



December 10, 2013

**All letters submitted via Federal eRulemaking Portal**

Legislative and Regulatory Activities Division  
Office of the Comptroller of the Currency  
400 7th Street, SW, Suite 3E-218 – Mail Stop 9W-11  
Washington, DC 20219

Robert deV. Frierson, Secretary  
Board of Governors of the Federal Reserve System  
10th Street and Constitution Avenue, NW  
Washington, DC 20551

Robert E. Feldman, Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

**Re: *Loans in Areas Having Special Flood Hazards***

OCC: Docket ID OCC 2013-0015  
FRB: Docket No. R-1462 / RIN 7100 AE-00  
FDIC: RIN 3064-AE03

Ladies and Gentlemen:

The Independent Bankers Association of Texas (“IBAT”) is a trade association representing over 400 independent, community banks domiciled in Texas. All of its members make real estate secured loans, which will be affected by this proposal. Furthermore, many of its members are located in communities that are significantly affected by hurricanes and the flooding that ensues from such events. At the same time, these community banks are struggling with the changes in residential mortgage lending rules resulting from the Dodd-Frank Act. In short, IBAT’s members are significantly impacted by these rules and need a system that is effective but readily achievable.

**Private insurance**

The proposed regulation requires regulated lending institutions to accept private flood insurance “which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer.” However, it is unlikely that lenders will be able to make this determination and will therefore likely just not accept private flood insurance rather than risk noncompliance.

**INDEPENDENT BANKERS ASSOCIATION OF TEXAS**

1 700 RIO GRANDE STREET  
SUITE 1 00  
AUSTIN, TEXAS 78701  
P: 51 2.474.6889  
F: 51 2.322.9004  
WWW.IBAT.ORG

**JAY M. GOBER**  
IBAT CHAIRMAN  
JGOBER@FSBGRAHAM.COM  
FIRST STATE BANK, GRAHAM

**JOHN W. JAY**  
IBAT CHAIRMAN-ELECT  
JWJAY@ROSCOEESTATEBANK.COM  
ROSCOE STATE BANK, ROSCOE

**ROBERTS POPE, JR.**  
IBAT VICE CHAIRMAN  
RPOPEJR@TEXASBANKANDTRUST.COM  
TEXAS BANK AND TRUST, LONGVIEW

**DARLA ROOKE**  
IBAT SECRETARY-TREASURER  
DROOKE@JUNCTIONNATIONAL.COM  
JUNCTION NATIONAL BANK

**KEVIN W. MONK**  
LEADERSHIP DIVISION CHAIRMAN  
KMONK@ALLIANCEBANK.COM  
ALLIANCE BANK, SULPHUR SPRINGS

**WILLARD J. STILL**  
IBAT EDUCATION FOUNDATION  
CHAIRMAN  
WSTILL@AMBANKWACO.COM  
AMERICAN BANK, N.A., WACO

**TROY M. ROBINSON**  
IMMEDIATE PAST CHAIRMAN  
TROBINSON@BANKTEXAS.ORG  
BANK TEXAS, QUITMAN

**CHRISTOPHER L. WILLISTON, CAE**  
PRESIDENT AND CEO  
CWILLISTON@IBAT.ORG

**STEPHEN Y. SCURLOCK**  
EXECUTIVE VICE PRESIDENT  
SSCURLOCK@IBAT.ORG

**JANE HOLSTIEN**  
SENIOR VICE PRESIDENT  
JHOLSTIEN@IBAT.ORG

**URSULA L. JIMENEZ, CAE**  
SENIOR VICE PRESIDENT  
UJIMENEZ@IBAT.ORG

**CHRISTOPHER L. WILLISTON, VI, CAE**  
SENIOR VICE PRESIDENT  
CLWILLISTON@IBAT.ORG

**CURT NELSON**  
IBAT SERVICES PRESIDENT  
CNELSON@IBAT.ORG

**MARY E. LANGE, CAE**  
IBAT EDUCATION FOUNDATION  
PRESIDENT  
MLANGE@IBAT.ORG

**JULIE COURTNEY, CAE, CFP**  
IBAT EDUCATION FOUNDATION  
SENIOR VICE PRESIDENT  
JCOURTNEY@IBAT.ORG

### **Escrow**

The proposed rules require escrow for all loans subject to mandatory purchase requirements regardless of whether the loan closed before or after the effective date of the rules. Many loans currently on the books do not contractually require escrow of taxes or insurance and do not provide for escrow accounts during the life of the loan. These loans could probably be amended to require escrow. However, this can't be done unilaterally and would necessitate having the borrowers sign new documents. The lender couldn't require the borrower to sign the loan documents, and borrowers may balk at changes that increase their monthly payments. The proposed rules should be changed to require escrow only on loans whose applications were received after the effective date of the rules.

### **Force placed insurance**

When premiums are not escrowed and a policy lapses for non-payment of premium, may the lender bill the borrower for insurance obtained for the period between the lapse and the date the lender discovered the lapse? The proposed rules do not answer this important question. A policy lapsing for failure to pay premiums is an event of default under the deed of trust. The question should be answered in the affirmative as the lender should be able to recoup expenses it incurs when the borrower defaults.

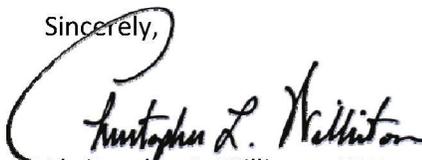
Our read of the proposed rule indicates that the lender is responsible for cancelling the force placed policy back to the date that the borrower can show he has insurance. However, unlike credit insurance rules, the refund of premiums in this scenario is not back to inception. Rebates of premium are governed by state law and would not be affected by this rule. Accordingly, if unchanged, this rule would mean that the lender is stuck with a portion of the premium for the force placed insurance—which was purchased only because the borrower did not satisfy the obligations of his agreement. In short, the borrower can default and cause the lender to pay for the default. This is an unfair result.

### **Conclusion**

The proposed rules contain these and other uncertainties, which dictate that they be substantially amended or withdrawn and redrafted. Without those changes, the lending community may not accept private flood insurance policies because of the number of unanswered questions. Furthermore, the escrow provisions are unworkable for existing mortgage loans, and the rebate of force placed insurance premiums flies in the face of state insurance rules and fairness.

Please do not hesitate to contact me if you have questions.

Sincerely,



Christopher L. Williston, CAE  
President and CEO