**JOSEPH P. GUNSET**
General Counsel

LLOYD'S

December 9, 2013

Office of the Comptroller of Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Farm Credit Administration
National Credit Union Administration (collectively, the "Agencies")

**Re: Loans in Areas Having Special Flood Hazards**

Lloyd's is submitting this comment letter in response to the Agencies' joint notice of proposed rulemaking regarding loans in areas having special flood hazards (the "Proposed Rule"). We appreciate the opportunity to provide comments on the Proposed Rule, which implements certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the "Act"). Lloyd's welcomed the Act as an important step in promoting the development of a private market for flood insurance in the US. We believe that the involvement of Lloyd's and other surplus lines insurers is key to the development of a competitive private flood insurance market. [1]

Lloyd's is the world's leading specialist insurance and reinsurance market and has been writing insurance in the US for well over 100 years. In 2012, Lloyd's wrote more than $12.3 billion in direct and reinsurance premiums in the US. For the past several years, Lloyd's has been the largest surplus lines insurer in the US. The Lloyd's market has proved an important source of support for the US following major natural catastrophes such as Hurricanes Katrina, Rita and Wilma and, more recently, Superstorm Sandy.

### "Private Flood Insurance" Definition

Lloyd's supports the Agencies' reliance on the Act's statutory definition of "private flood insurance," but we believe that language should be added to the regulation clarifying that residential coverage issued by eligible surplus lines insurers falls within that definition. As will be noted below, this is consistent with both the language and the intent of the Act's statutory definition.

Surplus lines insurance acts as a supplementary market for risks that are declined by the admitted market either due to a lack of underwriting capacity or expertise. The ability of surplus lines insurers to provide reliable capacity for these hard to write risks is facilitated by surplus lines insurers' freedom of form, meaning that they are not required

[1] Lloyd's has set out its views on the development of a healthy market for private flood insurance in the US in its 2011 report entitled Managing the Escalating Risks of Natural Catastrophe in the US: http://www.lloyds.com/~/media/lloyds/reports/emerging%20risk%20reports/natural%20catastrophes%20in%20the%20us.pdf

**LLOYD'S AMERICA, INC.** The Museum Office Building 25 West 53rd Street 14th Floor New York NY 10019
www.Lloyds.com/US
Telephone +1 212 382 4060 Fax +1 212 382 4070 Email: joseph.gunset@lloyds.com

to file their policy forms or have them approved by state insurance regulators. This flexibility enables surplus lines insurers to underwrite risks for which admitted insurers are either unable or unwilling to provide coverage. The surplus lines market is an important provider of capacity in geographic areas at high risk for flooding, such as the Gulf Coast, which has tended to face capacity shortages in the admitted market, especially in the wake of a major event. Therefore, requiring lenders to accept surplus lines insurance that meets the statutory definition of "private flood insurance" (in addition to flood insurance issued by admitted carriers) as contemplated by the Act is essential in order to ensure the development of a private flood insurance market that offers capacity for properties in all regions.

The statutory definition of "private flood insurance" refers to coverage "issued by an insurance company that is licensed, admitted *or otherwise approved to engage in the business of insurance*" [emphasis added].[2] Surplus lines insurers clearly fit within this definition as they are approved by virtue of being deemed eligible to write surplus lines insurance. As noted in the Proposed Rule, the Nonadmitted and Reinsurance Reform Act ("NRRA"), part of the Dodd-Frank Act, created nationwide eligibility standards for surplus lines insurers. The NRRA provides that non–US or alien insurers are deemed eligible to write surplus lines insurance throughout the US if they are included on the Quarterly Listing of Alien Insurers ("IID list") published by the International Insurers Department of the National Association of Insurance Commissioners.

While the Act does not specifically reference surplus lines insurance in the statutory definition, in its deliberations over the Act Congress discussed this issue and clearly intended for surplus lines insurance to be included within the statutory definition of "private flood insurance." In Senate deliberations, for example, Sen. Mike Crapo (R-ID) specifically addressed this issue by noting that surplus lines insurers provide cover for residential properties, particularly when licensed and admitted insurers are unwilling or unable to provide the desired coverage. The Chairman of the Senate Banking Committee, Sen. Tim Johnson (D-SD) confirmed that "the definition of 'private flood insurance' includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties."[3] In view of the unambiguous statement of legislative intent and the Act's reference to insurers "otherwise approved to engage in the business of insurance," it is appropriate for the Act's implementing regulations to definitively state that coverage issued by eligible surplus lines insurers falls within the definition of "private flood insurance." Such a provision would avoid unnecessary uncertainty and confusion regarding this issue. Lloyd's believes that the Proposed Rule should be revised to expressly state that coverage issued by surplus lines insurers appearing on the IID List is included within the definition of "private flood insurance."

[2] 42 U.S.C. §4012a(b)(7)(A)(i).
[3] 158 Cong. Rec. S6051 (daily ed. Sept. 10, 2012).

**Safe Harbor Provision**

Lloyd's agrees that the creation of a "safe harbor" provision for the purpose of determining which insurance policies meet the definition of "private flood insurance" is crucial in order to achieve the Act's intended goal of encouraging the development of the private flood insurance market. Lenders will likely be unwilling to invest the resources needed to determine for themselves whether private flood policies meet the statutory definition of "private flood insurance." This puts insurers offering private flood insurance at a competitive disadvantage because lenders, and consequently consumers, will prefer coverage provided by the National Flood Insurance Program ("NFIP"), with which they are more familiar. Therefore, in order to enable the growth of the private flood insurance market it will be necessary to establish a clear rule indicating those types of private flood insurance policies lenders are required to accept under the Act.

The Agencies have suggested creating a safe harbor that would require state insurance regulators to approve or make a determination that a private flood insurance policy meets the statutory definition. While Lloyd's agrees that state insurance regulators have expertise in this area, we do not believe that policy approval or a written determination by a state insurance regulator is the appropriate mechanism for establishing a safe harbor, at least with respect to flood insurance policies issued by surplus lines carriers. There is a process for the approval of policy forms used by admitted carriers; however, as noted above, there is no parallel process for surplus lines forms because surplus lines insurers have freedom of form and are not required to file policy forms. The administrative burden of applying for regulatory approval or determination that coverage meets the statutory definition on a state by state basis is unnecessary both for regulators and insurers since the standard that must be met is that the specific surplus lines coverage at issue must be at least as broad as the NFIP Standard Flood Insurance Policy (SFIP). For the sake of uniformity, there should be one standard for determining if policies provide sufficiently broad coverage to be deemed to meet the statutory definition of "private flood insurance." Any other arrangement risks inconsistent or even contradictory treatment of identical policy wordings.

Lloyd's believes that a more efficient solution, and one that would be easier to implement as a safe harbor for surplus lines policies, would be the creation of a checklist of coverage requirements or required provisions based on the SFIP that flood insurance policies must contain in order to be deemed to meet the statutory definition of "private flood insurance." Since the Federal Emergency Management Agency (FEMA) administers the NFIP and has the greatest familiarity with the provisions of the SFIP, FEMA would be well positioned to develop such a checklist. State insurance regulators could participate in this process with FEMA by providing their experience and insurance expertise.

In this manner, surplus lines insurers or insurance brokers could then certify to lenders that the coverage offered meets all the terms in the FEMA checklist. This would create a much more streamlined and uniform approach for the safe harbor. The administrative burden of a standard checklist and certification would be reduced for all parties, thus greatly increasing the speed by which surplus lines insurers would be able to offer their insurance products to homeowners. All of this would of course serve to limit the number of policies being backed by the NFIP.

**Policies Not Meeting the Statutory Definition**

Lloyd's believes that the focus of the Proposed Rule should be on establishing which private flood insurance policies lenders are required to accept because such policies meet the statutory definition of "private flood insurance." However, lenders should also be permitted to accept private flood insurance that does not meet the statutory definition at their discretion. As previously noted, admitted insurers have shown limited appetite for writing business in areas that are a high risk for flood and other natural catastrophes. In contrast, surplus lines insurers have been able to offer coverage in these areas as a consequence of their greater underwriting flexibility and particularly their ability to draft bespoke policy wordings.

Private flood coverage is often based upon the coverage offered by the NFIP. However, some risks may require, and some policyholders may request, special policy wordings or coverage terms to reflect their unique circumstances and requirements. Flexibility in terms is key to ensuring the availability of flood coverage for property in high risk areas. To that end, lenders should have discretion to accept any form of private flood insurance coverage they deem appropriate. This will help to guarantee that consumers have the ability to select a policy that suits their needs, and it is also consistent with the Act's goal of encouraging the development of private sector alternatives to the NFIP.

**Conclusion**

The surplus lines market is an important provider of capacity for flood risk in the US. As explained above, legislative history makes it clear that Congress recognized this and intended that the coverage issued by surplus lines insurers is to be included within the definition of "private flood insurance." The Proposed Rule should be revised to expressly include eligible surplus lines insurers in order to avoid any doubt lenders may have as to the acceptability of coverage issued by such insurers.

From a commercial standpoint, a safe harbor provision that provides clear guidance to lenders as to which flood private insurance policies they are required to accept is vital in order to encourage the development of the private flood insurance market. Since surplus lines insurers are not required to have their policy forms approved, however, approval from state insurance regulators is not the appropriate safe harbor mechanism for the surplus lines market. A simpler and more efficient approach would be for FEMA, with input from state insurance regulators, to create a checklist of required coverage terms based on the SFIP. The insurer or insurance broker could then simply certify to the lender that the private flood coverage contains all the provisions required by the checklist.

Finally, Lloyd's believes that lenders should be permitted the discretion to accept private flood insurance that does not meet the statutory definition of "private flood insurance." Granting lenders this flexibility will promote the availability of flood insurance coverage in high risk areas, and will allow consumers to negotiate coverage terms that best suit their needs.

Very truly yours,