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Re: **Joint Notice of Proposed Rulemaking: "Loans in Areas Having Special Flood Hazards," 78 Fed. Reg. 65108 (Oct. 30, 2013) – Comments of the Risk and Insurance Management Society, Inc.**

Dockets: FCA: RIN 3052-AC93; FDIC: RIN 3064-AE-03; Federal Reserve: Docket No. R-1462 (RIN 7100 AE-00); OCC: Docket ID OCC-2013-0015 (RIN 1557-AD67); NCUA: RIN 3133-AE18

Dear Sir or Madam:

The Risk and Insurance Management Society, Inc. ("RIMS") provides these comments concerning the Agencies' joint notice of proposed rulemaking to implement the Biggert-Waters Flood Insurance Reform Act of 2012 (the "Act"). Our comments focus on the requirement in Section 100239 of the Act that regulated lending institutions accept private flood insurance as complying with the National Flood Insurance Program's mandatory purchase requirement

if the insurance policy satisfies certain standards, including that the coverage be at least as broad as coverage provided by a standard flood insurance policy under the National Flood Insurance Program.

Background

RIMS is a global not-for-profit organization representing more than 3,500 industrial, service, nonprofit, charitable and government entities throughout the world in the area of risk management. RIMS serves more than 11,000 individuals worldwide, representing its member companies and organizations. RIMS's individual members manage corporate risk for their employers, and the purchase of insurance in connection with a commercial property loan plays an important role in managing that risk. If the property is located in a special flood hazard area, the Act's requirement that the lender accept qualifying private flood insurance, in combination with the proposed definition of "private flood insurance," is important to RIMS's members, because as proposed, the rule would decrease the market for private flood insurance.

RIMS's concerns regarding the proposed rule arise primarily because the proposal does not appear to account for at least three differences between flood insurance placed on residential property versus that placed on commercial property. For example, some of the provisions in NFIP-backed flood insurance policies are unique, so they differ from provisions in the standard ISO[1] policy forms that are commonly used in the commercial lending marketplace. Consequently, several provisions in NFIP-backed policies are inconsistent with the terms of ISO policies issued to commercial mortgagors. Moreover, much non-NFIP business in the commercial market is placed as surplus lines insurance by nonadmitted carriers (whose policies are approved by their state of domicile and not necessarily by other states, although they are permitted to issue policies to cover risks in those other states).[1] Finally, NFIP terminology regarding "residential property" does not recognize the differences in the insurance requirements associated with consumer residential property, specifically one-to-four family dwellings and individually owned condominium units, and those associated with commercial residential property, such as apartment buildings and condominium association property. Consequently, the private flood insurance provisions in the proposed rule need to include additional language that recognizes these differences, which would encourage commercial residential and condominium association properties to have insurance written in the private market.

Following are RIMS's concerns with the mandatory private flood insurance purchase requirement in the Act as the Agencies have proposed to implement it.

(1) A proposed safe harbor provides that a flood insurance policy meets the definition of private flood insurance if a state insurance regulator determines in writing that it does; the safe harbor is inadequate because of likely differences in how state insurance regulators will engage in making those determinations.

(2) Several components of the definition of "private flood insurance" do not account for the fact that the purchase of flood insurance in connection with loans on commercial property raises issues that differ from those surrounding the purchase of flood insurance for residential property.

(3) The Sufficiency of Information requirement should allow commercial property lenders to accept alternative forms of documentation to verify coverage.

The Safe Harbor Afforded Lenders in Accepting Private Flood Insurance is Inadequate.

The Act requires a lender to accept a private flood insurance policy on a covered loan in satisfaction of the requirement that a mortgagor purchase flood insurance if the policy meets certain requirements. The proposal includes a safe harbor a lender may use to confirm the policy meets the requirements: a written determination by a state insurance regulator that the insurance policy meets the definition of private flood insurance. Lenders are concerned that an insurance regulator may be unable (or unwilling) to certify all insurance policies, in which case lenders may be willing to accept on commercial loans only NFIP-backed policies, whose requirements are problematic for the commercial marketplace. RIMS supports the propose safe harbor, but if it is not implemented fully by state insurance regulators, then lenders – who, to avoid regulatory scrutiny, need assurance that a private flood insurance policy they accept fits within the definition of private flood insurance – will move to safety by simply requiring commercial mortgagors to buy NFIP-backed flood insurance. Another type of safe harbor that does not rely on actions by state insurance regulators is needed.

***The Definition of "Private Flood Insurance" Should be Modified to Recognize that Flood Insurance* for Residential Mortgages Differs from Flood Insurance for Commercial Mortgages.**

Several requirements in the proposed definition of "private flood insurance" should include language that differentiates between private flood insurance coverage on residential property versus that on commercial property. The following discussion of those requirements includes RIMS's recommended changes to the proposed rule (in redline). **Because regulatory citations in the proposed rule differ depending on the Agency involved, references to regulatory language that follow are to the rules proposed by the FDIC (12 C.F.R. Part 339).**

1. Monoline insurance; coverage on residential commercial property. Flood insurance coverage written in the form of a single line policy (monoline insurance) sometimes is placed with surplus lines insurers. Although monoline insurance is more frequently described as difference-in-conditions insurance, such a policy may only provide coverage for loss due to flood, and the regulation should be framed to accommodate that possibility. This provision should also be amended to allow residential commercial property, such as apartment buildings and condominium buildings, to be insured under surplus lines policies.

Subsection (i) of 12 C.F.R. § 339.2 (the definition of "private flood insurance") should be changed to read as follows:

"Private flood insurance means an insurance policy that: (1) Is issued by an insurance company that . . . (B) In the case of a policy of flood insurance, difference in conditions, multiple peril, all risk, or other blanket coverage insuring residential or nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located. . . ."

2. Scope of Insurance Coverage. The standard flood insurance policy ("SFIP") has not been developed within the commercial insurance marketplace, so the terms and coverage inherent to the policy are not consistent with the terms and coverage included in ISO forms used in the commercial insurance marketplace. The regulation should recognize the validity of terms otherwise deemed acceptable in commercial property policies.

Subsection (i)(2) should be changed to read as follows:

"Private flood insurance means an insurance policy that provides: . . .

"(A) flood insurance coverage that is at least as broad as the coverage provided under a flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer; or

"(B) flood insurance coverage for loss due to the peril of flood on terms comparable to the coverage the insured is required to maintain for loss due to fire, windstorm, or other causes of loss, considering deductibles, exclusions, and conditions offered by the insurer. . . ."

The added language is intentionally silent with respect to coverage limits; it is not intended that the flood insurance policy cover the full replacement value limit that is commonly required for fire insurance – nor should it be, given the coverage limits inherent to the NFIP.

3. Loss Payable Provisions. The mortgage-holder's and lender's loss payable provisions of standard ISO commercial property forms entitle the lender to 30 days' notice of cancellation (10 days for cancellation due to non-payment of premium). Although longer notice periods may be granted to the insured, notice to commercial mortgagees is more often held to the standard "30/10/10" approach.

Subsection (i)(3)should be changed to read as follows:

"Private flood insurance means an insurance policy that: . . .

"(3) Includes . . .

"(A) In the case of consumer residential property, a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the [lender], but in the case of commercial residential or non-residential property flood insurance coverage, 30 days' written notice of cancellation or non-renewal, reduced to 10 days for

cancellation or non-renewal due to non-payment of premium. . . ."

Given these distinctions, if the Agencies adopt these suggested change to Subsection (i)(3), it may be appropriate to add one or more definitions to distinguish between (a) consumer residential property and (b) commercial residential or non-residential property.

4. Mortgage Interest Clause. The mortgage-holder's and lender's loss payable provisions of standard ISO commercial property forms entitle the lender to payment of a claim for damage to insured property to the extent of the lender's interest in that property, even if the lender has commenced foreclosure proceedings, and even if the insured's claim is denied due to breach of policy conditions, if several conditions are satisfied. The lender must pay any outstanding premium, submit any necessary claim documentation, advise the insurer of any known change in conditions of the property, and notify the insured of policy cancellation. This approach is acceptable for loss due to other causes and should be deemed acceptable for loss due to flood in the commercial context, and an exception to the mortgagee clause requirement should be granted for condominium association policies, since the insured association itself seldom has mortgage financing.

Subsection (i)(3) should be changed to read as follows:

"Private flood insurance means an insurance policy that: . . .

"(3) Includes . . .

"(C) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP, but in the case of commercial flood insurance coverage, a mortgage interest clause comparable to the mortgage holder's or lender's loss payable clause of standard ISO commercial property forms, except with respect to condominium association policies. . . ."

5. Statute of Limitations for File Suit. Standard ISO forms provide a two-year statute of limitations to file suit, commencing with the date of loss, rather than a one-year limitations period after the date of claim denial.

Subsection (i)(3) should be changed to read as follows:

"Private flood insurance means an insurance policy that: . . .

"(3) Includes . . .

"(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy, but in the case of commercial flood insurance coverage, not later than two years after the date of loss. . . ."

6. Notice of Cancellation. Standard ISO commercial property forms give the insured 30 days' notice of cancellation, but only 10 days' notice if the cancellation is due to non-payment of premium. Standard ISO mortgagee provisions provide the same cancellation notice to the lender. Once the premium has been paid, SFIP coverage is not cancellable by either party, except in certain circumstances, such as upon the sale of the property, or upon the property's being reclassified as within a non-SFHA zone if the insurance was purchased only as a requirement of a mortgage. SFIP coverage does not provide for cancellation due to non-payment except if a renewal premium is not paid.

The private commercial insurance marketplace follows different practices with respect to payment of premium, and when flood insurance coverage is provided in the context of multi-peril policies, the policies are seldom non-cancellable.

Because the notice-of-cancellation approach for a commercial policy is accepted for loss due to other causes, it should be acceptable for loss due to flood in support of Congressional intent in enacting the Act "to stimulate the private insurance market."

Subsection (i)(4) should be changed to read as follows:

"Private flood insurance means an insurance policy that: . . .

"(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP, but in the case of commercial flood insurance coverage, provisions that are no more restrictive than the provisions in standard ISO commercial property forms."

Sufficiency of Demonstration of Required Flood Insurance Coverage

Finally, for the purpose of a borrower's demonstrating that required flood insurance is in place, the proposed rule requires that "a regulated lending institution or its servicer must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent."[1] For coverage through the NFIP, the documentation typically considered acceptable for loan closing is a copy of the NFIP application and evidence of premium payment, or a copy of the NFIP declarations page, both of which contain the required information. Reference to a declarations page as constituting appropriate documentation for private flood insurance fails to recognize that most commercial property insurance policies that include flood coverage do not reflect that information in the policy declarations page. For a loan closing, when coverage may be newly bound and the policy not yet available, the agencies should recognize the validity of binders, and should allow lenders to accept certificates of insurance at the time of closing with the condition that copies of pertinent sections of the actual policy that contain the required information be provided to the lender when the policy is issued.

Conclusion

RIMS appreciates the opportunity to provide these comments. There are significant differences

in the terms of, and procedures used to place, flood insurance placed on residential property versus that placed on commercial property. Consequently, the private flood insurance provisions in the proposed rule need to include additional language that recognizes these differences, which would encourage commercial and condominium association properties to have insurance written in the private market – consistent with Congressional intent.

Sincerely,

Carolyn Snow
RIMS Board of Directors

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