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VIA REGULATIONS.GOV

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 22
[Docket ID OCC-2016-0005]
RIN 1557-AD67

FEDERAL RESERVE SYSTEM
12 CFR Part 208
[Docket No. R-1549]
RIN 7100-AE60

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 339
RIN 3064-AE50

FARM CREDIT ADMINISTRATION
12 CFR Part 614
RIN 3052-AD11

NATIONAL CREDIT UNION ADMINISTRATION
12 CFR Part 760
RIN 3133-AE64

Re: Comments on “Loans in Areas Having Special Flood Hazards - Private Flood Insurance”

To Whom It May Concern:

The Reinsurance Association of America (RAA) is pleased to provide input to the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and National Credit Union Administration (collectively the “Agencies”) with respect to the proposed regulations (the “Regulations”) intended to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2102 (BW-12). Our comments focus on three issues: (1) definition of private flood insurance

under the Regulations, which should include surplus lines insurance; (2) the need to streamline the compliance aid/safe harbor provisions; and (3) the discretionary acceptance provisions.

The Reinsurance Association of America is the leading trade association of property and casualty reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis. The RAA represents its members before state, federal and international bodies.

Reinsurance is essentially insurance for insurance companies. It is a risk management tool for insurance companies to reduce the volatility in their insurance portfolios and improve their financial performance and security. Reinsurance is also the primary mechanism for spreading risk globally, thereby accessing a greater pool of capital to pay for the inevitable catastrophic losses.

Consistent with the intent of Congress, reinsurers believe the private sector can and should assume more risk of insured losses arising from flood disasters. Reinsurers are willing to offer catastrophe reinsurance options to the National Flood Insurance Program (NFIP) and private insurers voluntarily writing flood coverage to help them manage their exposure to flood insurance losses.

Accordingly, the RAA is pleased to support the efforts of the Agencies to promulgate regulations to implement of the provisions of BW-12 that require private flood insurance policies be accepted by lenders.

Definition of Private Flood Insurance and Surplus Lines

The RAA supports the Agencies' use of the BW-12 definition of "private flood insurance," but believes that the clarifying edits incorrectly exclude eligible surplus lines insurers from providing "private flood insurance" for residential properties.

Generally, there are two types of property and casualty insurers—admitted and surplus (or excess) lines. Admitted insurers file their rates and forms with state insurance regulators. "Surplus" or "excess" lines insurers (collectively, "surplus lines") specialize in difficult or hard to place risks, are not licensed and do not file rates and forms with state regulators. The RAA understands that surplus lines insurers are currently writing flood insurance policies for consumers in lieu of NFIP coverage, while also writing a significant amount flood insurance that provides coverage above the NFIP limits.

Admitted insurers are also called "licensed" insurers. So reference to "licensed" and "admitted" insurers addresses differences in state legislative nomenclature. Licenses are issued on a state specific basis.

Because of the state by state licensing process, it is quite common for an insurer to be licensed in one or more states, but be unlicensed in others. An insurer that is licensed in one state, but unlicensed in another, may be approved to provide coverage on a surplus lines basis for risks in the state where it is unlicensed. Accordingly, a licensed insurer may also be an approved surplus lines insurer depending upon the location of the covered risk. In addition, certain offshore insurers are approved by one or more states to provide coverage for eligible risks on a non-licensed, surplus lines basis.

Surplus lines insurers are “otherwise approved” insurers. They are approved to provide insurance coverage through operation of a state’s law or when the applicable state insurance commissioner directly or through incorporation by reference approves such insurers to provide coverage for risks in accordance with the state’s surplus lines laws and regulations.

As currently drafted, the Regulations do not require lenders to accept private flood insurance from insurers who are “otherwise approved” by the state in which the risk is located. The RAA believes this interpretation misreads the Congressional intent and limits the ability of the private insurance market to provide flood insurance coverage to the benefit of consumers individually and taxpayers generally.

The Congressional intent to permit “otherwise approved” surplus lines insurers to provide private flood insurance coverage to residential consumers is evidenced by the attached colloquy between Senators Crapo and Johnson, as published in the Congressional Record dated September 10, 2012 (the material portion of the record is on the second page of the attached.)

Of particular relevance is the following. In response to a question from Sen. Crapo, Sen. Johnson stated, “yes – 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. While the Senator is correct that surplus lines is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are ‘licensed, admitted, or otherwise approved’ in the state where the property is located.” Sen. Crapo agreed in response.

The Congressional intent to require lender acceptance of surplus lines insurance coverage is consistent with insurance market realities. When a new or difficult class of risks is first written by the insurance industry, the insurance industry typically does not have the necessary experience or loss history data to confidently make a state insurance rate filing that delineates the rating and underwriting rules that the insurer intends to utilize. The difficulty with understanding and correctly underwriting flood insurance creates the distinct possibility that insurers may need to amend their rating and underwriting rules and criteria. Because surplus lines insurers do not file rates with state insurance regulators, the approved surplus lines insurance market is typically the first part of the private insurance market to write new or difficult risks such as private flood insurance. The failure to require lender acceptance of coverage issued by approved surplus lines insurers will slow the development of the private flood insurance market that Congress seeks to foster.

As the Regulations do not require lenders to accept private flood insurance for residential and commercial properties issued by approved surplus lines insurers, the RAA asks the Agencies to review the Congressional Record and rewrite this portion of the Regulations to recognize and implement the Congressional intent to fully utilize the private licensed and surplus lines insurance market to reduce the financial consequences of the risk of flooding to consumers, lenders and taxpayers.

Streamlined, Lender Due Diligence Safe-Harbor

With regard to the proposed regulations, the RAA is pleased the Agencies have tried to create a lender due diligence safe-harbor provision to facilitate lender acceptance of flood insurance provided by private insurers.

Unfortunately, the compliance aid suggested is cumbersome and unwieldy. In practice, lender compliance with insurance requirements is handled by employees or service providers who are not insurance coverage attorneys. If lenders are required to engage attorneys to review insurance documentation, the costs of mortgage compliance will rise significantly to the disadvantage of the borrowing public. The due diligence safe-harbor needs to be simple to facilitate real estate closings and subsequent mortgage compliance.

The multi-part criteria suggested in the Regulations is not simple. It requires: (a) a policy summary by the insurer; (b) a verification by the lender that it has confirmed the accuracy of the summary and that the policy coverage meets the private flood insurance definition; and (c) a required policy wording provision. This complexity will slow lender acceptance of private flood insurance.

The RAA suggests the Agencies convene a meeting of representatives of the licensed insurance, surplus lines insurance, agent and lender communities to develop a workable, streamlined safe-harbor provision that ensures lenders are aware of whether the private flood policy has any material differences from the Standard Flood Insurance Policy for purposes of both the required and discretionary acceptance of private flood insurance.

Discretionary Acceptance Provisions

The Regulations' definition of private flood insurance in the discretionary acceptance provisions is the BW-12 statutory language. While the RAA supports the statutory definition, for the reasons stated above, coverage issued by approved surplus lines insurers should be included in the Regulations as acceptable for required and discretionary acceptance.

Assuming for the sake of argument that the Agencies decline to require lenders to accept approved surplus lines flood insurance coverage, the discretionary acceptance provisions should be modified to expressly authorize lenders to exercise their discretion to accept private flood insurance coverage from surplus lines insurers for residential and commercial risks.

As noted above, the RAA encourages the Agencies to review the legislative history of BW-12, Congressional Record, and state insurance law provisions regarding surplus lines insurance, and rewrite both the required and discretionary acceptance portions of the Regulations to implement the Congressional intent to fully utilize the private licensed and surplus lines insurance market to reduce the financial consequences of the risk of flooding to consumers, lenders and taxpayers.

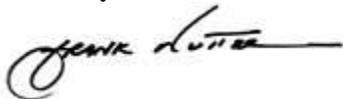
Conclusion

Natural catastrophe insurance, including flood insurance, can and should be written voluntarily in the private market. The use of private capital will protect consumers, taxpayers, and communities, while spreading risk throughout the globe to insurers and other capital providers who are willing to assume such risk.

With the suggested changes, the Regulations will promote the use of private flood insurance by easing lender burdens and facilitating their acceptance of qualifying “private flood insurance” and will remove barriers to private insurer participating in the flood insurance market, thereby fulfilling the intent of Congress.

We thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Franklin W. Nutter", written in a cursive style.

Franklin W. Nutter

President

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