Office of the Comptroller of the Currency
12 CFR Parts 22, 172
[Docket ID OCC-2013-0015]
RIN 1557-AD67
And FDIC, NCUA, Farm Credit Administration and Federal Reserve Board
Re: Comments on "Loans in Areas Having Special Flood Hazards."
VIA REGULATIONS.GOV

December 2, 2013

To Whom It May Concern:

We are individual groups within the smartersafer.org coalition, a diverse chorus of environmental, free-market, taxpayer, housing and insurance groups committed to risk-based insurance rates, property mitigation and environmental protection. As coalition members, we played a significant role in shaping the 2012 Biggert-Waters Flood Insurance Modernization Act and are eager to see that it is implemented in a fashion consistent with legislative intent and good public policy.

As individual members of the coalition—speaking for ourselves and not the coalition as a whole--we support an increased private market role in flood insurance that assures the availability of flood coverage, reduces risks to taxpayers while leveraging as much private capital as possible. We believe that Biggert-Waters is a step in the right direction.

In that context, we are pleased to see that you (OCC, the Fed, FDIC, FCA and NCUA) have proposed issued rules intended to implement sections 100209, 100239, and 100244. Our comments focus on section 100239 relating to the private purchase of flood insurance. With reference to 100239 we believe you should follow the following policies:

- The agencies should permit the proposed streamlined, lender due diligence safe-harbor as outlined in your proposed regulations; its implementation appears practicable as proposed for admitted market insurers insurers. For surplus lines insurers, we suggest that the agencies confer with representatives of the industry to develop an alternative approach.
- The agencies should allow policies that do not meet the statutory definition of "flood insurance" to satisfy the mandatory purchase requirement.

- The agencies should promulgate alternative standards and require privately offered flood insurance that does not meet the statutory definition to meet these standards.

The agencies should permit the proposed streamlined, lender due diligence safe-harbor as outlined in your proposed regulations; its implementation appears practicable as proposed for admitted market insurers. For surplus lines insurers, we suggest that the agencies confer with representatives of the industry to develop an alternative approach.

The idea of a "safe harbor" for private flood insurance makes sense based on our knowledge of insurance markets. While we are not currently aware of any mechanism that allows for the offering of advisory opinions on privately offered flood insurance, the current mechanics of the rate and form filing process would allow state insurance regulators to develop a process to issue such opinions for licensed insurers without significant burdens. The fundamental features of any insurance policy—its deductibles, coverage, costs, and other features—are all part of almost all rate and form filings already. Comparing these policy features to the statutory definition of flood insurance should not be a difficult task for state insurance regulators. In most cases, in most states, we feel that creating the safe harbor would present few if any insurance related difficulties.

In a handful of states, it appears possible that certain information necessary to determine equivalence might not be part of the rate and form filings and the process of issuing written opinion could impose some additional staff time burden on insurance regulators. Any additional costs incurred in this process could and should easily be mitigated through filing fees assessed on regulated insurers. The agencies should work with the National Association of Insurance Commissioners (NAIC) to develop a streamlined process.

In the surplus lines segment of the property and casualty insurance industry, where insurers typically do not file forms with state insurance regulators, however, another approach may be necessary. We suggest that the agencies confer with representatives of surplus lines insurers to develop an alternative approach for flood policy forms utilized by such insurers. A self-certification approach or certification through a private party may be a workable solution.

In the medium term, we feel the existence of a safe harbor is vital to the development of a vibrant private flood insurance market. Without it, many lenders will likely be reluctant to allow borrowers to procure private flood insurance policies. As such, we strongly support the existence of a "safe harbor" provision and believe that it is necessary to encourage a vibrant new flood insurance sector.

The agencies should allow policies that do not meet the statutory definition of "flood insurance" to satisfy the mandatory purchase requirement.

The current NFIP is a something close to a one-size fits all program: it offers only a handful of types of coverage and gives consumers few ways to customize their coverage. It gives individuals a more limited choice of deductibles than a purely private market might. It does not write certain types of coverage—such as community-wide policies—that might have certain advantages for in particular areas. In some cases, the use of one-size-fits-all policies produces results that appear absurd. In some areas, for example, the fact that even a small portion of an elevated structure sits at grade-level results in premiums charged as if the entire structure sat at grade level. These decisions do not appear to make sense and exacerbate the problem of offering coverage that meets the statutory definition of flood insurance. Granting greater flexibility to offer alternative policy types, including some that do not meet the statutory definition of flood insurance, should be considered very much in the public interest.

The agencies should promulgate alternative standards for privately offered flood insurance that does not meet the statutory definition.

Any law related to insurance has to define what is and is not insurance. Some products that might be marketed as flood insurance—say a policy with a $1,000 limit—provide effectively no flood protection whatsoever. Given longstanding policies that provide some limited relief to people who lose their homes to flooding (even when they are uninsured), encouraging the development of policies that provide effectively no coverage would be unwise. For policies that do not meet the statutory definition of flood insurance, such as some offered by less-regulated excess and surplus lines carriers, it's important to require some level of assurance that carriers offering flood cover are, indeed, solvent. To that end, we have three suggestions:

- ***Require that all privately written flood coverage not meeting the statutory definition of flood insurance have policy limits at least equal to the lesser of the full value of the insured property or the maximum insured value allowed under NFIP:*** While they may have some use in some cases, "mini-policies" that provide little or no coverage do not adequately protect taxpayers or communities. Policy limits should be equal to NFIP's or the structure value of the insured premise. Carriers, of course, should be free to offer more coverage than NFIP as well.
- ***Allow deductible structures equivalent to any deductible structure allowed in the admitted homeowners insurance market in the state where a flood policy is written:*** Through form regulation, many states limit the maximum allowable size of a homeowners' insurance deductible. Deductibles in excess of 10 percent of property value are rare. These same standards should apply, differently in each state, to flood insurance policies as well. Lenders, of course, could require lower deductibles, but the agencies should defer to state legislators, insurance regulators and state-by-state standards in deciding what these regulations should be. We suggest these

same standards be applied to policies written by E&S carriers that are used to meet mandatory purchase requirements but that do not meet the statutory definition of flood insurance. In cases where no state standard exists, we suggest as a default national standard that the total of deductibles, co-insurance and other payments that are the responsibility of the policyholder not exceed 15 percent of the home's value.

- ***Require that companies offering flood coverage that does not meet statutory definition of flood insurance be either (a) admitted market carriers (b) excess and surplus lines carriers that have a rating from an NRSRO that indicates financial security:*** As the United States' system of financial solvency regulation for insurers is mostly state-based, it is sensible to defer to existing state regulation. If a carrier writes property insurance in any state's admitted insurance market, it should also be allowed to write flood insurance. However, we suspect that, initially, many carriers that offer flood coverage not meeting the statutory definition of flood insurance will be excess and surplus lines carriers. These companies do not participate in guaranty funds and face less intensive solvency regulation. To provide for a level of protection to consumers and lenders alike, we suggest that E&S carriers who want to offer coverage that meets the mandatory purchase requirement be required to carry a rating from at least one Nationally Recognized Statistical Rating Organization that indicates financial security. In the case of A.M. Best Co., for example, this would mean a rating of B+ or better. This would provide a reasonable assurance that such carriers will not simply collapse.

Conclusions

To protect taxpayers, homeowners, and communities, the United States must make greater use of private capital in flood insurance markets. The regulations you have suggested would, with appropriate modifications, represent a major step in that right direction for the nation's flood safety. We thank you for the opportunity to submit these comments.

Respectfully Submitted,

The R Street Institute
The American Consumer Institute
National Taxpayers Union