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Office of the Comptroller of the Currency (OCC)—Docket ID OCC-2013-0015
Board of Governors of the Federal Reserve—Docket No. R-1462
Federal Deposit Insurance Corporation
Farm Credit Administration
National Credit Union Administration—RIN 3133-AE18

Re: American Insurance Association Comments on Loans in Areas Having Special Flood Hazards

To Whom It May Concern:

The American Insurance Association (AIA) appreciates the opportunity to comment on this Joint Notice of Proposed Rulemaking. Dating back to 1867, AIA is America's leading trade association representing the public policy interests of property and casualty insurers throughout the United States and around the world. Our Association represents insurers who write property and casualty insurance globally, nationally and locally. Many of our members participate in the National Flood Insurance Program and have a wealth of experience related to catastrophic and business insurance risks like those addressed in the joint rulemaking.

The rulemaking proposes to amend various regulations regarding loans in areas having special flood hazards in order to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (BW 12). Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance.

With regard to the proposal AIA has two substantive comments. First, we respond to your question related to the definition of "lapsed coverage." As drafted, the proposed definition is too narrow. Second, we examine the proposed definition of "private flood insurance" and how it needs to be modified to account for certain market participants. We hope you find these comments useful.

The Meaning of Lapsed Coverage

At page 42, the comments state:

“the Agencies *propose to amend their regulations* to provide that the regulated lending institution or its servicer may *charge the borrower for the costs of premiums and fees incurred for coverage* beginning on the *date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount*.

(Emphasis added). Thereafter, the agencies remark that they understand “lapsed” to be the **expiration date** provided in the policy and seek “comment on whether the Agencies’ interpretation of the term ‘lapsed’ is consistent with the insurance industry’s use of the term and as to whether further clarification is necessary.” *Id.* at 43.

The agencies’ interpretation of “lapse” is incorrect as it focuses only on expiration date. “Lapsed” could best be described is an insurance term of art and imparts more than the expiration date of coverage. Nonetheless, with many competitors in the insurance industry it would be difficult to say there is one *true* definition of lapsed as it can have separate or additive meanings depending on an insurer’s business practices.

Basically, a lapse occurs when a policy has been non-renewed for some reason or has been cancelled for non-payment. Why a policy is non-renewed can, of course, differ by insurer based on their particular business practices and needs. Ultimately, however, if there was a mistake or even non-payment, the insurance coverage may still be reinstated for someone once the insured has provided a “no known loss letter” or warranty.¹ Thus, it would probably be more appropriate to use “non-renewed or cancelled” rather than “expiration date” as proposed in the draft.

Private Flood Insurance Definition Does Not Fully Account for Surplus Line Insurers

To account for changes provided by BW12 to permit the use of complying private flood insurance, the draft proposes a definition of private flood insurance at page 66. That definition would, in part, mean “an insurance policy that ... [i]s issued by an insurance company that is ... **[l]icensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction** in which the insured building is located, by the insurance regulator of that State or jurisdiction”

Nonetheless, by focusing on “approved, licensed or admitted” alone the definition would seem to ignore that, to the extent it is available, private flood insurance is mostly, if not exclusively, written in the surplus, excess and non-admitted space currently. Those terms refers to coverage lines that are not filed with or substantively regulated by state insurance regulators as a condition

¹ A simple description of this can be found at <http://www.agordon.com/blog/bid/184323/What-is-a-No-Loss-Letter>.

to being offered. For instance, the International Risk Management Institute refers to them as “coverage lines that need not be filed with state insurance departments as a condition of being able to offer coverage. The types of risks typically insured in the surplus lines insurance markets can usually be categorized as risks with adverse loss experience, unusual risks, and those for which there is a shortage of capacity within the standard market.”²

Consequently, to account for a portion of the insurance marketplace that may well have an interest in writing private flood insurance we believe a clause needs to be added to the definition—“or providing the coverage on a surplus lines basis”—before “in the State.” Thus, it would read “Licensed, admitted, or otherwise approved to engage in the business of insurance *or providing the coverage on a surplus lines basis* in the State or jurisdiction.....” In this way we believe all segments of the marketplace that otherwise meet the needed requirements may be able to participate.³ That will be important in meeting Congressional intent.

Thank you for considering these comments. We hope they are helpful and would be glad to speak with you about any specific questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Whittle", with a long horizontal line extending to the right.

James J. Whittle
Assistant General Counsel
& Chief Claims Counsel

² <http://www.irmi.com/online/insurance-glossary/terms/s/surplus-lines-insurance.aspx> ; see also American Association of Managing General Agents at <http://www.aamga.org/faqs>

³ With this definitional change we are simply advocating for an open playing field. There are myriad requirements within BW 12 and the Flood Disaster Protection Act and all private flood insurance should have to meet those and any other legal requirements. Thus, there are many legal requirements that must be adhered to ensure there is also a level playing field between WYOs and private flood insurers. We encourage the agencies to establish and maintain an open *and* level marketplace. Failing to do so may likely compromise the dual goals of expanding flood insurance availability and take up.