

May 17, 2021

VIA ELECTRONIC FILING – www.regulations.gov

Mr. Blake J. Paulsen
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Ms. Ann Misback
Secretary of the Board
Board of Governors of the Federal Reserve
20th Street & Constitution Avenue, NW
Washington, DC 20551

Mr. James P. Sheesley
Assistance Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Mr. Dale Aultman
Secretary of the Board
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

**Re: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers
Regarding Private Flood Insurance**

To Whom It May Concern:

The Council of Insurance Agents & Brokers (“The Council”) and the Wholesale & Specialty Insurance Association (WSIA) appreciate this opportunity to comment on the proposed supplement to the Interagency Questions and Answers (“Q&A”) Regarding Flood Insurance issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Administration (collectively “the Agencies”).¹

By way of background, The Council represents the largest and most successful employee benefits and property/casualty agencies and brokerage firms. Council member firms annually place more than \$300 billion in commercial insurance business in the United States and abroad. In fact, they place 90 percent of all U.S. insurance products and services, and they administer billions of dollars in employee benefits. Council members conduct business in some 30,000 locations and employ upward of 350,000 people worldwide, specializing in a wide range of insurance products and risk management services for business, industry, government, and the public.

¹ Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Private Flood Insurance, 86 Fed. Reg. 14696 (Mar. 18, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-18/pdf/2021-05314.pdf>.

The Wholesale & Specialty Insurance Association is a world-class member service organization representing the entirety of the wholesale, specialty and surplus lines industry. The Wholesale & Specialty Insurance Association was formed in 2017 through the merger of the American Association of Managing General Agents (AAMGA) and the National Association of Professional Surplus Lines Offices (NAPSLO). WSIA’s membership consists of approximately 735 member firms, including U.S. Wholesale, U.S. Insurance Market, Associate and Service members, representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide conducting business in the U.S. surplus lines market.

As a general matter, members of The Council and WSIA have seen firsthand how the Agencies’ regulatory actions have effectively expanded the private flood insurance market to date.² Where growth of the private market was previously hindered by a complex and highly technical statutory framework, the Agencies’ implementation of the mandatory acceptance provisions and the widespread use of compliance aid assurance clauses have allowed the private flood insurance market to thrive. The mandatory acceptance provisions facilitate private policy placements, ensure that consumers have access to affordable flood coverage, and provide security to lenders seeking to fulfill their compliance obligation (thereby encouraging lender acceptance of private flood insurance policies).

Having experienced the growth and success of the mandatory acceptance framework, The Council and WSIA support the Agencies’ work thus far to interpret the Biggert-Waters Act’s (the “Act”) private flood provisions and issue comprehensive guidance. The proposed Q&A builds on these efforts and will provide greater certainty to the industry participants working to further develop the private flood insurance market. There are, however, a few details that we believe could be clarified. For instance, while not directly addressed in the Q&A, the proposal could incorporate language that clarifies that digital transmission (e.g., use of fillable PDFs, electronic signatures, etc.) of relevant flood coverage documents—as well as physical transmission or use of paper images—is permissible. Below, we have included some more specific suggestions on how these proposed Q&As could be strengthened.

1. *The Agencies should clarify the scope of Q&A Mandatory 7 to clearly define the exact elements that lenders must review beyond the compliance aid assurance clause.*

Q&A Mandatory 7 describes additional reviews a lender must conduct under the mandatory acceptance framework when a flood insurance policy is issued by a private insurer. Specifically, it provides that—beyond relying on the compliance aid assurance clause—the lender must:

- Ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the designated loan;
- Determine the maximum limit of coverage available for the particular type of property under the Act; and
- Ensure that other key aspects of the policy are accurate, such as the borrower’s name and property address.

² Final Rule, Loans in Areas Having Special Flood Hazards, 84 Fed. Reg. 4953 (Feb. 20, 2019), <https://www.federalregister.gov/documents/2019/02/20/2019-02650/loans-in-areas-having-special-flood-hazards>.

The Council and WSIA understand that lenders must undertake this additional analysis with respect to deductibles, coverage limits, and the accuracy of consumer/property information. But we believe that the reference to “other key aspects of the policy” should be narrowed to only apply in circumstances when there are unique loan-related issues (rather than permit a broad interpretation which could inject a discretionary analysis in an otherwise mandatory framework).

As drafted, outside of the borrower’s name and property address, it is unclear what additional aspects of a policy that a lender should affirmatively review on every private flood insurance policy. We understand, however, that there are complex arrangements for which there may be additional policy provisions that warrant further review (e.g., schedules associated with single policies that cover multiple commercial properties).

To account for these arrangements, the Agencies should narrow the application of the catch-all language to focus solely on the lenders’ potential need to review “key aspects” related to non-standard flood insurance policies, such as the supplemental documents that may be required when a single policy covers multiple commercial properties.

- 2. The Agencies should clarify that Q&A Private Flood Compliance 6 applies to conventional multiple-peril policies and policies that have a flood-related endorsement.*

Q&A Private Flood Compliance 6 provides clear guidance on a lender’s ability to accept multiple-peril policies that cover flood hazards.

The Council and WSIA appreciate the Agencies’ efforts to provide clarity on this issue, but—to ensure that the guidance offered is comprehensive—it should explain that lenders are permitted to accept both standalone multiple-peril policies that address flood risks and scenarios in which the flood coverage is endorsed onto another policy that insures against other perils (e.g., via an endorsement to a homeowners policy), as long as the mandatory or discretionary acceptance provisions are otherwise satisfied.

- 3. The Agencies should consider removing or redrafting Q&A Private Flood Compliance 10 and 11 because, as drafted, they suggest that lenders have an independent obligation to verify the eligibility of surplus lines insurers seeking to write flood coverage.*

The Council and WSIA acknowledge the Agencies’ ongoing efforts to ensure that surplus lines insurers can write flood coverage for residential and nonresidential properties.³ To that end, the Agencies offer several Q&As addressing the role that surplus lines insurers play in the private flood insurance market (e.g., Q&A Private Flood Compliance 9-11). In reviewing these questions, however, we think it is important that the Agencies clarify that the surplus line broker (not the lender) is responsible for determining whether a carrier is eligible to write a given policy and affirm that policies written by surplus lines insurers that contain the compliance aid assurance clause are eligible for mandatory acceptance (without an independent analysis by the lender).

³ E.g., 12 C.F.R. § 22.2(k)(1)(i); 12 C.F.R. § 208.25(b)(9)(i)(A); 12 C.F.R. § 339.2; 12 C.F.R. § 614.4925; 12 C.F.R. § 760.2 (defining “private flood insurance” to mean an insurance 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”) (emphasis added).

Q&A Private Flood Compliance 10, which seeks to clarify lenders’ ability to accept flood policies issued by surplus lines insurers for noncommercial properties, contains language suggesting that lenders may only accept such policies if “the surplus lines insurer is eligible or not disapproved to place insurance in the State or jurisdiction in which the property to be insured is located.”

As written, the response implies that the lender has an obligation to determine whether the insurer is “eligible” in a given state. This duty, however, is already addressed under state law, which requires the insurance broker who is placing the policy to only place that coverage with an insurer that satisfies the state’s eligibility requirements. The suggestion in this response that the lender has a separate, independent obligation to undertake an eligibility determination unnecessarily complicates the current requirements under state law and creates a regulatory hurdle that does not exist today.

Similarly, Q&A Private Flood Compliance 11 seeks to clarify that lenders can accept a private flood policy that includes a compliance aid assurance clause and a disclaimer that the “insurer is not licensed in the State or jurisdiction in which the property is located.” These questions seem to be an effort to explain that, if a private flood policy

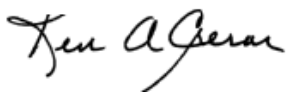
- Is written by a surplus lines insurer on residential/noncommercial property;
- Contains the compliance aid assurance clause; and
- Meets all other necessary requirements (e.g., maximum coverage limit),

then the policy will be eligible for mandatory acceptance by a lender. As drafted, however, the response offered in Q&A Private Flood Compliance 11 implies a level of discretion (i.e., outlines several circumstances under which lenders *may* accept the policies) and suggests that lenders have an independent obligation to verify the contents of a policy procured from a surplus lines insurer. As with Q&A Private Flood Compliance 10, the response provided seems to only risk further confusion and impose additional verification obligations on lenders (in what would otherwise fall within the mandatory acceptance framework).

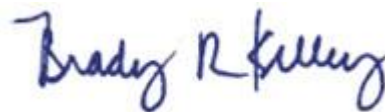
The Council and WSIA appreciate the Agencies’ work thus far to expand access to private flood insurance policies, inject additional clarity into the existing regulatory framework, and encourage and facilitate greater involvement in the private flood insurance market. With these largely technical changes, we believe that these Q&As will provide a coat of certainty and consistency to industry participants.

Thank you for your consideration of these important issues.

Respectfully submitted,



Ken A. Crerar
President/CEO



Brady R. Kelley
Executive Director



The Council of Insurance Agents & Brokers
701 Pennsylvania Avenue, NW
Suite 750
Washington, DC 20004-2608
(202) 783-4400
ken.a.crerar@ciab.com



Wholesale & Specialty Insurance Association
4131 N. Mulberry Drive
Suite 200
Kansas City, MO 64116
816.799.0860
brady@wsia.org