

Notice & Request for Comment Summary

Interagency Questions and Answers Regarding Private Flood Insurance

*Prepared by NASCUS Legislative & Regulatory Affairs Department
April 2021*

NCUA, together with the OCC, the Federal Reserve Board, the FDIC, and FCA (together, the Agencies) have published a request for comments on proposed supplemental Interagency Questions and Answers (Q&As) Regarding Flood Insurance regarding the acceptance of flood insurance policies issued by private insurers pursuant to the Agencies' private flood insurance [final rule issued in February 2019](#) implementing the [Biggert-Waters Flood Insurance Reform Act of 2012](#).

There are 24 new proposed Q&As in 3 sections:

- I. Private Flood Insurance—Mandatory Acceptance (9 proposed questions)
- II. Private Flood Insurance— Discretionary Acceptance (4 proposed questions)
- III. Private Flood Insurance—General Compliance (11 proposed questions)

NCUA's Flood Insurance rule is located in Part 760 and applies to FISCUs by reference in Part 741.216.

The Request for Comment [may be read here](#). Comments are due to NCUA on **May 17, 2021**.

Once this request for comment closes, the Agencies plan to publish a final document in the Federal Register that consolidates these proposed private flood insurance questions and answers and the July 2020 Proposed Questions and Answers into one set of Interagency Questions and Answers Regarding Flood Insurance.

Summary

Since 1997, the Agencies have published the Interagency Questions and Answers to provide the lending industry with guidance addressing a wide spectrum of technical flood insurance-related compliance issues. These Q&As are periodically updated as needed. The proposed questions published for comment address the implementation of the requirement that lenders accept private flood insurance pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012.

To assist lenders in evaluating whether a flood insurance policy meets the definition of "private flood insurance," the private flood insurance rule also includes a compliance aid provision. Under the compliance aid provision, a lender may conclude that a policy meets the definition of "private flood insurance," without further review, if the policy, or

an endorsement to the policy, contains the compliance aid clause set forth in the rule. Moreover, the private flood insurance rule permits a lender, at its discretion, to accept a flood insurance policy issued by a private insurer, even if the policy does not meet the statutory and regulatory definition of “private flood insurance,” provided the policy meets certain requirements in the rule (discretionary acceptance). A lender also is permitted, at its discretion, to accept certain mutual aid plans that meet the conditions stated in the rule.

The Agencies seek comment on the following 24 Q&As to assist lenders in implementing the private flood insurance provisions of the rule.

I. Private Flood Insurance—Mandatory Acceptance

The Agencies propose 9 new Q&As to address issues regarding the mandatory acceptance and the application of the compliance aid assurance clause with respect to the private flood insurance provision of the Regulation. The new proposed Q&As would be designated as Mandatory 1–9.

Proposed new Q&A Mandatory 1

The proposed question and answer is intended to clarify that lenders have discretion to to only accept private flood insurance policies under the mandatory acceptance provision of the Regulation and decline to accept flood insurance policies that only meet the criteria set forth in the Regulation’s discretionary acceptance or mutual aid provisions.

<i>Mandatory 1. May a lender decide to only accept private flood insurance policies under the mandatory acceptance provision of the Regulation?</i>
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Yes. A lender is only required to accept flood insurance policies issued by a private insurer that meet the definition of “private flood insurance” under the Regulation. A lender is not required to accept flood insurance policies that only meet the criteria set forth in the discretionary acceptance or mutual aid provision of the Regulation.
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Feedback/Comments:

Proposed new Q&A Mandatory 2

Mandatory 2 addresses review of a private flood policy to determine it meets the mandatory acceptance criteria and explains that other than at origination, a lender must review a flood insurance policy issued by a private insurer when the policy is up for renewal, or any time the borrower presents the lender with any new flood insurance policy issued by a private insurer.

Mandatory 2: Apart from loan origination, when must a lender review a flood policy issued by a private flood insurer?

Once a flood insurance policy issued by a private insurer comes up for renewal or any time the borrower presents the lender with any new flood insurance policy issued by a private insurer, regardless of whether a triggering event occurred (making, increasing, extending or renewing a loan), the lender must review the policy to determine whether it meets the mandatory acceptance criteria. A lender may determine that the policy meets the mandatory acceptance criteria without further review if the policy or an endorsement to the policy includes the compliance aid assurance clause. If the policy does not meet the mandatory acceptance criteria, the lender may still accept the policy if it meets the discretionary acceptance criteria or, if applicable, the mutual aid plan criteria. If the policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria, the lender must notify the borrower in accordance with the force placement provisions of the Regulation. If the borrower does not purchase flood insurance that complies with the Regulation, the lender must purchase insurance on the borrower's behalf. If the lender has previously reviewed the flood insurance policy under the discretionary acceptance provision to ensure that the policy meets the private flood insurance requirements of the Regulation, the lender may rely on its previous review, provided there are no changes to the terms of the policy. However, as required by the Regulation, the lender must document its conclusion regarding sufficiency of protection of the loan in writing. See Q&A Discretionary 4.

Feedback/Comments:

Proposed new Q&A Mandatory 3

Mandatory 3 addresses whether lenders are required to change a policy of not originating a mortgage in non-participating communities or coastal barrier regions where the NFIP is not available. The proposed answer explains a lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance rules.

Mandatory 3: *If a lender has a policy not to originate a mortgage in nonparticipating communities or coastal barrier regions where the NFIP is not available, do the private flood insurance requirements under the Regulation require a lender to change its policy?*

The Regulation does not require that a lender originate a loan that does not meet the lender's underwriting criteria. The Agencies note that the flood insurance purchase requirement only applies to loans secured by structures located or to be located in an

SFHA in which flood insurance is available under the Act. As noted in Q&A Applicability 1, the flood insurance purchase requirement does not apply within non-participating communities, where NFIP insurance is not available under the Act. Therefore, the lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance requirements under the Regulation.

Feedback/Comments:

Proposed new Q&A Mandatory 4

Mandatory 4 would clarify that the compliance aid assurance clause is not intended to act as a conformity clause but rather to facilitate the ability of lenders and consumers to recognize policies that meet the definition of “private flood insurance” and to promote the consistent acceptance of policies that meet this definition.

Mandatory 4: *Did the Agencies intend the compliance aid assurance clause to act as a conformity clause that would make a private policy conform to the definition of private flood insurance?*

No. The Agencies did not intend the compliance aid assurance clause to act as a conformity clause. Rather, the compliance aid assurance clause is intended to facilitate the ability of lenders, as well as consumers, to recognize policies that meet the definition of “private flood insurance” and promote the consistent acceptance of policies that meet this definition. The compliance aid provision is intended to leverage the expertise of insurers to assist lenders in satisfying the requirements of the Regulation.

Feedback/Comments:

Proposed new Q&A Mandatory 5

Proposed Mandatory 5 clarifies that a lender is not required to accept a private flood insurance policy solely because the policy contains the compliance aid assurance clause if the lender chooses to conduct its own review and determines the policy does not meet the mandatory acceptance requirements. The proposed answer also clarifies that if a private flood insurance policy does not include the compliance aid assurance clause, the lender must still review the policy to determine if it meets the requirements for private flood insurance.

Mandatory 5: *Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid assurance clause? Conversely, may a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid assurance clause?*

A lender is not required to accept a flood insurance policy issued by a private insurer solely because the policy contains the compliance aid assurance clause if the lender chooses to conduct its own review and determines the flood insurance policy actually does not meet the mandatory acceptance requirements. If a flood insurance policy issued by a private insurer does not include the compliance aid assurance clause, the lender must still review the policy to determine if it meets the requirements for private flood insurance as set forth in the Regulation before the lender may choose to reject the policy.

Feedback/Comments:

Proposed new Q&A Mandatory 6

Mandatory 6 discusses whether a lender is required to conduct an additional review of a flood insurance policy under the mandatory acceptance provision if the policy includes the compliance aid assurance clause. The proposed answer would state that under the mandatory acceptance provision of the Regulation, if a policy or an endorsement to the policy contains the compliance aid assurance clause, a lender is not required to conduct any further review of the policy in order to determine that the policy meets the definition of “private flood insurance.”

Mandatory 6: *If a flood insurance policy issued by a private insurer includes the compliance aid assurance clause, does a lender need to conduct an additional review of the policy for compliance with the mandatory acceptance provision of the Regulation?*

No, under the mandatory acceptance provision of the Regulation, if a policy or an endorsement to the policy contains the compliance aid assurance clause, further review is not necessary in order for the lender to determine that a policy meets the definition of “private flood insurance.” It is important to note that, in order for the lender to rely on the compliance aid assurance clause without further review of the policy, the language of the compliance aid assurance clause must be stated in the policy, or as an endorsement to the policy, as set forth in the Regulation. If the language is different from the compliance aid assurance clause set forth in the Regulation, the lender cannot rely on the protections of the compliance aid assurance clause in the Regulation and should review the policy to determine if it meets the

definition of private flood insurance. However, a policy containing the compliance aid assurance clause need not be rejected if there are stylistic differences, such as formatting, font, and punctuation that do not change the substantive meaning of the clause, from the compliance aid assurance clause included in the Regulation. See also Q&A Mandatory 7.

Feedback/Comments:

Proposed new Q&A Mandatory 7

Describes additional reviews a lender must conduct when a flood insurance policy issued by a private insurer includes the compliance aid assurance clause, as the clause only assists a lender in making the determination that a flood insurance policy meets the definition of private flood insurance in the Regulation, and not other requirements specified in the Regulation. Specifically, the lender also must ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act, and also should ensure that other key aspects of the policy are accurate, such as the borrower's name and property address.

Mandatory 7: What additional reviews does a lender need to conduct if the flood insurance policy issued by a private insurer includes the compliance aid assurance clause?

Although a lender may rely on the compliance aid assurance clause to determine that a flood insurance policy meets the definition of private flood insurance in the Regulation, the lender must also ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the Act. The lender should also ensure that other key aspects of the policy are accurate, such as the borrower's name and property address. See also Q&A Mandatory 6.

Feedback/Comments:

Proposed new Q&A Mandatory 8

Addresses whether a lender may use the criteria under the discretionary acceptance provision to decide whether to accept a policy that does not contain the compliance aid assurance clause without first reviewing the policy to determine if it meets the

mandatory acceptance provision. The proposed answer would clarify that a lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision. However, if the policy is not accepted under the discretionary acceptance provision, the lender would still need to determine whether it must accept the policy under the mandatory acceptance criteria. The proposed answer would also remind lenders to document that a policy provides sufficient protection of the loan if the lender accepts the policy under the discretionary acceptance provision of the Regulation.

Mandatory 8: *If a flood insurance policy issued by a private issuer does not include a compliance aid assurance clause, can a lender use the criteria under the discretionary acceptance provision to decide whether to accept the policy without first checking to see if the policy meets the criteria under the mandatory acceptance provision?*

Yes, the lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision.³⁶ However, even if the policy does not meet the discretionary acceptance criteria, the lender will still need to determine whether it must accept the policy under the mandatory acceptance criteria.³⁷ Note that if the lender accepts a policy under the discretionary acceptance provision, the Regulation requires the lender to document that the policy provides sufficient protection of the loan.

Feedback/Comments:

Proposed New Mandatory 9

Lastly, new proposed Q&A Mandatory 9 would note that if the compliance aid assurance clause is included on the declarations page, a lender may accept the policy without further review to determine whether the policy meets the definition of private flood insurance. However, a lender must also ensure compliance with the mandatory purchase requirement.

Mandatory 9: *If the compliance aid assurance clause is on the declarations page, may a lender accept the policy without further review?*

If the compliance aid assurance clause is included on the declarations page, a lender may accept the policy without further review to determine whether the policy meets the definition of private flood insurance. However, a lender must also ensure compliance with the mandatory purchase requirement. See Q&A Mandatory 7.

Feedback/Comments:

II. Private Flood Insurance— Discretionary Acceptance

The Agencies propose to add four new Q&As to provide additional clarity on the discretionary acceptance provision of the Regulation. These new Q&As would be designated as Discretionary 1–4.

Proposed new Q&A Discretionary 1

Addresses whether lenders are required to accept flood insurance policies that meet the discretionary acceptance criteria. The proposed answer would clarify that it is at the lender's discretion to accept a policy that meets the discretionary acceptance criteria so long as the policy does not meet the mandatory acceptance criteria.

Discretionary #1: Are lenders required to accept flood insurance policies that meet the discretionary acceptance criteria?

No, the discretionary acceptance criteria in the Regulation sets forth the minimum acceptable criteria that a flood insurance policy must have for the lender to accept the policy under the discretionary acceptance provision. It is at the lender's discretion to accept a policy that meets the discretionary acceptance criteria so long as the policy does not meet the mandatory acceptance criteria.

Feedback/Comments:

Proposed new Q&A Discretionary 2

Addresses the required documentation demonstrating that an accepted discretionary policy provides sufficient protection. The proposed answer discusses the requirement that the lender document in writing that the policy provides sufficient protection of the loan, consistent with safety and soundness principles. Furthermore, the proposed answer would note that while the Regulation does not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, lenders may include any information that reasonably supports the lender's conclusion following review of the policy.

Discretionary #2: *If the lender determines that a flood insurance policy meets the discretionary acceptance criteria and accepts that policy, what documentation will demonstrate that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles?*

The Regulation requires the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles (see also Q&A Coverage 1). While the Regulation does not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, lenders may include any information that reasonably supports the lender's conclusion following review of the policy.

Feedback/Comments:

Proposed new Q&A Discretionary 3

Addresses lender evaluation of an insurer's solvency, strength, and ability to pay claims as part of the determination of whether a private policy provides sufficient protection. The proposed answer would provide that a lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator's office of the State in which the property securing the loan is located, among other options. The lender could also rely on the licensing or other processes used by the State insurance regulator for such an evaluation.

Discretionary #3: *How can a lender evaluate the sufficiency of an insurer's solvency, strength, and ability to satisfy claims when determining whether a flood insurance policy provides sufficient protection of the loan, consistent with general safety and soundness principles?*

A lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator's office of the State in which the property securing the loan is located, among other options. A lender can rely on the licensing or other processes used by the State insurance regulator for such an evaluation. See Q&A Coverage 1.

Feedback/Comments:

Proposed new Q&A Discretionary 4

Proposed Discretionary 4 would address whether a lender is required to review a flood insurance policy upon renewal if that policy was issued by a private insurer and was originally accepted in accordance with the discretionary acceptance requirements. The proposed answer would provide that if a lender had accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements and the policy is renewed, the lender would be required to review the policy to ensure it still meets the regulatory requirements and document the review.

Discretionary #4: If a flood insurance policy issued by a private insurer that was originally accepted in accordance with the discretionary acceptance requirements is renewed annually, is the lender required to review the policy upon renewal?

If a lender had accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements and the policy is renewed, the lender must review the policy upon renewal to ensure that it continues to meet the discretionary acceptance requirements. The lender must also document its conclusion regarding sufficiency of the protection of the loan in writing upon each renewal to indicate that the policy continues to provide sufficient protection of the loan.

Feedback/Comments:

III. Private Flood Insurance—General Compliance

The Agencies propose to add 11 new Q&As on topics related to the private flood insurance provisions of the Regulation that are not covered in sections I and II above. The new proposed Q&As would be designated as Private Flood Compliance 1–11.

New proposed Q&A Private Flood Compliance 1

Addresses the maximum allowable deductible for a private flood insurance policy in an SFHA and clarifies that the maximum amount depends on whether the lender is accepting the flood insurance policy under the mandatory acceptance provision or the discretionary acceptance provision.

Private Flood Compliance #1: What is the maximum deductible a flood insurance policy issued by a private insurer can have for residential or commercial properties located in an SFHA?

The maximum deductible for a flood insurance policy issued by a private insurer varies depending on whether the lender accepts the policy under the mandatory acceptance or the discretionary acceptance provision. For purposes of compliance with the mandatory acceptance provision, the Regulation provides that a policy must contain a deductible that is “at least as broad as” in a Standard Flood Insurance Policy (SFIP)—i.e., no higher than the specified maximum under an SFIP—for any total coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender. For a private policy with a coverage amount exceeding that available under the NFIP, the deductible may exceed the specific maximum deductible under an SFIP. However, for safety and soundness purposes, the lender should consider whether the deductible is reasonable based on the borrower’s financial condition, among other factors. See Q&A Amount 9.

- ✓ For example, if a private policy for a commercial building provided \$1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of \$500,000 for a commercial building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP. The lender should consider whether the deductible is reasonable based on the borrower’s financial condition.
- ✓ Similarly, if a private policy for a residential building provided \$1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of \$250,000 for a residential building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP.

The lender should consider whether the deductible is reasonable based on the borrower’s financial condition. For purposes of compliance with the discretionary acceptance provision, the Regulation requires that the policy provide sufficient protection of the loan, consistent with general safety and soundness principles.⁴² Among the factors a lender could consider in determining whether a policy provides sufficient protection of a loan is whether the policy’s deductible is reasonable based on the borrower’s financial condition. Unlike the limitation on deductibles for policies accepted under the mandatory acceptance provision for any total coverage amount up to the maximum available under the NFIP, a lender can accept a flood insurance policy issued by a private insurer under the discretionary acceptance provision with a deductible higher than that for an SFIP for a similar type of property, provided the lender has determined the policy provides sufficient protection of the loan, consistent with general safety and soundness principles. Whether the lender is evaluating the policy under the mandatory acceptance provision or the discretionary acceptance provision, a lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.

Feedback/Comments:

New proposed Q&A Private Flood Compliance 2

Clarifies that a lender may require the deductible on a borrower's private flood insurance policy be lower than the maximum deductible for an NFIP policy in connection with a policy that the lender accepts under the mandatory acceptance provision consistent with general safety and soundness principles as well as under the discretionary acceptance provision.

Private Flood Compliance #2: *May a lender require that the deductible of any flood insurance policy issued by a private insurer be lower than the maximum deductible for an NFIP policy?*

Yes. If the lender is accepting the private flood insurance policy under the mandatory acceptance provision, the Regulation requires that the private flood insurance policy be at least as broad as an NFIP policy, which includes a requirement that the private flood insurance policy contain a deductible no higher than the specified maximum deductible for a Standard Flood Insurance Policy (SFIP). The lender may require a borrower's private flood insurance policy deductible be lower than the maximum deductible for an NFIP policy in connection with a policy that the lender accepts under the mandatory acceptance provision, consistent with general safety and soundness principles and based on a borrower's financial condition, among other factors. If the lender is accepting a flood insurance policy issued by a private insurer under the discretionary acceptance provision, the lender need only consider whether the policy, including the stated deductible, provides sufficient protection of the loan, consistent with general safety and soundness principles.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 3

Provides guidance on lenders wishing to charge fees to the borrower for the lender's use of a third party to review flood insurance policies. The proposed answer notes that the Act and the Regulation do not prohibit lenders from charging fees to borrowers for contracting with a third party to review flood insurance policies.

Private Flood Compliance #3: *If a lender utilizes a third party to review flood insurance policies, would it be permissible for a lender to charge the borrower a fee for this review?*

The Act and the Regulation do not prohibit lenders from charging fees to borrowers for contracting with third parties to review flood insurance policies. As explained in Q&A Fees 1 and Q&A Fees 2, lenders may charge limited, reasonable fees for flood

determinations and life-of-loan monitoring. Similarly, the Act and the Regulation do not prohibit lenders from charging a fee to a borrower when a third party reviews a flood insurance policy issued by a private insurer. However, lenders should be aware of any other applicable requirements regarding fees and disclosures of fees.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 4

Proposed Private Flood Compliance 4 addresses the lender's responsibility to ensure a private flood insurance policy meets the requirements of the Regulation if the policy is not available prior to loan closing. The proposed answer would provide that the Act and Regulation do not specify the acceptable types of documentation for a lender to rely on when reviewing a flood insurance policy issued by a private insurer and would advise that lenders should determine whether they have sufficient evidence to show the policy meets the requirements under the Regulation.

Private Flood Compliance #4: If the policy is not available prior to closing, what can the lender rely on to make sure the policy meets the requirements of the Regulation?

The Act and Regulation do not specify the acceptable types of documentation for a lender to rely on when reviewing a flood insurance policy issued by a private insurer. Lenders should determine whether they have sufficient evidence to show the policy meets the requirements under the Regulation. Lenders can take steps to help mitigate against closing delays such as designating employees responsible for reviewing flood policies, training employees, and requesting additional information from insurers early in the process. If the lender does not have enough information to determine if the policy meets the private flood insurance requirements under the Regulation, then the lender should timely request additional information as necessary to complete its review.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 5

Addresses whether a declarations page provides sufficient information for a lender to determine whether a policy complies with the regulations. Under the proposed answer,

if the declarations page provides sufficient information for the lender to determine whether the policy meets the mandatory acceptance provision or the discretionary acceptance provision of the Regulation or if the declarations pages contains the compliance aid assurance clause, then the lender may rely on the declarations page.

Private Flood Compliance #5: *Under existing force placement requirements, a declarations page is sufficient to evidence a borrower’s purchase of a flood insurance policy. Does the declarations page have sufficient information for a lender to determine whether the policy complies with the Regulation?*

It depends. If the declarations page provides enough information for the lender to determine whether the policy meets the mandatory acceptance provision or discretionary acceptance provision of the Regulation or if the declarations pages contains the compliance aid assurance clause, then the lender may rely on the declarations pages. However, if the declarations page does not provide enough information for the lender to determine whether the policy satisfies the mandatory acceptance provision or discretionary acceptance provision of the Regulation, the lender should request additional information about the policy to aid in making its determination.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 6

Provides guidance on a lender’s ability to accept multiple-peril policies clarifying that a lender may accept multiple-peril policies that cover the hazard of flood under the private flood insurance provisions of the Regulation, provided they meet the requirements of the Regulation.

Private Flood Compliance #6: *May a lender accept a multiple-peril policy issued by a private insurer to satisfy the mandatory purchase of flood insurance requirement?*

Yes. A lender can accept a multiple-peril policy that covers the hazard of flood under the private flood insurance provisions of the Regulation, provided the policy meets the requirements under the Regulation.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 7

Proposed Private Flood Compliance 7 discusses how the private flood insurance requirements of the Regulation would work in conjunction with requirements of secondary market investors, such as Fannie Mae and Freddie Mac. The proposed answer notes that secondary market investor requirements are separate from the requirements of the Regulation and lenders seeking sale of loans should carefully review the investor's requirements and direct any questions to the appropriate entities.

Private Flood Compliance #7: How do the private flood insurance requirements of the Regulation, especially the compliance aid assurance clause, work in conjunction with the requirements from secondary market investors (for example, the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac))?

Lenders must comply with Federal flood insurance requirements. The requirements for the secondary market are separate from the Regulation. A lender should carefully review these separate requirements for secondary market investors regarding acceptable private flood insurance if the lender plans to sell loans to such investors and should direct questions regarding these requirements to the appropriate entities.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 8

Proposed Private Flood Insurance Compliance 8 provides guidance to servicers for loans covered by flood insurance mandated by the Act. Specifically, the proposed answer would clarify that for loans serviced on behalf of lenders supervised by the Agencies, the servicer must comply with the Regulation in determining whether a flood insurance policy issued by a private insurer must be accepted under the mandatory acceptance provision or may be accepted under the discretionary acceptance or mutual aid provisions. However, for loans serviced on behalf of other entities not supervised by the Agencies, the proposed answer would state that the servicer should comply with the terms of its contract with such an entity.

Private Flood Compliance #8: When servicing a loan covered by flood insurance pursuant to the Act and the Regulation, which requirements must a servicer follow in evaluating the acceptance of a flood insurance policy issued by a private insurer?

For loans serviced on behalf of lenders supervised by the Agencies, the servicer must comply with the Regulation in determining whether a flood insurance policy issued by a private insurer must be accepted under the mandatory acceptance provision or may be accepted under the discretionary acceptance provision or mutual aid provision. For loans serviced on behalf of other entities not supervised by the Agencies, the servicer should comply with the terms of its contract with that entity. For example, when servicing loans on behalf of Fannie Mae or Freddie Mac, where there are insurer rating requirements specified within those entities' servicing guidance or other relevant authorities that are not required in the Regulation, the servicer should adhere to those servicing requirements.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 9

Proposed Private Flood Compliance 9 explains how a lender can determine whether an insurer is licensed, admitted, or otherwise approved in a particular State, or whether a surplus lines or non-admitted alien insurer is permitted to issue an insurance policy in a particular State. The proposed answer would suggest that a lender may review the website of the State insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue insurance in a particular State or contact the State insurance regulator directly. Further, the proposed answer notes that the information with respect to surplus lines insurer eligibility may be available in the Consumer Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders may also consult commercial service providers regarding the eligibility of surplus lines insurers in particular States as long as the lenders have a reasonable basis to believe that these service providers have reliable information.

Private Flood Compliance #9: How can a lender determine: (i) Whether an insurer is licensed or admitted in a particular State, (ii) or whether a surplus lines or non-admitted alien insurer is permitted to issue an insurance policy in a particular State?

A lender may refer to the website of the State insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue an insurance policy in a particular State. If the lender cannot determine this information from the website, the lender could contact the State insurance regulator directly. Further, information with respect to surplus lines insurer eligibility also may be available in the Consumer Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders may consult commercial service providers regarding the eligibility of surplus

lines insurers in particular States provided the lenders have a reasonable basis to believe that these service providers have reliable information. With regard to non-admitted alien insurers in particular, lenders could review the NAIC's Quarterly Listing of Alien Insurers.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 10

Addresses whether lenders may accept policies issued by private insurers that are surplus lines insurers for noncommercial residential properties. The proposed answer would explain that 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, lenders may accept policies issued by surplus lines insurers as coverage for noncommercial (i.e., residential) properties. The proposed answer also confirms that policies issued by surplus lines insurers for noncommercial properties are covered in the definition of "private flood insurance" and in the discretionary acceptance provision.

Private Flood Compliance #10: May lenders accept policies issued by private insurers that are surplus lines insurers for noncommercial residential properties?

Yes, 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, lenders may accept policies issued by surplus lines insurers as coverage for noncommercial (i.e., residential) properties. Consistent with the Act and the Regulation, the Agencies confirm that policies issued by surplus lines insurers for noncommercial properties are covered in the definition of "private flood insurance" and in the discretionary acceptance provision. In the definition of "private flood insurance," surplus lines policies for noncommercial properties are covered as policies that are issued by insurance companies that are "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." Similarly, within the discretionary acceptance provision, noncommercial residential policies issued by surplus lines carriers are covered as policies that are issued by private insurance companies that are "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." For purposes of the Regulation, the meaning of "otherwise approved" is based on whether applicable State law provides that the surplus lines insurer is eligible or not disapproved to place insurance in that State. Even if the surplus lines insurer is not considered to be engaged in the business of insurance under applicable State law, the surplus lines

insurer would still be “otherwise approved” only for purposes of this provision of the Regulation if the insurer is eligible or not disapproved to place insurance in the State.

Feedback/Comments:

Proposed new Q&A Private Flood Compliance 11

Addresses whether a lender may accept a private flood insurance policy that includes a compliance aid assurance clause, but also includes a disclaimer that the “insurer is not licensed in the State or jurisdiction in which the property is located.” The proposed answer would explain that there are circumstances under which lenders may accept a policy issued by an insurer that is not licensed in the State or jurisdiction in which the property is located.

Private Flood Compliance #11: May a lender accept a private flood insurance policy that includes a compliance aid assurance clause, but also includes a disclaimer explaining that the “insurer is not licensed in the State or jurisdiction in which the property is located,” which suggests that the policy is issued by a surplus lines insurer?

Even if the policy includes a statement indicating that the insurer is not licensed in the State or jurisdiction in which the property is located, suggesting that the policy is issued by a surplus lines insurer, there are circumstances under which lenders may accept the policy. A lender may accept a policy issued by a surplus lines insurer recognized or not disapproved by the relevant State insurance regulator as protection for loan collateral that is a commercial property. Also, a lender may accept a policy issued by a surplus lines insurer as protection for loan collateral that is a noncommercial property as a policy issued by an insurance company that is “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.” See Q&A Private Flood Compliance 10.

Feedback/Comments:

-End-