National Association of Professional Surplus Lines Offices, Ltd.

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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

RE: Loans in Areas Having Special Flood Hazards

Dear Sirs and Madams:

On behalf of the NAPSLO[1] membership, thank you for the opportunity to comment on the joint agencies' proposed regulation relating to flood insurance and loans in areas having special flood hazards. The Biggert-Waters 2012 Flood Insurance Reform Act (the Act) made certain improvements to the law, especially the provisions relating to the acceptance by lenders of private flood insurance issued by private insurers. We are encouraged by the draft regulation's focus on expanding flood insurance coverage in the private market, providing consumers with additional options for coverage and reducing reliance on the federal government. We believe the surplus lines (also known as nonadmitted) market can assist in this goal, and we offer comments focused on the ability of our membership to provide coverages and solutions pursuant to the joint agencies' proposed regulation.

The surplus lines market plays an important role in providing insurance for hard-to-place, unique or high capacity (i.e., high limit) risks. Often called the "safety valve" of the insurance industry, surplus lines insurers fill the need for coverage in the marketplace by insuring those risks that are declined by the standard underwriting and pricing processes of admitted insurance carriers. With the ability to accommodate a wide variety of risks, the surplus lines market acts as an effective supplement to the admitted market.

Surplus lines insurers are able to cover unique and hard-to-place risks because, as nonadmitted insurers, they are not required to comply with rate and form filing regulations that apply to admitted insurance

[1] NAPSLO is the national trade association representing the surplus lines industry and the wholesale distribution system. Our membership consists of approximately 400 brokerage member firms, 100 company member firms and 200 associate member firms, all of whom operate over 1,500 offices representing approximately 15,000 to 20,000 individual brokers, insurance company professionals, underwriters and other insurance professionals in the 50 states and the District of Columbia.

carriers. As a result of this flexibility, surplus lines insurers are able to react to market changes and accommodate the unique needs of insureds that are unable to obtain coverage from admitted carriers. This results in cost-effective solutions for consumers that are not "one size fits all," but are instead skillfully tailored to meet specific needs for non-standard risks.

According to the 2013 A.M. Best Special Report U.S. Surplus Lines Segment Review,[2] the total surplus lines direct written premium volume in 2012 was approximately $34.8 billion. In 2012, for the ninth year in a row, the surplus lines industry reported no financially impaired companies. This was in marked contrast to the admitted property/casualty industry's 21 disclosed financial impairments for the year. The report also indicated that, even though surplus lines insurers incurred increased losses in 2012 from Super Storm Sandy, that:

> "Aside from 2012, surplus lines companies have been extremely successful when compared with the property/casualty industry. The most recent five- and 10-year periods exemplify this disparity, which A.M. Best believes is due to surplus lines insurers' freedom of rate and form, customization, innovation and ability to adapt quickly to insureds' needs as they arise. Since surplus lines companies typically underwrite coverage for tougher risks that are hard to place in the admitted marketplace, there is a greater focus on tighter underwriting that correlates to the nature of the risk exposures being covered."

We believe private insurers, including surplus lines insurers, should be allowed to provide flood insurance coverages, including coverages that are either consistent with or outside or in excess of the Act's current definition of private flood insurance. We urge the agencies to amend the definition of private flood insurance to broaden the coverages and choices available to consumers and permit lenders to accept a flood insurance policy issued by a private insurer that may not meet the current definition of private flood insurance, but still achieve the mandatory purchase requirement of the Flood Disaster Protection Act (FDPA). We further believe lenders should be allowed to accept policies issued by private insurers, regardless of whether they meet the revised statutory definition. We believe any requirement that lenders accept only policies issued by private insurers that meet the current and/or revised statutory definition will reduce the options and availability of privately issued flood insurance.

The nonadmitted market accepts risks and issues coverage differently than the admitted market, because nonadmitted insurers have the flexibility to underwrite and price each individual risk based on the individual factors shaping that risk. We are concerned the constraints of the Act's current definition of private flood insurance would eliminate, or significantly limit, the nonadmitted market's flexibility to underwrite and price coverage needs that may differ from coverage currently offered by the NFIP. And we believe surplus lines insurers should be allowed to supplement the admitted market for flood insurance in all states. In order to offer the insured with private market alternatives to the NFIP, we believe there should be no requirement that the NFIP decline coverage in order for an insured to seek coverage in the admitted or nonadmitted markets.

[2] Attached is a copy of A.M. Best's Special Report on the Surplus Lines industry issued in September 2013.

Surplus lines insurers who wish to provide private market solutions in accordance with the new definition of private flood insurance will want to ensure and illustrate equivalence in such coverages. We recommend further discussions with surplus lines insurers to better understand these coverages and consideration of ways the industry can help lenders evaluate and feel comfortable that the coverages offered in a nonadmitted policy meet the new definition of private flood insurance.

We further believe the definition of private insurer should include an insurer that is licensed, admitted, or otherwise "eligible" to engage in the business of insurance in the State or jurisdiction in which the insured building is located. It is important to include "eligible" insurers in order to ensure surplus lines insurers are accepted and to be consistent with the nationwide insurer eligibility requirements established by the Nonadmitted and Reinsurance Reform Act (NRRA) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. An eligible U.S. surplus lines insurer is defined by the NRRA as an insurer authorized to write the type of insurance in its domiciliary jurisdiction and possessing capital and surplus or its equivalent under the laws of its domiciliary jurisdiction of at least $15,000,000. Pursuant to the NRRA, eligible alien/non-U.S. insurers are insurers listed on the NAIC's Quarterly Listing of Alien Insurers published by its International Insurers Department (IID).

Conclusion

NAPSLO members are eager to play a larger role in providing consumers with choices and private market solutions for flood insurance. The proposed regulation should (1) allow private insurers to provide flood insurance coverages, including coverages that are either consistent with or outside or in excess of the Act's current definition of private flood insurance; (2) ensure the definition of private insurer that includes surplus lines insurers; (3) amend the definition of private flood insurance to broaden the coverages and choices available to consumers and permit lenders to accept a flood insurance policy issued by private insurers; (4) allow lenders to accept policies issued by private insurers, regardless of whether they meet the revised statutory definition; and (5) exclude surplus lines insurers from any rate and form requirements to be required of the admitted market. While the nonadmitted market cannot unequivocally commit to covering all risks the admitted market cannot, it can provide broader coverage for flood insurance beyond the offerings of the current federalized program.

Again, we thank you for this opportunity to comment and look forward to further discussing the surplus lines market's role in offering private market solutions for flood insurance. We would appreciate any opportunity to assist in the future, including further discussions regarding our comments or approaches to address these comments within the regulation.

Sincerely,

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