

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
PROPOSED 11 NYCRR 227  
(INSURANCE REGULATION 202)**

**REGULATION OF FORCE-PLACED INSURANCE**

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 301 and 302 of the Financial Services Law and Sections 301, 308, 2110, 2303, 2304, 2324, and 2403 and Articles 21, 23, 24 and 34 of the Insurance Law, do hereby promulgate a new Part 227 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 202), to take effect 30 days after publication in the State Register, to read as follows:

**(ALL MATERIAL IS NEW)**

**Section 227.0 Purpose**

(a) The purpose of this Part is to set forth rules for the rates for and placement of force-placed insurance and to prohibit certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

(b) An investigation by the department found that the rates for force-placed hazard insurance bore little relation to insurers' actual loss experience, resulting in high profits, a portion of which insurers commonly passed on to mortgage servicers and their affiliates through commissions, other payments, and reinsurance arrangements, to the detriment of homeowners and investors. The department also found that homeowners often failed to receive adequate notice that insurers and servicers were force-placing insurance policies on their homes. Section 227.2 of this Part sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners' insurance, and that they may purchase voluntary homeowners' insurance coverage at any time.

(c) The department's investigation found that insurers offered financial incentives to mortgage servicers and their affiliates, including commissions to servicer-affiliated insurance producers who performed little or no work, and entered into arrangements that transferred a significant percentage of force-placed insurance profits to affiliates of servicers. In addition, one insurer provided force-placed insurance on mortgages serviced by an affiliate of the insurer. These practices not only artificially inflated premiums charged to homeowners, but created a conflict of interest in that servicers had an incentive to purchase more costly force-placed insurance where they earned a portion of the premiums or profits from the placement of force-placed insurance. Section 227.6 of this Part prohibits these practices.

(d) Further, actual loss ratios for force-placed hazard insurance have been significantly lower than both the expected loss ratios insurers filed with the department and the actual loss ratios for voluntary homeowners' insurance. Insurers have failed to regularly update and adjust their rates despite these significant discrepancies. Section 227.7 of this Part requires insurers to regularly inform the department of loss ratios actually experienced and re-file rates when actual loss ratios are below 40 percent, and sets a minimum permissible loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

## Section 227.1 Definitions

For the purpose of this Part:

(a) *Actual loss ratio* means the sum of paid losses and loss reserves, as a percentage of earned premiums.

(b) *Affiliate* means any company that controls, is controlled by, or is under common control with an insurer or insurance producer.

(c) *Clearly and conspicuously* means that the statement, representation or term being disclosed is of such size, color, and contrast and is so presented as to be readily noticed and understood by the person to whom it is being disclosed.

(d) *Force-placed insurance* means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the residential real property securing such loan. The term *force-placed insurance* shall not include hazard insurance:

(1) to protect against flood loss obtained by a servicer as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et. seq.,\* except as provided in section 227.6 of this Part;

(2) obtained by a borrower but renewed by the borrower's servicer as described in 12 C.F.R. sections 1024.17(k)(1), (2), or (5);\*\* or

(3) obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

(e) *Hazard insurance* means insurance on the residential real property securing a mortgage loan that protects residential real property against losses caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.

(f)(1) *Insurance tracking* means all activities related to determining whether a borrower has in place hazard insurance that complies with the mortgage loan contract's requirements to maintain hazard insurance, including:

(i) developing and maintaining a database used by a servicer to track required hazard insurance on borrowers' loans;

(ii) maintaining hazard insurance information on behalf of a servicer, including in a servicer's mortgage servicing system;

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\* 42 United States Code sections 4001-4129 (revised January 3, 2012), published by U.S. Government Printing Office, Washington, D.C. 20401. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

\*\* 12 Code of Federal Regulations sections 1024.17(k)(1), 1024.17(k)(2), and 1024.17(k)(5) (revised February 14, 2013), published in Federal Register Vol. 78, No. 31, February 14, 2013. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

(iii) inputting insurance information on new loans into an insurance tracking database or a servicer's mortgage servicing system;

(iv) all communications by a servicer or on behalf of a servicer with a borrower's voluntary hazard insurer or voluntary hazard insurance producer;

(v) all communications by a servicer or on behalf of a servicer with a borrower concerning required hazard insurance, including the written notices required by section 227.2 of this Part and communications concerning charging the borrower's account for insurance; and

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

(2) The term *insurance tracking* shall not include:

(i) issuing force-placed insurance or monitoring the continuing need for force-placed insurance after (a) voluntary hazard insurance covering residential real property has lapsed or been cancelled, or (b) an insurer, insurance producer or affiliate has not received evidence of existing insurance coverage that complies with section 227.4 of this Part; or

(ii) performing administrative services associated with cancelling force-placed insurance on properties on which force-placed insurance is not required.

(g) *Insurer* means an authorized insurer.

(h) *Insurance producer* means a licensed insurance producer.

(i) *Loss reserves* means the sum of case reserves and incurred but not reported losses.

(j) *Mortgage loan* means a loan made primarily for personal, family or household use, secured by either a mortgage or deed of trust on residential real property in this state, any certificate of stock or other evidence of ownership in, and proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property in this state, or a loan secured by a security interest on a manufactured home in this state as defined in Uniform Commercial Code section 9-102(53) or mobile home in this state which contains one to four family housing units.

(k) *Real estate owned property* means residential real property that is owned by a lender after the property is not sold at a foreclosure auction.

(l) *Residential real property* means real property located in this state used or occupied, or intended to be used or occupied, predominantly for residential purposes and which consists of not more than four dwelling units, other than hotels and motels.

(m) *Servicer* means a person or entity engaging in the servicing of mortgage loans in this state, whether or not such person or entity is registered or required to be registered pursuant to paragraph (b-1) of subdivision two of section 590 of the Banking Law.

## **Section 227.2 Requirements Before Issuing Force-Placed Insurance**

(a) If an insurer, insurance producer, or affiliate mails or delivers to a borrower on behalf of a servicer notices relating to force-placed insurance, then the insurer, insurance producer, or affiliate shall:

(1) deliver to a borrower or place in the mail a written notice in accordance with 12 C.F.R. section 1024.37(c)(1)(i), 12 C.F.R. section 1024.37(c)(2), and 12 C.F.R. section 1024.37(c)(3);\*\*\*

(2) deliver to the borrower or place in the mail a written notice in accordance with 12 C.F.R. section 1024.37(c)(1)(ii), 12 C.F.R. section 1024.37(d)(1), 12 C.F.R. section 1024.37(d)(2), 12 C.F.R. section 1024.37(d)(3), and 12 C.F.R. section 1024.37(d)(5);\*\*\*\* and

(3) on a separate piece of paper in the same transmittal as the written notices required by paragraphs (1) and (2) of this subdivision, clearly and conspicuously disclose that an insurer, insurance producer, affiliate, or any other third party is staffing the mortgage servicer's telephones, if that is the case.

(b) Renewing or replacing force-placed insurance.

(1) If an insurer, insurance producer, or affiliate mails or delivers to a borrower on behalf of a servicer notices relating to renewing or replacing force-placed insurance, then the insurer, insurance producer, or affiliate shall:

(i) deliver to a borrower or place in the mail a written notice in accordance with 12 C.F.R. section 1024.37(e)(1)(i), 12 C.F.R. section 1024.37(e)(2), 12 C.F.R. section 1024.37(e)(3), and 12 C.F.R. section 1024.37(e)(4);\*\*\*\*\* and

(ii) on a separate piece of paper in the same transmittal as the written notice required by subparagraph (i) of this paragraph, clearly and conspicuously disclose that an insurer, insurance producer, affiliate, or any other third party is staffing the mortgage servicer's telephones, if that is the case.

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\*\*\* 12 Code of Federal Regulations sections 1024.37(c)(1)(i), 1024.37(c)(2), and 1024.37(c)(3) (revised February 14, 2013), published in Federal Register Vol. 78, No. 31, February 14, 2013. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

\*\*\*\* 12 Code of Federal Regulations sections 1024.37(c)(1)(ii), 1024.37(d)(1), 1024.37(d)(2), 1024.37(d)(3), and 1024.37(d)(5) (revised February 14, 2013), published in Federal Register Vol. 78, No. 31, February 14, 2013. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

\*\*\*\*\* 12 Code of Federal Regulations sections 1024.37(e)(1)(i), 1024.37(e)(2), and 1024.37(e)(3), and 1024.37(e)(4) (revised February 14, 2013), published in Federal Register Vol. 78, No. 31, February 14, 2013. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

(c) Mailing of notices. The notices required by this section shall clearly and conspicuously disclose on the front of the envelope that the delivery or mailing contains important homeowners insurance information. Such disclosure shall be printed in a readily noticeable contrasting color with a font size of at least 12 point.

### **Section 227.3 Amount of Coverage**

An insurer shall not issue force-placed insurance in excess of the borrower's last known amount of hazard insurance; provided, however, that if the amount of the borrower's last known hazard insurance did not comply with the mortgage loan requirements, then the insurer shall not issue force-placed insurance in excess of the replacement cost of the improvements on the mortgaged property.

### **Section 227.4 Sufficiency of Demonstration**

If an insurer, insurance producer, or affiliate receives correspondence related to force-placed insurance from a borrower on behalf a servicer, then the insurer, insurance producer, or affiliate shall accept any reasonable form of written confirmation, from the borrower or otherwise, of existing hazard insurance that complies with the mortgage loan contract's requirements to maintain hazard insurance, which shall include the existing hazard insurance policy number along with the identity of, and contact information for, the insurer or insurance producer. An insurer, insurance producer, or affiliate that receives correspondence related to force-placed insurance from a borrower on behalf a servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's hazard insurance certificate, the borrower's hazard insurance policy, or other similar forms of written confirmation. An insurer, insurance producer, or affiliate that receives correspondence related to force-placed insurance from a borrower on behalf a servicer may reject evidence of hazard insurance submitted by a borrower if neither the borrower's insurer nor the borrower's insurance producer provides confirmation of the hazard insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's mortgage loan contract requirements.

### **Section 227.5 Refunds of Force-Placed Insurance Premiums**

Within 15 days of receiving, from the borrower or otherwise, evidence demonstrating that the borrower has had in place hazard insurance that complies with the mortgage loan contract's requirements to maintain hazard insurance, an insurer, insurance producer or affiliate shall remove force-placed insurance from the borrower's property and refund to the servicer or borrower, as the case may be, all force-placed insurance premiums paid by the servicer or borrower for any period of overlapping insurance coverage.

### **Section 227.6 Prohibited Practices**

(a) For purposes of this section, the term *force-placed insurance* shall include hazard insurance to protect against flood loss obtained by a servicer as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et. seq.<sup>\*\*\*\*\*</sup>

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\*\*\*\*\* 42 United States Code sections 4001-4129 (revised January 3, 2012), published by U.S. Government Printing Office, Washington, D.C. 20401. Copies of such documents are available for inspection at the offices of the Department of Financial Services at One State Street, New York, NY 10004.

(b) No insurer shall issue force-placed insurance on mortgaged property serviced by a servicer affiliated with the insurer.

(c) No insurer, insurance producer, or affiliate shall compensate a servicer or a person or entity affiliated with a servicer with respect to force-placed insurance on residential real property being serviced by the servicer.

(d) No insurer, directly or indirectly, shall compensate an insurance agent or an independent adjuster that acts in the adjustment of a loss for force-placed insurance based on underwriting profitability or loss ratio.

(e) No insurer shall share force-placed insurance premiums or force-placed insurance risk with the servicer that obtained the force-placed insurance or a person or entity affiliated with the servicer that obtained the force-placed insurance.

(f) No insurer, insurance producer, or affiliate shall make any payments, including but not limited to the payment of expenses, to a servicer or a person or entity affiliated with a servicer in connection with securing force-placed insurance business.

(g) No insurer, insurance producer, or affiliate shall provide insurance tracking to a servicer or a person or entity affiliated with a servicer for a reduced fee or no separately identifiable charge.

#### **Section 227.7 Minimum Loss Ratio and Rate Filings**

(a) Within 30 days of the effective date of this Part, an insurer writing force-placed insurance in this state shall file force-placed insurance premium rates with a permissible loss ratio of at least 62 percent.

(b) An insurer shall have separate rate classifications for:

(1) force-placed insurance; and

(2) hazard insurance obtained by a servicer on real estate owned property.

(c) No later than April 1 of each year, an insurer issuing force-placed insurance in this state shall report to the superintendent, for each of such insurer's force-placed insurance policy forms for the preceding calendar year:

(1) actual loss ratio;

(2) earned premium;

(3) itemized expenses, including:

(i) expenses incurred in connection with insurance tracking;

(ii) expenses incurred in connection with issuing force-placed insurance or monitoring the continuing need for force-placed insurance after (a) voluntary hazard insurance covering residential real

property has lapsed or been cancelled; or (b) the insurer, insurance producer or affiliate has not received evidence of existing insurance coverage that complies section 227.4 of this Part; and

(iii) expenses incurred in connection with cancelling force-placed insurance on properties for which force-placed insurance is not required.

(4) paid losses;

(5) loss reserves;

(6) case reserves; and

(7) incurred but not reported losses.

(d) Commencing on January 1, 2015 and continuing annually thereafter, an insurer writing force-placed insurance in this state shall, within 30 days after filing its annual statement, re-file with the superintendent its force-placed insurance premium rates for any force-placed hazard insurance policy form that has had an actual loss ratio of less than 40 percent for the immediately preceding calendar year.

(e) At least once every three years, an insurer writing force-placed insurance in this state shall re-file with the superintendent its force-placed insurance premium rates, supported by required data and actuarial analysis that is acceptable both professionally and to the superintendent, taking into account the loss experience over the preceding period and an appropriate rating factor for catastrophe exposure and other factors.

(f) Commencing on January 1, 2015, an insurer shall not include as an expense in a force-placed insurance rate filing any expense incurred in connection with insurance tracking.