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Re: Comments on "Loans in Areas Having Special Flood Hazards."
12 CFR Parts 22, 172 [Docket ID OCC – 2013 -0015], RIN 1557 - AD67

To Whom It May Concern:

On behalf of the more than one million members of the National Association of REALTORS® (NAR), thank you for the opportunity to comment on proposed rules to effectively implement the 2012 Biggert-Waters Flood Insurance Act (BW12) through an approach that balances flood insurance availability and affordability.

In that context, NAR is pleased that the Office of the Comptroller of the Currency (OCC), the Federal Reserve (The Fed), the Farm Credit Administration (FCA), the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA) (The Agencies) have issued joint proposed regulations that implement several sections of BW12.

NAR's comments will address the proposed regulations specifically related to: (1) the acceptance of private flood insurance coverage; (2) the escrow of flood insurance payments; and (3) the force-placement of flood insurance coverage.

Lender Acceptance of Private Flood Insurance Coverage
Section 239 of BW12 instructs Government Sponsored Enterprises and regulated lenders to accept private flood insurance that is equivalent to policies issued by the National Flood Insurance Program (NFIP) for purposes of satisfying the mandatory purchase requirement. This notice proposes the conditions for equivalency.

Currently, property owners rely primarily on the NFIP for flood insurance, but to the extent that a robust private market can supplement and complement the NFIP and enhance consumer choice, NAR would encourage such an approach.

The Agencies propose to require a regulated lending institution to accept private flood insurance that meets the definition of this term to satisfy the insurance requirement, provided that the flood insurance policy also meets the conditions set forth in the mandatory purchase requirement guidelines.

To facilitate compliance with this section, the Agencies are proposing a "safe harbor" concept that would require a state insurance regulator to make a written determination that a flood insurance policy issued by a private insurer meets the definition of private flood insurance set forth in BW12.

NAR believes that the safe harbor proposal could be a viable approach but faces several hurdles that must be addressed before it could work effectively:

1) Minimize bureaucracy and red tape. State insurance regulators have no experience in regulating or reviewing individual flood insurance policies. Insurance Commissioners regulate most forms of insurance with the exception of flood insurance, which is operated at the federal level through the NFIP. Consideration should be given to whether the safe harbor would require the creation of an entirely new bureaucracy to review and make determinations on hundreds (perhaps thousands) of individual private flood insurance policies. This could divert scarce resources and staff time away from other important licensing and monitoring activities.
2) Enhance consumer protections. The Agencies should establish an appeals process in the event a state denies a private flood insurance that is equivalent to NFIP's. The ability to deny a policy also has troubling implications for a homeowners' ability to obtain needed flood insurance on the private market.

3) While NAR recognizes the value of an independent third party to assess the equivalence of private flood insurance policies, NAR would encourage the agencies to work with insurance entities, state insurance commissioners, consumer groups and other stakeholder groups to develop and clarify how a third party review program might be structured.

Escrowing Flood Insurance Payments

Pursuant to Section 209 of BW12, the Agencies propose to revise existing regulations to require regulated lending institutions or servicers acting on their behalf to escrow all premiums and fees for flood insurance required for any loans secured by residential improved real estate, unless the lending institution qualifies for a statutory exemption.

While generally supportive of this provision, NAR would caution the Agencies that flood insurance must remain affordable for borrowers to be able to obtain this insurance product in a timely manner. To that end, we encourage the Agencies to review their rules and monitoring to ensure that lending institutions do not charge any additional fees to property owners for the establishment and maintenance of flood insurance premium escrow accounts, and thereby making this process unduly burdensome to consumers. It is critical that additional fees and costs are not passed through to the consumer to keep the cost of flood insurance as low as possible.

NAR is pleased that lending institutions will be required to notify borrowers of this new requirement. Adequate notification to property owners related to flood insurance issues in general (for example, the purchase requirement) by lenders has been inconsistent at best. While there is no specific enforcement mechanism included in BW12 or in the proposed rule, NAR would encourage the Agencies to develop an administrative mechanism that would provide an incentive to encourage lenders to notify borrowers of this escrow requirement in a timely manner.

Finally, NAR would encourage the Agencies to work closely with the Consumer Financial Protection Board (CFPB) to make sure these proposed regulations are consistent with current statutes and regulations that address the establishment and operation of other escrow accounts, including the Real Estate Settlement Procedures Act (RESPA) and the Truth In Lending Act (TILA).

Forced-Placed Coverage of Flood Insurance

Existing regulations allow lenders to purchase flood insurance for property owners if they determine that the property has inadequate or non-existent flood insurance. Generally we would support consumer protections to ensure that lenders are working to obtain the lowest-cost flood insurance possible and that, when the borrower obtains adequate flood insurance on their own, the forced-placed policy is terminated in a timely manner so that the property owner is not paying for two flood insurance policies.

Conclusion
NAR appreciates the opportunity to comment on any proposal to complement NFIP's twin affordability and availability goals while safeguarding consumer choice and bringing additional clarity to the program. Affordable and available flood insurance is critical to the stability of real estate markets nationwide.

Sincerely

Steve Brown
2014 President
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