

# RESCINDED

Transmittal – See OCC 2020-11

OCC Bulletin 2013-24 | October 11, 2013

## Flood Insurance: Notice of Proposed Rulemaking

### Summary

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and National Credit Union Administration (NCUA) have issued a Notice of Proposed Rulemaking that would amend regulations regarding loans in areas having special flood hazards to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act or Act). Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance policies, and the force-placement of flood insurance. Furthermore, the OCC is proposing to integrate its flood insurance regulations for national banks and federal savings associations (collectively, banks), currently set forth at 12 CFR 22 and 12 CFR 172. The proposed rule has a 60-day comment period, ending on December 10, 2013.

### Highlights

#### Escrow of Flood Insurance Payments

- Pursuant to section 100209 of the Biggert-Waters Act, the proposal generally would require banks, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for residential improved real estate or a mobile home securing any residential mortgage loan *outstanding or entered into* on or after July 6, 2014, unless the bank qualifies for the statutory exception.
  - For loans requiring flood insurance that are made *on or after* July 6, 2014, banks would be required to begin escrowing upon loan consummation. For loans that are *outstanding* on July 6, 2014, banks would be required to begin escrowing with the first loan payment after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014. This timing for outstanding loans is intended to alleviate the potential burden of the new requirement on lenders and borrowers.
- The proposal would require banks to mail or deliver a written notice informing borrowers of the escrow requirement. For loans outstanding on July 6, 2014, banks must provide this notice at least 90 days before they must begin escrowing. For loans made on or after July 6, 2014, banks must provide this notice at the time they provide the general notice of the flood insurance requirement. The proposal includes sample forms of this notice.
- Except as may be required under applicable state law, a bank is not required to escrow if it has total assets of less than \$1 billion and, as of July 6, 2012, was not

### To

Chief Executive Officers of All National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties

required by federal or state law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance.

### Private Flood Insurance

- Under current law, banks *may* accept private flood insurance in satisfaction of National Flood Insurance Program (NFIP) requirements if certain conditions are met. Pursuant to section 100239 of the Biggert-Waters Act, the proposal would *require* that banks accept “private flood insurance” as defined in the Act. To assist banks in complying with this requirement, the proposal includes a safe harbor under which a flood insurance policy is deemed to meet the definition of “private flood insurance” if a state insurance regulator makes a determination in writing that the policy meets this definition.
- The preamble to the proposed rule explains that the agencies also are considering including in the final rule a provision expressly permitting the discretionary acceptance of private policies that do not meet the statutory definition of “private flood insurance” if the policies meet certain standards and requirements.

### Force Placement

- Pursuant to section 100244 of the Biggert-Waters Act, the proposal would amend the current rule’s force-placement of flood insurance provision to clarify that a bank or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which such coverage lapsed or on which the coverage became insufficient.
- The proposal also would stipulate the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower.
- The proposal sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

#### Note for Community Banks

The amendments proposed by this rulemaking would apply to all banks, including community banks. The escrow requirement for flood insurance premiums does not, however, apply to banks with total assets of less than \$1 billion and that, as of July 6, 2012, were not required by federal or state law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance. With respect to private insurance, the proposed safe harbor provision would assist community banks in determining whether they are required to accept a particular policy as satisfaction of the mandatory flood insurance requirement.

### Background

The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act, as amended, govern the NFIP. Among other things, these statutes require the purchase of flood insurance on certain properties and make available federally subsidized flood insurance to owners of improved real estate or mobile homes located in special flood

hazard areas if the community where the improved real estate or mobile home is located participates in the NFIP.<sup>1</sup> The Federal Emergency Management Agency (FEMA) administers the NFIP.<sup>2</sup> OCC, Board, FDIC, NCUA, and FCA regulations implement these statutes for the lending institutions they supervise.

The Biggert-Waters Act significantly amends the NFIP requirements. Among other things, the Act (1) requires regulated lending institutions to escrow premiums and fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;<sup>3</sup> (2) directs regulated lending institutions to accept private flood insurance, as defined by the Act, and to notify borrowers of the availability of private flood insurance; and (3) clarifies that the cost of premiums and fees incurred for force-placed insurance may include costs for coverage beginning on the date on which the flood insurance coverage lapsed or did not provide sufficient coverage, and establishes procedures for terminating force-placed insurance.

### Further Information

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### Related Link

- [Loans in Areas Having Special Flood Hazards \(PDF\)](#)

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<sup>1</sup> A special flood hazard area is an area within a floodplain having a 1 percent or greater chance of flood occurrence in any given year. 44 CFR 59.1.

<sup>2</sup> FEMA regulations implementing the NFIP appear at 44 CFR 59-77.

<sup>3</sup> Subsequent to the enactment of the Biggert-Waters Act, Congress clarified that the flood insurance escrow requirement applies only to residential loans secured by residential improved real estate. See Public Law No. 112-281 (January 14, 2013).