

From: Nancy Townsend <NTownsend@columbiabank.com>
Sent: Friday, January 06, 2017 4:04 PM
To: Comments
Subject: FDIC – Loans in Areas Having Special Flood Hazards—Private Flood Insurance (FDIC 12 CFR 339; RIN 3064-AE50)

To Whom It May Concern:

Columbia Bank appreciates the opportunity to provide comments on the Proposed Rule 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. After review of the Proposed Rule, the Bank submits the following comments.

It is our opinion that the spirit and intent of the regulation pertaining to private flood insurance policies was to encourage opening up that market to provide borrowers with alternatives to acceptable flood coverage. We applaud the effort to open up this market as we agree it is beneficial to borrowers and lenders alike. However, this Proposal appears to fall short of this encouragement; rather, it is our concern that it will have the opposite effect and stifle this growth. The burden of determining acceptability, whether mandatory or discretionary, is placed upon lending institutions and requires insurance and legal expertise that is better performed by insurance professionals and state insurance regulators. We offer the following specific comments in this regard:

1. The Agencies seek comments as to whether the proposed criteria for determining if flood insurance coverage are “at least as broad as” the coverage provided under the NFIP facilitate a regulated lending institution’s determination.
 - a. The proposed criteria does not alleviate ambiguity concerns with respect to “at least as broad as” coverage. In particular, §§339.2(k)(2)(iii-vi) are subject to interpretation wherein lending institutions will find it difficult to determine, with any degree of certainty, if a policy meets the definition of Private Flood Insurance requiring mandatory acceptance. The level of insurance or legal expertise required to perform the analysis of each policy is not typically found in lending institutions and as such would necessitate their seeking outside professional or legal review of each policy. Additional expense for review, delays in loan closings, and potential harm to borrowers may result.

As an example of a variable in which clear guidance is necessary, 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.
 - b. It is assumed that a copy of the full policy would be needed to perform the analysis required to determine if the coverage is at least as broad as NFIP coverage. This is often not available to lending institutions until sometime after insurance coverage is bound, if at all. This leads to borrower frustration, delays, additional expense, and potential harm to borrowers.
 - c. §339.2(k)(2)(iv) requires that deductibles are no higher than the specified maximum for the same type of property. Higher deductibles, especially in the case of multi-peril and non-residential policies, may be consistent with general safety and soundness principles; however, the higher deductibles may exclude

many policies issued by private carriers that otherwise may be deemed to meet the private policy definition.

- d. State law and requirements of state insurance regulators may not allow flexibility of the insurance carriers or underwriters to produce mortgage interest clauses, written 45-day notice before cancellation or non-renewal, or other information and provisions as listed in §339.2(k)(3).
2. The agencies request comment on all aspects of the proposed compliance aid; in particular, whether the provision as proposed would assist in complying with requirement to accept policies meeting the definition of “private flood insurance” and addressing whether each of the three criteria in the proposed provision is necessary and feasible.
 - a. The first criterion regarding a written summary demonstrating 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, will require cooperation from the insurance industry. This section of the proposal does not specifically state the party responsible for providing the written summary; however, in reviewing this with the context of the second criterion, it appears the intent was that this be provided by the insurer. We are concerned that this cooperation will not be forthcoming. It is our understanding that this concern is also shared among others in the banking industry. As such, this criterion does not appear to be feasible.
 - b. The second criterion requiring the supervised institution to verify in writing that the policy includes the provisions identified by the insurer in the summary provided under the first criterion and that these provisions satisfy the criteria included in the definition, is again a concern due to the insurance and legal expertise it appears to require to make this determination. Verifying that the provisions identified by the insurer are in the policy, provided the policy is available for review, could be easily accomplished by the Bank. However, confirming that these provisions satisfy the criteria included in the definition appears to be a duplication of the work done by the insurance professionals in producing the summary; provided that the summary can be obtained. As stated elsewhere herein, the expertise required for this review is not typically found or readily available to lenders, and is better left to the insurance industry and state insurance regulators. As such, this criterion also does not appear to be feasible.
 - c. The final criterion that the policy include a specific provision within the policy or an endorsement to the policy stating, “This policy meets the definition of private flood insurance contained in 42 U.S.C. 40123a(b)(7) and the corresponding regulation” is considered necessary and feasible; provided, however, that the insurance industry cooperates. If the insurance professionals provide this provision in the policy or an endorsement, which we assume would be legally binding in the event of a claim, we believe this to be sufficient for lending institutions to accept as a private policy as defined, without the need for the first and second criteria. We are concerned, however, that the insurance industry may not be willing to provide this assurance due to many of the same reasons we have provided herein surrounding coverage “at least as broad as” NFIP policies.
 3. The Agencies are soliciting comments as to whether the proposed criteria for discretionary acceptance of flood insurance policies not meeting the statutory definition of “private flood insurance” are appropriate, compatible with industry practice, and the impact on the growth of the market for flood insurance policies issued by private insurers.
 - a. The discretionary acceptance criteria as proposed do not contain sufficient detail to provide a clear line by which lenders may determine the acceptance or denial of a policy to avoid regulatory ambiguity and inconsistent interpretation of the mandatory purchase requirement by quality control reviewers, auditors, and regulatory examiners.

- b. Granular analysis of insurance policies by lenders not having in-depth insurance expertise is problematic in determining acceptance of policies. This is a consistent concern throughout the Proposal, as this type of expertise is not often available in financial institutions.
- c. Without clear, defined guidance, or some other form of safe harbor, lenders will be less likely to exercise discretionary acceptance of policies issued by private insurers, resulting in achieving outcomes contrary to the intent of the Act.

Thank you for the opportunity to engage in the regulatory process regarding the Interagency Proposed Private Flood Insurance Rule.

Respectfully,

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