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Docket No. CFPB-2012-0034; RIN 3170-AA14; 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal

Dear Mrs. Jackson:

The American Bankers Insurance Association (ABIA) appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's (CFPB) mortgage servicing proposed rule under the Real Estate Settlement Procedures Act (RESPA) and Regulation X (Proposal). The ABIA, a subsidiary of the American Bankers Association, represents banks that are actively engaged in the business of insurance, principally as producers; insurance companies; and third party administrators that provide insurance products and services to banks.

Our comments relate to the portion of the Mortgage Servicing Proposal that affects force-placed insurance (FPI), proposed section 1024.37, which partially implements section 1463 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). We also provide comments on the escrow account requirements under section 1024.17.

I. Background

a. The Need for FPI

FPI provides important protections to homeowners, residential mortgage lenders, and investors, and helps support the nation's housing finance market. Housing lenders and housing investors, including Fannie Mae, Freddie Mac, the Federal Housing Administration, and private organizations, require borrowers to maintain homeowners insurance and flood insurance (if applicable).

Insurance protects the borrower's home - which the borrower, lender, and investor use as collateral for a mortgage – by providing funds to repair or rebuild the home following a loss. Lenders and investors require mortgage servicers to track the status of each borrower's insurance coverage. If a homeowner fails to maintain the required insurance, lenders and investors are exposed to a significant risk of loss. To mitigate that risk, lenders and investors typically require borrowers to advance funds for the required hazard or flood policy, which are paid along with the monthly mortgage payment and placed in an escrow account maintained by their mortgage servicer. If escrowed funds are not available, mortgage servicers will, in some cases, advance their own funds to pay for voluntary insurance.

Mortgage servicers are permitted, under terms of the mortgage agreement, to purchase FPI.[1] Without this insurance of last resort, lenders and investors' costs would rise significantly due to uninsured losses, and thus funding for mortgages would be reduced or lenders and investors would compensate for their increased risk by raising the costs of mortgage credit. Furthermore, borrowers' interests would be left unprotected.

The rise in defaults and foreclosures since the financial crisis in 2008 has caused more borrowers to let their voluntary insurance lapse, increasing the need for FPI. While this increase could seem like a profitable boom in business for insurers, the defaults and foreclosures actually present heightened risks for mortgage lenders, investors, and insurers. Foreclosed properties often are neglected or abandoned, impairing the value of the property and increasing the risk of loss.

FPI is a means of ensuring preservation of the collateral's value. During times of widespread economic distress, it becomes especially critical to protect borrowers by ensuring there will be sufficient funds to repair their home in the event of a loss, maintain the value of the collateral, and preserve the solvency of housing lenders, particularly depository institutions, because of safety and soundness requirements.

b. Existing Laws and Regulations Governing FPI

In addition to the oversight of mortgage servicers by federal regulators such as the CFPB, FPI rates and terms and conditions are also currently subject to robust oversight by state regulators. State insurance regulators have authority to review and approve FPI rates and forms; they also review the solvency of the admitted insurers offering FPI.

II. Summary of Proposal

Under proposed section 1024.17, a servicer would be required to advance funds to pay a borrower's hazard insurance premium if the borrower has an escrow account for the insurance, unless the borrower's policy is cancelled or not renewed for reasons other than nonpayment of premium charges.

Proposed section 1024.37 implements the FPI provisions of Dodd-Frank. Under 1024.37(b), a servicer may not obtain FPI unless it has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance, and the proposed commentary provides examples of what constitutes a reasonable basis. Separately, a servicer may not charge a borrower for FPI unless it delivers two notices and,

[1] Mortgage servicers are *required* to purchase flood insurance in some circumstances. *See* 12 CFR § 22.7 (2012). We encourage the CFPB to clarify that this rule does not affect force placed flood insurance laws and regulations.

during the 45-day notice period, has not received verification that the borrower has hazard insurance in place.

The proposed rule specifies the content of the notices and includes model notices. Before renewing or replacing FPI, under the Proposal, the servicer must send a notice. Upon notice that the borrower has hazard insurance in place, a servicer must cancel the FPI within 15 days and refund any fees for periods of overlapping coverage. Apart from charges subject to state insurance regulation, all charges must be bona fide and reasonable. Finally, a servicer may concurrently or simultaneously deliver a notice under the Flood Disaster Protection Act (FDPA).

III. Comments on Proposal

We support the Dodd-Frank mandates for FPI and believe those requirements reflect what largely occurs in the marketplace today. We are concerned that the CFPB is proposing additional requirements that go beyond the statutory authority granted to CFPB by Dodd-Frank. Our comments are focused on those portions of the Proposal.

a. Obligation to Continue Escrowed Insurance & Advance Funds – 1024.17(k)

The Proposal's requirement for servicers to advance funds, if necessary, where the borrower has an escrow account for homeowners insurance should be removed from the proposed regulation because: 1) it is not based on the RESPA provisions promulgated under Dodd-Frank, which the Proposal seeks to implement; 2) it fails to consider that mortgage servicers may not have the information necessary to determine why a policy was cancelled; and 3) it would dampen the ability of a homeowner's insurer to fully assess the ongoing underwriting criteria necessary to the management of its business.

The Proposal goes beyond Dodd-Frank's amendments to RESPA by requiring mortgage servicers to advance funds, where necessary, to continue voluntary insurance policies in cases where an escrowed borrower's selected policy is being terminated for non-payment. While we appreciate the CFPB's inclusion of examples of borrower's insurance being terminated for reasons other than nonpayment of premium, if the borrower's insurance carrier fails to notify the mortgage servicer of the reason for cancellation, the servicer would not be in position to know whether a voluntary policy has been cancelled for non-payment or some other reason, or to make the determination whether it should advance funds to continue a voluntary policy. The mortgage servicer would have to significantly change its practices and expend significant resources to obtain that information in those situations.

Further, typical insurance tracking services identify whether a policy remains in effect and do not distinguish if a policy has been cancelled for any particular reason, such as non-payment or borrower cancellation. Moreover, it is nearly impossible for insurers to distinguish between a borrower cancellation based on non-payment versus a non-renewal decision: if a borrower wishes to cancel or not renew a policy, they can simply stop paying for it without notifying the insurer and purchase another policy. But in that case, the mortgage servicer would, arguably, still be required to advance funds for a policy that the borrower wishes to cancel.

Additionally, advancing homeowners insurance premiums by mortgage servicers would cause significant problems for insurers that may be unable to fully assess a borrower's financial condition and thus be unable to fully and continuously evaluate the underwriting criteria applicable to the borrower's policy. For example, if a borrower defaults on his or her mortgage or a foreclosure has been initiated, the borrower's homeowners insurer may need to cancel the policy or increase the borrower's premium pursuant to its underwriting guidelines. But under the Proposal, the homeowners insurer would not have any notice of a change in the borrower's financial condition because the mortgage servicer would be required to advance the homeowners insurance premiums as if the borrower was current with their loan payments.

We urge the CFPB to remove the requirement that a servicer advance funds for insurance premiums because CFPB has no authority in law to require it. In addition, the requirement is unworkable and would create significant difficulties for insurers.

b. Basis for Obtaining FPI – 1024.37(b)

Some aspects of the Proposal conflate the statutory "reasonable basis" needed to place FPI with a reasonable basis not to advance funds for a voluntary policy under escrow pursuant to the newly proposed 1024.17(k). As a result, the Proposal fails to recognize that compliance with certain statutory requirements establishes a reasonable basis to purchase FPI.

Under 12 USC § 2605(k)(1)(A), added by section 1463 of Dodd-Frank, a servicer must not "obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance." Additionally, 12 USC § 2605(l) states that a servicer "shall not be construed as having a reasonable basis for obtaining force-placed insurance *unless the requirements of this subsection have been met*." (emphasis added).

The requirements enumerated in that subsection include: written notices; sufficiency of demonstration of insurance; termination and refunds; and certain clarifications with respect to the Flood Disaster Protection Act of 1973. The statute, as written, states that a reasonable basis is found if those requirements, and nothing more, have been met.

In the section-by-section analysis, the CFPB discusses section 2065(k)(1)(A), but not the language of 2605(l) (quoted above), which establishes the reasonable basis standard. Instead, the CFPB adds an additional reasonable basis requirement before the servicer can even get to the notice requirements, making the "reasonable basis" determination a separate, distinct requirement. To adhere to the clear statutory language, proposed section 1024.37(b) should make it clear that a servicer shall be deemed to have a reasonable basis if it meets the requirements of proposed 1024.37(c), (d), and (g). The Bureau should not ignore clear, unambiguous statutory language, and it must make this change to adhere to the statutory construct under the Dodd-Frank Act.

Moreover, the proposed official staff commentary provides examples of a "reasonable basis" that are rooted in the voluntary policy premium advance requirement (*See* 1024.37(b)-1 and -2), which highlights the Proposal's failure to distinguish between a reasonable basis to purchase FPI under 12 USC § 2605(l) and a reasonable basis to not advance funds through escrow, under 1024.17(k).

In sum, the proposal should not add to the specific elements of a reasonable basis outlined in 12 USC § 2605(l); such a change would go beyond the CFPB's statutory authority. Instead the CFPB should clarify that compliance with proposed 1024.37(c), (d), and (g) establishes a reasonable basis to purchase FPI. This approach ensures that the "reasonable basis" required to purchase FPI does not depend on whether funds are advanced for voluntary policy premiums and is consistent with RESPA.

c. Content of Initial Notice – 1024.37(c)(2)

The Dodd-Frank amendments to RESPA provide for specific information to be disclosed to consumers before FPI is purchased. We recommend that the demonstration of coverage language be expanded and that other information be permitted to be concurrently disclosed on the same form as the NPI notices at the mortgage servicer's discretion.

i. Sufficiency of Demonstration of Coverage

RESPA requires mortgage servicers to "accept *any reasonable form of written confirmation* from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, *or as otherwise required by the Bureau of Consumer Financial Protection*."[2] We encourage the CFPB to use its statutorily provided authority to more fully discern what constitutes a "reasonable form of written confirmation… of existing insurance coverage."

The Proposal does not clearly address what constitutes a sufficient demonstration of coverage. Rather, the Proposal requires FPI notices to request that the borrower "promptly provide the servicer with the insurance policy number, and the name, mailing address and phone number of the insurance company or the borrower's insurance agent." The statute appears to intend for those specific elements to be *part* of what the borrower needs to produce, in order for the servicer to verify the information, but not *all* of what the borrower needs to produce. Without more information, servicers do not have the ability to determine whether acceptable coverage is in place without taking additional affirmative actions; the opportunity to simply accept the borrower's documentation is foreclosed under the Proposal. This forces the servicer to actively work to obtain the necessary information to demonstrate adequate coverage, which delays the verification process and may jeopardize the servicer's compliance with certain Dodd-Frank related timing requirements. We encourage the CFPB to clearly define what constitutes a sufficient demonstration of coverage, and to include in that definition a policy declaration page or policy binder. We also encourage the CPFB to permit FPI notices to include requests for policy declaration pages or policy binders under Section 1024.37(c)(2)(vii).

ii. Additional Permissible Language

While the Proposal acknowledges that the FPI notices can be provided concurrently with a notice of a lack of flood insurance, it is not clear if the notices may be provided on one document

[2] 12 U.S.C. § 2605(l)(2) (2012) (emphasis added).

together or may only be mailed together in an envelope.[3] In fact, there are several other pieces of information that we encourage the CFPB to permit, but not require, mortgage servicers to provide on the same notice document as the FPI notices, including:

- Reminder of the obligation to insure and that failure to insure is a breach;
- Preferred insurance substantiation, i.e. a declaration page, and how the mortgage clause should read on the policy;
- The amount of insurance required;
- Reference to the borrower's loan number;
- Offer to advance premium on a voluntary policy;
- Reference to time for the borrower to comply;
- Recommend that the borrower purchase their own policy and advise of the right to purchase insurance from the provider of their choice;
- That FPI will not cover personal property or liability;
- That the lender will be the named insured on the FPI;
- Whether FPI is single interest or dual interest; and
- Disclosures related to FPI imposed by other state or federal law, such as bankruptcy information, Fair Debt Collection Practices Act disclosures and Rosenthal Fair Debt Collection Practices Act disclosures (California).

We encourage the CFPB to clarify that if a servicer includes any or all of these pieces of information in the FPI notice letter, the servicer would still be in compliance with section 1024.37.

d. Grace Period - 1024.37(c)(1)(iii)

The Proposal provides examples of "grace periods" that are applicable to the determination of whether a borrower has had insurance "in place continuously" under Section 1024.37(c)(1)(iii).[4] We ask the CFPB to revise the examples in proposed comment 1024.37(c)(1)(iii)-1 to reflect the fact that "grace periods" do not necessarily mean that coverage is continuous. A "grace period" provides the borrower more time to pay the premium but the insurance coverage is not extended during that period. Therefore, the examples need to be revised to state that if the borrower pays the premium during the grace period, there is continuous coverage only if the premium has a retroactive effective date.

We also fear those examples could be inadvertently applied to the sufficient demonstration of coverage requirements discussed above. We encourage the CFPB to clarify that the grace period analysis is only applicable when determining if insurance has been "in place continuously" under Section 1024.37(c)(1)(iii), and the associated determination of whether charges for lapses in coverage are appropriate, and that grace periods are not relevant to the determination of whether a sufficient demonstration of coverage has been provided.

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[3] Section 1024.37(e)(3) states that the disclosures "must be in a format substantially similar to" the model notices, so we assume that significant deviations, including the addition of language, would be prohibited.
[4] Proposed comment 37(c)(1)(iii)–1.

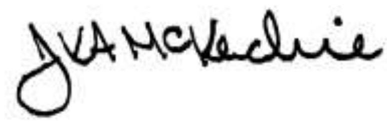
e. Renewal or Replacement of FPI – 1024.37(e)

We generally support providing annual notices to borrowers of FPI policy renewals or replacements, though we apply our recommended changes to the content of the initial FPI notices to the extent they apply to the renewal notifications.

IV. Conclusion

Force-placed insurance provides important protection of collateral for borrowers, lenders and investors and is currently subject to significant state insurance regulations. We encourage the CFPB to follow the reforms implemented by Dodd-Frank and remove aspects of the proposed mortgage servicing rule that surpass the Act’s mandates, especially the proposed requirement to advance insurance premiums for voluntary insurance policies paid through escrow in cases of non-payment. The final rule should also follow the statutory definition of what constitutes a reasonable basis to purchase force-place insurance and clearly define what constitutes a sufficient demonstration of coverage. Finally, we encourage the CFPB to permit certain additional information to be placed in the force-placed insurance notification letters. We look forward to helping CFPB in the future.

Sincerely,



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