NEW YORKERS FOR RESPONSIBLE LENDING

c/o New Economy Project / 176 Grand Street / New York, NY / 10013
Tel: (212) 680-5100 / Fax: (212) 680-5104 / nyrl@nedap.org

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Office of the Comptroller of the Currency (OCC)
Docket ID OCC-2013-0015
Via email: regs.comments@occ.treas.gov

Federal Reserve Board (FRB)
Docket No. R-1462
Via email: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation (FDIC)
Via email: comments@FDIC.gov

Farm Credit Administration (FCA)
RIN 3052-AC93
Via email: reg-comm@fca.gov

National Credit Union Administration (NCUA)
RIN 3133-AE18
Via email: regcomments@ncua.gov

RE: Joint Notice of Proposed Rulemaking regarding Loans in Areas Having Special Flood Hazards

Dear OCC, FRB, FDIC, FCA and NCUA:

The undersigned members of the New Yorkers for Responsible Lending coalition (NYRL) are pleased to submit comments to the agencies regarding their request for comment on the proposed rulemaking on loans in areas with special flood hazards. The proposed regulations include important provisions related to flood and force-placed flood insurance but fail to address pervasive abuses in the force-placed flood insurance market. Our groups do support the flood insurance escrow requirements included in the proposed regulations, but urge the agencies to significantly strengthen the force-placed flood insurance provisions.

NYRL is a 161-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy

groups. Coalition members work with homeowners whose homes and communities were devastated by Super-storm Sandy and Hurricane Irene, and have detailed knowledge of the abusive force-placed hazard and flood insurance practices that have drained more than $970 million from struggling homeowners across New York State over the last nine years.

It is critical that the agencies crack down on abusive force-placed flood insurance practices now, as the substantial flood insurance premium increases resulting from the Biggart-Waters Flood Insurance Reform and Modernization Act will cause many low- and moderate-income homeowners to fall behind on their flood insurance payments and have force-placed flood insurance imposed as a result.

As New York State's Department of Financial Services documented in its May 2012 hearing on force-placed hazard insurance, mortgage servicers' market power enables them to demand illegal kickbacks from force-placed insurers. Force-placed flood insurance is no different: force-placed flood insurance policies are chosen by mortgage servicers but paid for by homeowners, many of whom are low- or moderate-income or live in communities of color. As a result, mortgage servicers choose policies based on the kickbacks and incentives they receive rather than on price or value for homeowners. This practice creates a perverse incentive for mortgage servicers to aggressively place homeowners -- many of whom have storm-damaged homes, are in foreclosure, or are struggling to keep up with their mortgage payments -- into force-placed flood insurance policies, often without providing adequate notice.

Our groups make the following recommendations to the agencies to strengthen the proposed rules regarding force-placed flood insurance:

1. Ban kickbacks and non-monetary compensation for force-placed flood insurance

The agencies should strengthen the proposed regulations by banning mortgage lenders or servicers from doing business with affiliated insurance companies, entering into reinsurance deals or receiving any sort of commissions or free- or reduced-cost services from insurers or their affiliates. These types of kickbacks have substantially inflated the cost of force-placed flood insurance and create a strong incentive for lenders and servicers to impose force-placed flood insurance on homeowners, at the expense of renewing homeowners' existing flood insurance policies.

Affiliates of mortgage servicers often unnecessarily reinsure force-placed insurance policies to share in potential underwriting profits. Since the loss ratios for force-placed insurance are extremely low, averaging just 34.5% in New York State over the past nine years, using affiliates to reinsure force-placed insurance policies is a low-risk way for the banks that own mortgage servicing companies to further gouge homeowners by claiming a portion of the exorbitant premiums charged for force placed insurance. Until recently, JPMorgan Chase, for example, reinsured 75% of the force-placed insurance premiums it collected from homeowners through its subsidiary Banc One.[1]

[1] See testimony of Banc One and Select Portfolio Servicing at 5/17/12 NYS Department of Financial Services hearing on force-placed insurance. Available: http://www.dfs.ny.gov/insurance/hearing/fp_052012_trans_err.htm

The agencies should expand the proposed regulations to make clear that no mortgage lenders, servicers or affiliated entities are permitted to receive any fee, commission, kickback, reinsurance contract, service such as insurance tracking or administration, or other thing of value in exchange for purchasing force-placed flood insurance.

The agencies should also develop a protocol for supervision that includes regular data collection and reporting to ensure that mortgage lenders and servicers are complying with these standards.

2. Expand the proposed regulations to address lenders' and servicers' failure to notify homeowners of force-placed flood insurance and limit retroactive billing.

The proposed regulations fail to address the problematic notice and retroactive billing tactics that mortgage servicers employ when homeowners fall behind on their flood insurance or escrow payments. These practices gouge low- and moderate-income homeowners, and put many at risk of foreclosure.

Require lenders and servicers to advance payment for flood insurance for all homeowners whose policies are canceled for non-payment

The agencies should make clear that lenders and servicers must exhaust all options to keep homeowners' existing flood insurance policies in place before resorting to force-placed flood insurance. In particular, the agencies should expand the proposed regulations to require mortgage lenders and servicers to continue payments of homeowners' existing flood insurance policies or reestablish the policies if homeowners miss premium payments. In addition, the agencies should require that, if homeowners fall behind on their flood insurance payments, lenders and servicers must advance their own funds to pay past due premiums and reinstate the homeowners' flood insurance coverage. If homeowners do not have existing escrow accounts, lenders and servicers must establish escrow accounts to pay future premiums.

Requiring lenders and servicers to maintain homeowners' existing flood insurance policies would substantially reduce the need for force-placed flood insurance and would help prevent foreclosures. Voluntary premiums are less expensive than force-placed flood insurance, and requiring servicers to advance these premiums rather than impose force-placed flood insurance would help many New York families reduce both defaults that occur as a direct result of excessive force-placed flood insurance charges, and foreclosures that occur when force-placed premiums block homeowners from affordable loan modifications.

Limit retroactive charges

Mortgage servicers are responsible for tracking insurance coverage on the loans they service. When there is a lapse in a homeowner's insurance coverage, whether hazard or flood insurance, the servicer, typically through an insurance tracking vendor, notifies the force-placed insurer. It is the servicer's responsibility to identify lapses in insurance and notify homeowners of these lapses in a timely fashion.

Lenders and servicers often delay notifying homeowners about force placed insurance for months, unfairly piling thousands of dollars of debt onto homeowners who are unaware that their

flood insurance policies have been canceled. The case of the Massanets from Staten Island provides an example of the severe problems that typically result from these practices:

The Massanets, retirees on a fixed income, fell behind on their modified mortgage after their mortgage servicer charged them for force-placed hazard and flood insurance policies even though they had their own hazard insurance policy and were not required to carry flood insurance. Within weeks of receiving notice of the force-placed flood insurance policy, which had a $2,375 annual premium, the family replaced the policy with a voluntary flood insurance policy with an annual premium of only $251 (despite the fact that they were not required to purchase the flood insurance). When they requested a refund of the force-placed flood insurance premium, however, they discovered that their servicer had retroactively billed them for nine months' worth of force-placed flood insurance before providing the first notice. As a result, the Massanets were charged for more than $1,700 in force-placed flood insurance premiums despite not needing flood insurance and purchasing their own flood insurance policy promptly upon receiving notice. Their servicer refused to waive the premium charges, putting them into default on their modification, even though the family's escrow shortage was a direct result of the servicer's abusive force-placed hazard and flood insurance practices.[2]

The Massanets were put at risk of foreclosure after receiving a loan modification, because they did not receive timely notice of wrongfully imposed force-placed flood insurance. The Massanet family's experience with force-placed flood insurance illustrates the pressing need to require timely notice by lenders, servicers and insurance tracking vendors and for strict limits on retroactive billing.

The agencies should improve their proposed notice requirement by requiring lenders, servicers and force-placed insurers and their affiliates to provide the first required notice within 15 days of a force-placed flood insurance policy coming into effect, and should not allow retroactive charges for more than 60 days' worth of force-placed flood insurance coverage. It is reasonable to expect that lenders and servicers (or their vendors) may fail to identify a lapse in flood insurance at the instant the lapse occurs or even for a short period of time following the lapse. It is unreasonable, however, to allow a servicer to delay sending notices in order to retroactively charge a borrower for a lengthy period of force-placed flood insurance coverage.

3. Sufficiency of Demonstration and Timely Premium Refunds

The proposed regulations on sufficiency of demonstration and refunds of unearned premiums are important protections that address common force-placed flood insurance abuses. Mortgage lenders, servicers and force-placed insurers often make it difficult for homeowners to provide proof of insurance, and delay refunds of unearned force-placed flood insurance premiums when homeowners are able to provide this proof.

4. Private Flood Insurance and Escrow of Flood Insurance Premiums

The agencies propose three basic requirements for private residential flood insurance: the insurer must be licensed; the coverage must be at least as broad as coverage provided under the NFIP; and it must be a dual-interest policy, with notice of the cancellation provided to both the

[2] See testimony of Maria Massanet at 5/17/12 NYS Department of Financial Services hearing on force-placed insurance. Available: http://www.dfs.ny.gov/insurance/hearing/fp_052012/Maria_Massanet_testimony.pdf

homeowner and the lender. These are sensible minimum conditions for private flood insurance. The agencies should not relax the rules further in an attempt to encourage private flood insurance.

Escrow of flood insurance premiums is important because it smooths payments over time, helps insulate homeowners from payment shocks, and provides greater assurance to servicers that flood insurance payments will be made on time. Homeowners without escrow may not realize the true cost of their loans or experience difficulty making flood insurance payments when they come due. Homeowners without escrow are also at higher risk of having force-placed flood insurance imposed.

The agencies should address the widespread abuses that characterize the force-placed flood insurance industry. We urge the agencies to strengthen the proposed regulations by banning kickbacks in the force-placed flood insurance market and addressing notice and retroactive billing abuses.

Thank you for the opportunity to comment.

Sincerely,

Bedford-Stuyvesant Community Legal Services
DC 37 AFSCME Municipal Employees Legal Services
Empire Justice Center
JASA – Legal Services for the Elderly in Queens
Legal Services NYC – Bronx
MFY Legal Services, Inc.
New Economy Project
Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
Western New York Law Center