Chicago-Kent Law Review

Volume 91
Issue 2 *Causation, Liability and Apportionment: Comparative Interdisciplinary Perspectives*

Article 13

5-16-2016

Force-Placed Insurance: The Lending Industry's "Dirty Little Secret"

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FORCE-PLACED INSURANCE: THE LENDING INDUSTRY'S "DIRTY LITTLE SECRET"

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INTRODUCTION

Imagine you have timely paid your mortgage payment every month. You have maintained insurance on your home to protect it in case of an accidental fire or unpredictable weather. But you get a letter in the mail from your bank stating it does not have a record of your insurance policy, and if the bank is not provided with proof of insurance, it will exercise its right to force-place insurance on your home. You call your insurance agent, who informs you that your policy was never renewed and you have not had insurance on your home for the past year. Confused, you reinstate your policy and send proof to the bank. You are relieved that you were able to reinstate your insurance before anything happened to damage your property and that the bank did not need to force-place insurance on your home.

Except the bank still force-places hazard insurance on your property for the year that you did not have it. Despite the fact that that time period has lapsed, the bank selects a force-placed insurance policy, splits the cost of the policy into twelve increments, and tacks it on to your mortgage payment. The force-placed policy costs more than triple what your previous policy cost, with much less coverage. Now your mortgage payment has gone up several hundred dollars to make up for the insurance policy and you are having trouble making payments.

Force-placed insurance ("FPI") is not a new phenomenon, but it is gaining increased awareness in the news and courts because of the impact it has had on homeowners since the Great Recession.[1] During the recession, homeowners that could not afford their mortgages stopped making their mortgage payments and often, their homeowners' insurance payments as

*J.D., May 2015, Chicago-Kent College of Law, Illinois Institute of Technology. Special thanks to Emily A. Herbick.

1. Stacy Johnson, *Next Bank Scandal? Force-Placed Homeowners Insurance*, MONEY TALKS NEWS (Nov. 15, 2010), http://www.moneytalksnews.com/next-bank-rip-off-forced-place-homeowners-insurance/.

well.[2] When this happened, lenders force-placed insurance on the homes, resulting in most foreclosed homes having a force-placed policy.[3]

Most people use lenders, or mortgage servicers, to secure mortgages when purchasing a home. In mortgage contracts, there are generally provisions that require borrowers to maintain hazard insurance on their homes.[4] This makes sense; lenders want to ensure that their collateral is protected in case something causes damage to the property.[5] The insurance clauses in mortgage contracts also generally have provisions stating that if a borrower does not maintain insurance on the property, the bank or lender has the right to force-place insurance on the property to protect its interest and that the borrower is responsible for that cost.[6] Again, this makes sense from the lender's standpoint. If the property is damaged before the borrower pays off the mortgage loan and he cannot afford to fix the damage, the lender loses money on its loan. Force-placed insurance policies are especially important to lenders since the mortgage crisis, which resulted in a surge of foreclosures and property damage suffered as a result of natural disasters.[7]

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")[8] was enacted in order to regulate the financial industry in the wake of the 2008 recession.[9] In 2013, new amendments to Dodd-Frank revealed an effort to regulate the force-placed insurance indus-

2. *Id.*

3. *Id.*

4. Daniel J. Neppl, *Force-Placed Insurance: 3 Things to Watch in 2012*, LAW 360 (Apr. 11, 2012), http://www.law360.com/articles/328781/force-placed-insurance-3-things-to-watch-in-2012; *see also* Caplen v. SN Servicing Corp., 343 F. App'x. 833, 834 (3d Cir. 2009) ("Under the terms of the note and mortgage, the [homeowners] agreed to carry hazard insurance on the property and to provide evidence of insurance to the bank; if they failed to do so, the bank was authorized to 'force place' insurance on the property - that is, to independently obtain insurance and add the cost of the premiums to the principal due under the note - in order to protect its security interest in the property.").

5. Neppl, *supra* note 4 ("Insurance coverage a lender or loan servicer obtains to protect its security interest in real property, force-placed insurance is a perfectly appropriate vehicle to protect a collateralized interest.").

6. *Id.*

7. Karen C. Yotis, *Force-Placed Insurance: Another Multi-Billion Dollar Industry Caught in the Regulatory Cross Hair*, LEXISNEXIS LEGAL NEWSROOM (May 6, 2013, 4:19 PM), http://www.lexisnexis.com/legalnewsroom/insurance/b/insuranceregulation/archive/2013/05/06/force-placed-insurance-another-multi-billion-dollar-industry-caught-in-the-regulatory-cross-hairs.aspx.

8. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

9. *Wall Street Reform: The Dodd-Frank Act*, WHITEHOUSE.GOV, http://www.whitehouse.gov/economy/middle-class/dodd-frank-wall-street-reform (last visited Dec. 20, 2015) ("The most far reaching Wall Street reform in history, Dodd-Frank will prevent the excessive risk-taking that led to the financial crisis. The law also provides common-sense protections for American families, creating new consumer watchdog to prevent mortgage companies and pay-day lenders from exploiting consumers. These new rules will build a safer, more stable financial system—one that provides a robust foundation for lasting economic growth and job creation.").

try and protect homeowners from exorbitant policies.[10] Force-placed insurance is defined in the Dodd-Frank Amendments as "hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage."[11] The act of force-placing insurance on homes that do not have hazard insurance is not very controversial and is certainly not uncommon.[12] However, banking practices regarding force-placed insurance are controversial and have recently come under increased scrutiny.[13] The increased scrutiny is partly because force-placed insurance policies are typically much more costly than insurance policies acquired by consumers on the open market, and usually provide significantly less coverage.[14] This is due to the fact that a typical force-placed insurance policy does not cover personal property or liability coverage in the event a homeowner is liable to another person.[15] Some force-placed insurance policies only cover the outstanding amount due on the loan, which protects lenders' interests, but not homeowners' interests.[16] The scrutiny can also be attributed to the fact that banks sometimes force-place insurance on homes for time periods that have lapsed, as in the above hypothetical.[17]

Additionally, force-placed insurance has been scrutinized because many banks that act as lenders have been accused of receiving kickbacks or unlawful commissions from force-placed insurance companies.[18] Allegedly, mortgage servicers and insurers are conspiring to inflate force-placed

10. CONSUMER FIN. PROT. BUREAU, THE CFPB DODD-FRANK MORTGAGE RULES READINESS GUIDE 6 (2015), http://files.consumerfinance.gov/f/201509_cfpb_readiness-guide_mortgage-implementation.pdf.

11. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1463, 12 U.S.C. 2605(k)(2) (2010).

12. *See* Gallo v. PHH Mortg. Corp., 916 F. Supp. 2d 537, 540-41 (D.N.J. 2012).

13. Neppl, *supra* note 4.

14. Benjamin M. Lawsky, Superintendent, N.Y. State Dep't of Fin. Servs., Regulating in an Evolving Financial Landscape, Lecture at the Thirteenth Annual A.A. Sommer, Jr. Lecture on Corporate, Securities & Financial Law at the Fordham Corporate Law Center (Apr. 18, 2013), *in* 19 FORDHAM J. CORP. & FIN. L. 273, 282 (2014).

15. *Force-Placed Insurance: Tips for Consumers*, COMMONWEALTH OF VA. STATE CORP. COMM'N, http://www.scc.virginia.gov/boi/pubs/fpins_guide.pdf (last visited Dec. 20, 2015).

16. *Id.*

17. *See, e.g.*, Yotis, *supra* note 7 ("Retroactive billing is commonplace.").

18. *See, e.g.*, Gallo v. PHH Mortg. Corp., 916 F. Supp. 2d 537, 542 (D.N.J. 2012) ("Plaintiff alleges that Defendant PHH Mortgage has negotiated and entered into prearranged agreements with force-placed insurance providers, including subsidiaries of Assurant, Inc., such as American Security, whereby Defendant receives fees, payments, commissions, kickbacks, or other things of value from the force-placed insurance providers.").

insurance premiums in order to receive kickbacks and commissions.[19] The extraordinarily high premiums are passed on to homeowners through their mortgage payments or deducted from their escrow accounts.[20] Although mortgage contracts contain clauses granting lenders the right to force-place insurance policies in the event homeowners fail to maintain insurance, borrowers still complain that lenders do not disclose the cost and coverage of the force-placed insurance policies, charge excessive fees in contravention of the loan contract, assess excessive premiums,[21] or fail to inform the borrowers that they were force-placing insurance policies.[22]

This Note will discuss the current practices and resulting settlements within the force-placed insurance industry, the problems with the current practices, and suggest additional changes to further regulate the force-placed insurance industry, such as capping FPI premiums and allowing for penalties to homeowners who let their hazard insurance lapse.

I. CURRENT PRACTICES AND CASE LAW

Force-placing insurance is not a new practice, but has newfound notoriety because of the financial crisis of 2008.[23] As mentioned above, force-placed insurance is a mechanism used by lenders to protect their collateral.[24] Initially, force-placed insurance was not closely regulated.[25] "It was essentially a dirty little secret in the insurance industry."[26] However, more recently, the practice of force-placing insurance has garnered a lot of negative attention.[27] Because of the recent influx in foreclosures, force-placed insurance policies remain in place for longer periods of time.[28] As a result, the force-placed insurance industry has turned "into a multi-billion dollar industry, raised consumer concerns, and generated a complex web of regulatory activity."[29] The banks profit greatly from the force-placed insurance

19. George L. Blum, Annotation, *Liability for Unfair or Deceptive Practices with Respect to Force-Placed Insurance*, *in* 96 A.L.R.6th 125 (2014).

20. *Id.*

21. Lawsky, *supra* note 14, at 283.

22. John M. Flynt, *A Solution to Force-Placed Insurance Litigation for Lenders: Disclosure and Arbitration*, 26 CUMB. L. REV. 537, 545 (1996) (analyzing force-placed insurance in context of car loans).

23. *See generally id.*

24. Lawsky, *supra* note 14, at 282.

25. *Id.* at 283.

26. *Id.*

27. Yotis, *supra* note 7 (citing Press Release, N.Y. Dep't of Fin. Servs., Cuomo Administration Settles with Country's Second Largest 'Force-Placed' Insurer, Leading Nationwide Reform Effort and Saving Millions for Homeowners and Investors (Apr. 18, 2013)).

28. *Id.*

29. *Id.*

industry, with J.P. Morgan Chase, for example, reportedly earning about $600 million through this practice since 2006.[30] Since 2012, five regulatory bodies and all fifty attorneys general have launched investigations into the force-placed insurance industry in an effort to regulate it.[31] This section discusses current FPI practices and the case law that reflects those practices.

A. Current Practices

1. How Force-Placed Insurance Works

Most mortgage contracts require homeowners to maintain hazard insurance on their homes.[32] The contracts further provide that if the borrower does not maintain hazard insurance, the lender has the option of force-placing insurance on the property.[33] To ensure that homeowners keep up with their insurance, lenders require evidence of the insurance.[34] While it is generally in homeowners' best interest to provide proof that they have hazard insurance, lenders typically employ force-placed insurance companies to track loans for evidence of hazard insurance as well.[35] When a loan shows that hazard insurance is not present, the lender force-places the coverage.[36] The policies usually cost several times the cost of insurance policies acquired on the open market.[37] The servicer then pays the force-placed insurer for the policy and subsequently charges the borrower for the premium.[38] Alternatively, in the event that a borrower defaults on his loan payments, an insurance policy is force-placed on the home, and again the mortgage owner is obliged to take over the force-placed premiums.[39] Either way, the banks and force-placed insurers make money, and oftentimes, borrowers are the ones that suffer.

30. Leslie Scism & Erik Holm, *Assurant to Pay $14 Million to Settle New York Probe*, WALL ST. J. (Mar. 21, 2013), http://www.wsj.com/articles/SB10001424127887324557804578374332506552720.

31. Yotis, *supra* note 7.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Paul Sullivan, *Coping with High-Priced Insurance That Lenders Make You Buy*, N.Y. TIMES (Jan. 20, 2012), http://www.nytimes.com/2012/01/21/your-money/home-insurance/how-to-handle-force-placed-insurance-wealth-matters.html?_r=0.

38. Yotis, *supra* note 7.

39. *Id.*

2. Relationship Between Banks and Force-Placed Insurance Companies

a. The Major Players

The main entities in the forced-placed insurance industry are comprised of mortgage owners and investors, mortgage servicers, and force-placed insurers. The Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") are government-sponsored enterprises which "facilitate the flow of capital to residential mortgages, thereby supporting home ownership in America,"[40] and own over 50 million mortgages.[41] Both Fannie Mae and Freddie Mac purchase mortgages from banks.[42] They are indirectly involved in the force-placed insurance industry because, as the mortgage owners, they require continuous hazard insurance on the homes underlying their mortgages.[43] At the same time, Fannie Mae and Freddie Mac require continuous hazard insurance on their mortgages.[44]

Mortgage servicers are also known as lenders, or the banks that loan borrowers money to purchase homes. The largest mortgage servicers are Wells Fargo, Bank of America, Chase, and Citi.[45] These servicers manage mortgage loans for the mortgage owners, Fannie Mae and Freddie Mac.[46]

Next, there are the force-placed insurers that sell the grossly inflated insurance premiums. These companies are not the well-known homeowners insurance companies that advertise to the general public, such as Allstate or State Farm. The force-placed insurance companies are lesser known, and sometimes even subsidiary or "specialty" companies of the mortgage servicers.[47] "Most insurers do not want to write force-placed insurance without the opportunity for detailed underwriting, so the result is that just a few

40. Jason T. Strickland, *The Proposed Regulatory Changes to Fannie Mae and Freddie Mac: An Analysis*, 8 N.C. BANKING INST. 267 (2004).

41. Yotis, *supra* note 7.

42. Strickland, *supra* note 40, at 268.

43. Yotis, *supra* note 7.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Force-Placed Insurance*, LAWYERSANDSETTLEMENTS.COM (May 15, 2012), http://www.lawyersandsettlements.com/lawsuit/forced-placed-insurance-lawsuits.html#.VPOufEthPwI ("Critics say that once the financial firms realized there was profit to be made in force-placed insurance, reportedly to the tune of $5.5 billion in 2010, financial institutions formed their own specialty insurance companies, so they could offer force-placed insurance on properties without insurance coverage.").

carriers dominate the market."[48] Assurant is well-known as one of the largest force-placed insurance companies in the United States.[49] Other main force-placed insurance companies include Balboa, a subsidiary of Bank of America, American Modern, a subsidiary of Berkshire Hathaway and Munich Re, and Australia's QBE Insurance Group.[50]

Lastly, there are the borrowers. Borrowers, or homeowners, are consumers who borrow money from lenders to purchase homes. They are the individuals who end up paying the exorbitant insurance premiums if a force-placed insurance policy is placed on their home.

b. Kickbacks and Commissions

Although mortgage servicers advance several justifications[51] for the high price of force-placed insurance, much of the cost is paid back to the servicer in one form or another,[52] resulting in at least the appearance of dubious business practices. Force-placed insurance premiums contain "a waterfall of compensation streams that flow to the mortgage servicer" in the form of commissions, payments for marketing, and captive reinsurance.[53]

Mortgage servicers are accused of colluding with insurers to inflate force-placed insurance prices.[54] The servicers obtain commissions by purchasing force-placed insurance with agents affiliated with their own company.[55] Further, they are accused of using one insurance company as a front to funnel policies to "lender-affiliated captive reinsurers."[56]

Force-placed insurance companies also profit greatly, both directly and indirectly, from the inflated insurance prices. While it is no great surprise that the force-placed insurance companies profit from the high cost of their product, they further increase profits by paying millions of dollars to banks in exchange for sending business their way.[57] Therefore, the banks and the force-placed insurance companies have incentive to form relation-

48. Sheila Coolidge, *Force-Placed Insurance Update: State and National Regulation Likely*, WOLTERS KLUWER (Sept. 10, 2012), http://www.wolterskluwerfs.com/article/force-placed-insurance-update.aspx.

49. Lawsky, *surpa* note 14, at 283.

50. *Force-Placed Insurance Under Fire Amid US Crisis*, INSIDER Q. (2010), http://www.insiderquarterly.com/force-placed-insurance-under-fire-amid-us-crisis.

51. *See infra* Part I.A.3.

52. *See* Yotis, *supra* note 7.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

ships in which they charge excessive premiums and hand the bill to the consumers. Insurers have additionally been accused of having sham-companies without any employees receiving commissions.[58] Without agents actually working, it is likely that at least some force-placed insurance agencies are not even performing actual services, and are therefore issuing illusory policies. They are, in effect, charging homeowners for nothing, especially in instances where the policy period has already lapsed.

3. Banks' Justifications

Banks and force-placed insurers repeatedly try to justify their force-placed insurance practices by explaining that force-placed insurance actually helps homeowners and the mortgage industry.[59] Their rationale is that mortgage originators and mortgage purchasers, such as Fannie Mae and Freddie Mac, require insurance on homes with mortgages.[60] If not for force-placed insurance, when homeowners allowed their hazard insurance to lapse, the banks would be left with uninsured collateral. Without force-placed insurance, mortgage loan interest rates would surge,[61] thus leaving fewer people able to afford homes. The cost of having uninsured collateral due to lack of hazard insurance would be shifted to the mortgage loan interest rates, thereby affecting homeowners and potential homeowners. Therefore, according to banks, a lack of force-placed insurance would result in fewer home loans.[62]

Further, the banks and insurers defend their practice by claiming the lender-placed insurance, as they call it, is not forced.[63] They purport that people can avoid force-placed insurance by buying their own insurance.[64] This, however, presumes that the homeowners are not living in high-risk areas that open market insurers are hesitant to insure. Banks claim that there are processes in place before the insurance is force-placed which notifies borrowers of the potential lapse in their insurance polices, thereby delaying the placement of force-placed insurance.[65] One such process in-

58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* (discussing American Security Insurance Company's practice of investigating homeowners' insurance policies if they do not have proof of insurance and sending homeowners multiple letters regarding their lack of insurance before force-placing insurance on the homes).

cludes notifying borrowers multiple times that "expensive force-placed insurance is imminent if they don't act to renew their coverage."[66]

Banks also justify force-placed insurance practices by asserting that "regular" insurers (the insurers that homeowners use on the open market—those that are not force-placed insurers) have stopped insuring high-risk areas, such as those affected by hurricanes, for example.[67] Force-placed insurance then steps in to insure the high-risk properties. Banks take the position that by force-placing insurance they are helping homeowners that live in high-risk areas who would otherwise be unable to obtain hazard insurance. Unlike regular insurers, force-placed insurance companies do not have discretion over which homes they will or will not insure. Consequently, forced-placed insurers allow these homeowners to obtain hazard insurance, which they will likely need to utilize at some point. Banks and insurers justify the heightened cost of force-placed insurance by noting that force-placed insurance carriers are required to place the insurance immediately and "accept any property, in any condition, regardless of age, prior damage, prior insurance claims, exposure to hurricanes, floods, wildfires, sinkholes, and other underwriting factors," unlike regular insurance companies that have the option of declining to insure properties that pose higher risks.[68] Traditional insurers are also able to adjust the price of insurance based on a home's "elevation, proximity to brush, proximity to coastline, fire protection, burglary protection, and hurricane damage mitigation," while force-placed insurers are unable to use these adjustments in contemplating policy coverage.[69] Because the force-placed insurance must be placed as soon as possible, the insurance companies are unable to visit and inspect the house as a regular insurance company would.[70] Additionally, they argue that properties with lapsed policies pose a greater risk, and therefore, the inflated rates reflect that risk.[71]

Lastly, banks argue they have the right to force-place these insurance policies. This, of course, is based on the language in mortgage contracts, which requires homeowners to maintain hazard insurance on their properties during the duration of the loan. If the insurance policy lapses, the borrower is "in technical default."[72] Therefore, banks argue they are only doing what is permitted in the mortgage contract.

66. Johnson, *supra* note 1.
67. *Id.*
68. Yotis, *supra* note 7.
69. *Id.*; *see also* Johnson, *supra* note 1.
70. Johnson, *supra* note 1.
71. *Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50.
72. *Id.*

4. New Regulations: Dodd-Frank and State Interventions

a. Dodd-Frank Wall Street Reform Act

In the wake of the Great Recession, Dodd-Frank has emerged to regulate the financial industry and put an end to lenders' deceptive business practices. Based on concerns with exorbitant force-placed insurance profits, commissions, kickbacks and billing practices, many agencies have started investigating and regulating the force-placed insurance industry.[73] These include the Federal Housing Finance Agency, the Consumer Financial Protection Bureau, Fannie Mae, Freddie Mac, the National Association of Insurance Commissioners, and individual states.[74]

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act.[75] The purpose of Dodd-Frank was to "promote financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, [and] to protect consumers from abusive financial services practices."[76] Title X of Dodd-Frank created the Consumer Financial Protection Bureau ("Bureau") to investigate violations of consumer protection laws.[77] Dodd-Frank allows the Bureau to prohibit deceptive and abusive practices by financial institutions and enact rules regarding consumer protection statutes.[78] Pursuant to section 1061, the Bureau implemented Regulation Z, which amended the Truth in Lending Act ("TILA").[79] In 2013, the Bureau published final rules "that make major changes to the mortgage loan servicing requirements of Regulation X, which includes the provision relating to FPI."[80]

Dodd-Frank also amended the Real Estate Settlement Procedures Act of 1974 ("RESPA")[81] (Regulation X) in addition to TILA (Regulation Z) in

73. Edward Wyatt, *A Mortgage Practice Gets a Closer Look by Regulators*, N.Y. TIMES (Mar. 26, 2013), http://www.nytimes.com/2013/03/27/business/economy/regulators-review-costs-of-force-placed-insurance.html.

74. *Id.*

75. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

76. H.R. 4173, 111th Cong. (2010).

77. Neppl, *supra* note 4.

78. Thomas P. Vartanian et al., *Title X Overview: Bureau of Consumer Financial Protection*, AM. BANKERS ASS'N, http://www.aba.com/Issues/RegReform/Pages/RR10_overview.aspx (last visited Dec. 20, 2015).

79. Truth in Lending Act (Regulation Z), 12 C.F.R. §§ 1026.1-1026.60 (2015).

80. Yotis, *supra* note 7 (citing Mortgage Servicing Rules under the Real Estate Settlement Act (Regulation X); Final Rule, 78 Fed. Reg. 10,696 (Feb. 14, 2013) (to be codified at 12 C.F.R. pt. 1024)).

81. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (codified as amended at 12 U.S.C. §§ 2601-2617 (2010)).

an effort to regulate lenders' FPI practices.[82] Pursuant to the new regulations, lenders must have a reasonable basis to believe that a borrower has not maintained hazard insurance on his or her home before placing force-placed insurance on a home.[83] The amendments to RESPA set forth requirements for lenders to acquire force-placed insurance.[84] The requirements include, among other things, that lenders provide written notice to borrowers[85] and send a second written notice no earlier than 30 days after sending the first notice,[86] in addition to having a reasonable basis to believe the borrower failed to maintain hazard insurance.[87] Most importantly, the amendments also require all force-placed insurance charges be bona fide and reasonable.[88]

The amendments to TILA set forth regulations pertaining to how banks and lenders handle mortgage payments and accounts.[89] Regulation Z provides that loan servicers cannot "fail to credit a periodic payment to the consumer's loan account as of the date of receipt . . . ."[90] This is relevant because banks that implement force-placed insurance policies sometimes fail to credit mortgage payments when the homeowners cannot afford to pay the mortgage payment on top of the force-placed insurance premium. This has other ramifications for buyers. As mentioned above, when banks fail to credit mortgage payments, they are able to report to credit reporting agencies that the borrower is in arrears. In some instances, lenders may even threaten to foreclose on the house due to unpaid FPI premiums.[91] Borrowers' credit is then negatively impacted, which in turn may impact other areas of their lives.

On December 18, 2013, Fannie Mae announced new requirements for force-placed insurance practices.[92] The new requirements address many of

82. *Id.* (codified as amended at 15 U.S.C. §§ 1601-1666j (2010)).

83. Real Estate Settlement Procedures Act (Regulation X), 12 C.F.R. § 1024.37(b) (2015).

84. *Id.* § 1024.37(c)(1).

85. *Id.* § 1024.37(c)(1)(i).

86. *Id.* § 1024.37(d)(1).

87. *Id.* § 1024.37(b).

88. *Id.* § 1024.37(h).

89. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1464, 15 U.S.C. § 1639f(a) (2010) ("In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).").

90. *Id.* § 1026.36(c)(1)(i).

91. *See* Sullivan, *supra* note 37.

92. FANNIEMAE, SERVICING GUIDE ANNOUNCEMENT SVC-2013-27: LENDER-PLACED INSURANCE REQUIREMENTS (Dec. 18, 2013), https://www.fanniemae.com/content/announcement/svc1327.pdf.

the issues regarding force-placed insurance that concern regulators and consumers. The requirements provide that FPI premiums "charged to the borrower or reimbursed by Fannie Mae *must exclude* any lender-placed insurance commission or payments earned or received by the servicer, or other entities or individuals affiliated with the servicer . . . ."[93] (emphasis added). The requirements additionally prohibit incentive-based commissions and affiliations between mortgage servicers and forced-placed insurance carriers.[94] These changes are significant because they act to limit the enormous profit lenders receive from gouging consumers.

The Fannie Mae requirements also require lenders to certify they comply with Fannie Mae's requirements regarding force-placed insurance, including its cost; the servicers must be able to provide copies of force-placed insurance policies and contracts between the servicer and force-placed insurance companies; and servicers must respond to Fannie Mae's requests for information within 30 days of the request.[95] This helps ensure lenders are acting in good faith when placing FPI on borrowers' properties and are not forcing the policies purely for unearned, exorbitant profits.

b. State-By-State Regulations

While Dodd-Frank relates only to federal consumer protections, states can independently investigate force-placed insurance practices.[96] "State regulators also have broad powers at their disposal. For example, regulators in Illinois, New York and elsewhere have the power to enforce state insurance laws and promulgate rules and regulations necessary to implement those laws."[97] State regulators are able to reject insurance policies that may be considered "unjust, unfair, inequitable, ambiguous, misleading, inconsistent, deceptive, contrary to law or to the public policy of [a] State."[98]

New York's State Department of Financial Services ("NYDFS"), for example, has authority over banks and insurers in New York.[99] NYDFS has been investigating forced-placed insurance practices and insurers within the state.[100] NYDFS conducted public hearings on force-placed insurance prac-

93. *Id.*

94. *Id.* ("The prohibited lender-placed insurance commissions include any incentive-based compensation regardless of its designation as commission, bonus, fees, or other types of payments from the servicer's lender-placed insurance carrier.").

95. *Id.*

96. Neppl, *supra* note 4.

97. *Id.*

98. *Id.* (citing 215 ILCS 5/143 (2014) of the Illinois Insurance Code).

99. *Id.*

100. *Id.*

tices in May 2012 in an effort to obtain information on deceptive force-placed insurance practices that potentially violate state insurance and consumer protection laws.[101] It also sent a warning letter to Ocwen, a mortgage servicer known for force-placing insurance policies on homeowners, written by Superintendent of Financial Services, Benjamin Lawsky.[102] Lawsky was concerned with the legitimacy of the commissions and fee arrangements between mortgage servicers and force-placed insurance companies.[103] The investigation into the force-placed insurance industry uncovered "a lack of competition [in the force-placed insurance industry], high prices and low loss ratios, all of which hurt homeowners."[104] To further investigate the relationship between the lenders and force-placed insurance companies, NYDFS subpoenaed thirty-one additional financial institutions in order to obtain more information on the inner-workings of the industry.[105] The investigation was intended to increase transparency in force-placed insurance practices and hold banks accountable for gouging consumers.[106] It resulted in a large settlement by Assurant, one of the largest force-placed insurance companies in the country.[107]

B. Settlements and FPI Litigation

Recently, numerous class action lawsuits have been settled between homeowners and banks with suspicious force-placed insurance practices.[108]

101. *Id.*

102. Adam D. Maarec, *NYDFS Letter A Warning to Servicers on LPI*, AM. BANKERS. INS. ASS'N (Aug. 6, 2014), http://bankinsuranceconnection.aba.com/2014/08/nydfs-letter-warning-to-servicers-on-lpi.html; *see also* Letter from Benjamin M. Lawsky, Superintendent, N.Y. Dep't of Fin. Servs., to Timothy Hayes, Gen. Counsel, Ocwen Fin. Corp. (Aug. 4, 2014), http://www.dfs.ny.gov/about/letters/ltr140804_ocwen.pdf.

103. Letter from Benjamin M. Lawsky to Timothy Hayes, *supra* note 102.

104. *Lender-Placed Insurance*, NAT'L ASS'N OF INS. COMM'RS (Oct. 1, 2015), http://www.naic.org/cipr_topics/topic_lender_placed_insurance.htm.

105. Letter from Benjamin M. Lawsky to Timothy Hayes, *supra* note 102.

106. Press Release, Dep't of Fin. Servs., Department of Financial Services Expands Probe into Force-Placed Insurance, Demanding Explanation for High Rates; Will Hold Public Hearings (Apr. 5, 2012), http://www.dfs.ny.gov/about/press/pr1204051.htm.

107. *See infra* Part I.B; *see also* Steve Viuker, *NY State Reaches Force-Placed Insurance Settlement*, TOTAL MORTGAGE (Apr. 3, 2013), https://www.totalmortgage.com/blog/news-2/ny-state-reaches-force-placed-insurance-settlement/21271.

108. *See, e.g.*, Order Granting Final Approval to Class Action Settlement, Hall v. Bank of Am., N.A., No. 12-cv-22700, 2014 WL 7184039 (S.D. Fla. Dec. 17, 2014) ($228 million settlement); Order Granting Final Approval to Class Action Settlement, Diaz v. HSBC USA, N.A., No. 1:13-cv-21104, 2014 WL 5488161 (S.D. Fla. Oct. 29, 2014) ($32 million settlement); Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement, Saccoccio v. JP Morgan Chase Bank, N.A., 297 F.R.D. 683 (S.D. Fla. Feb. 28, 2014) ($300 million settlement); Stipulation and Settlement Agreement, Fladell v. Wells Fargo Bank, N.A., No. 0:13-cv-60721, 2014 WL 10017434, *1 (S.D. Fla. Mar. 17, 2014) ($19.5 million settlement).

However, the settlements' effectiveness is questionable. Force-placed insurance is a highly lucrative multi-billion dollar industry.[109] In comparison, settlements are relatively low, making it worthwhile for lenders to pay the settlements and continue their dubious force-placed insurance practices.

The National Mortgage Settlement, "the largest consumer financial protection settlement in U.S. history,"[110] provided a $50 billion settlement for homeowners affected by the five largest mortgage servicers in the United States.[111] In the National Mortgage Settlement, the federal government and forty-nine state attorneys general entered into the settlement with Ally/GMAC, Bank of America, Citi, J.P. Morgan Chase, and Wells Fargo in February 2012.[112]

Assurant, one of the largest force-placed insurers in the United States,[113] recently settled with New York state regulators over its force-placed insurance practices in early 2013.[114] Assurant paid a $14 million penalty to New York as well as restitution to homeowners affected by its force-placed insurance practices.[115] This settlement emerged after New York Department of Financial Services opened an investigation into the force-placed insurance industry in 2012,[116] and condemned the relationship between banks and force-placed insurance companies as being "highly profitable for the companies at the expense of consumers."[117]

In May 2013, Wells Fargo and QBE similarly settled a class action suit regarding their force-placed insurance practices.[118] The suit alleged Wells Fargo "unfairly" took commissions on the force-placed insurance policies.[119] In that settlement, Wells Fargo and QBE agreed to pay $19.5 million to affected homeowners, after homeowners alleged, among other

109. Jeff Horwitz, *Mortgage Servicers Go to Extreme Lengths to Skirt New Regulations*, PBS NEWSHOUR (July 31, 2014, 7:12 PM), http://www.pbs.org/newshour/rundown/mortgage-servicers-create-multi-million-dollar-shell-companies-skirt-regulations/.

110. *About the Settlement*, JOINT ST.-FED. NAT'L MORTG. SERVICING SETTLEMENTS, http://www.nationalmortgagesettlement.com/about (last visited Dec. 20, 2015).

111. *Id.*

112. *Id.*

113. Lawsky, *supra* note 14, at 283.

114. Scism & Holm, *supra* note 30.

115. *Id.*

116. *See supra* Part. I.A.4.ii.

117. Scism & Holm, *supra* note 30.

118. Stipulation and Settlement Agreement at 1, Williams v. Wells Fargo Bank, N.A., No. 1:11-cv-21233 (S.D. Fla. 2011).

119. Class Action Complaint at 30–31, Williams v. Wells Fargo Fin., No. 1:11-cv-21233, *supra* note 118.

things, breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, and breach of fiduciary duty.[120]

Additionally, in October 2013, J.P. Morgan Chase and Assurant settled a force-placed insurance class action lawsuit for $300 million.[121] The suit alleged that the two companies forced homeowners into the augmented insurance contracts and received kickbacks.[122] The settlement provides some relief for the affected homeowners and also provides that J.P. Morgan must stop collecting fees for force-placed insurance.[123]

HSBC Bank also settled a class action lawsuit in Florida in 2014 for $32 million.[124] HSBC, like the aforementioned lenders, was alleged to have overcharged customers for force-placed insurance.[125]

Finally, Bank of America entered into a settlement in a Florida class action in April 2014 in which it agreed to pay $228 million.[126] The suit accused Bank of America of overcharging homeowners for force-placed insurance[127] and participating in a kickback scheme with force-placed insurance companies.[128] Bank of America was also accused of violating the U.S. Racketeer Influenced and Corrupt Organizations Act ("RICO"), though the company denied any wrongdoing.[129]

II. THE PROBLEM WITH CURRENT BANKING PRACTICES

The current banking practices have resulted in collusion between banks and insurers[130] with borrowers being charged outrageous insurance

120. Stipulation and Settlement Agreement, Fladell v. Wells Fargo Bank, N.A., No. 0:13-cv-60721, 2014 WL 10017434, *1 (S.D. Fla. Mar. 17, 2014); Erica Teichert, *Wells Fargo, QBE Reach $19M Force-Placed Insurance Deal*, LAW360 (May 13, 2013, 4:45 PM), http://www.law360.com/articles/441054/wells-fargo-qbe-reach-19m-force-placed-insurance-deal

121. Saccoccio v. JP Morgan Chase Bank, N.A., 297 F.R.D. 683 (S.D. Fla. Feb. 28, 2014).

122. *Id.*

123. *Id.*

124. Courtney Coren, *HSBC Force-Placed Insurance Settlement Receives Final Approval*, CLASS ACTIONS (Oct. 31, 2014), http://topclassactions.com/lawsuit-settlements/lawsuit-news/43234-hsbc-force-placed-settlement-receives-final-approval/; *See also* Order Granting Final Approval to Class Action Settlement, Diaz v. HSBC USA, N.A., No. 1:13-cv-21104, 2014 WL 5488161 (S.D. Fla. Oct. 29, 2014).

125. *Id.*

126. Order Granting Final Approval to Class Action Settlement, Hall v. Bank of America, N.A., No. 12-cv-22700, 2014 WL 7184039 (S.D. Fla. Dec. 17, 2014).

127. *Id.*

128. Dena Aubin, *Bank of America, QBE to Settle Insurance Lawsuit for $228 Million*, REUTERS (Apr. 7, 2014), http://www.reuters.com/article/2014/04/07/us-bankofamerica-settlement-idUSBREA361FJ20140407.

129. *Id.*

130. *Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50 ("There is no doubt that there is collusion between the banks and insurers,") (internal quotes omitted).

premiums. This section discusses the problems with current FPI practices. The main issues are that the current banking practices are abusive and deceptive, and settlements are insufficient to deter the lenders and insurers from continuing to gouge borrowers for force-placed insurance policies.

A. Abusive and Deceptive Practices

Lenders' force-placed insurance practices can happen to anyone in any income bracket; however, the current practices disproportionately affect those with lower incomes.[131] As discussed above, most homes in foreclosure have force-placed insurance policies on them.[132] This may occur after a borrower stops making mortgage payments, but it may also occur when borrowers are in financial trouble and close to foreclosure.[133] The policy is usually divided into twelve increments and added to a borrower's mortgage payment. Borrowers facing financial difficulties may stop making insurance payments in an effort to save extra money. In that event, a lender will force-place an insurance policy on the borrower's home.[134] Bearing in mind the extraordinary expense of force-placed policies, this can add several thousand dollars onto the borrower's mortgage loan, resulting in a significant increase to a borrower's monthly mortgage payment.[135] These borrowers, already facing financial difficulties, often cannot afford that extra cost. This results in a financial burden that is too great for the borrower, causing a foreclosure when he cannot make the excess payment on top of his original mortgage payment.[136]

Furthermore, because of the slew of entities involved, merely bringing a lawsuit for deceptive practices is a major hurdle.[137] In one mortgage loan, there may be servicers, affiliates, subsidiaries, successors, assignees, and holding companies involved.[138] Because of how many companies are potentially involved, it is difficult in some cases to even name a defendant.[139] In *Roberts v. Wells Fargo Bank, N.A.*, for example, the plaintiff named Assurant as one of the defendants in his claims for unjust enrichment and

131. Lawsky, *supra* note 14 ("[T]hese are folks who are already teetering on the edge of financial disaster.").

132. Johnson, *supra* note 1.

133. *Id.*

134. *Id.*

135. *See, e.g.*, *id.*

136. Lawsky, *supra* note 14.

137. Doug Scott MacGregor, *Force-Placed Insurance in Residential Real Estate*, *in* 92 APPLEMAN: CURRENT CRITICAL ISSUES INS. L. (2014).

138. *Id.*

139. *Id.*

aiding and abetting a breach of fiduciary duty.[140] Assurant claimed it was a holding company which owns other companies who are responsible for selling force-placed insurance and thus not responsible.[141] Assurant's motion to dismiss was granted, despite its recognition as one of the largest force-placed insurance providers.[142]

Moreover, force-placed insurance practices are abusive because they eliminate competition.[143] In an uncorrupted market, competition keeps prices lower for consumers.[144] Companies must have reasonable prices or they risk losing consumers to a similar company that charges less for a similar product or service. Consumers are expected to shop around because it is in their best interest to obtain the most economically feasible service. However, in the force-placed insurance industry, lenders choose the force-placed insurance policy and charge the borrower for the cost.[145] This means there is no one seeking the best deal or the lowest price, which creates "reverse competition."[146] "Reverse competition is a market condition that tends to drive up premium prices to the consumers, as the lender is not motivated to select the lowest price for coverage since the cost is born by the borrower."[147] Not only are the lenders *not* looking out for the borrower's best interest, they actually have a financial stake in the force-placed insurance companies, either through ownership or through kickbacks and commissions.[148] Lenders, therefore, have an incentive to select the most expensive policy. The higher the force-placed insurance premium, the greater the profit for force-placed insurance companies, and consequently, the higher the kickback or commission to the lender. Not surprisingly, FPI premiums quadrupled between 2004 and 2011,[149] leading to increased profits for lenders and insurers. In one instance in Florida, a homeowner purchased a $4,000 per year insurance policy on the open market.[150] After her servicer claimed the policy lapsed, it force-placed a $33,000 per year insur-

140. *Id.*
141. *Id.*
142. *Id.*
143. *See Lender-Placed Insurance*, *supra* note 104.
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*; *see also supra* Part I.A.2.ii.
149. Yotis, *supra* note 7.
150. Johnson, *supra* note 1.

ance policy on her home.[151] Of that $33,000 premium, the mortgage servicer received a $7,000 commission for the policy.[152]

Further, lenders have commonly forced policies on lapsed time periods.[153] This practice is known as "retroactive insurance."[154] Retroactive insurance, however, is not always unjustified; sometimes insurers backdate insurance coverage to cover losses that were sustained while the property was not covered.[155] Unfortunately, in many cases, force-placed insurance is backdated to cover periods where no losses were incurred, but coverage still did not exist.[156] Thus, lenders and force-placed insurance companies are essentially collecting huge premiums for time periods that they know they will never have to pay claims on because those times have come and gone without incident.[157]

Additionally, as it is the lender's responsibility to track insurance coverage and inform homeowners when the coverage no longer exists, lenders are incentivized to refrain from informing homeowners of lapses in coverage. In doing so, lenders can retroactively apply force-placed insurance for longer time periods, maximizing profits. If the lender informs the homeowner immediately and the homeowner then replaces its lapsed policy, the lender recoups less from the force-placed insurance policy. "If a servicer does a poor job of insurance tracking and only notifies the borrower 15 months after voluntary coverage lapses, the servicer can retroactively bill for 15 months."[158] Not only does this potentially harm homeowners, it decreases efficiency.[159] The Consumer Federation of America ("CFA") proposed barring retroactive insurance charges more than 60 days old, which would promote efficiency in tracking insurance coverage.[160] However, the CFA's proposed rule was unsuccessful.[161]

151. *Id.*

152. Julie Patel, *Florida Tops the Nation in Force-Placed Insurance*, SUN SENTINEL (July 8, 2012), http://articles.sun-sentinel.com/2012-07-08/business/fl-force-placed-insurance-20120708_1_force-placed-policies-force-placed-coverage-force-placed-insurance.

153. *Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50.

154. *Id.*

155. *Id.*

156. *See e.g.*, Rule 23 Class Action Complaint & Jury Trial Demand, Holmes v. Bank of America, N.A., No. 3:12-cv-00487, 2013 WL 2317722 (W.D.N.C. Aug. 6, 2012).

157. *See e.g.*, Sullivan, *supra* note 37 (noting a case in which Wells Fargo retroactively placed a FPI policy on a homeowners' property for a year in which no damage occurred to the property).

158. Bibeka Shrestha, *New CFPB Rule Clamps Down on Force-Placed Insurance*, LAW360 (Jan. 18, 2013), http://www.law360.com/articles/408734/new-cfpb-rule-clamps-down-on-force-placed-insurance (quoting Bob Hunter, director of insurance for the Consumer Federation of America).

159. *Id.*

160. *Id.*

161. *Id.*

On the other hand, disallowing retroactive force-placed insurance may incentivize homeowners to allow their policies to lapse to see how long they can get away without paying for coverage. Without the threat of back-dated insurance, homeowners would face no penalty for allowing their coverage to lapse.

B. Settlements Not Enough to Deter Lenders

Settlements provide an easy way out for banks that engage or have engaged in the past in unfair or deceptive force-placed insurance practices. Settlements do not deter banks from continuing force-placed insurance practices because banks make so much money implementing force-placed insurance, while settlements are very low in comparison to their profit margins.[162] The settlements are necessary to compensate homeowners affected by force-placed insurance practices; however, many borrowers who are eligible for relief under the class action lawsuits are not in the financial position to take on the banks on their own.[163] Typically, the borrowers that do deal with force-placed insurance are in poor financial positions.[164]

While settlements provide some relief to homeowners, most homeowners only recover a fraction of what they paid in force-placed insurance premiums. In the J.P. Morgan and Citigroup settlement, homeowners only recouped 12.5% of the premiums they paid for force-placed insurance.[165] This is better than nothing, but not near the amounts the homeowners were unfairly charged.[166] Furthermore, banks do not have to take responsibility for their actions because it is often written into settlements that the lender does not admit to the deceptive practices of which it is accused.[167] In its settlement, Bank of America Spokesperson Richard Simon stated, "Bank of America believes that its lender-placed hazard insurance practices comply fully with state and federal law. Nevertheless, in order to put an end to this

162. Scism & Holm, *supra* note 30 (J.P. Morgan Chase reportedly earned $600 million from 2006 through 2013).

163. Yotis, *supra* note 7.

164. *See supra* Part II.A.

165. Christina Rexrode, *In the Battle over Forced Insurance, Homeowners are Beating the Banks*, MARKETWATCH BLOGS (Feb. 19, 2014, 12:36 PM), http://blogs.marketwatch.com/thetell/2014/02/19/in-the-battle-over-forced-insurance-homeowners-are-beating-the-banks/.

166. *Id.* ("The settlements also require the banks to stop accepting commissions from the insurance companies for six years.").

167. *See, e.g.*, Hall v. Bank of America, N.A., No. 12-cv-22700, 2014 WL 7184039 (S.D. Fla. Dec. 17, 2014). Contrast the settlement in *Hall* with Sullivan, *supra* note 37 (Noting that in one settlement, Chase "had to stop both taking commissions from selling force-placed insurance and requiring insurance above the loan balances.")

litigation, we have reached a settlement that is acceptable to all parties."[168] The current unfair FPI practices are perpetuated when banks can refrain from admitting any wrongdoing.

III. What Government Authorities Should Do To Fix Current Practices

The Dodd-Frank amendments are a step in the right direction to help combat deceptive FPI practices. However, the amendments are not enough. To remedy the rampant problems in the force-placed insurance industry, Congress should: (1) impose stricter requirements on both lenders and insurers; (2) criminalize and prosecute claims for deceptive and abusive practices by lenders and insurers; and (3) impose a small fee on homeowners who allow their insurance to lapse.

A. Impose Stricter Requirements on Lenders and Insurers

Banks and lenders should be prohibited from accepting kickbacks and commissions from force-placed insurers. This solution is proposed by the Federal Housing Finance Agency and would "bar banks from charging fees and commissions on FPI policies."[169] Admittedly, RESPA prohibits these to an extent. RESPA prohibits fee-splitting and charging fees for services that are not performed.[170] It provides, "all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable."[171] However, nothing defines "bona fide and reasonable."[172] The ambiguous language contained within RESPA regarding "bona fide and reasonable" charges means that the kickbacks and/or commissions are still widely prevalent. Barring these fees would require both lenders and insurers to be more transparent about where their money comes from and where it goes. It would also cut down the cost of force-placed insurance premiums, as the added unearned compensation to banks would be eliminated.

One of the criticisms with the current practices is that lenders are able to force-place insurance for lapsed time periods despite the absence of

168. Aubin, *supra* note 128.

169. Yotis, *supra* note 7 (citing Lender Placed Insurance, Terms and Conditions, 78 Fed. Reg. 19,263 (Mar. 25, 2013) (Notice, Input accepted until May 28, 2013)).

170. 12 C.F.R. § 1024.37(h) (2015); *see also Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50.

171. 12 C.F.R. § 1024.37(h) (2015); *see also Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50.

172. *Force-Placed Insurance Under Fire Amid US Crisis*, *supra* note 50.

property damage. Thus, banks and insurers should be prohibited from force-placing insurance for time periods that have lapsed and that they know will never be paid out. Lenders and insurers should not benefit from time periods in which no damage was caused to the property even though no insurance coverage existed. But, not allowing any type of compensation may incentivize homeowners to allow their hazard coverage to lapse. In order to prevent this, the rules could require insurance to be force-placed for past time periods, but limit it to market value. The market value cost will provide a cap on lenders and insurers. By doing this, homeowners do not have an incentive to forgo hazard insurance and at the same time banks and insurers would not benefit excessively from the lapse.

Similarly, another solution to help resolve the deceptive force-placed insurance practices is to require real coverage from the force-placed insurance policies. As noted above, many force-placed insurance policies provide significantly less coverage than a policy acquired on the open market. By requiring force-placed insurance to provide meaningful coverage, it would ensure the force-placed policies are not illusory and would serve a purpose other than purely increasing lenders' and insurers' profits.

B. Prosecute Claims

In addition to imposing stricter requirements on force-placed insurance practices, the current deceptive practices in the force-placed insurance industry should be criminalized and prosecuted. The settlements that banks enter into with homeowners do provide the homeowners with some relief. However, these settlements do little to deter banks from continuing their FPI practices. It is cheaper for banks to settle with some homeowners and continue to gouge the rest of the homeowners with current force-placed insurance practices. Lenders and force-placed insurance companies need the threat of criminal liability to deter deceptive and abusive practices. This could include harsher penalties on lenders and insurers that engage in the deceitful force-placed insurance practices. Large monetary penalties imposed by the government will go a long way in ensuring the force-placed insurance industry ceases its harmful practices.

C. Cap Force-Placed Insurance Premiums and Allow Small Penalties to Homeowners Who Allow Insurance to Lapse

In addition to criminalizing kickbacks and imposing harsher penalties on banks that employ problematic FPI practices, Congress could impose an industry-wide cap on force-placed insurance by prohibiting lenders from charging more than the market rate. This would prevent banks from charging overly excessive force-placed insurance premiums in the first place. It would also eliminate lenders' incentives to choose force-placed insurance policies that cost the most and instead focus on the policy's coverage. The lenders would be prevented from making large profits off of illusory insurance and would therefore be forced to focus on obtaining the best policy for consumers to adequately protect their interests.

However, as previously noted, merely imposing a cap on the force-placed insurance industry incentivizes homeowners to allow their policies to lapse. In the worst-case scenario, homeowners will only have to pay the going market rate when the bank inevitably force-places insurance on their property. While the current practices are extremely unfair to homeowners, borrowers should not be allowed to profit or take advantage of potentially new limitations on lenders. Therefore, in addition to limiting force-placed insurance policies to market rates, a small penalty could be imposed on homeowners who allow their hazard insurance to lapse. By imposing the penalty on homeowners, banks would still make some profit off of force-placed insurance policies, but homeowners would not be taken advantage of in the process.

CONCLUSION

Although Congress has made some strides in regulating the force-placed insurance industry, more regulation and reform is still needed. Lenders and insurers must not be allowed to continue their harmful practices in order to profit excessively off of borrowers. While force-placed insurance will inevitably cost more than insurance acquired on the open market because of the high-risk properties that are generally insured in this manner, the excessive cost due to kickbacks and commissions must be drastically cut. Banks in violation of the regulations need to be subjected to harsher penalties so they are not incentivized to continue the unfair FPI practices that are prevalent today. Banks and force-placed insurers should be required to provide more detailed information about their FPI practices, especially with regard to premiums and commissions, in order to ensure greater transparency in the force-placed insurance industry. By capping the cost of force-placed insurance, as well as imposing a nominal penalty on homeowners who allow their hazard insurance to lapse, Congress could put an end to the current force-placed insurance dilemma.