



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

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Office of the Comptroller of the Currency
Legislative & Regulatory Activities Division,
400 7th Street SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
[Docket ID OCC-2016-0005] RIN 1557-AD67
regs.comments@occ.treas.gov

Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attn: Robert deV. Frierson, Secretary
[Docket No. R-1549] RIN 7100-AE60
regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
550 17th Street NW.,
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary
RIN 3064-AE50
comments@fdic.gov

Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
Attn: Barry F. Mardock, Deputy Director
Office of Regulatory Policy
RIN 3052-AD11
regcomm@fca.gov

National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428.
Attn: Gerard Poliquin, Secretary of the Board
RIN 3133-AE64
regcomments@ncua.gov

RE: Loans in Areas Having Special Flood Hazards – Private Flood Insurance

Submitted via Electronic Delivery to: www.regulations.gov

Dear Sir / Madam,

On November 7, 2016, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Company (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) published a joint notice of proposed rulemaking entitled “Loans in Areas Having Special Flood Hazards—Private Flood Insurance” in the Federal Register.¹

¹ 81 Federal Register at 78,063 (November 7, 2016).

The National Association of Home Builders (NAHB) appreciates the opportunity to provide comments on this proposed rule. NAHB is a Washington, D.C.-based trade association representing more than 140,000 members affiliated with approximately 750 affiliated state and local home builder associations in all fifty states, the District of Columbia, and Puerto Rico. Our members include those involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Collectively, NAHB's builder members will construct about 80 percent of the new housing units produced each year.

NAHB has a significant interest in ensuring the seamless implementation of the National Flood Insurance Program (NFIP) including the elements that are the subject of the proposed rule, because they have the potential to impact a home buyer's ability to meet the program's mandatory purchase requirement. Since 1994, federal law has required home buyers purchasing new or existing homes using a mortgage from a regulated lending institution to have flood insurance if the property is located within a Special Flood Hazard Area (SFHA). Because of this direct link between mortgage financing and the NFIP, it is critical that a reliable and annually predictable flood insurance program exists to ensure home builders can continue to provide safe and affordable housing to consumers.

Today's proposal is in response to the Biggert-Waters Act, which required the Agencies to direct regulated entities to accept private flood insurance. Specifically, the proposal would require regulated lending institutions to accept insurance policies that meet the statutory definition of private flood insurance as established in the Biggert-Waters Flood Insurance Reform Act of 2012. In addition, it would allow regulated lending institutions to accept flood insurance provided by private insurers that does not meet the statutory definition of "private flood insurance" on a discretionary basis, subject to certain restrictions.

Currently, the flood insurance market is served by both private flood insurance and the NFIP. NAHB does not seek to use this letter to evaluate the role of the private market in providing flood insurance or whether that market should be expanded. The existence of the role for the private market was established in statute when the Biggert-Waters Flood Insurance Reform Act of 2012 was adopted and any effort to expand it is best left for the forthcoming reauthorization conversation. Alternatively, NAHB seeks to raise for the Agencies' consideration several issues with the proposal that have the potential to disrupt the market and therefore result in potential unintended consequences for home builders and the consumers they serve.

Under the proposal, the Agencies establish a set of parameters for defining "private flood insurance" that is consistent with the statutory definition but includes some added clarifying edits. NAHB calls attention to the first item, which states that "private flood insurance" is a "policy that: Is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus

lines insurer by the State insurance regulator of the State or jurisdiction where the property to be insured is located(.)”²

This definition could be interpreted as limiting surplus lines insurers to noncommercial residential property, effectively closing off the residential market to these insurers. This raises concern for NAHB, as currently these insurers are involved in providing flood insurance policies to residential properties in high hazard areas. A blanket change in market availability will impact homeowners who currently obtain policies from these providers as well as limit the availability of options for homeowners in the future. While NAHB recognizes that the proposed definition is statutory, we urge the Agencies to clarify that surplus lines insurers may also engage in residential properties. In addition, it is not clear how existing policies will be impacted once the rule takes effect. Will the policies entered into at the advice of insurance professionals be called into question if the associated mortgage transactions are in progress at the time this rule goes into effect? Likewise, will these policies be subject to review at a later date due to the change in eligibility of surplus line insurers to provide coverage in the residential market? These and other related questions must be carefully considered and answered prior to finalizing any rule.

NAHB also calls the Agencies’ attention to the fact that many of the parameters outlined in the proposal serve to impose artificial constraints on private policies. By the nature of how these policies are developed, they have handled certain issues very differently than the NFIP Standard Policy. Provisions such as deductible limits, payout limits, and the definition of a flood are just a few examples where existing private insurance policies may differ greatly from the NFIP counterpart. While the Agencies acknowledge the challenges private policies face as a result of the establishment of a definition for “private flood insurance,” the discretion provided in the rule for financial institutions to address this issue raises a separate set of issues for homeowners. While NAHB supports some level of flexibility for financial institutions to determine which policies meet the mandatory purchase requirements, providing them the ability to retroactively change their determinations raises serious concerns. If a financial institution retroactively returns to a homeowner after deeming the original policy purchased with the guidance of an insurance professional no longer sufficient, that homeowner is challenged with quickly finding a new provider, may be subject to penalties for a lapse in coverage, and may face an unforeseen financial burden as he/she scrambles to obtain a new sufficient and likely more costly policy. Such a result is counter to the predictability builders and homeowners need and will have real world implications for housing affordability. NAHB estimates that nationally, for every \$1,000 increase in the price of a home, about 152,903 households are priced out of the market for a median-priced new home.³

NAHB understands the challenge the Agencies face, however, we strongly caution against moving forward with any final rule that raises more questions than it answers. As drafted, the proposal is more

² 81 Federal Register at 78,065-78,066 (November 7, 2016)

³ NAHB Priced Out Model http://www.nahb.org/en/research/housing-economics/housings-economic-impact/households-priced-out-by-higher-house-prices-and-interest-rates.aspx?_ga=1.262158348.169281943.1404132311

likely to result in the unintended consequence of creating new constraints on access to private insurance in the residential market rather than providing the predictable framework intended.

NAHB stands ready to continue to work with Agencies on these issues. Please do not hesitate to contact me at (202) 266-8327 or tspielvogel@nahb.org if you have any questions or if you would like to discuss NAHB's comments further.

Sincerely,

A handwritten signature in cursive script that reads "Tamra Spielvogel".

Tamra Spielvogel
Environmental Policy Program Manager
National Association of Home Builders