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VICE PRESIDENT AND COMPLIANCE OFFICER

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To FDIC as: FDIC Loans in Areas Having Special Flood Hazards

To Whom It May Concern:

Columbia Bank appreciates the opportunity to provide comments on the Proposed Rule implementing the Biggert-Waters Act changes to the rule for Loans in Areas Having Special Flood Hazards found at 12 CFR 339. After review of the proposed rule, the Bank submits the following comments:

1. The Agencies seek comments regarding whether a written determination from the state insurance regulator would facilitate lenders' acceptance of flood insurance from private insurers. As proposed, such a determination would constitute a safe harbor for lenders in the determination of whether or not a policy meets the statutory definition of "private flood insurance."
  - a. A regulatory safe harbor that allows lenders to rely on the determination of state insurance regulators as to the adequacy of a flood insurance policy would greatly facilitate lenders' acceptance of private insurance policies. Insurance policies in general, and flood insurance policies in particular given the regulatory consequences for failure to properly document adequate insurance, require a level of expertise that lending institutions, especially smaller institutions, may not possess. Safe harbor reliance on a clearly valid and binding determination from an outside source would help ensure lenders' acceptance of policies that properly protect both the lender and the borrower.
  - b. In the event a safe harbor as to policy adequacy was to be included in the final rule, clarification would be needed with regard to the process of obtaining a valid and binding determination. It would not be helpful for lenders to be expected to obtain the determination on a per-policy basis. This would increase the time the lender needs to satisfy closing conditions, potentially delaying loan closing for the borrower and requiring additional lender resources, and more importantly, frustrate the intent of the amendments. The burden of obtaining safe harbor status for each policy should be placed on the insurance companies. The state insurance regulators are presumably the most qualified to analyze and make the determination as to policy adequacy for regulatory requirements. With the lender retaining responsibility for ensuring the amount of, and payment for coverage in accordance with regulatory requirements, given safe harbor reliance on the adequacy of the contents of the policy, the most appropriate assignment of responsibility with respect to the insurance and banking industries is achieved.

2. The Agencies solicit comments on whether policies issued by private insurers that do not meet the statutory definition of “private flood insurance” should be permitted to satisfy the mandatory purchase requirement, or alternatively, whether an explicit prohibition on accepting policies not meeting the statutory definition should be included in the final rule.
  - a. There must be either the inclusion of a clear prohibition of the acceptance of policies not meeting the statutory definition, or a clear statement that policies that are not 100% on point with the statutory definition may be accepted to satisfy the mandatory purchase requirement solely if a definitive list and range of variables is included in the regulation. This definitive list is necessary to avoid regulatory ambiguity and inconsistent interpretation of the mandatory purchase requirement by quality control reviewers, auditors, and regulatory examiners.
  - b. Indicating that lenders must not accept policies that fail to meet the statutory definition of “private flood insurance” provides a clear line by which lenders may determine the acceptance or denial of a policy, especially when combined with the safe harbor determination by state insurance regulators. This would minimize granular analysis of insurance policies by lenders not having in-depth insurance expertise, minimize the possibility of compliance errors, and most importantly, prevent the issuance of inadequate policies in the event the insured party suffers a covered loss. While such a prohibition may initially cause borrower frustration due to the limitations on flood insurance options, private insurers desiring to participate in this business will issue policies qualifying for the statutory definition on the basis that lenders are clearly prohibited from accepting a lesser or different policy standard.
  - c. Alternatively, allowing the acceptance of policies not meeting the statutory definition of private insurance policy would be considerably more problematic for lenders UNLESS the policy was reviewed and approved by the state insurance regulator, providing the same safe harbor for a lender as a fully compliant policy. In order to avoid regulatory ambiguity, and in the absence of state insurance regulator safe harbor designation, further clarification of the types of policies and policy terms and conditions that would and would not satisfy the mandatory purchase requirement would be necessary. The option to accept policies that do not measure up to the statutory definition, without a safe harbor designation, has the potential to (i) increase lender and borrower risk for loss; and (ii) increase compliance errors at individual examiner discretion.
3. The Agencies are requesting comments on whether, if the final rule expressly permits acceptance of private flood insurance policies outside the statutory definition, the final rule should contain criteria establishing that the policy must be written by an appropriately licensed or regulated insurer, at least as broad in terms of coverage as policies obtained through the NFIP, and inclusive of a mortgagee clause similar in strength to that in an NFIP policy.
  - a. Primarily, it is imperative that if the regulation expressly permits acceptance of private flood insurance policies not meeting the statutory definition, clear criteria governing such policies be established. The absence of such criteria presents ambiguity for lenders in determining whether a policy does or does not satisfy the mandatory purchase requirement. Without also obtaining a safe harbor designation from the state insurance

regulator, lenders will be more cautious of such policies, and borrowers may experience closing delays while policies are reviewed, even when the insurance company is licensed and regulated.

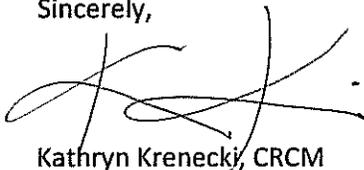
- b. Without a safe harbor designation, the criteria provided in the proposed rule would require further clarification with regard to the definitional terminology requiring coverage “at least as broad as” that offered by an NFIP policy. The clarification is necessary to avoid questions by lenders regarding what terms of the private flood insurance policy must be considered in an analysis of the breadth of a private policy. The addition of “including when considering deductibles, exclusions, and conditions offered by the insurer” to the definition appears to be for the purpose of providing examples and not meant to be an exhaustive list. For instance, NFIP policies provide that the limit of coverage is on a “per occurrence” basis, which would pay out up to the full coverage amount for each loss event regardless of the frequency of such events. Conversely, most private flood insurance policies are underwritten with the coverage limit annually aggregated, whereby multiple losses occurring in a single year would be covered only up to the face amount of the policy and once exhausted would cover no more. Currently, no written guidelines cover whether this particular term of a policy should be considered in determining its breadth of coverage. As a result, many lenders do not accept policies with annually aggregated coverage in order to avoid compliance risk. Guidance as to the meaning of “at least as broad” is necessary and must address if there are in fact terms of coverage that are or may be subject to approvable variance from the NFIP policy terms, defining the options borrowers have in satisfying the mandatory purchase requirement.
4. The Agencies are seeking comment on lender and borrower experiences with private policies meeting and not meeting the statutory definition.
  - a. As stated herein, the main concern regarding the acceptance of non-statutory policies is in the definition of coverage “at least as broad as” that offered in NFIP policies. Generally speaking, lender’s review of policies to date has required that private flood insurance policies meet all aspects of the NFIP policy requirements, as the regulatory language does not expressly provide otherwise. This has caused lenders to reject some policies, especially those failing to provide per occurrence coverage. This frustrates borrowers and delays closings while the borrower obtains coverage that meets all requirements.
  - b. More regulatory restrictions on the types of flood insurance policies and terms that are considered to satisfy the mandatory purchase requirement, results in more policies not being accepted by lenders on the basis of fulfilling the regulatory requirements. This results in borrower frustration, as the consummation of a loan transaction may be delayed on the basis of the non-acceptance of the policy. Additionally, this condition makes it more likely that a borrower will receive notice and be the subject of force placement of flood insurance, as small and seemingly insignificant variances in a policy may result in a difference in the acceptability of a policy.

5. The Agencies propose that no escrow account need be established for the payment of flood insurance premiums when the lender determines the borrower is paying into an escrow account with another lender.
  - a. This provision is agreeable, as it allows the Bank to rely on the escrow account established in connection with a borrower's first mortgage when making a loan secured by a second lien. However, additional clarification is requested as to the term "determine." In the event this determination is to be obtained from the first mortgage lender, provisions need to be made regarding consumer privacy and the allowance of communication between institutions for purposes of escrow account documentation. If the determination that there is an escrow account established for flood premiums by the borrower's first lien lender may be proven by the borrower without assistance of the first lien lender, clear documentation standards must be outlined to ensure that the integrity of the documentation is not called into question by compliance examiners.
6. The Agencies seek comments on the escrow timing proposal, specifically with regard to whether or not lenders should be permitted to comply before the mandatory compliance date.
  - a. Permitting lenders to comply with the escrow provisions ahead of the mandatory due date would allow increased flexibility in the implementation of the requirements, benefiting both lenders and borrowers with a smoother transition. In order to prevent borrower harm as it pertains to the need to provide the lender with a substantial amount of money to fund the next year's escrow account for borrowers with loans outstanding, an early compliance provision could include the same structure as the timing requirements for loans outstanding as of the mandatory compliance date. This would allow institutions to comply in accordance with their own and the borrower's insurance renewal schedule, while ensuring escrow account establishment only at the time of flood insurance renewal.
7. The Agencies seek comment on whether "lapsed or did not provide a sufficient coverage amount" is adequate terminology to determine the date on which the lender may charge for force-placed insurance, or if more clarification is necessary.
  - a. The Bank requests additional clarification of the terminology, on the basis that events triggering notification and force-placement may not be delineated in such a concrete fashion in actual practice. While the terminology would cover force placement arising from the expiration of a policy or a borrower-initiated change to that policy received by the lender, it may not provide clear guidance for other situations. For example, in the event the borrower adds an additional structure to the property without the direct knowledge of the lender, the current language would not provide clarity on whether the lender is entitled to force place and charge from the date of construction of the building (which would be difficult to determine and document) or the date on which the lender became aware of the new structure. The regulation should specify that the date in such situations should correspond with the lender's identification of the deficiency for ease of documentation.

8. The Agencies propose a provision whereby the lender must accept a declarations page as sufficient demonstration for purposes of confirming a borrower's existing flood insurance, triggering the cancellation of a force placed policy within 30 days of receipt.
  - a. The requirement to accept the declarations page as sufficient demonstration (unless identified as a safe harbor policy) may cause lenders to accept a private flood insurance policy on the basis of that declarations page and later determine the policy is unacceptable upon further investigation. It should be noted that the information necessary to determine the breadth of coverage such as the 45 day cancellation notice, and other required provisions, is not located on the typical declarations page. The proposal indicates that "if the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request the borrower to obtain an adequate flood insurance policy." The conflict in requiring acceptance of the declarations page as demonstration of sufficient coverage (in the case of no safe harbor), and requiring lenders to ensure that policies meet specified requirements not explicitly stated on the declarations page, positions banks for citation of violations bearing civil money penalty of \$2,000 each at the time of compliance examination; therefore, the requirement to accept a declarations page as sufficient demonstration for purpose of confirming a borrower's existing flood insurance, must come with a safe harbor.

Thank you for the opportunity to engage in the regulatory process regarding the Interagency Proposal on Flood Insurance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn Krenecki', with a stylized flourish at the end.

Kathryn Krenecki, CRCM  
Vice President and Compliance Officer