

Interagency Flood Insurance Update on Private Flood Insurance Rule

Outlook Live Webinar – June 18, 2019

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Speakers

- **Board of Governors of the Federal Reserve System**
 - **Lanette Meister**, Supervisory Policy and Outreach
 - **Vivian Wong**, Consumer Laws and Regulations
- **Farm Credit Administration**
 - **Ira Marshall**, Office of Regulatory Policy
- **Federal Deposit Insurance Corporation**
 - **Simin Ho**, Supervisory Policy
 - **Navid Choudhury**, Legal Division
- **National Credit Union Administration**
 - **Sarah Chung**, Office of General Counsel
- **Office of the Comptroller of the Currency**
 - **Rhonda Daniels**, Consumer Compliance Policy
 - **Sadia Chaudhary**, Chief Counsel's Office

Agenda

- Private Flood Insurance Final Rule effective July 1, 2019
 - Mandatory acceptance of private flood insurance
 - Compliance aid for mandatory acceptance of private flood insurance
 - Discretionary acceptance of private flood insurance
 - Flood coverage provided by mutual aid societies
- Preparations to comply with the rule
- Questions and Answers

Background

Flood Insurance Purchase Requirement

- Flood insurance is required for the term of the loan on buildings or mobile homes if:
 - The lender makes, increases, extends, or renews any loan secured by improved real estate or a mobile home that is affixed to a permanent foundation;
 - The property securing the loan is located or will be located in a Special Flood Hazard Area (SFHA) as identified by the Federal Emergency Management Agency (FEMA); and
 - The community participates in the National Flood Insurance Program (NFIP).
- Calculate the required amount of insurance

Biggert-Waters Flood Insurance Reform Act (Biggert-Waters)

- Directed lenders to accept "private flood insurance" as defined in the statute

Private Flood Insurance Final Rule

- Mandatory acceptance
 - A lender must accept private flood insurance, as defined by regulation, in satisfaction of the flood insurance purchase requirement if the policy meets the requirements for coverage
 - The mandatory acceptance provision is based on the definition of "private flood insurance" in Biggert-Waters
- Compliance Aid
- Discretionary acceptance
- Mutual aid society plans

Mandatory Acceptance

“Private Flood Insurance” means an insurance policy that:

- 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
 - 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;
- Provides flood insurance coverage that is at least as broad as the coverage provided under a Standard Flood Insurance Policy (SFIP) for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer;

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Mandatory Acceptance (continued)

“Private Flood Insurance” (Cont’d)

- Includes all of the following:
 - A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage;
 - Information about the availability of flood insurance coverage under the NFIP;
 - A mortgage interest clause similar to the clause contained in an SFIP; and
 - 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
- Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

“At Least As Broad As”

- To be **at least as broad as** the coverage provided under an SFIP, the policy must, at a minimum:
 - Define the term “flood” to include the events defined as a “flood” in an SFIP
 - Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured; other coverages; and increased cost of compliance coverage
 - Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender

Continued...

“At Least As Broad As” (continued)

- Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder
- Not contain conditions that narrow the coverage provided in an SFIP

Compliance Aid for Mandatory Acceptance

A lender may determine that 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. 4012a(b)(7) and the corresponding regulation.”

Note: A lender cannot reject a private policy solely because it is not accompanied by this statement.

Discretionary Acceptance

- A lender may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in satisfaction of the flood insurance purchase requirement if the policy:
 - Provides coverage in the amount required;
 - Is issued by an insurer 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;

Continued...

Discretionary Acceptance *(continued)*

- Covers both the lender(s) and borrower(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and
- Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender documents its conclusion regarding sufficiency of the protection of the loan in writing.

Sufficient Protection

- Factors that a lender could consider in making the "sufficient protection" determination:
 - Whether the policy's deductibles are 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
 - Whether the private insurance company has the financial solvency, strength and ability to satisfy claims

Mutual Aid Societies

The regulation 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 a demonstrated history of fulfilling terms of agreements to cover losses to members' property caused by flooding.

A lender may accept a plan issued by a mutual aid society 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;
- The plan covers both the borrower(s) and the lender(s) as loss payees; and
- The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the lender documents its conclusion regarding sufficiency of the protection of the loan in writing.

Preparations to Comply with the Rule

- Sound flood insurance Compliance Management System (CMS)
- Knowledgeable management
- Policies, procedures, and systems updated
 - Include third party service provider activities
 - Consider all affected business lines and departments
- Training for responsible employees and officers

Preparations to Comply with the Rule *(continued)*

- Call Center and other customer response employees coordination
 - Designate responsible parties
- Compliance monitoring and audit program update
 - Private flood insurance evaluation incorporated

QUESTIONS & ANSWERS

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Resources

- [Flood Insurance Reform Law](#)
 - The National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, and the National Flood Insurance Reform Act of 1994
 - The Biggert-Waters Flood Insurance Reform Act of 2012
 - Homeowner Flood Insurance Affordability Act of 2014
- [Interagency Flood Insurance Regulation Update](#) (Outlook Live webinar on October 22, 2015)
- The Agencies' flood regulations:
 - [12 CFR Parts 22, 172](#) (OCC)
 - [12 CFR Part 208.25](#) (Federal Reserve)
 - [12 CFR Part 339](#) (FDIC)
 - [12 CFR Part 614](#) (Farm Credit)
 - [12 CFR Part 760](#) (NCUA)
