

**Outlook Live Transcript**  
**2019 Interagency Flood Insurance Update on Private Flood Insurance Rule**  
**June 18, 2019**

**Jean Roark – Facilitator:**

Good afternoon and welcome to Outlook Live. I'm Jean Roark with the St. Louis Fed, and I'll be your moderator. Today's topic is [Interagency Flood Insurance Update on Private Flood Insurance Rule](#). Shortly, I'll turn our call over to Lanette Meister who will facilitate our conversation. I'll run through our call logistics on slide 2.

Upon logging into the webcast, you are automatically set up to listen to our webinar through your computer speakers. This option allows you to sit back and enjoy the webinar. A quick logistical note, we encourage you to listen to the audio through your PC, but if you need a phone option, we do have a limited number of lines available. If you choose to listen to the audio through your phone, you'll need to download the presentation and follow along manually on your computer.

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If you're interested in that, you must do two things. First, you need to be registered for the session and second, you must complete the post-session survey. And feel free to visit our website at [www.consumercomplianceoutlook.org](http://www.consumercomplianceoutlook.org) and there you can find session materials and eventually the archive of today's webinar.

All right. Let me cover our legal language before turning our call over to our speakers. The opinions expressed in this presentation are intended for informational purposes and are not formal opinions of nor binding on the Board of Governors of the Federal Reserve System or any other agency. And with all that out of the way, let's get started, and I'll turn our call over to Lanette Meister.

**Lanette Meister – Federal Reserve Board (FRB):**

Thanks, Jean. Good afternoon, everyone. Welcome to the interagency webinar on compliance with the Private Flood Insurance Rule. My name is Lanette Meister. I am a senior policy analyst at the Federal Reserve. Joining me today we have Vivian Wong, also from the Federal Reserve Board, Ira Marshall from the Farm Credit Administration, Simin Ho and Navid Choudhury from the Federal Deposit Insurance Corporation, Sarah Chung from the National Credit Union

Administration, and Rhonda Daniels and Sadia Chaudhary from the Office of the Comptroller of the Currency.

Now let's begin on slide 4. The topic of private flood insurance has been part of our national flood dialogue for decades. Congress originally established the National Flood Insurance Program, or NFIP, in response to growing flood losses that strained insurance companies and escalated the costs of disaster relief to U.S. taxpayers. Shortly thereafter, Congress established the flood insurance purchase requirement for certain loans made by regulated lenders in special flood hazard areas.

Now, more than 50 years later, we're seeing increased availability of private flood insurance and a new regulation to guide lenders in evaluating those policies. During today's program, we'll discuss the Private Flood Insurance Rule the agencies issued earlier this year that takes effect on July 1, 2019. We will discuss key provisions of the rule. We also will discuss some steps you might consider taking within your institution to prepare for compliance with the new rule.

We've received a number of questions in advance of this session, so I've allowed plenty of time today to respond to those questions. As our Outlook Live host mentioned, if you have questions during the session, please use the link to send them to us. The content of this webinar including the Q&A will be archived on the Outlook Live site for your ongoing reference.<sup>1</sup>

Now I'd like to turn the presentation over to Navid, who will provide an overview of the Private Flood Insurance Rule beginning on slide 5.

**Navid Choudhury – Federal Deposit Insurance Corporation (FDIC):**

Thank you, Lanette. As you know, consumers can obtain flood insurance coverage through the federally sponsored NFIP or from private insurance providers. As you are aware, the federal flood insurance statutes govern the NFIP and also require the purchase of flood insurance in connection with a loan made, increased, extended, or renewed by a federally-regulated lending institution (referred to as a “lender” in this webinar) when the loan is secured by improved real estate or a mobile home located in a special flood hazard area in a participating community.

The minimum amount of flood insurance required for the term of the loan is the lesser of: the outstanding principal balance of the loan; or the maximum amount of insurance available under the NFIP for the particular type of property; or the insurable value of the property. We refer to this requirement as a “flood insurance purchase requirement” in this webinar.

In 2012, Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters) to amend the federal flood insurance statutes and also to stimulate the private flood insurance market by directing lenders to accept “private flood insurance” as defined by Biggert-Waters, in

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<sup>1</sup> The archive of this event is available at: <https://www.webcaster4.com/Webcast/Page/577/30085>.

satisfaction of the flood insurance purchase requirement. The agencies have issued a final rule that implements the private flood insurance provisions of Biggert-Waters. The rule clarifies legal standards regarding lenders' acceptance of private flood insurance.

Let's take a look at the key provisions of the rule on slide 6. The rule addresses the following key issues that my colleagues will discuss in more detail. First, the rule includes a provision referred to as a "mandatory acceptance" provision that requires lenders to accept a policy that meets the Biggert-Waters definition of "private flood insurance." The rule also includes a compliance aid provision to help lenders comply with the mandatory acceptance requirement.

Next, the rule includes a "discretionary acceptance" provision that permits a lender to accept a policy issued by a private insurer when that policy does not meet the Biggert-Waters definition of "private flood insurance" so long as it meets certain conditions set forth in the rule.

Finally, the rule permits a lender to accept plans providing flood insurance coverage issued by mutual aid societies that do not meet the Biggert-Waters definition of "private flood insurance" provided certain criteria are met.

I would like to now turn this over to Sadia who will discuss the mandatory acceptance provision in greater detail on slide 7. Sadia?

**Sadia Chaudhary – Office of the Comptroller of the Currency (OCC):**

Thank you, Navid. As Lanette stated earlier, under the mandatory acceptance provision, a lender is required to accept a private policy that meets the Biggert-Waters definition of "private flood insurance". The term "private flood insurance" is defined in Biggert-Waters, and the definition of "private flood insurance" in the rule is based on that statutory definition. As set forth in the rule, "private flood insurance" means an insurance policy that meets the following criteria:

- First, the policy is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or the insurance company is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located, in the case of a policy of difference in conditions, multiple peril, all risk or other blanket coverage insuring nonresidential commercial property.
  - In the preamble to the final private insurance rule, the agencies confirmed that policies issued by surplus lines insurers for residential properties are already covered in the definition of "private flood insurance" as policies that are issued by private insurance companies that are "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."

- Also, just to clarify, a difference in condition insurance policy is a type of policy that provides expanded coverage for some perils not covered by standard insurance policies. It is designed to fill in gaps in insurance coverage and is frequently used by large companies looking for protection from catastrophic peril.
- Second, the policy must provide flood insurance coverage that is “at least as broad as” the coverage provided under the Standard Flood Insurance Policy (or SFIP) for the same type of property including when considering deductibles, exclusions, and conditions offered by the insurer. My colleague Sarah will discuss the concept of “at least as broad as” in more detail in just a bit.
- Continuing on slide 8, next, the policy must also provide that the insurer will give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the lender that made the loan, or its servicer;
- Next, that policy must include information about the availability of flood insurance coverage under the NFIP;
- Next, it must include a mortgage interest clause similar to the clause in the SFIP;
- Next, it must include a provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and
- Finally, the policy must also contain cancellation provisions that are as restrictive as the provisions in an SFIP.

I would now like to turn things over to Sarah who will discuss the “at least as broad as” requirement in the mandatory acceptance provision.

**Sarah Chung – National Credit Union Administration (NCUA):**

Thanks, Sadia. Now we're on slide 9. To be considered “at least as broad as the coverage provided under the SFIP for the same type of property, including when considering deductibles, exclusions and conditions offered by the insurer,” the policy must, at a minimum, meet the following five criteria:

- As you can see under the first bullet, the policy must define the term “flood” to include the events defined as a “flood” in an SFIP;
- Moving on to the second bullet, the policy must contain the coverage specified in an SFIP. Now, this includes coverage relating to building property coverage, personal property

coverage, if purchased by the insured, other coverages, and increased cost of compliance coverage. To give you an example, under the SFIP, the increased cost of compliance provision pays the borrower to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition of the structure.

- Now, under the third bullet, the policy must contain deductibles no higher than the specified maximum as under an SFIP. The policy must also include similar non-applicability provisions as under an SFIP for any total coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender.
  - If you apply this third bullet to a policy providing coverage exceeding the amount of coverage available in an SFIP, this would mean that the policy would only have to meet the deductible for the amount of coverage available in an SFIP. To help illustrate this, here is an example. Let's say a private policy for a commercial building provides \$1,000,000 of flood insurance coverage. Now this is in excess of the NFIP maximum coverage of \$500,000 for a commercial building. If you apply this third bullet, then the policy would only need to match the SFIP deductible for the first \$500,000. It would be acceptable for a \$1 million policy to have deductibles higher than the maximum deductible for a policy available under the NFIP for the coverage over \$500,000.
- Continuing on slide 10. So now I'm moving on to the fourth criterion for "at least as broad as" provision at the first bullet on slide 10. For a private insurance policy to provide flood coverage that is "at least as broad as the coverage provided under an SFIP for the same type of property," the policy must provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. A lender is not required to accept policies that have additional exclusions beyond those included in an SFIP, unless those additional exclusions pertain to coverage that is in addition to the amount and type of coverage provided in an SFIP, or have the effect of providing broader coverage to the policyholder.
- Finally, under the last bullet, for a private insurance policy to provide flood coverage that is "at least as broad as the coverage provided under an SFIP for the same type of property," the policy must not contain conditions that narrow the coverage provided in an SFIP.
- When determining whether coverage is at least as broad as the coverage provided in an SFIP, lenders should compare like policies.

- For example, a policy covering a 1-4 family residence or a single family dwelling unit in a condominium should be compared to an SFIP dwelling policy; a policy covering a residential condominium building should be compared to an SFIP Residential Condominium Building Association Policy (RCBAP); and a policy covering other buildings should be compared to an SFIP General Property policy.
- It is important to note that the version of the SFIP that should be used for purposes of evaluating whether a private flood insurance policy complies with the mandatory acceptance requirement is a version that was in effect as of the date the borrower provided the private flood insurance policy to the lender.

Simin is now going to discuss the “compliance aid” provision of the rule on slide 11.

**Simin Ho – FDIC:**

Thank you, Sarah. The agencies were concerned that many lenders, especially smaller ones, may lack technical expertise regarding flood insurance policies in general. Therefore, it might be challenging with such lenders to evaluate whether a policy meets the statutory definition of “private flood insurance” in the Biggert-Waters Act.

The final rule includes the “compliance aid” provision designed to facilitate lenders' determination as to whether a flood insurance policy meets the definition of “private flood insurance,” and therefore must be accepted under the “mandatory acceptance” provision.

As you can see, the final rule has a more simplified version of the compliance aid than the proposed rule. The agencies heard from commenters that the proposed compliance aid was too burdensome to be helpful.

In response to these comments, the “compliance aid” in the final rule is now in the form of an assurance clause statement.

Specifically, a lender may determine that a policy meets the definition of “private flood insurance” without further review of the policy if the following statement is included within the policy or as an endorsement to the policy:

"This policy meets the definition of private flood insurance contained in 42 U.S.C. Section 4012a(b)(7) and the corresponding regulation."

If this statement is included in the policy or as an endorsement to the policy, the lender may rely on the statement and would not need to review the policy further to determine whether it meets the definition of “private flood insurance.”

However, a lender could choose not to rely on this assurance clause statement and instead make its own determination as to whether the policy meets the definition of “private flood insurance.”

It is important to note that a lender is required to accept a policy that both meets the Biggert-Waters definition of “private flood insurance” and fulfills the flood insurance coverage amount, even if the policy does not contain the assurance clause statement. In other words, a lender cannot reject a private policy solely because it does not include or is not accompanied by this statement.

If insurers choose to include this assurance clause statement, it may help lenders and consumers to recognize policies that meets the definition of “private flood insurance” and promotes the consistent acceptance of private flood policies across the market. And in turn, we hope that this may also facilitate the use of private flood insurance. We hope you'll find the compliance aid helpful.

Vivian will now discuss the “discretionary acceptance” provision beginning on slide 12. Vivian?

**Vivian Wong – FRB:**

Thank you, Simin. Now let's turn to the discretionary acceptance provision in the rule. As the agencies were developing this rule, the agencies received many comments stating that it would be difficult for many flood insurance policies in the private market to meet the definition of “private flood insurance” in Biggert-Waters. In addition, many lenders had already been accepting flood insurance policies issued by private insurers consistent with the agencies’ Interagency Flood Q&A guidance that has been in effect prior to the enactment of Biggert-Waters. Therefore, in order to issue a rule that would be consistent with the Congressional intent of Biggert-Waters to stimulate the private flood insurance market and to ensure that flood insurance issued by private insurers that lenders have been accepting under the agencies’ Q&A guidance can continue to be accepted, the final rule includes a “discretionary acceptance” provision.

Under the “discretionary acceptance” provision, a lender may choose to accept a flood insurance policy issued by a private insurer even if the policy does not meet Biggert-Waters definition of “private flood insurance” if the following four criteria are met:

- First, the policy must provide coverage in the amount required under the flood insurance mandatory purchase requirement;
- Second, the policy must be issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer, recognized or not disapproved by the insurance regulator of the State or jurisdiction where the property to be

insured is located. In other words, the same concept regarding surplus lines insurance for noncommercial properties that we discussed earlier within the Mandatory Acceptance section applies here for discretionary acceptance;

- Continuing on to slide 13, the third criteria is that the policy must cover both the borrower and lender as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, or homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners associations or other applicable group as a common expense.
- And fourth, the final criteria is the policy must provide sufficient protection of the loan, consistent with general safety and soundness principles, and the lender must document its conclusion regarding the sufficiency of the protection of the loan in writing.

Turning now to slide 14, let's discuss what is meant by sufficient protection. As discussed in the preamble to the final rule, some factors that a lender could consider in determining whether a policy provides sufficient protection of a loan include:

- Whether the policy's deductible is reasonable based on the borrower's financial condition;
- Whether the insurer provides adequate notice of cancellation to the borrower and lender to ensure the borrower has time to obtain replacement insurance or the lender can provide timely force placement of flood insurance, if necessary;
- Whether the terms and conditions of the policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the lender's interest in the collateral;
- Whether the policy complies with applicable state insurance laws; and
- Whether the private insurance company has the financial solvency, strength and ability to satisfy claims.

Ira will now discuss the mutual aid society provision in the rule on slide 15. Ira?

**Ira Marshall – Farm Credit Administration (FCA):**

Thanks, Vivian. The rule includes a mutual aid society provision that permits a lender to accept flood coverage provided by a mutual aid society if certain criteria are met. We understood from commenters that some lenders operated in communities where insurance coverage is provided by mutual aid societies. Coverage provided by these communities may not always meet the requirements for discretionary acceptance we just discussed. However, some lenders already



accept mutual aid society plans in satisfaction of the flood insurance purchase requirement, and reportedly, have positive experiences with coverage.

The rule defines mutual aid society as an organization:

- Whose members share a common religious, charitable, educational or fraternal bond;
- That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond: and
- That has demonstrated the history of fulfilling terms of agreements to cover losses to members' property caused by flooding; either by paying to cover the cost of damaged structures or by repairing or rebuilding the structures.

The rule also provides that a lender may accept a plan issued by a mutual aid society, as that term is defined in the rule in satisfaction of the flood insurance purchase requirement if:

- The lender's supervisory agency has determined that such plans qualify as flood insurance for purposes of the Act;
- The plan provides coverage in the amount required by the regulation; that is, the amount of coverage must be at least equal to the lesser of the outstanding principle balance of the loan or the maximum limit of coverage available for that type of property under the federal flood statutes;
- The plan covers both the lender and borrower as a loss payee;
- The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles;
- And the lender documents its conclusion regarding sufficient protection of the loan in writing.

A couple of things to note,

- First, a lender may accept such a plan only if the lender's supervisory agency determines that such plans qualify as flood insurance.
- Additionally, as with the discretionary insurance coverage, the lender must document in writing its determination that the plan provides sufficient protection of the loan. Vivian

already discussed the factors a lender could consider in making this determination in the context of discretionary acceptance of traditional flood insurance.

Although all of these factors may not apply to mutual aid society plans, the lender is still expected to go through a due diligence-type analysis to verify that the policy is consistent with general safety and soundness principles, and to document in writing its conclusion regarding sufficient protection of the loan.

Rhonda will now discuss some preparations you might consider making within your institution in order to comply with the rule, which can be found on slide 16. Rhonda?

**Rhonda Daniels – OCC:**

Thanks, Ira. As previously indicated, this regulation takes effect on July 1, 2019. What steps should your institution take now to address these requirements?

First, the institution's management should ensure that steps are taken to maintain a sound compliance management program that identifies and manages the risks associated with this new flood insurance requirement. Key to that effort is the compliance officer. So it is not only important for that individual to understand the requirements of the Private Flood Insurance Rule, but also to be empowered to take necessary and appropriate actions within the institution to ensure compliance with the rule.

Second, institution management should become knowledgeable about this rule, given the changes to the mandatory purchase requirement as a result of the rule. Management's knowledge and level of commitment are important for setting a positive tone and empowering the compliance officer to take the actions necessary across departmental and business lines, if appropriate, to ensure a culture of compliance and accountability throughout the institution.

Third, the institution should review and update applicable compliance policies, procedures, training, and systems to address the requirements of the Private Flood Insurance Rule. Third-party activities also should be carefully considered in this review process. The institution should identify any gaps between current processes and management information systems and the new private flood insurance requirements, and make necessary changes to minimize compliance risk across various departments and lines of business. Affected departments may include those that originate residential, commercial, and agricultural loans, as well as loan servicing departments.

Fourth, management and staff need to be trained on the Private Flood Insurance Rule's requirements to ensure that they understand their specific compliance responsibilities. For example, when designing training, consider which employees will be responsible for reviewing the private flood insurance policy if the policy is submitted for mandatory acceptance and the policy does not contain the compliance aid statement. And, if the lender plans to permit acceptance of private policies under the "discretionary acceptance" provision, consider which employees will be

responsible for making the “sufficient protection” determination to ensure that those employees receive appropriate training. Additionally, the institution might consider designating which employees will be responsible for evaluating private flood insurance policies and communicate that decision to all staff to ensure that knowledgeable staff make decisions on these policies. Moving on to slide 17.

Fifth, the institution will need to ensure that it coordinates responses to customer inquiries about private flood insurance policies. Departments and employees responsible for handling flood insurance inquiries should be designated and known to all relevant staff to ensure accurate and timely responses by the institution. Of course, this is an important consideration for all flood insurance inquiries, not just for inquiries about the Private Flood Insurance Rule.

And finally, the institution's compliance monitoring and auditing programs should be modified to address the Private Flood Insurance Rule.

And now on slide 18, let's go to your questions. I know we've received many questions already. Lanette, can you lead us off?

**Lanette Meister – FRB:**

Thanks, Rhonda. First, before we move to the questions, let's pause a moment and, Jean, will you remind the participants how they can submit additional questions.

**Jean Roark – Facilitator:**

Sure. Thanks so much, Lanette. To submit your question, you can use the "Ask Question" button in the webinar or if you're listening to the audio through the phone, and you'd like to submit a content-related question, you can submit those via e-mail, and the e-mail address is [fedwebinar@sf.frb.org](mailto:fedwebinar@sf.frb.org). All right. Back to you, Lanette.

**Lanette Meister – FRB:**

Thanks, Jean. So a large number of participants submitted questions to us in advance of the webinar. Thank you for providing those questions to us to help us to prepare for the webinar. We found that many of the questions touched on similar points and provided individualized facts that may not have broad applicability to the audience. To enable us to address as many of the audience's questions as possible, we've combined the similar questions and removed the individualized facts to enable us to encompass the core questions within this webinar.

So let's begin with the Q&A. We've categorized the questions and several of our presenters have agreed to respond to the questions for us. So we're going to start off with a category of questions around the mandatory acceptance requirement and we'll start with a question for Sadia. May a lender decide to only accept private flood insurance policies under the mandatory acceptance provisions of the regulation?

**Sadia Chaudhary – OCC:**

Good question, Lanette. The answer is yes. The lender is only required to accept flood insurance policies issued by a private insurer that meet the definition of “private flood insurance” under the regulation. A lender is not required to accept flood insurance policies that meet the criteria set forth in the discretionary acceptance or mutual aid provisions of the regulation.

**Lanette Meister – FRB:**

Great. Here's another mandatory acceptance question. On July 1, 2019, are all private flood insurance policies on file with the lender expected to be in compliance with either the compliance aid assurance clause or the mandatory purchase criteria? In other words, on July 1, will it be necessary for the lender to send 45-day insufficient insurance notices to all private flood insurance policy holders with policies that do not have either the compliance aid assurance clause or meet the mandatory acceptance criteria?

**Sadia Chaudhary – OCC:**

So lenders will not be required to review all existing flood insurance policies on the effective date of the rule. On and after July 1, 2019, lenders must accept any new private policies that meet the mandatory acceptance criteria and may, at their discretion, accept policies that meet the discretionary criteria.

**Lanette Meister – FRB:**

Great. And Sadia, if we have a private flood insurance policy currently in place and it comes up for renewal after July 1, 2019, the questioner asks, do we need to review the policy under the mandatory acceptance criteria in order to allow continued use of that policy post renewal? And the questioner continues what if the private policy does not meet the criteria?

**Sadia Chaudhary – OCC:**

So once the policy comes up for renewal, it would be necessary for the lender to review it. Although there is no regulatory requirement to review policies that are currently in place, once a policy comes up for renewal, it should be handled as though it is a new policy. In other words, a lender will have to review all policies that are new or renewed after July 1, 2019, to make sure the policies comply with the regulation. To comply with the regulation, the policies must meet the mandatory acceptance criteria or have the compliance aid assurance clause. If the policy does not meet the mandatory criteria, it may still be acceptable if it meets the discretionary criteria. If the policy does not meet the mandatory or the discretionary criteria, the lender will have to notify the borrower. If the borrower does not purchase acceptable flood insurance, the lender must purchase acceptable insurance on that borrower's behalf.

**Lanette Meister – FRB:**

Thanks. And a last question for you, Sadia, on the mandatory acceptance. Could the agencies provide further clarification regarding the 45-day written notice before cancellations or non-

renewal of flood insurance coverage, which is required under the definition of private flood insurance? Is there any sample language or reference in the SFIP?

**Sadia Chaudhary – OCC:**

Actually, there's no direct reference in the SFIP, and the requirement is not based on what is contained in that SFIP. The agencies implemented this requirement in the mandatory acceptance provision of the regulation as required by the Biggert-Waters Act.

**Lanette Meister – FRB:**

Thanks. So they should look to the statute for that.

**Sadia Chaudhary – OCC:**

Yes.

**Lanette Meister – FRB:**

Great. Thank you. So Navid, will the agencies provide any further guidance to help lenders make a determination on whether a private flood insurance policy is “at least as broad as” an NFIP policy?

**Navid Choudhury – FDIC:**

The Private Flood Insurance Rule specifies the requirements for determining whether a private policy provides coverage that is “at least as broad as” the coverage provided under the SFIP. The agencies are in the process of updating the flood insurance examination procedures to address the private flood insurance requirements including the “at least as broad as” requirement.

Each agency will make these examination procedures publicly available. Lenders can use these examination procedures to assist with their evaluation of the “at least as broad as” requirement.

**Lanette Meister – FRB:**

Great. So another question on mandatory acceptance for you, Navid. If a lender is a participant in a syndicated transaction, what are the lender's obligations with respect to the acceptance of private flood insurance policies? Is the participating lender obligated to review the policy to determine whether it meets the definition of private flood insurance?

**Navid Choudhury – FDIC:**

So Q&A #4 from the 2009 Interagency flood insurance Q&As addresses this question. The Q&A explains that, with respect to loan syndications and participations, individual participating lenders are responsible for ensuring compliance with flood insurance requirements even if the agreement among the lenders may assign the compliance duties to the lead lender. The requirements for loan syndications and participations would not change for private flood insurance policies.

Each participating lender would need to perform upfront due diligence to ensure that the lead lender has undertaken the necessary steps to have adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. This would include ensuring that a private flood insurance policy obtained by the lead lender is compliant with either the mandatory acceptance or the discretionary acceptance provisions.

**Lanette Meister – FRB:**

That makes sense, Navid. Thanks. So here's another mandatory acceptance question for you, Navid. If a lender has a general policy of not originating mortgages in non-participating communities or coastal barrier regions where the NFIP is not available due to the inherent safety and soundness risk of those areas, does the lender need to rethink this policy in light of the Biggert-Waters Act and the agencies' final rule on private flood insurance? Does the final rule mean that the lender must or should lend in these areas because private flood insurance is now available?

**Navid Choudhury – FDIC:**

The flood insurance regulations do not require that a lender originate a loan that does not meet the lender's legitimate underwriting criteria. We also note that the flood insurance purchase requirement only applies to loans secured by structures located or to be located in a special flood hazard area in which flood insurance is available under the National Flood Insurance Act of 1968, as amended. Per the statute, the flood insurance purchase requirement does not apply within non-participating communities, where NFIP insurance is not available under the act. So the lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the agencies' final rule.

**Lanette Meister – FRB:**

Thanks. And one more question on the mandatory acceptance, Navid. May a lender reject a private flood insurance policy satisfying the Biggert-Waters definition of private flood insurance for safety and soundness, or for other reasons?

**Navid Choudhury – FDIC:**

Under the statute and regulation, a lender must accept the private flood policy if the policy meets the definition of private flood insurance. As the agencies noted in the preamble to the final rule, the private flood insurance definition already contains criteria that address safety and soundness, such as the requirements for the insurance company to be licensed, admitted, or otherwise approved to engage in the business of insurance by a State regulator.

**Lanette Meister – FRB:**

OK. Thanks, Navid. So now we're going to move to a few questions about the compliance aid. So Simin, if a policy includes the compliance aid assurance clause language, does a lender need to conduct additional review of the policy for compliance with the definition of private flood insurance? Is a lender required to accept a policy that includes the compliance aid statement?

**Simin Ho – FDIC:**

Lanette, the answer would be no to this question. The regulation provides that if a policy or an endorsement to the policy contains the compliance aid assurance clause language, no further review is necessary in order for the lender to accept the policy. However, a lender is not required to accept a policy solely because the policy contains the compliance aid assurance clause if the lender determines the policy actually does not meet the mandatory acceptance requirement.

**Lanette Meister – FRB:**

Thanks. And Simin, may a lender rely on an assurance clause that has language that's similar to, but is not exactly the same as the compliance aid assurance clause language in the regulation?

**Simin Ho – FDIC:**

In order for the lender to rely on the compliance aid assurance clause without further review of the policy, the assurance clause must be stated in the policy exactly as set forth in the regulation. If the language in the policy is different from the compliance aid assurance clause set forth in the regulation, the lender should not rely on the assurance clause in the policy and should review the policy to determine if it meets the definition of private flood insurance.

**Lanette Meister – FRB:**

Thanks. And one more question about the compliance aid. If a private flood insurance policy does not contain the compliance aid assurance clause, can a lender immediately use the criteria under the discretionary acceptance provision to decide whether to accept or reject the policy without first checking to see if the policy meets the criteria under the mandatory acceptance provisions?

**Simin Ho – FDIC:**

That's a good question and the answer would be yes. A lender may choose to first evaluate a policy under the discretionary acceptance criteria in order to determine whether to accept a policy. However, if the lender makes a determination that the policy does not meet the discretionary acceptance criteria, the lender must determine whether the policy meets the mandatory acceptance criteria before making a determination about whether or not to accept the policy.

Just to remind everyone that if the lender uses the discretionary acceptance criteria, the regulation requires the lender to document its analysis on whether the policy provides sufficient protection of the loan.

**Lanette Meister – FRB:**

Thanks. That's a really helpful tip on that one then as to the process once they're looking at the policy for the compliance aid. Thanks, Simin. All right. We have a couple of questions on discretionary acceptance. Ira, do regulators require lenders to accept flood insurance policies that meet the discretionary criteria or can the lender make that determination at its discretion? Additionally, if the lender decides to accept a policy that meets the discretionary criteria, what

documentation is sufficient to show that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles?

**Ira Marshall – FCA:**

Thanks for that question, Lanette. A lender must accept a policy that meets the mandatory criteria. A lender does not have to accept a policy that does not meet those criteria. The discretionary criteria in the rule sets forth the minimal acceptable criteria that the flood policy must have for the lender to be allowed to accept it.

Documentation that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles, could include a written acknowledgement that the lender has, with due diligence, reviewed the policy for adequate coverage. Some of the factors that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection of a loan have already been discussed in this webinar and include consideration of deductibles, notice provisions, financial solvency of the insurance provider, among other things.

**Lanette Meister – FRB:**

That's helpful, Ira. Thank you. And another question for you, Ira. The preamble to the final rule states that "some factors... that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection... includes... whether the flood insurance policy complies with applicable State insurance laws and whether the private insurance company has the financial solvency, strength and ability to satisfy claims." How do we know that the private insurers are financially stable?

**Ira Marshall – FCA:**

If the lender has concerns about a private insurance company's financial stability, the lender can evaluate the insurance company further by contacting the state insurance regulator's office of the state in which the property securing the loan is located. In general, the lender can rely on the licensing or other processes used by the state insurance regulator to evaluate an insurance company's financial solvency, strength, and ability to satisfy claims.

**Lanette Meister – FRB:**

That's really helpful. Thank you. All right. So now we're going to change up the format a little bit. We have a question for all of the agencies. So I'll pose the question and then I'll call on the agency to give its response to the question and this has to do with the mutual aid plans. So the question is what is each agency's current policy towards supervised institutions' acceptance of mutual aid plans? Simin, will you answer for the FDIC?



**Simin Ho – FDIC:**

Sure, no problem. Since the final rule was issued, the FDIC has been considering our policy for mutual aid society flood plans. We are still evaluating how we will implement the mutual aid society provision of the final rule.

**Lanette Meister – FRB:**

Thanks. And Vivian, will you answer for the Federal Reserve?

**Vivian Wong – FRB:**

Sure. So as the preamble to the final rule recognizes the agencies have had different practices regarding the acceptability of mutual aid plans to satisfy the flood insurance purchase requirement. The analysis of mutual aid plans can be very fact-intensive. So therefore, Federal Reserve staff plan to continue to review these plans on a case-by-case basis.

**Lanette Meister – FRB:**

Thanks, Vivian. Sarah, how about the NCUA?

**Sarah Chung – NCUA:**

Thanks, Lanette. The NCUA must approve any mutual aid society plan. If a credit union wishes to accept a mutual aid society plan under the regulation, the credit union must submit any such plan to the NCUA for approval. The NCUA will evaluate each request based on the regulation's requirements.

**Lanette Meister – FRB:**

Thanks, Sarah. And Rhonda, how about the OCC?

**Rhonda Daniels – OCC:**

Thanks, Lanette. The OCC currently allows a national bank or a federal savings association to accept flood insurance coverage provided by mutual aid societies such as Amish and Mennonite Aid Plans, if the national banks or federal savings associations determine that the flood coverage adequately protects its security for a loan. The Private Flood Insurance Rule maintains the status quo by continuing to allow national banks and federal savings associations to accept flood coverage by mutual aid society plans such as plans issued by the Amish or Mennonites. Since the OCC has already determined that Amish and Mennonite Aid Plans qualify as flood insurance, no further action is needed by the OCC in order for a national bank or a federal savings association to accept such coverage to satisfy the flood insurance purchase requirement. After the Private Flood Insurance Rule takes effect on July 1, a national bank or a federal savings association may accept flood coverage issued by the Amish or Mennonites in accordance with the rule.

**Lanette Meister – FRB:**

Thanks, Rhonda. And Ira, how about the Farm Credit Administration?

**Ira Marshall – FCA:**

Thank you, Lanette. FCA's intent is to maintain the status quo among the system institutions in accepting mutual aid society plans, in particular Amish Aid. With respect to Amish Aid, we will maintain our policy of allowing system institutions to accept it, and effect compliance with the regulation through examination. We may address this topic further in an Information Memorandum, a Book Letter, or exam guidance, but we have not initiated that particular process yet.

**Lanette Meister – FRB:**

All right. So that was a fun change-up. We'll go now to some questions about coverage, and Sarah has agreed to answer them for us. Sarah, if a borrower purchases flood insurance that is insufficient to meet the minimum required amount, may a borrower purchase an additional private flood excess insurance policy to make up the difference?

**Sarah Chung – NCUA:**

The answer is yes, as long as the private flood excess insurance policy meets the requirements in the agencies' regulation regarding the mandatory acceptance of private flood insurance, the discretionary acceptance of flood insurance issued by a private insurer, or the acceptance of certain mutual aid plans.

**Lanette Meister – FRB:**

Thanks. And Sarah, if a borrower purchases a private flood insurance policy, may a lender require more than the maximum amount of insurance available for a particular type of building for an NFIP policy? For example, requiring a private flood insurance policy with more than \$250,000 of coverage for a residential building?

**Sarah Chung – NCUA:**

The National Flood Insurance Act and the agencies' regulation provide that the minimum amount of insurance required equals the lesser of: the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP, which is the lesser of the maximum limit available for the type of structure or the insurable value of the structure. As the agencies have provided in the Interagency Flood Q&As, lenders are permitted to require more flood insurance coverage than required by the regulation. However, the Interagency Flood Q&As also provide that a lender should avoid creating situations where a building is “over-insured.”

**Lanette Meister – FRB:**

It's an important concept, isn't it?

**Sarah Chung – NCUA:**

Yes.

**Lanette Meister – FRB:**

Thank you. So Sarah, this questioner asks, a borrower intends to purchase a condo unit in a residential condominium building that has a master private flood insurance policy covering each unit. The private policy meets the minimum amount of coverage required under the regulation, but the policy was not issued by an insurer that is licensed, admitted or otherwise approved to engage in the business of insurance in the state where the property is located. Can the lender accept the master policy or will the lender need to require the borrower to purchase his or her own flood insurance policy for the condo unit?

**Sarah Chung – NCUA:**

Good question, Lanette. This situation is unlikely to arise since the insurance broker is generally required under state law to confirm that the insurer is licensed or admitted in a particular state. For non-admitted or surplus lines insurers, the broker must be licensed to sell surplus lines insurance and such brokers are responsible for ensuring that the surplus lines insurer meets eligibility criteria to write policies in the state.

If, however, a lender obtains the condo association's policy or other proof of insurance and determines that the policy was not issued by an insurer that is licensed, admitted or otherwise approved to engage in the business of insurance by the state in which the condo unit is located, the lender will need to require the borrower to obtain his or her own policy for the unit in an amount sufficient to meet the minimum amount of coverage required.

**Lanette Meister – FRB:**

Thanks, Sarah. So our next question has to do with the declaration page, and Rhonda has agreed to answer this for us. Rhonda, under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of flood insurance. Is the declaration page sufficient information for the lender to determine whether the policy complies with the private flood insurance rule?

**Rhonda Daniels – OCC:**

Not necessarily. A declarations page would not provide enough information for the mandatory acceptance rules or for the institution to determine that the policy meets the statutory definition of "private flood insurance." It also may not provide enough information for the discretionary approach. In these cases, the lender should request additional information about the policy to aid it in making its determination.

**Lanette Meister – FRB:**

Thanks, Rhonda. Then we have some questions for Vivian about licensure. How can a lender determine whether a surplus lines insurer is permitted to issue an insurance policy in a particular state, Vivian?

**Vivian Wong – FRB:**

Great question, Lanette. So a lender could go to the website of the insurance regulator where the collateral property is located to see whether particular surplus lines insurer is permitted to issue an insurance policy in a particular state. Information on surplus lines insurers also may be available in the Consumer Insurance Search (CIS) tool available on the NAIC website. Lenders also may consult additional commercial service providers regarding the eligibility of surplus lines insurers in particular states provided the lenders have validated that these service providers deliver reliable information.

With regard to foreign insurers, lenders should check the NAIC's Quarterly Listing of Alien Insurers, which is maintained consistent with the requirements of the Dodd-Frank Act.

**Lanette Meister – FRB:**

Thanks, Vivian. May lenders accept private flood insurance policies that includes a compliance aid statement, but also include a disclaimer explaining that "the insurer is not licensed in the state or jurisdiction in which the property is located," unquote, suggesting that the policy is issued by a surplus lines insurer?

**Vivian Wong – FRB:**

So if the policy includes a statement indicating that the insurer is not licensed in the state, therefore suggesting that the policy is from a surplus lines insurer, the agencies explained in the preamble to the rule that lenders may accept policies issued by surplus lines insurers recognized or not disapproved by the state insurance regulator for commercial properties. Separately, lenders may accept policies issued by surplus lines insurance for noncommercial properties as policies issued by insurance companies that are "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."

**Lanette Meister – FRB:**

And one more question for you, Vivian, about the secondary market. How does the final rule, especially the compliance aid, work in conjunction with the requirements from the secondary market investors, for example Fannie Mae and Freddie Mac? Will the secondary market investors revise their guidance to match the agencies' final rule?

**Vivian Wong – FRB:**

The requirements for the secondary market are separate from the agencies' final rule. A lender should carefully review these separate requirements for secondary market investors regarding acceptable private flood insurance if the lender plans to sell loans to such investors and direct questions regarding these requirements to the appropriate entities.

**Lanette Meister – FRB:**

Thank you, Vivian. And we have one more question that's a general compliance question that I'll pose to Rhonda. Rhonda, we're just a few days away from July 1, 2019. May lenders comply with the final rule prior to the effective date of July 1?

**Rhonda Daniels – OCC:**

Thanks, Lanette. Yes. As the agencies discussed in the preamble to the final rule, lenders may comply with the final rule prior to the effective date if they wish to do so.

**Lanette Meister – FRB:**

Great. Thank you, Rhonda. So we've reached the top of the hour. I'd like to thank all of today's presenters and our broader interagency flood insurance team for all the work that went into preparing the materials for this webinar. We're hopeful that this webinar and Q&A provided you with the information that you need in order to successfully implement the private flood insurance regulations within your institution.

On slide 19, you'll find a number of additional resources to assist you in your compliance activities. And now we'll turn it back to Jean to remind us about the survey on today's webinar.

**Jean Roark – Facilitator:** All right. Thanks, Lanette, and thank you to our presenters today and to the entire Outlook Live team for their time. We'll be sending an e-mail with a link to our survey. Please take just a moment to fill it out. We read every response and strive to make our sessions better based upon your feedback.

And as a quick reminder, you can check our website, [www.consumercomplianceoutlook.org](http://www.consumercomplianceoutlook.org) for the archive of this call and for information on upcoming sessions. Thanks for joining us today. This concludes today's Outlook Live webinar. Enjoy the rest of your day.

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