



MORTGAGE BANKERS ASSOCIATION

January 6, 2017

Office of the Comptroller of the Currency  
Legislative and Regulatory Activities Division  
400 7<sup>th</sup> Street SW., Suite 3E-218, Mail Stop 9W-11  
Washington, DC 20219  
Docket ID OCC-2016-0005; RIN 1557-AD67

Board of Governors of the Federal Reserve System  
Robert deV. Frierson, Secretary  
20th Street and Constitution Avenue NW  
Washington, DC 20551  
Docket No. R-1549; RIN 7100-AE60

Federal Deposit Insurance Corporation  
Robert E. Feldman, Executive Secretary  
Attention: Comments/Legal ESS  
550 17th Street NW  
Washington, DC 20429  
12 CFR Part 339; RIN 3064-AE50

Farm Credit Administration  
Barry F. Mardock, Deputy Director  
Office of Regulatory Policy  
1501 Farm Credit Drive  
McLean, VA 22102-5090  
12 CFR Part 614; RIN 3052-AD11

National Credit Union Administration  
Gerard S. Poliquin, Secretary of the Board  
1775 Duke Street  
Alexandria, VA 22314-3428  
Compliance Aid Provision  
12 CFR Part 760; RIN 3133-AE64

**Re: Joint Notice of Proposed Rulemaking on Loans in Areas Having Special Flood Hazards -- Private Flood Insurance**

Dear Sir or Madam:

The Mortgage Bankers Association<sup>1</sup> (MBA) appreciates the opportunity to comment on the joint proposed rulemaking of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the Agencies) amending regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

## **BACKGROUND**

In 2012, Congress enacted the Biggert-Waters Act to ensure the continued financial sustainability of the National Flood Insurance Program (NFIP). The Act made a number of broad reforms to the NFIP, including provisions intended to encourage greater private insurer participation in the flood insurance market.

In October 2013, the Agencies issued a joint notice of proposed rulemaking to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act (the 2013 NPR). The following March, Congress enacted the Homeowner Flood Insurance Affordability Act (HFIAA) which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance and created a new exemption from the mandatory flood insurance purchase requirements for certain detached structures. Accordingly, the Agencies jointly issued final rules in July 2015 (proposed in October 2014), to implement the escrow and detached structure provisions of HFIAA and the force-placed insurance provisions of Biggert Waters. The Agencies did not include the private flood insurance provisions at that time but are re-proposing them in the proposed rule released this past November.

With the other mandates from the Act finalized, the Agencies are now seeking comment to revise and re-propose the private flood insurance provisions. MBA submits the following rule-specific comments below, first addressing the 1-4 unit residential issues followed by our commercial real estate/multifamily comments.

### **SINGLE FAMILY RULE-SPECIFIC COMMENTS**

#### **1. Private Flood Insurance**

The proposed rule defines “private flood insurance” consistent with the Biggert-Water Act definition<sup>2</sup> (Definition) and includes criteria for determining whether a

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<sup>2</sup> Under the Biggert-Water Act, “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 regulatory 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 recognized, or not disapproved, as a surplus lines insurer by the State insurance regulator of the State or jurisdiction where the property to be insured is located;
- Provides flood coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP), including when considering deductibles, exclusions, and conditions offered by the insurer;
- Includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution’s behalf;
- Includes information about the availability of flood insurance coverage under the NFIP;
- Includes a mortgage interest clause similar to the clause contained in an SFIP;
- Includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and
- Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

policy's coverage is "at least as broad as" SFIP<sup>3</sup> coverage. Coverage under a private policy would be considered "at least as broad as" coverage provided under an SFIP if it, at a minimum:

- Defines the term "flood" to include the events defined as "flood" in an SFIP;
- Covers both mortgagor and mortgagee as loss payees;
- Contains the coverage provisions specified in SFIP, including those relating to building property coverage; personal property coverage if purchased by the insured mortgagor; other coverages; and the increased cost of compliance;
- For any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender, contains deductibles no higher than the specified NFIP maximum for the same type of property, and includes similar non-applicability provisions as under an SFIP;
- Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in a SFIP; any additional or different exclusions than those in an SFIP may only pertain to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and
- Does not contain conditions that narrow the coverage that would be provided in an SFIP.

Additionally, the Agencies are including a Compliance Aid Provision to further assist lenders in evaluating private policies. Under the proposed rules, a policy is deemed to meet the definition of "private flood insurance" if three criteria are met:

- The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;
- The regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and

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<sup>3</sup> Definition of Standard Flood Insurance Policy (SFIP). The proposed rule would define SFIP to mean a standard flood insurance policy under the NFIP in effect as of the date the private policy is provided to a regulated lending institution. The Agencies are requesting comment on whether this is the correct time-frame to determine what version of the SFIP should be used to evaluate private policy.

- The policy includes the following provision within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 USC 4012a(b)(7) and the corresponding regulation.”

MBA applauds the Agencies for recognizing the problems inherent in requiring regulated lending institutions to determine that coverage is “at least as broad as” the coverage provided by a SFIP under the NFIP. However, the proposed rules still present a significant burden for lenders, since the requirements necessitate comprehensive review and comparison of private flood insurance policies.

While a written summary that identifies the provisions of the policy that meet each criterion could assist a lender in reviewing policies, the proposed rule still necessitates a comprehensive review of the complete insurance policy which lenders typically do not have at loan closing. Lenders often do not receive complete policies until weeks, if not months, after closing. Typically, only an application with evidence of premium payment, the declaration page, or certificate of insurance are available at closing, none of which has the level of detail necessary to meet the level of review required under the proposed rule.

This also presents an impossible situation with respect to the requirements for cancellation of force-placed insurance. Lenders are required to accept a borrower’s policy declaration page as confirmation of the existence of coverage, in order to cancel force-placed insurance and refund any excess premiums, so long as the declaration page includes the policy number and the identity and contact information for the insurance company or agent. This document, however, does not contain enough information for a lender to determine if the policy presented meets the mandatory purchase requirement.<sup>4</sup> This creates the risk of extended periods of inadequate coverage with no reasonable means for the lender to effectively make that determination in a timelier manner.

Additionally, because a lender would still be required under the proposed rule to accept a policy that meets the definition of private flood insurance and the mandatory purchase

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<sup>4</sup> This issue was raised in comments to the Agencies’ proposed rules issued in October 2014. Several commenters requested that the Agencies clarify that sufficient evidence of insurance coverage requires additional information or documentation beyond what is typically included in a declaration page in order for a lender to be able to determine that such policy satisfies either the Biggert-Waters definition of private flood insurance, in the case of a private policy, or the mandatory purchase requirement. *“A large lender commenter requested that the Agencies clarify that, in addition to the minimum required information, the declarations page must contain the correct amount, dates, and other information to fulfill the mandatory purchase requirements. This commenter also recommended that a copy of the policy be provided to the lender or servicer and that the lender or servicer have 45 days to check for compliance with any required private flood insurance criteria as conditions for terminating the force-placed insurance based on a borrower’s private policy. As provided by the October 2013 Proposed Rule, sufficient documentation consists of an insurance policy declarations page that includes the existing flood insurance policy number and the identity of and contact information for the insurance company or its agent. This information is all that is required under Biggert-Waters for an insurance policy declarations page to be considered sufficient evidence of a borrower’s flood insurance coverage, and the Agencies decline to require additional information.”*

requirement, even if the policy is not accompanied by a written summary and does not include an assurance clause, we do not believe the criterion provide any meaningful benefit to lenders.

Given the additional costs, likelihood of delay, and the complexity of the decision making process, MBA encourages the Agencies to consider a solution that places the burden of demonstrating compliance on the parties most logically able to bear it: the insurers themselves. MBA strongly urges the Agencies to include a safe harbor if an insurer certifies that their policy is compliant with the mandatory purchase requirement of the Flood Disaster Protection Act (FDPA). This would require certification by the insurance industry, the group most qualified to do the coverage review and investigations necessary to certify policies.

As we noted in our 2013 comments, such a self-certification process would add very little risk, as private insurers would be contractually obligated to ensure their policies met the FDPA requirements. Self-certification would also largely mirror the larger hazard insurance market, and greatly increase the likelihood of acceptance of private flood insurance.

## **2. Requirement to accept private flood insurance**

The proposal would include a new provision to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Biggert-Waters Act, which requires all regulated lending institutions accept private flood insurance that meets both the statutory definition of “private flood insurance” and the mandatory purchase requirement.

As noted in our comments to the October 2013 proposed rules, MBA is concerned about requirements that broadly require lenders to accept private flood insurance policies, without consideration of the particular situation, unique characteristics of the collateral, or other aspects of the policy. MBA strongly supports providing lenders with the discretion to accept private policies – as is the case currently - but mandates to accept private policies, perhaps even those that do not adequately cover the risks to a particular property, present exposure for borrowers and mortgage lenders and are inappropriate. Lenders should not be required to accept a policy without any ability to ensure the specific flood exposures of that particular location or collateral are adequately addressed.

## **3. Discretion to accept other private policies**

The proposed rules contain a provision that would permit institutions at their discretion to accept a private flood policy that does not meet the definition of “private flood insurance”. Institutions would be permitted to accept other types of private policies provided they meet the following criteria:

- Must be 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 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, policy must be issued by a surplus lines insurer recognized, or not disapproved, by the State insurance regulator;
- Must cover both mortgagor and mortgagee as loss payees;
- Must provide for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to state law; and,
- Must either be “at least as broad” or “similar” to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. In determining whether the coverage is similar to coverage provided under an SFIP, lenders would be required to (1) compare the private policy with SFIP to determine the differences; (2) reasonably determine that the private policy provides sufficient protection of the loan secured by the property; and (3) document its findings.

MBA strongly agrees that providing lenders with discretion to accept private policies that do not meet the definition of “private flood insurance” will effectuate Congressional intent by broadly encouraging the growth of the private flood insurance market. However, we are concerned that the proposed criteria is too restrictive and would have the effect of stifling the acceptance of private flood insurance, rather than promoting it.

Requiring a lender to confirm the private insurer’s approval by the state insurance regulator will unnecessarily burden lenders and insurance agents and add little value for borrowers. Instead, MBA suggests allowing lenders to rely upon the A.M. Best financial strength rating of the insurer, a financial health assessment that has served the lending industry for years. MBA also urges the Agencies not to restrict policies issued by surplus lines insurers to nonresidential commercial properties. Surplus policies may be the only alternative for residential homeowners whose risks do not fit within the terms and limits of the NFIP or whose risks are declined by the standard market.

Requiring coverage of both mortgagor and mortgagee will effectively rule out private insurance options for condominiums as master policies almost never include a lender beneficiary. Current industry standards allow for the acceptance of private flood insurance policies not meeting the Definition and MBA is unaware of any widespread problems associated with this process. MBA strongly encourages the Agencies to allow this to continue without adding unnecessary restrictions. This will reduce costs and encourage the acceptance of private flood insurance.

## **COMMERCIAL/MULTIFAMILY RULE-SPECIFIC COMMENTS**

Commercial real estate (CRE) properties are income producing properties owned primarily by institutional investors. Properties such as office buildings, retail centers, hospitality properties and multifamily apartment buildings (with 5 or more units), among others, are different types of CRE. For this latter half of the letter, we provide comments that address these types of properties.

The proposal requests comments with respect to three provisions aimed at clarifying the circumstances under which a lender would be required or have the option to accept flood insurance from a private insurer which satisfies the mandatory purchase requirement. Outlined below is MBA's analysis of the practical challenges for commercial and multifamily properties related to these provisions. Many of our comments apply to both the Compliance Aid for Mandatory Acceptance and the Discretionary Acceptance Provision. Therefore we group these two provisions together when providing comments. We then follow that by outlining our comments to the Mutual Aid Society Provision and lastly provide our thoughts in response to the specific nonresidential questions raised in the proposal.

Before delving into the specific provision comments, we want to underscore that commercial/multifamily insurance policies (including flood insurance) can be extremely complex. These policies can be standard policy forms or can consist of a multi-hundred page manuscript coverage. For example, a property owner who owns multiple properties may choose to provide all of the necessary insurance (including flood insurance) through a blanket insurance policy that is subject to various limits and layers rather than purchasing a specific flood insurance policy related to a specific building. Requiring a bank to employ personnel with the level of expertise required to review such policies would be extremely burdensome. Unlike the SFIP, private policies for large commercial and multifamily properties are not standard forms and therefore each would require a detailed review by very experienced staff.

### **1. The Compliance Aid for Mandatory and Discretionary Acceptance Provisions**

In MBA's comment letter responding to the October 2013 joint proposal, we recommended having the insurance company provide certification that the policy issued meets the definition of "private flood policy" under the rule. As noted in that letter, this would place responsibility for the evaluation with the insurance industry, the group most qualified to make the assessment. Further, we recommended that the rule provide the lender a safe harbor in accepting the insurer's assessment. MBA applauds the Agencies for acknowledging and accepting a portion of our recommendation; however, by allowing the insurer certification without the recommended safe harbor, we do not believe that these provisions alleviate the lenders' concern about potential liability associated with acceptance of private flood insurance policies. For example, we are concerned that a lender verification or confirmation could expose the lender to new and additional liability both from a regulatory and legal aspect. In addition, we are concerned

that the bank may face additional liability arising from a dispute between the bank and the borrower as to the acceptability of the private flood policy.

Furthermore, while we recognize the Agencies' attempt to provide direction in evaluating the "at least as broad as" or "similar" provisions, we do not believe that either substantially improves the lender's ability to make an evaluation. We continue to believe that the lender will not have the staffing or expertise to make this determination. MBA continues to encourage the Agencies to consider a solution that relies on an insurer statement that ensures the private policy meets the definition of "private flood insurance" and also provides a safe harbor to lenders who accept and rely on the statements.

To help illustrate the above, we outline several specific challenges the commercial and multifamily lenders would face when implementing the proposal as it is currently written:

- **Lack of timely access to policies** - To be workable, a lender or servicer must have timely access to the terms of the private policy in order to determine whether the private policy meets the requirements included in the proposal. Currently, the FEMA NFIP Flood Insurance Manual requires lenders to accept a "copy of the Flood Insurance Application and premium payment, or a copy of the declarations page" as evidence of proof of flood insurance. Binders are not accepted, and forms such as the ACORD 29 are accepted "for informational purposes only."<sup>5</sup> This structure is workable only because the relevant policy forms for NFIP policies are immediately available online. This is not the case in the private policy arena, however, where there generally is a substantial delay between the binding of coverage and actual delivery of a policy. Any significant delay in obtaining policies to review creates the possibility for conflict and litigation between a borrower, who will believe that they are in compliance by having tried to obtain a private policy, and a lender, who cannot make a determination as to compliance because the policy has not been delivered. As a result, the lender would be required to force place because at that point coverage is "inadequate or does not exist" or require the borrower to obtain an NFIP policy. In addition the lender must have the ability to review a private policy that would replace the forced place policy in the same manner it has to review other policies.
- **Force Placed Insurance** - We also note that the current NFIP requirements, anticipating a standard NFIP policy, provide for the release of force placed insurance coverage upon the borrower's presentation of limited information. This limited information would be insufficient for a lender to determine compliance of a private flood policy with the proposal. We urge the Agencies to coordinate requirements so that release of an in place force placed flood insurance policy would only be required once the lender is able to review and confirm compliance in the same manner that is required in placing or renewing private flood policy coverage.

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<sup>5</sup> NFIP Flood Insurance Manual, "General Rules," at 15.



- **Commercial/multifamily flood policies are highly complex** – As acknowledged by the Agencies, CRE and MF insurance policies are highly complex. Unlike the SFIP, commercial and multifamily flood policies issued by an insurer may not be standalone policies, but may be included within the broader policy that covers all of the property coverages (e.g. flood, fire, named wind, earthquake, etc.). The complexity of these policies and the integration of terms among the various coverages would make this type of review very burdensome for the lender. Furthermore, the criteria requires that the lender determine that the private policy provides “sufficient” coverage of the loan. As noted above, this raises the question of borrower reliance on the lender’s assessment of the policy and the potential liability that may arise from such reliance. In addition, several of the terms provided by the NFIP such as 1) the maximum \$500,000 coverage amount available with respect to commercial and multifamily properties under the NFIP, 2) the lack of contents coverage, 3) the actual cash value payment regime and 4) other terms included for commercial and multifamily properties are often “insufficient” to protect the loan.
- **Lack of manageable guidance to determine compliance** – Without standard insurance language and/or policy forms, determining whether a proffered private policy meets the criteria set forth in the proposal will require banks to conduct case-by-case evaluations of issues requiring subjective decisions and are often disputed among parties, at times leading to litigation. This flood insurance policy analysis is outside the scope of evaluation that lenders currently perform. Most lenders do not possess the expertise to conduct this analysis. While we recognize and appreciate the Agencies’ attempt to provide direction, we believe that the requirement that a lender verify or confirm that the provisions identified by the insurer satisfy the criteria set forth in the definition, significantly reduces the value of the insurer certification that the policy meets the definition of private flood insurance.
- **Potential creation of new bank liability** - Interposing the bank between the borrower and its insurer could expose lenders to liability that does not currently exist. In the current market, lenders set forth minimum insurance requirements (including for flood insurance) in the borrowers’ loan documents. Once set, the borrower and its insurer negotiate and decide (subject to the lender’s minimum requirements) on the coverage (including amounts, deductibles, etc.) required to cover the borrower’s property adequately. In the event of a failure to pay a claim or the insufficiency of insurance proceeds to cover losses, the borrower remains liable to the bank for repair of the property and/or repayment of the loan. In the event that a private flood policy (confirmed by the insurer and verified by the bank) fails to pay the same amounts or in the same time frame as an NFIP policy, we fear that a borrower may seek action against the lender rather than focusing its dispute with its insurance provider (as is currently done). On the other hand, if a lender rejects a private flood policy, the borrower could claim harm as a result (because a loan does not close).
- **Lenders need flexibility to require financial ratings and other common terms in the insurance policy when required to accept a private flood insurance policy** – Lenders and loan programs regularly impose certain financial strength

requirements for the providers of insurance (including flood insurance) aimed at ensuring that the insurer can meet its claims paying obligations. With respect to SFIP policies, a stated financial strength rating is not required as the NFIP program has the backing of the US Treasury. However moving into the private flood insurance market, it is critical that lenders have the flexibility to continue to ensure that insurance providers meet the required financial standards as required in the loan documents. In addition, lenders must have the flexibility to require other standard insurance terms (such as a lender's loss payable or mortgagee clause).

Lastly we would ask for clarification as to enforcement in the event of a dispute. We urge the Agencies to reconsider a safe harbor for lenders or provide assurance that the lender will not face penalties or other sanctions for accepting a policy that was later determined as not similar to the SFIP options or for rejecting a policy that was later determined to be similar to the SFIP.

With respect to the Discretionary Acceptance provision, we note that like Mutual Aid Societies, alternate forms of insurance (such as captives) are sometimes proposed by borrowers. We recommend the Agencies include a provision in the Discretionary Acceptance Provision that would allow lenders to accept alternative insurance policies meeting the requirements of that section and have the approval of the lenders primary regulator even though they are not "issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; 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 where the property to be insured is located"<sup>6</sup>.

In summary, MBA would urge the Agencies to provide a road toward acceptance of flood policies from private insurers that places responsibility for evaluation of the private flood policy and the NFIP policy in the hands of the insurance experts (such as insurance providers, brokers, agents) and eliminates potential additional liability for the lender. We urge the Agencies to reconsider a 'safe harbor' in the event that the lender accepts a flood policy (properly documented and certified) from a private insurer that is later found not to meet the definition of "private flood insurance". We further recommend that lenders have flexibility to impose on private flood insurance providers terms similar to those imposed on providers of other required insurance coverages. We also recommend a broader timeframe to allow the insurer to evaluate the SFIP policy in advance of the effective date of the insurance coverage and clarification of the methodology by which a lender will be able to determine NFIP policy changes.

## **2. Mutual Aid Society Provision**

MBA appreciates the Agencies desire to provide an exception for a mutual aid society. We are not aware of instances under which mutual aid societies would undertake the

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<sup>6</sup> Fed. Reg. 81, p. 78074

insurance of commercial and multifamily properties or be prepared to fund the repair of these buildings. Given the likely inability of mutual aid societies to repair large commercial and multifamily buildings, we recommend that commercial and multifamily properties be exempted from a requirement to accept insurance provided by mutual aid societies.

To the extent that the primary regulators retain the right to require banks to accept such insurance in satisfaction of the mandatory purchase requirement, we recommend that the regulators impose financial strength and claims paying ratings in addition to past performance in the evaluation.

### **3. Nonresidential Proposal Comments**

MBA appreciates the Agencies recognition that commercial properties insurance requirements can be complex and significantly different than the insurance required in the 1-4 family residential loan market and the specific request for comment related to these properties.

As indicated in the body of this letter, the inability of a lender to have timely (prior to expiration or renewal) access to private, non-standard insurance policies hampers any evaluation process. Often in financing commercial and multifamily properties, the NFIP mandatory purchase flood insurance is a small portion of the total insurance coverage. 'Private flood insurance' insurance as defined in the proposal will preclude lenders from accepting private policies that are acceptable for other types of insurance including the required excess flood coverage.

Terms that are typical in commercial and multifamily real estate lending, as mentioned above, include items such as coverage amounts, mortgagee and lender loss payee clauses, maximum deductibles, insurance term, replacement cost coverage and financial strength ratings. In addition lenders often require coverages such as contents, business interruption and ordinance and law to mitigate the risk that a property will be unable to repair, operate and meet debt service payments. Lenders regularly accept blanket insurance coverage (for flood and other insurance types) to allow the property owner to minimize its insurance costs while maintaining the coverage that satisfies the loan document requirements. While lenders set insurance standards to try to ensure that sufficient funds are available, they are unlikely to make any claim regarding the sufficiency of the insurance or in any other way provide any assurance that coverage will be available.

In connection with the proposal, we would urge the Agencies to:

- Provide clarification that multifamily properties, a subset of commercial real estate properties, are included under the term "nonresidential" for this purpose: Biggert Waters for the first time recognized multifamily properties as a subset of commercial properties and transitioned multifamily properties from the maximum \$250,000 coverage available on 1-4 family units to the maximum \$500,000 coverage available on nonresidential properties.

- Provide the lenders (including e.g. insurers and guarantors) the flexibility to set insurance requirements for the entirety of its required flood coverage in the same manner that it sets requirements for other insurance coverages such as fire, named wind, earthquake, etc.
- Allow lenders to require terms that the lender typically includes when requiring other types of insurance for similar properties in similar locations such as financial strength ratings, mortgage clauses, lender loss payee clauses, etc.

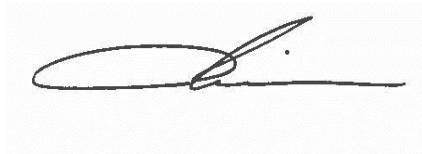
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MBA appreciates the Agencies' work to develop this rule, and your careful consideration of the industry's comments. We look forward to working with you as you move forward. Should you have questions or wish to discuss any aspect of these comments further, please contact Sara Singhas (202) 557-2826, [ssinghas@mba.org](mailto:ssinghas@mba.org) or Kathy Marquardt (202) 557-2742, [kmarquardt@mba.org](mailto:kmarquardt@mba.org).

Sincerely,



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