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Submitted via [www.regulations.gov](http://www.regulations.gov)

Legislative and Regulatory Activities  
Division  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Suite 3E-218, mail stop 9W-11  
Washington, DC 20219

Robert deV. Frierson, Secretary  
Board of Governors of the Federal Reserve  
System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20551

Robert E. Feldman, Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Barry F. Mardock, Deputy Director  
Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

Gerard S. Poliquin, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

**RE: Joint Notice of Proposed Rulemaking: Docket ID OCC-2016-0005: Loans in Areas Having Special Flood Hazards – Private Flood Insurance**

Dear Sir or Madam:

On behalf of the National Association of Professional Insurance Agents (PIA)<sup>1</sup>, I hereby submit the following comments regarding the Joint Notice of Proposed Rulemaking (the Notice) published by the United States Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and National Credit Union Administration (collectively referred to herein as “the Agencies”) on November 7, 2016.

Comments were requested on the private flood insurance provisions of the Biggert-Waters Act (Pub. L. 112-141, 126 Stat. 916 [2012]) (Biggert-Waters) as they pertain to regulated mortgage lending institutions that service properties in special flood hazard areas (SFHAs), and we

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<sup>1</sup> By way of background, PIA is a national trade association founded in 1931. It represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals who can be found across America.

appreciate this opportunity to comment on the issue of the private market for flood insurance, a coverage that is vital to consumers and independent insurance agents alike.

The National Flood Insurance Program (NFIP) will expire on September 30, 2017 if it is not reauthorized. PIA National supports the reauthorization of the NFIP, as the program provides critical support to those affected by floods and coverage that the private market is currently unable to adequately supply. That said, the NFIP, which is housed in the Department of Homeland Security within the Federal Emergency Management Agency (FEMA), is in substantial debt to the U.S. Treasury Department due to the unprecedented size of the claims that arose out of the record-setting 2005 Atlantic hurricane season (which included Hurricanes Katrina, Rita, and Wilma), followed by Superstorm Sandy in 2012.<sup>2</sup> Aside from these rare large losses and a brief period during the 1980s, historically, the program has been self-sustaining, despite the fact that it was not originally designed to be a self-funding program. Prior to the 2005 hurricane season, the NFIP had never exceeded \$4 billion in annual paid losses.<sup>3</sup>

However, the \$23 billion debt to Treasury that lingers after those two unique seasons remains a threat to the ongoing financial viability of the NFIP. PIA National opposes the immediate wholesale privatization of the NFIP but strongly supports efforts to cultivate the private flood insurance market. The private flood insurance market is not ready to immediately take on the entire burden of insuring against the risk of floods, but PIA National supports sensible proposals, including many of those contained in the Agencies' Notice, to broaden the private market for flood coverage.

### **Mandatory Purchase and Defining Private Flood Insurance**

We previously expressed our support for H.R. 2901/S. 1679, the Flood Insurance Market Parity and Modernization Act, sponsored by Rep. Dennis Ross (R-FL) and Senator Dean Heller (R-NV) during the 114<sup>th</sup> Congress. The bill sought to encourage the growth of the private flood insurance market. We prefer that "mandatory flood coverage" provided by private insurance entities match the definition proposed in the Flood Insurance Market Parity and Modernization Act, in which private flood insurance coverage is defined as coverage issued by an insurer that is licensed or otherwise approved, by the state insurance regulator, to engage in the business of insurance in the state in which the prospective insured property is located; that is eligible as a nonadmitted insurer to provide insurance in the home state of the prospective insured; that is issued by an insurance company that is not otherwise disapproved as a surplus lines insurer by the state insurance regulator in the state in which the prospective insured property is located; and that provides flood insurance coverage in compliance with the laws and regulations of that state.

Having said that, should the Agencies wish to promulgate a final rule addressing the issue of lender acceptance of private flood insurance before the 115<sup>th</sup> Congress acts on it, the Agencies' proposed definition of "private flood insurance," as envisioned in Biggert-Waters and clarified by the Notice, will ensure the collateral securing mortgage loans is as protected by coverage

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<sup>2</sup> The NFIP gets authority from Congress to borrow from the Treasury Department. Congressional borrowing authority is limited to a specific dollar amount and has periodically increased over the years in response to ad hoc requests from FEMA.

<sup>3</sup> <https://www.fema.gov/loss-dollars-paid-calendar-year>, accessed January 5, 2017.

provided by the private market as that same collateral is by NFIP policy coverage. The proposal set forth in this Notice would require a regulated lender to accept a private flood policy that meets the statutory definition of “private flood insurance” and meets the mandatory purchase requirement as contemplated by Biggert-Waters, and we support such a proposal.

Subject to our preference, noted above, for the definition set forth in the Flood Insurance Market Parity and Modernization Act, PIA National supports the criteria set forth in the Notice for identifying coverage that is “at least as broad” as that offered by the NFIP so that lenders may more readily identify private flood insurance that meets the statutory definition and mandatory purchase requirements.

### **Discretionary Acceptance Proposal**

The Notice includes a provision that would allow lenders to use their discretion to accept certain types of private flood insurance policies even if they do not meet the definition set forth in Biggert-Waters and refined by regulation. This provision is in keeping with the spirit of Biggert-Waters, which was intended to stimulate the private market; discretionary acceptance of private flood insurance policies may be appropriate under specific circumstances even if such policies do not meet the statutory and regulatory definitions that would otherwise require mandatory acceptance. This flexibility will aid in diversifying the private flood insurance market and allow insurers to offer a variety of coverage types, deductible and premium amounts, and terms, the addition of which will benefit consumers and strengthen this small but growing private industry.

The Notice sets forth several criteria for a lender to accept private flood insurance policies that do not meet the statutory definition. The private policy must be issued by an insurer licensed, admitted, or otherwise approved to engage in the business of insurance in the state in which the prospective insured property is located. Where the private flood insurance policy includes different conditions, additional perils, or other blanket coverage insuring nonresidential commercial property, the policy would need to be issued by a surplus lines insurer recognized or not disapproved by the state insurance regulator of the state in which the property is located.

We reject the aspect of this requirement that will functionally limit the residential market for private flood coverage among surplus lines producers, many of whom currently provide private flood insurance policies for excess coverage, for example, on residential properties located in SFHAs. Millions of dollars of coverage are already generated by the surplus lines market for private flood insurance of residential properties, and the implementation of this aspect of the Notice would disrupt and potentially contract a small but already-existing private flood insurance market. Moreover, implementation of this aspect of the Notice would reduce rather than broaden the options available to flood insurance policy consumers, and broadening consumer options is one of the strongest arguments in favor of encouraging lenders to accept private flood insurance policies. Finally, implementation of this aspect of the Notice would negatively affect the residential private flood insurance industry, a nascent segment of the market often best served by surplus lines insurers.

Additionally, for a lender to approve a private flood insurance policy that does not meet the statutory definition, the policy must provide for cancellation following “reasonable notice” to the

borrower only for reasons that may also be used for FEMA to cancel an NFIP policy in cases of nonpayment or when cancellation is mandated by state law. While we appreciate that a “discretionary acceptance” provision will invariably require lenders to exercise discretion, we urge the Agencies not to provide lenders with unnecessary discretion that could cost consumers important protections. Here we recommend that the provision include a 45-day notice requirement, just as the mandatory acceptance provision does, rather than allow lenders to determine individually what constitutes “reasonable notice” to a consumer.

Also, rather than allow a lender’s discretionary acceptance to be contingent upon the policy being “similar” to coverage provided by an NFIP policy, PIA National supports applying only the “at least as broad” criteria, as defined elsewhere in the Notice, to both mandatory and discretionary acceptance of private flood insurance policies. Allowing lenders to potentially accept policies that provide coverage that is “similar to” the coverage provided pursuant to an NFIP policy unnecessarily puts consumers at risk should a lender use its discretion carelessly and accept a policy that falls substantially short of the coverage provided by the NFIP. The “at least as broad” analysis is more comprehensive and provides lenders, agents, and consumers with a greater level of protection against unintentional misuse of lender discretion.

Finally, the Notice should be amended to require private flood insurers to provide a standard disclosure where their policy deviates from what an NFIP policy would provide. This would provide consumers and agents with a foundational level of confidence that the purchase of a policy that does not meet the statutory guidelines could still be found to be acceptable to a lender.

PIA recognizes and appreciates the considerable thought and effort that the Agencies have given to this issue, and we are grateful for the opportunity to provide the independent agent perspective. Please contact me at [laurenpa@pianet.org](mailto:laurenpa@pianet.org) or (703) 518-1344 with any questions or concerns. Thank you for your time and consideration.

Sincerely,



Lauren G. Pachman  
Counsel and Director of Regulatory Affairs  
National Association of Professional Insurance Agents