
INFORMATIONAL MEMORANDUM



December 23, 2015

To: Chief Executive Officer
All Farm Credit System Institutions

From: Gary K. Van Meter, Director
Office of Regulatory Policy

Samuel R. Coleman, Director and Chief Examiner
Office of Examination

Subject: Limited Suspension of Enforcement Actions Relating to Private Flood Insurance

The purpose of this Informational Memorandum (IM) is to clarify the rules regarding the mandatory purchase requirement for designated loans pending the issuance of final regulations implementing the private flood insurance provision of Biggert-Waters.

Background

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters)¹ amended the mandatory flood insurance purchase requirement of the National Flood Insurance Program (NFIP). Under this amendment, lenders are required to accept private flood insurance policies as satisfaction of the mandatory purchase requirement if the coverage provided by the private flood insurance satisfies the standards specified in Biggert-Waters. This provision will become effective upon issuance of final regulations.

In October 2013, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the FCA, and the National Credit Union Administration jointly (Agencies) issued a proposal to require regulated lending institutions to accept private flood insurance coverage, as defined in Biggert-Waters, to satisfy the mandatory flood insurance purchase requirement of Biggert-Waters (the October 2013 Proposed Rule).² While the Agencies finalized other provisions of the October 2013 Proposed Rule in the final rule published July 21, 2015, (the July 2015 Final Rule), we did not finalize the provisions relating to private flood insurance.

¹ Public Law 112-141, 126 Stat. 916 (2012).

² 78 FR 65108 (Oct. 30, 2013).

Analysis

Prior to the enactment of Biggert-Waters, and pending a final rule to implement private insurance provisions of Biggert-Waters, Farm Credit System (System) institutions were and still are permitted to accept private insurance if such insurance met the criteria set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines as described in Q&A 63 of our [Q&As About Flood Insurance](#). Similarly, a private insurance policy is permitted to be used to supplement NFIP insurance for designated loans³ where the property is underinsured if the policy meets the criteria set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines, as described below.⁴ FEMA indicated that, to the extent a private policy differed from the NFIP Standard Flood Insurance Policy, the differences should have been carefully examined before the policy was accepted as sufficient protection under the law. FEMA also stated that the suitability of private policies needed only to be considered when the mandatory purchase requirement applied.

FEMA's Mandatory Purchase of Flood Insurance Guidelines included the following six criteria.

- a. **Licensure.** The insurer must be licensed, admitted, or otherwise approved to do business in the jurisdiction where the building is located, by the insurance regulator of that jurisdiction, except as indicated in b. below.
- b. **Surplus Lines Recognition (Non-Residential Commercial).** In the case of non-residential commercial property insurance issued under a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, the insurer should be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the jurisdiction where the building is located.
- c. **Requirement of 45-Day Cancellation/Non-Renewal Notice.** The private flood insurance policy should include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. The policy should also state that, to be effective, such notice must be mailed to both the insured and the lender or Federal agency lender, and must include information about the availability of flood insurance coverage under the NFIP. The policy should be as restrictive in its cancellation provisions as the NFIP's Standard Flood Insurance Policy (SFIP).
- d. **Breadth of Policy Coverage.** The policy must guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least as broad as the coverage under the SFIP.
- e. **Strength of Mortgage Interest Clause.** Lenders must ensure that a mortgage interest clause similar to that contained in the General Conditions section of the SFIP is contained in the policy.

³ Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

⁴ FEMA National Flood Insurance Program, Mandatory Purchase of Flood Insurance Guidelines, September 2007.

- f. **Legal Recourse.** The policy must contain a provision that the insured must file suit within 1 year after the date of written denial of all or part of the claim.

Furthermore, Q&A 64 of our [Q&As About Flood Insurance](#) permits a lender to rely on a private insurance policy that does not meet the criteria set forth by FEMA only in limited circumstances. For example, when a flood insurance policy had expired and the borrower had failed to renew coverage, private insurance policies that did not meet the criteria set forth by FEMA, such as private insurance policies that provided portfolio-wide blanket coverage, would be considered to be useful protection for the lender for a gap in coverage in the period of time before a force placed policy took effect. Nevertheless, the lender is still required to force place adequate coverage in a timely manner, as required, and is not permitted to rely on a private insurance policy that does not meet the criteria set forth by FEMA on an ongoing basis.

On February 6, 2013, FEMA rescinded its Mandatory Purchase of Flood Insurance Guidelines, and advised lenders to consult their respective regulatory agency for information regarding compliance with the mandatory purchase requirements. As explained in the preamble to the July 2015 Final Rule, the Agencies did not finalize the provisions relating to the acceptance of private flood insurance policies, which were included in the October 2013 Proposed Rule. Instead, the Agencies indicated that we plan to address private flood insurance later in a separate rulemaking.

Because this provision of Biggert-Waters requiring lenders to accept private flood insurance policies as satisfaction of the mandatory purchase requirement will only become effective upon issuance of final regulations, System institutions do not currently have regulations upon which to rely in this area. However, Q&As 63 and 64 of our [Q&As About Flood Insurance](#) continue to provide guidance on accepting and using private flood insurance policies. Even though these Q&As reference FEMA guidance that has been rescinded, System institutions may continue to rely on the guidance pending finalization of regulations implementing the private flood insurance provision of Biggert-Waters.

Therefore, until the FCA adopts final regulations implementing the private flood insurance provision of Biggert-Waters, or the FCA determines that the following treatment is no longer appropriate, the FCA will not bring an enforcement action against any System institution for accepting a private flood insurance policy in satisfaction of the mandatory purchase requirement for designated loans provided:

- a. The flood insurance policy:
1. is issued by an insurance company that is:
 - (i) licensed, admitted, or otherwise approved to engage in the business of insurance in the State in which the insured building is located, by the insurance regulator of that State; or

- (ii) eligible as a nonadmitted insurer to provide insurance in the home State of the insured, in accordance with sections 521 through 527 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8201 through 8206);
 2. is issued by an insurance company that is not otherwise disapproved as a surplus lines insurer by the insurance regulator of the State in which the property to be insured is located;
 3. provides flood insurance coverage that complies with the laws and regulations of that State;
 4. provides flood insurance for the term of the loan in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the NFIP, whichever is less; and
 5. provides flood insurance coverage for the foundation in addition to the dwelling; and
- b. The System institution:
1. is otherwise in compliance with all other existing statutory and regulatory flood insurance requirements, and
 2. has determined that the flood insurance policy is consistent with safe, sound, and prudent underwriting and lending practices.

If you have any questions about this memorandum, please contact your designated examiner-in-charge; Paul Gibbs, Associate Director, Office of Regulatory Policy, at (703) 883-4203 (gibbsp@fca.gov); or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020 (donnerm@fca.gov).