

January 3, 2017

Legislative and Regulatory Activities Division,  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW., Suite 3E-218  
Washington, D.C. 20219

RE: Loans in Areas Having Special Flood Hazards: Private Flood Insurance;  
Docket ID: OCC-2016-0005

To Whom It May Concern:

SmarterSafer is pleased to submit this letter of comment on the Office of the Comptroller of the Currency's joint notice of proposed rulemaking on Loans in Areas Having Special Flood Hazard: Private Flood Insurance. SmarterSafer is a coalition of environmental organizations, taxpayer advocates, insurance representatives, housing organizations and mitigation experts that advocates for environmentally-responsible, fiscally-sound approaches to natural catastrophe policy.

SmarterSafer supports the efforts of the regulators to move forward to ensure implementation of the requirements under Biggert-Waters that private flood insurance policies be accepted by lenders. Federal law requires homeowners in special flood hazard areas (SFHAs) with federally-backed mortgages to purchase flood insurance. Even without the Biggert-Waters clarification, there is nothing in current law that restricts the ability of consumers to purchase private flood insurance. Consumers should be able to purchase coverage from private insurers or through the National Flood Insurance Program (NFIP) based on their needs.

For decades, however, NFIP has basically been the only available flood insurance. This is due in large part to NFIP providing flood coverage at highly subsidized rates to those at risk. As rates begin to move towards actuarial soundness in the NFIP and as the private sector is becoming more innovative on mapping and risk analysis, private insurers are beginning to enter the flood market. Though Biggert-Waters clarified that private flood should be accepted, unfortunately language was not clear, and lenders have voiced concerns about accepting private coverage without guidance from regulators. This means that consumers are limited in their choices and some consumers are being told by lenders that they cannot purchase private coverage. It is critical that banking regulators promulgate a rule that allows consumers to purchase policies through private companies as well as NFIP.

Growth of a private flood market will help consumers as well as NFIP. NFIP is currently over \$23 billion in debt, and without significant reform, the program remains at risk. Increased private competition will help take the strain off the NFIP and taxpayers as well as increase consumer choice. In addition, a private flood market will help ensure more property owners purchase coverage. In 2016 only 12 percent of homeowners had a flood insurance policy, down from 14 percent in 2015. A functioning private flood insurance market will increase flood coverage across the board, helping additional homeowners access needed insurance.

By increasing the acceptance of private flood policies by lenders, agencies will ensure that consumers can choose policies that meet their needs instead of a one-size-fits-all NFIP policy. This means consumers can choose policies with different coverage types, limits, and premiums. As flood events and recovery costs increase nationwide, consumers must have sufficient and affordable options when purchasing flood insurance.

#### Definition of “private flood insurance”

The proposed rule requires lenders accept certain private flood insurance while allowing lenders to accept other private flood policies, provided that certain requirements are met. SmarterSafer encourages the agencies to adopt a broad definition of “private flood insurance” that lenders must accept. The rules define private flood insurance as policies from an insurer that is licensed, admitted, or approved in the state, including surplus lines carriers. The private flood policy must also be at least as broad as an NFIP policy; and requires 45 days of written notice before cancellation or nonrenewal, a mortgage interest clause similar to a standard flood policy, and a provision limiting the ability of an insured to file suit to no later than one year after a written denial.

The Agencies should consider expanding the definition of “private flood insurance” to increase the number of policies that meet the definition and are accepted by lenders. An overly restrictive definition of “private flood insurance” would restrict the number of private insurance policies accepted by lenders and would stifle consumer choice. A broad definition of “private flood insurance” will increase consumer choice and ensure competition and innovation, while maximizing the number of properties covered by flood insurance.

#### Criteria for Discretionary Acceptance

Under the proposed rule, lenders are permitted to accept policies that do not fulfill the requirements for mandatory acceptance, provided that certain requirements are met. This discretionary option is critical to the proposed rule and private marketplace, and should be retained and expanded. Lenders should be permitted to accept any private policies as long as the insurance providers are approved by the state insurance commissioners. Insurance is regulated by the state and that is the proper place to regulate private flood insurance.

SmarterSafer encourages broad, expanded criteria for discretionary acceptance of private flood insurance by lenders. The rule as proposed would permit a lender to accept a private flood policy that does not meet the statutory definition of private flood insurance if the plan provides coverage that 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 NFIP; is issued by either a licensed insurer in the State in which the property is to be insured or located; protects both the mortgagor and mortgagee; contains a cancellation policy which only permits cancellation for the reasons permitted by FEMA for a standard flood insurance policy (SFIP), and provides for a reasonable notice of cancellation to the borrower; and is either at least as broad as an NFIP policy, or provides coverage that is similar to coverage provided under an SFIP, including deductibles, exclusions, and conditions offered by the insurer. Allowing for various policies besides those that meet the mandatory acceptance criteria is critical to the marketplace and will result in different types of coverages, deductibles, and terms that could be

beneficial to consumers. SmarterSafer urges regulators to ensure broad acceptance of private flood insurance by expanding the definition of insurance that can be accepted by regulators.

The proposed rule contemplates not allowing insurance written by surplus lines providers to be accepted under the discretionary acceptance provision. This would harm consumers and stifle development of a private market. As private insurers enter the flood market, the \$40.2 billion surplus lines market remains a substantial source of such policies. When an insurance market is first developing, surplus lines insurance is critical, as it allows companies to enter the marketplace with less loss experience and claims data. The exclusion of surplus lines carriers from the proposed definition would be a significant setback for the development of the private flood insurance marketplace and for consumer choice. SmarterSafer strongly supports the inclusion of surplus lines providers in the Agencies' proposed definition for private flood insurance under both the mandatory and discretionary acceptance.

In addition, the process for discretionary acceptance should be simple and straightforward to encourage lenders to accept private flood policies without unnecessary burdens on the lenders or policyholders. Even when allowing for broad discretionary authority, if the process for acceptance is too burdensome, lenders will not be motivated to accept private flood policies that do not meet the criteria for mandatory acceptance. Instead of a complicated documentation regime as envisioned by the Rule, lenders should be permitted to accept any private policies so long as they determine that the policy protects their interests and the interests of the consumer. The process should be simple and straightforward.

We look forward to working with you on this important matter. For any further information, please contact Jenn Fogel-Bublick at Capitol Counsel at (202) 861-3200, and for additional information on SmarterSafer, including a member list, please go to [www.SmarterSafer.org](http://www.SmarterSafer.org).

Sincerely,

SmarterSafer