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December 10, 2013

By electronic delivery to:

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Re: OCC - Docket ID OCC-2013-0015; Loans in Areas Having Special Flood Hazards; RIN 1557-AD67; RIN 7100AE-00; RIN 3064-AE03; RIN 3052-AC93; RIN 3133-AE18

Ladies and Gentlemen:

JPMorgan Chase Bank, N.A. ("JPMC") is pleased to have the opportunity to comment on proposed amendments to the flood insurance regulations (the "Proposal") to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 ("BWA"), as issued for public comment by the Office of the Comptroller of the Currency, the Farm Credit Administration, the Board of Governors of the Federal Reserve System, the National Credit Union Administration and the Federal Deposit Insurance Corporation (collectively, the "Agencies").

JPMC appreciates the thoughtful and thorough job the Agencies did in developing the proposed rules to implement BWA. Our comments below are two-fold in purpose -- we will respond to the Agencies' solicitations for comment (italicized below) and will highlight those areas of the Proposal that would benefit from additional modification or clarification or present significant operational challenges including, without limitation, the proposed implementation date for mandatory escrowing.

Escrow of Flood Insurance Payments

- **Modifying Junior Lien Exclusion**

We strongly support the proposed exclusions from the escrow requirements, but request a modification to the proposed rule with respect to junior liens. We are concerned with the Proposal's imposition of an ongoing duty to monitor first lien lenders to make sure that they are properly escrowing and to identify when a junior lien moves to the first lien position either by payoff or release of the first lien. We believe that a new monitoring requirement is unnecessary given that junior lien lenders regularly confirm that the required flood insurance is in effect and, as an additional named insured under the customer's policy, will be notified in the event of a cancellation and required (and able at that time) to take appropriate action.

Additionally, we would ask that the rule be amended to preclude the second lienholder from automatically becoming subject to BWA escrow requirements upon the payoff or release of the first lien. Junior lien lenders do not have the means to track lien status and do not routinely do so. We would suggest amending the rule so that in such cases, the subordinate lender becomes subject to the escrow requirements upon the earlier of the date on which (1) a "trigger event" occurs under the flood statute or regulatory guidance or (2) the customer's flood insurance policy lapses and the junior lien lender, as an additional insured, is notified by the insurer.

- **Clarifying When Escrow Payments are Required**

BWA requires escrow payments for flood insurance premiums with "...the same frequency as payments on the loan are made." We request the Agencies to clarify that escrow payments are not required when lenders have ceased billing the customer. For example, the billing of the customer will cease after a bankruptcy filing or loan charge-off. As lenders will not cease billing to avoid escrow collection, we recommend a broad exemption as it is difficult to identify all cases where customer billing may stop, e.g., borrower assistance, payment deferrals.

We also request clarification on when escrow payments are required on HELOCs. These products are often set-up with a zero balance and, as a result, zero payments. Are we required to charge the customers for an advance in order to fund the creation of an escrow account for their flood insurance premiums even if the customer has no other balance, or do we have to monitor their accounts to determine when they have payments due and when they do not?

- **<u>Lender Placed Policies</u>**.

The Agencies solicit comment on whether the requirement to begin escrowing for a loan that becomes a designated loan after July 6, 2014, should be limited only to when a borrower-purchased flood insurance policy is established and exclude instances in which a lender-placed flood insurance policy is established.

JPMC currently escrows for residential loans that have lender-placed insurance and believes that this is a helpful way for customers to keep their insurance payments up-to-date via a non-interest bearing vehicle. However, we do not think that escrows for lender-placed policies should be an absolute requirement. For example, there are cases where the customer prefers to take a new loan advance to pay their lender-placed premium rather than face a significantly higher monthly payment, and we believe that lenders should be allowed to make those customer accommodations.

- **<u>Implementation of Escrow Requirements</u>**

JPMC appreciates that the Proposal would spread the required implementation for existing customers over a period of time tied to the customers' policy renewal date. We agree with the Agencies' view that a phased-in approach benefits both customers and lenders. We have, however, identified an obstacle to implementing escrow payments using the strict time line stated in the Proposal, which requires that a lender "...shall begin escrowing premiums and fees for flood insurance (i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the customer's flood insurance policy on or after July 6, 2014..." By way of illustration, the "Section-by-Section Analysis" portion of the Proposal states:

> For example, if a customer's current flood insurance policy will renew on March 15, 2015, and the customer's loan payments are generally due the first of each month, the institution must begin escrowing with the loan payment due on April 1, 2015. The customer would be responsible for paying the premium to renew the policy on March 15, 2015, however. Payments that are escrowed beginning April 1, 2015 will be used by the lender to pay the premiums for subsequent years.

For JPMC (and most other lenders), loans are coded on the system as either "escrow" or "non-escrow" accounts. Using the dates in the example provided by the Agencies, this would require that we change the status of the account to "escrow" promptly following March 15, 2015 which would, in turn, mean that the system would automatically pay any outstanding policy premium due on March 15, 2015 if that policy did not show as paid on the servicing system. Such a payment would create an immediate escrow shortage, which is obviously not what the Agencies envisioned. In order to rectify this obstacle, we suggest a slight expansion to the implementation time line for existing customers, as follows (using the Agencies' example):

- March 15, 2015: customer-paid flood policy expires (and may or may not have been paid).
- April 2015: lender establishes the escrow account and triggers an escrow analysis, as required by RESPA that will be sent to the customer.
- As soon as possible (but no later than July 1, 2015): the customer's new payment that includes an escrow component for the payment of flood insurance takes effect.

This revised time line would prevent the servicing system from inadvertently paying the flood premium due for the policy renewing on March 15, 2015 and triggering an unnecessary escrow deficiency. While it delays implementation slightly, this timeline is much less disruptive to customers while only increasing their escrow payments slightly in year one. For example, for an annual premium of $1,200, 12 escrow payments of $100 would, in the first year only, be replaced by 10 payments of $120 beginning on June 1st, depending on the lender's practices. This outcome is significantly more customer-friendly than the current annual premium requirement.

- **Notice to Customers of Escrow Requirements**

Timing. *[T]he Agencies solicit comment on whether 90 days is an appropriate time period to provide notice for loans outstanding on July 6, 2014.*

As a standard, the proposed 90 days of advance notice is appropriate without being too long. However, many loan programs require more than 90 days' notice of a payment change, which would include payment increases due to the addition of an escrow account. We, therefore, respectfully request the Agencies to acknowledge that the 90-day may be extended, if necessary, to comply with other applicable notice periods.

Content. With respect to notifying new and existing customers of the new escrow requirements, we believe that the notices proposed by the Agencies do an excellent job of communicating the essentials to consumers in plain language. Requiring that the existing Special Flood Hazard Notice (the "Notice") be the vehicle for conveying escrow information on new loans is logical and avoids the additional complexity of requiring a separate notification. The proposed separate notice for existing customers communicates the complexities of an escrow account in a straightforward and comprehensible manner. We would, however, propose additional content (highlighted below) to the proposed clause in the Notice to include a reference to the exclusion for commercial, business and agricultural purpose loans secured by residential property and a clarification regarding the duration of escrow payments:

Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.

. . .

[Escrow Requirement for Residential Loans

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home ~~securing a loan~~ that is located in an area with special flood hazards <u>and secures a loan that is not primarily for business, commercial, or agricultural purposes.</u> These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for <u>as long as your residence remains in a special flood hazard area</u> ~~the duration of your loan~~ and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

We propose the same changes to the notice to customers whose loans become "designated loans" after July 6, 2014, plus additional content for "zone-in" customers given that they are often confused as to why they are being required to purchase flood insurance post-origination and the consequences of their new flood insurance requirements:

Appendix C – Sample Escrow Requirement Clause for Loans that Become Designated Loans.

Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home ~~securing a loan~~ that is located in an area with special flood hazards <u>and secures loan that is not primarily for business, commercial, or agricultural purposes</u>. <u>Because the Federal Emergency Management Agency has determined that your residence is now in a special flood hazard area, you must begin making payments of flood insurance premiums and fees to [Insert Name of Lender or Servicer]. You must make these payments</u> with the same frequency as your loan payments for ~~the duration of your loan~~ <u>as long as your residence remains in a special flood hazard area.</u> Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

- **<u>Early Implementation of Escrows</u>**

The Agencies request comment on the timing proposed for complying with the escrow requirement for outstanding loans and whether regulated lending institutions should be provided the option of complying with the escrow requirement earlier than the dates set forth in the proposal. ... Although borrowers would ultimately pay the same amount regardless of when the escrow begins, the Agencies request comment on whether lenders' *early compliance with the escrow requirements would be otherwise detrimental to borrowers, and if so, how it may be detrimental.*

We encourage the Agencies to allow lenders to implement the new escrow requirements in advance of the chosen effective date. We (and others) will have systems releases associated with the Proposal and allowing the escrow features to operate based on a systems release date is more prudent than limiting their implementation to a fixed date. Adopting a flexible stance regarding early implementation will not be harmful to consumers, as establishing escrow payments at any point in their policy renewal cycle should be viewed as providing more financial flexibility than a one-time annual premium payment requirement.

- **<u>Effective Date</u>**

We also would like to address the serious implementation challenges faced by the residential mortgage industry with respect to the July 2014 implementation date provided in BWA. With the October 2013 notice of proposed rulemaking and a December 10th end to the comment period, we do not believe that the industry will be able to comply with the final regulations by July 2014. The implementation of escrowing in connection with existing loans is especially complicated, including the need to address the consumer fairness issues discussed below. We, therefore, request the Agencies to extend the implementation date and have included some suggestions below. In that regard, we would like to summarize some of the major implementation challenges the industry faces with respect to escrowing on both new and existing loans and lines of credit, including an important distinction between first mortgage systems which have full escrow capability and home equity systems, which do not.

➢ New Loans

- Industry home equity systems do not currently support escrowing, as escrowing has not historically been a requirement for these transactions. As JPMC and our peers book and service first lien loans and HELOCs, on their home equity systems, the new requirements will require a major technology and operational effort to comply.

- JPMC has multiple systems on which home equity-related loans are booked or supported. Implementation of the escrow requirements will affect all of these systems and will require creating new connectivity with third party service providers that perform escrow accounting and reconciliation functions. We believe that many of our peers face similar issues.

- Entirely new processes and procedures will be needed for home equity originations and servicing (<u>e.g.</u>, escrow functions, customer service, payments and collections).

- The above changes are significant and have to be implemented at the same time our mortgage banking business already faces long IT queues due to other regulatory changes.

- As a result, we request 1 year from the issuance of the final regulations to implement escrowing on new loans.

➢ Existing Loans

Compared to new loans, implementation of the escrow requirement for existing loans is much more complex and potentially unfair to customers.

- Requiring escrows is particularly unfair to customers that arranged for a non-escrow account (e.g., by paying a rate increment). We clearly need to thoroughly analyze this population, determine which customers paid for a non-escrow benefit, what they paid, and how it was documented, all over an extended period of time involving multiple institutions and portfolios. We also need to develop a plan for responding to potential customer complaints and claims for refunds.

- There is also potential litigation risk in implementing escrows for home equity customers who did not contractually agree to maintain an escrow account. It is not known whether BWA will be deemed to supersede contractual limitations, and BWA does not insulate lenders or their servicers from this potential liability. In addition, the Truth in Lending Act and Regulation Z generally prohibit changes to a HELOC account unless the change is a favorable one. It is foreseeable that courts will find that requiring escrow accounts without a contractual promise to escrow is a violation of these restrictions.

- For these reasons, we recommend that escrow requirements for existing customers be linked to a "trigger event" by these customers (i.e., making a new loan or increasing, renewing or extending an existing loan), beginning no sooner than 1 year from the issuance of the final regulations. As you know, flood compliance requirements are typically tied to such trigger events and it would be fairer to customers and reduce litigation risk to lenders to implement escrowing in a similar fashion.

Lender Placement of Flood Insurance

- **Notice and Purchase of Coverage**

Backdating Policies. The proposed amendment of 12 C.F.R. §22.7(a) implements Section 100244 of BWA, which permits a lender to charge the customer for the cost of flood insurance coverage commencing on the date on which the coverage on the collateral lapsed or became insufficient. This change is helpful by making it clear that lender-placed insurance on expired or lapsed policies should be back dated to the date of expiry to ensure continuous flood coverage. This seems a fair outcome in that situation because the customer was notified at origination that flood insurance must be in effect at all times and that if it failed to provide the coverage, the lender would lender-place coverage at the customer's expense.

There are situations, however, where the customer may not be aware of a requirement for flood insurance (typically due to remapping or "zone-ins"), or the need for an increase in coverage (such as transitions from emergency to the National Flood Insurance Program ("NFIP") Regular Program and from non-participating community to participating community status) until it receives the 45 day letter from the lender. That letter must be sent when the lender determines that the required coverage on the collateral is either non-existent or insufficient, e.g. when the lender receives notice from a determination vendor that the zone or community status has changed. We would like to suggest that the proposed rule be revised to address the effective date of lender-placed policies in these situations in a manner that will balance the need for continuous coverage with fairness to the customer. For zone-ins and other changes of which the lender would receive notice from the flood determination vendor, we suggest that the final regulation indicate that the policy should be effective on the 46th day after the initial notice is sent to the customer. We think it is unreasonable to backdate the lender-placed policy to either the actual effective date of the change in status or the date on which the 45 day notice was sent by the lender because the customer cannot obtain a backdated policy on its own that is effective on either of these dates.

There are further circumstances that may result in a lender's discovery that insurance is non-existent or inadequate due to reasons other than expiry or a change for which the lender would receive notice from a flood determination vendor. For example, the lender may in the course of monitoring flood insurance for safety and soundness purposes discover that coverage is insufficient or non-existent due to lender or vendor error, that there was a miscalculation of required coverage or that insufficient insurance was accepted, or it may discover additional structures on the property. In each of those instances, we suggest that the final regulation specify that the lender-placed policy must become effective on the 46th day after sending the notice if the customer failed to provide the required coverage.

Expiry versus Lapse. *The Agencies seek comment on whether the Agencies' interpretation of the term ''lapsed'' is consistent with the insurance industry's use of the term and as to whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.*

We agree that the terms "expired" and "lapsed" are synonymous.

- **Termination of Lender-Placed Insurance**

With respect to the sufficiency of evidence to require the termination of a lender-placed policy, the Proposal follows BWA Section 100244's mandate that a lender must accept a declarations page that includes the customer's policy number and the identity of, and contact information for the insurance company or agent. This minimal information is not a sufficient basis on which to verify that the policy complies with the basic mandatory purchase requirements or, in the case of a private policy, with the BWA criteria for "private flood insurance". Therefore, we would suggest that this section be amended to (1) add a clarification that in addition to the minimal information, the declarations page must contain the correct amount, dates and other information to fulfill the mandatory purchase requirements and (2) include as a condition to termination of lender-placed insurance based on a customer's private policy, the requirement for a copy of the policy and 45 days for the lender to check for compliance with all BWA "private flood insurance" criteria.

Private Flood Insurance

- **<u>Mandatory Acceptance of Private Policies that meet BWA Definition</u>**

[T]he Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition and, if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

We believe that such a requirement would create an adverse lending environment and not further the BWA goal of making privately issued flood insurance more available. We rarely receive a private policy that would meet the BWA definition in all respects. Our challenges with confirming the elements of the BWA definition are discussed below under "Criteria for Discretionary Acceptance of Private Policies." If such a rule were implemented, we would not anticipate accepting a material number of private policies for the foreseeable future. Such a rule would make it very difficult to close real estate loans, particularly in the commercial area where private policies are dominant. In many cases, customers seeking credit would essentially be forced to purchase an NFIP policy in lieu of an unacceptable private policy, or on top of their existing multi-peril insurance.

- **<u>Proposed "Safe Harbor"</u>**

The Agencies solicit comment on whether: (i) Any mechanism exists or may be developed by State regulators to make such a determination [whether a flood insurance policy meets all the criteria set forth in the statutory definition of ''private flood insurance]; (ii) a written determination would facilitate lenders' acceptance of flood insurance by private insurers; (iii) such a safe harbor would alleviate the concerns of regulated lending institutions in evaluating private flood policies; and (iv) a safe harbor would enable the growth of the private flood insurance market.

While we appreciate the innovative thinking behind the "safe harbor" and support its inclusion, we believe that it is unlikely to promote meaningful marketplace support for private policies given the structure and purpose of State insurance regulation. States primarily regulate the insurance industry around several key functions, including company licensing, producer licensing, product regulation, market conduct, solvency, and consumer services. We do not believe that the proposed task of making a determination whether a particular private policy meets BWA criteria fits within existing State insurance regulatory functions. State insurance regulators view flood insurance as a federal program and are only lightly involved with this product. Even if the States do agree to make these determinations, we are concerned that the proposed safe harbor will have a protracted development time and will result in inconsistencies that may preclude lenders' reliance on these determinations. For these reasons, we believe that the suggested safe harbor will not foster growth in the private flood insurance market, but will instead leave lenders with significant regulatory and customer risk.

We strongly support the alternative safe harbor proposed by the American Bankers Association, the American Bankers Insurance Association, and the Consumer Bankers Association in their public comment letter dated December 6, 2013. We believe that the option for insurers to certify that their policies comply with BWA will help incent the private industry to respond to the need for additional private flood insurance and that this alternative complements the Agencies' proposed safe harbor.

- **<u>Discretionary Acceptance of Private Policies that do not meet BWA Definition</u>**

The Agencies solicit comment 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.

JPMC believes that the Agencies should allow lenders discretion in accepting private policies that do not meet the BWA definition. FEMA, as the source of these criteria, stated in its Memorandum to the Federal Financial Institutions Examination Council (issued March 7, 2012) that the elements were merely suggestions by FEMA on what a lender should consider in evaluating a private policy. Per FEMA, "...[i]f a lender is satisfied that a private policy adequately protects his security for a loan despite not containing some of these elements or differing from them, it is within his authority to accept the private policy." In practice, the industry has faced significant challenges in applying the criteria to a diverse mix of private insurance policies. The standard flood insurance policy ("SFIP") forms issued under the NFIP are mandated by FEMA and provide a uniformity that does not exist for private policies. Nonetheless, all private policy rates and forms have been vetted and authorized by State regulatory authorities. By virtue of rescinding their guidance, FEMA recognized that lenders should have the flexibility to judge the merits of a private policy and we believe that FEMA's judgment was correct.

We urge the Agencies to continue to permit lenders to make judgments about the adequacy of private flood insurance policies, using the BWA criteria as guidance. At least since the March 2012 FEMA memorandum referenced above, the industry has been utilizing business judgment to determine the adequacy of private policies. We believe that continuing flexibility in private policy reviews is the best approach for maintaining and expanding the private insurance market.

- **Criteria for Discretionary Acceptance of Private Policies.**

1. *[I]f the Agencies decide to include a provision in the final rules that expressly permits regulated lending institutions, at their discretion, to accept policies issued by private insurers that do not meet the statutory definition of ''private flood insurance'' to satisfy the mandatory purchase requirement, the Agencies are requesting comment on whether they should require the following criteria for such discretionary policies pursuant to the Agencies' authority to implement the FDPA's general mandatory purchase requirement.*
    - *. . . [M]ust be 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 insured building is located by the insurance regulator of the State. Further, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, . . . the private insurance provider must be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located.*
    - *. . . [C]overage . . . must be at least as broad as the coverage provided by a SFIP under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For example, the private flood insurance policy must provide coverage for the foundation of a building in addition to the aboveground portion of the building...*
    - *. . . [M]ust include a mortgage interest clause similar to the clause contained in a SFIP. ...*

We do not believe that the Agencies need to issue alternative policy acceptability criteria. If, however, the Agencies conclude that such guidance is necessary, we recommend that the acceptability criteria be limited to core concerns and be advisory in nature. We agree with the Agencies' suggestion to require the insurer to be authorized to engage in the business of insurance and in the case of blanket coverage on nonresidential property, recognized or not disapproved as a surplus lines carrier. We also agree that requiring a mortgagee clause is reasonable and helpful to both parties.

We do not recommend including a requirement that the private policy coverage be "at least as broad as" an SFIP. In our experience, the coverage provisions of private policies can be very complex and vary significantly from an SFIP, making it difficult to determine whether the coverage is at least as broad as an SFIP. There is no "standard" private policy. Many private flood policies are surplus lines insurance policies. Surplus lines insurance tailors coverage and price to fit the risk; therefore, its coverage and forms do not mirror those of the SFIP. Other private policies are admitted products, but because they are designed by their carriers to compete with NFIP coverage by offering greater limits, broader coverage, or more coverage features, their coverage and forms also differ from an SFIP policy. Further examples of the differences between these types of policies are listed below:

- Private policies may cover multiple risks, including flood. An SFIP policy is a named perils policy.
- Private commercial policies do not typically cover just one building; they usually have schedules of locations subject to coverage. SFIPs cover only one building.
- Private flood insurance policies have a variety of coverage features and exclusions. It is common for a private policy to have a much higher stated coverage amount than an SFIP policy.
- Private policies usually have an annual aggregate limit versus the NFIP per occurrence coverage.
- Private policies have deductibles in scale with their coverage. Large deductibles in policies with large coverage limits are often lower on a percentage basis than an SFIP.

If some standards of coverage are deemed necessary, we suggest requiring core coverage qualities such as, for example, including the foundation of a building and covering flood hazards for structures located in zones A or V. If, however, an "at least as broad as" standard is included, we specifically request guidance on how it would pertain to blanket policies that cover multiple structures and protect against various risks.

2. *The Agencies also solicit comment as to whether criteria, additional to those discussed above, should be imposed if the Agencies permit regulated lending institutions to accept a private flood insurance policy issued by a private insurer that does not meet the statutory definition of ''private flood insurance.''*

We do not believe that additional criteria should be imposed.

3. *Additionally, the Agencies request comment on whether allowing discretionary acceptance of flood insurance policies issued by private insurers not meeting the statutory definition of private flood insurance but requiring that such discretionary policies meet certain criteria could encourage development of the private flood insurance market while also ensuring that regulated lending institutions and borrowers are properly protected.*

JPMC believes that permitting lenders to accept private flood insurance policies that do not meet the BWA definition, but meet certain objective criteria would simultaneously encourage the development of the private insurance market and satisfy the Agencies' concerns with respect to the protection of both lenders and customers.

4. *The Agencies also seek comment regarding the experience of both lenders and their borrowers with respect to policies issued by private insurers that do not meet the statutory definition of ''private flood insurance'' as compared to policies issued by private insurers that meet the statutory definition of ''private flood insurance.''*

Our experience is that if strict adherence to the BWA criteria is required, virtually no private policies will be accepted to satisfy the mandatory purchase requirement of FDPA. If lenders cannot accept private policies, customers will be limited to NFIP policies which will not advance BWA's goal of encouraging growth in the private market. Limiting required coverage to NFIP policies will adversely affect customers, particularly small businesses that reduce insurance expense by purchasing multi-peril blanket policies. It also may further limit insurance availability in areas that are only partially covered by the NFIP, such as properties that are part of an Emergency Program.

Below are a few examples that demonstrate our challenges in finding private policies that strictly meet the BWA criteria:

45 Days' Notice of Policy Cancellation or Non-Renewal. State law dictates the number of days' notice required for cancellation of different types of insurance, usually between 10–90 days. 45 days' notice is sometimes seen, but is certainly not industry standard.

Cancellation Provisions as Restrictive as SFIP. NFIP policies do not actually have provisions that allow the insurer to cancel, so a private policy can never be as restrictive as an SFIP if it permits cancellation.

Requirement to Bring Suit within 1 Year after Date of Written Denial of a Claim. These provisions vary in private policies and sometimes there is no requirement on when suit must be brought.

Information about the Availability of Flood Insurance Coverage under the NFIP. Since these policies are issued by private insurance companies, they do not include NFIP information as it has no relevance there, nor is it necessary as the customer already received such information with the Notice of Special Flood Hazards.

Coverage as Broad as SFIP. We have found this requirement challenging with respect to both residential and, especially, commercial private policies. For example, in the case of participations/syndications where multi-million dollar policies covering properties around the world are involved, it is not really possible (or relevant) to compare these policies to an NFIP policy that covers a single structure. In some instances, a private policy provides coverage that an SFIP does not (e.g., business interruption coverage) while an SFIP may cover other items that the private policy does not. A private policy is better assessed by focusing on overall value, including the properties covered, the locations of the properties, collateral loan balance, creditworthiness of the client, market capacity in the insurance industry and the price of the insurance, rather than through a comparison limited to an SFIP. Residential policies, while much less complicated, also present different pros and cons versus an SFIP, and makes lender discretion with some core adequacy standards a better approach.

Additionally, the BWA criteria are not risk-weighted so that a failure to meet any of the criteria may result in rejection of a private policy, regardless of whether there are other factors present that may protect the lender and the customer's interests. Given the challenges in meeting the BWA criteria, we urge the Agencies to continue to permit lenders to make judgments about the value of private flood insurance policies to the institution and their customers using the BWA criteria merely as guidance.

JPMC appreciates this opportunity to provide comments on the Proposal. If you have any questions, please contact Craig Prentiss at 212-270-2762 or the undersigned at the number indicated above.

Sincerely yours,

Daniel Wilkening
Senior Vice President
Chief Operating Office, Commercial Banking