

**Subject: Flood Insurance**  
**Date: November 14, 2014**

**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**

Transmittal: See OCC 2015-33

## Description: Notice of Proposed Rulemaking

### Summary

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Federal Reserve Board), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and National Credit Union Administration (NCUA) (collectively, the agencies) have issued a notice of proposed rulemaking that would implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). Specifically, the proposal would amend existing regulations to establish requirements for national banks and federal savings associations (collectively, banks) to escrow flood insurance payments and provide an exemption to the general mandatory flood insurance requirement for detached structures. The proposed rule has a 60-day comment period, ending on December 29, 2014.

### Note for Community Banks

The proposed escrow requirement for flood insurance premiums would not apply to any bank that has total assets of less than \$1 billion provided that, as of July 6, 2012, the bank (1) was not required by applicable federal or state law to escrow taxes or insurance for the term of the loan; and (2) did not have a policy to require escrow of taxes and insurance. The proposal also would provide other exceptions to this escrow requirement for certain types of loans.

### Highlights

#### Escrow of Flood Insurance Payments

Pursuant to the Biggert-Waters Act and the HFIAA, the proposal would amend 12 CFR 22 (for national banks) and 12 CFR 172 (for federal savings associations) to require regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, unless one of the following exceptions applies:

- The bank has total assets of less than \$1 billion and, as of July 6, 2012 (1) was not required by applicable federal or state law to escrow taxes or insurance for the term of the loan; and (2) did not have a policy to require escrow of taxes and insurance.
- The loan is
  - in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided;
  - secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met;

- an extension of credit primarily for a business, commercial, or agricultural purpose;
- a home equity line of credit;
- a nonperforming loan; or
- of a term not longer than 12 months.

The proposal would require a bank to mail or deliver a written notice to borrowers informing them of the escrow requirements. The notice must be delivered to the borrower along with, or included in, the "Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance." (The proposal would amend the current sample form of this notice accordingly.)

The proposal also would implement the requirement under the HFIAA that a regulated lending institution subject to the escrow requirement must offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. Lenders would be required to deliver information to borrowers on this escrow option by March 31, 2016, and implement the escrow as soon as reasonably practicable after receiving a borrower's request to escrow. The proposal provides a sample clause to assist institutions in complying with this notice requirement. Moreover, a regulated lending institution, whether qualifying for the small lender exception would have to offer and make available to a borrower the option to escrow flood insurance premiums and fees for outstanding loans.

### **Detached Structures Exemption**

The proposal would amend the current rule to include the new exemption to the general mandatory flood insurance requirement for detached structures established by the HFIAA. Specifically, the proposed rule provides that flood insurance is not required for any structure that is part of a residential property if it is detached from the primary residential structure and does not serve as a residence. The preamble to the proposal, however, makes clear that a lender may nevertheless choose to require flood insurance on the detached structure to protect the collateral securing the mortgage.

### **Background**

The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act, as amended, govern the National Flood Insurance Program (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. The Federal Emergency Management Agency administers the NFIP. The OCC, Federal Reserve Board, FDIC, and FCA have issued joint regulations to implement these statutes for the lending institutions they supervise.

The Biggert-Waters Act significantly amended the NFIP requirements. In relevant part, the act (1) requires a regulated lending institution to escrow premiums and fees for flood insurance on residential improved real estate, unless the institution meets a small lender exception;<sup>1</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; (3) clarifies what costs may be included in premiums and fees incurred for force-placed insurance; and (4) establishes procedures for terminating force-placed insurance. On October 30, 2013, the agencies jointly issued a proposed rule to implement these provisions.<sup>2</sup>

On March 21, 2014, President Obama signed into law the HFIAA, which amends some of the changes the Biggert-Waters Act made to the NFIP, including those related to the escrow of flood insurance premiums and fees. Specifically, the HFIAA extends the date for lending institutions to begin escrowing from July 6, 2014, to January 1, 2016; limits the application of the escrow requirement to the origination, refinance, increase, extension, or renewal of a loan made on or after this date; and incorporates additional exceptions to the escrow requirement. The HFIAA also mandates that regulated lending institutions provide an option to borrowers to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. In addition, the HFIAA provides a new exemption to the mandatory flood insurance purchase requirements for a structure that is part of, but detached from, the primary

residential structure and does not serve as a residence. The proposed rule would implement these HFIAA provisions.

#### Further Information

Please contact Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, at (202) 649-6350; or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, at (202) 649-5490.

Amy S. Friend  
Senior Deputy Comptroller and Chief Counsel

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<sup>1</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).

<sup>2</sup> 78 Fed. Reg. 65108 (October 30, 2013).

<sup>3</sup> Because HFIAA leaves untouched the provisions in the Biggert-Waters Act relating to private flood insurance and force-placed flood insurance, this proposal does not address those provisions.

#### Related Link

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