REINSURANCE ASSOCIATION OF AMERICA
1445 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005

Telephone: (202) 638-3690
Facsimile: (202) 638-0936
www.reinsurance.org

January 6, 2017

VIA REGULATIONS.GOV

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 22
[Docket ID OCC–2016–0005]
RIN 1557–AD67

FEDERAL RESERVE SYSTEM
12 CFR Part 208
[Docket No. R–1549]
RIN 7100–AE60

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 339
RIN 3064–AE50

FARM CREDIT ADMINISTRATION
12 CFR Part 614
RIN 3052–AD11

NATIONAL CREDIT UNION ADMINISTRATION
12 CFR Part 760
RIN 3133–AE64

Re: Comments on "Loans in Areas Having Special Flood Hazards - Private Flood Insurance"

To Whom It May Concern:

The Reinsurance Association of America (RAA) is pleased to provide input to the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and National Credit Union Administration (collectively the "Agencies") with respect to the proposed regulations (the "Regulations") intended to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2102 (BW-12). Our comments focus on three issues: (1) definition of private flood insurance

under the Regulations, which should include surplus lines insurance; (2) the need to streamline the compliance aid/safe harbor provisions; and (3) the discretionary acceptance provisions.

The Reinsurance Association of America is the leading trade association of property and casualty reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis. The RAA represents its members before state, federal and international bodies.

Reinsurance is essentially insurance for insurance companies. It is a risk management tool for insurance companies to reduce the volatility in their insurance portfolios and improve their financial performance and security. Reinsurance is also the primary mechanism for spreading risk globally, thereby accessing a greater pool of capital to pay for the inevitable catastrophic losses.

Consistent with the intent of Congress, reinsurers believe the private sector can and should assume more risk of insured losses arising from flood disasters. Reinsurers are willing to offer catastrophe reinsurance options to the National Flood Insurance Program (NFIP) and private insurers voluntarily writing flood coverage to help them manage their exposure to flood insurance losses.

Accordingly, the RAA is pleased to support the efforts of the Agencies to promulgate regulations to implement of the provisions of BW-12 that require private flood insurance policies be accepted by lenders.

Definition of Private Flood Insurance and Surplus Lines

The RAA supports the Agencies' use of the BW-12 definition of "private flood insurance," but believes that the clarifying edits incorrectly exclude eligible surplus lines insurers from providing "private flood insurance" for residential properties.

Generally, there are two types of property and casualty insurers—admitted and surplus (or excess) lines. Admitted insurers file their rates and forms with state insurance regulators. "Surplus" or "excess" lines insurers (collectively, "surplus lines") specialize in difficult or hard to place risks, are not licensed and do not file rates and forms with state regulators. The RAA understands that surplus lines insurers are currently writing flood insurance policies for consumers in lieu of NFIP coverage, while also writing a significant amount flood insurance that provides coverage above the NFIP limits.

Admitted insurers are also called "licensed" insurers. So reference to "licensed" and "admitted" insurers addresses differences in state legislative nomenclature. Licenses are issued on a state specific basis.

Because of the state by state licensing process, it is quite common for an insurer to be licensed in one or more states, but be unlicensed in others. An insurer that is licensed in one state, but unlicensed in another, may be approved to provide coverage on a surplus lines basis for risks in the state where it is unlicensed. Accordingly, a licensed insurer may also be an approved surplus lines insurer depending upon the location of the covered risk. In addition, certain offshore insurers are approved by one or more states to provide coverage for eligible risks on a non-licensed, surplus lines basis.

Surplus lines insurers are "otherwise approved" insurers. They are approved to provide insurance coverage through operation of a state's law or when the applicable state insurance commissioner directly or through incorporation by reference approves such insurers to provide coverage for risks in accordance with the state's surplus lines laws and regulations.

As currently drafted, the Regulations do not require lenders to accept private flood insurance from insurers who are "otherwise approved" by the state in which the risk is located. The RAA believes this interpretation misreads the Congressional intent and limits the ability of the private insurance market to provide flood insurance coverage to the benefit of consumers individually and taxpayers generally.

The Congressional intent to permit "otherwise approved" surplus lines insurers to provide private flood insurance coverage to residential consumers is evidenced by the attached colloquy between Senators Crapo and Johnson, as published in the Congressional Record dated September 10, 2012 (the material portion of the record is on the second page of the attached.)

Of particular relevance is the following. In response to a question from Sen. Crapo, Sen. Johnson stated, "yes – the definition of 'private flood insurance' includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties. While the Senator is correct that surplus lines is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are 'licensed, admitted, or otherwise approved' in the state where the property is located." Sen. Crapo agreed in response.

The Congressional intent to require lender acceptance of surplus lines insurance coverage is consistent with insurance market realities. When a new or difficult class of risks is first written by the insurance industry, the insurance industry typically does not have the necessary experience or loss history data to confidently make a state insurance rate filing that delineates the rating and underwriting rules that the insurer intends to utilize. The difficulty with understanding and correctly underwriting flood insurance creates the distinct possibility that insurers may need to amend their rating and underwriting rules and criteria. Because surplus lines insurers do not file rates with state insurance regulators, the approved surplus lines insurance market is typically the first part of the private insurance market to write new or difficult risks such as private flood insurance. The failure to require lender acceptance of coverage issued by approved surplus lines insurers will slow the development of the private flood insurance market that Congress seeks to foster.

As the Regulations do not require lenders to accept private flood insurance for residential and commercial properties issued by approved surplus lines insurers, the RAA asks the Agencies to review the Congressional Record and rewrite this portion of the Regulations to recognize and implement the Congressional intent to fully utilize the private licensed and surplus lines insurance market to reduce the financial consequences of the risk of flooding to consumers, lenders and taxpayers.

Streamlined, Lender Due Diligence Safe-Harbor

With regard to the proposed regulations, the RAA is pleased the Agencies have tried to create a lender due diligence safe-harbor provision to facilitate lender acceptance of flood insurance provided by private insurers.

Unfortunately, the compliance aid suggested is cumbersome and unwieldy. In practice, lender compliance with insurance requirements is handled by employees or service providers who are not insurance coverage attorneys. If lenders are required to engage attorneys to review insurance documentation, the costs of mortgage compliance will rise significantly to the disadvantage of the borrowing public. The due diligence safe-harbor needs to be simple to facilitate real estate closings and subsequent mortgage compliance.

The multi-part criteria suggested in the Regulations is not simple. It requires: (a) a policy summary by the insurer; (b) a verification by the lender that it has confirmed the accuracy of the summary and that the policy coverage meets the private flood insurance definition; and (c) a required policy wording provision. This complexity will slow lender acceptance of private flood insurance.

The RAA suggests the Agencies convene a meeting of representatives of the licensed insurance, surplus lines insurance, agent and lender communities to develop a workable, streamlined safe-harbor provision that ensures lenders are aware of whether the private flood policy has any material differences from the Standard Flood Insurance Policy for purposes of both the required and discretionary acceptance of private flood insurance.

Discretionary Acceptance Provisions

The Regulations' definition of private flood insurance in the discretionary acceptance provisions is the BW-12 statutory language. While the RAA supports the statutory definition, for the reasons stated above, coverage issued by approved surplus lines insurers should be included in the Regulations as acceptable for required and discretionary acceptance.

Assuming for the sake of argument that the Agencies decline to require lenders to accept approved surplus lines flood insurance coverage, the discretionary acceptance provisions should be modified to expressly authorize lenders to exercise their discretion to accept private flood insurance coverage from surplus lines insurers for residential and commercial risks.

As noted above, the RAA encourages the Agencies to review the legislative history of BW-12, Congressional Record, and state insurance law provisions regarding surplus lines insurance, and rewrite both the required and discretionary acceptance portions of the Regulations to implement the Congressional intent to fully utilize the private licensed and surplus lines insurance market to reduce the financial consequences of the risk of flooding to consumers, lenders and taxpayers.

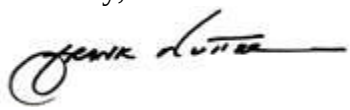
Conclusion

Natural catastrophe insurance, including flood insurance, can and should be written voluntarily in the private market. The use of private capital will protect consumers, taxpayers, and communities, while spreading risk throughout the globe to insurers and other capital providers who are willing to assume such risk.

With the suggested changes, the Regulations will promote the use of private flood insurance by easing lender burdens and facilitating their acceptance of qualifying "private flood insurance" and will remove barriers to private insurer participating in the flood insurance market, thereby fulfilling the intent of Congress.

We thank you for the opportunity to submit these comments.

Sincerely,



Franklin W. Nutter
President
Reinsurance Association of America
1445 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, SECOND SESSION

Vol. 158 WASHINGTON, MONDAY, SEPTEMBER 10, 2012 No. 120

Senate

The Senate met at 2 p.m. and was called to order by the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, Your presence fills us with reverential awe for we find a light in Your commands. Even in darkness, your light dawns for those who love You. And so, Lord, as we begin the next phase of the work of the Senate, give us greater confidence in the power of Your providential purposes. Remind our lawmakers that the hearts of governmental leaders are in Your hands, yielding to the wisdom of Your sovereign will. Help us, Lord, to get to know You and love You so we can serve You as we should.

We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable RICHARD BLUMENTHAL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 10, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD BLUMENTHAL, a Senator from the State of Connecticut, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. BLUMENTHAL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

WELCOME BACK

Mr. REID. Mr. President, I welcome everyone back, the staff and Presiding Officer. I hope everyone had a restful and productive month. I look forward to this work period, which will be very short and exact, and I hope we can accomplish a few things.

CLEAR PICTURES

Mr. REID. Mr. President, I wish to take a minute to talk about Congressman PAUL RYAN's arithmetic. It is very interesting. He said he ran a marathon. A marathon is 26.2 miles long. While being questioned by the press, he said he ran it in about 2 hours and 50 minutes. Now, that is pretty fast. I would like to take a minute and apply the Ryan math to my marathon times. I will pick just one marathon time.

I ran the Boston Marathon, and using the Ryan math my time would not have been a world record but within minutes of a world record. I could have made the Olympic team. By using Ryan math, I would have been superb. Well, the Ryan math doesn't work in marathons. As we all know, we can always check someone's math, and his math doesn't work for running a marathon or anything else.

The Ryan math doesn't work with his budgets, it doesn't work with Medicare, and it doesn't work with his tax plan. It doesn't work with anything he has suggested and opined. It is no more than his little assertion that I guess he thought no one would check. When people run these races, they keep records. For all of my marathons, they have kept records. So as much as I would like to have the Ryan math apply to my marathons, it doesn't work.

The Senate is going to resume its work in a few minutes on the heels of the two conventions. One was in Florida and one in North Carolina. The Republicans used their virtually fact-free convention to showcase the richest style economic policies.

The Democrats took a different approach. I am sure we all had our favorites. I thought Congressman CLEAVER's speech was so terrific. I don't know how many were able to see it, but it was great. He was up there marching. He was just outstanding.

Gov. Jennifer Granholm from Michigan was so good as she explained to everyone about jobs and why Detroit should not have gone bankrupt.

I thought JOE BIDEN's speech was typical for JOE BIDEN. It was wonderful. I admire him so much. I served with him for a quarter of a century. What a good man. He has contributed such valuable service to his country. While talking about his life story, we saw when his son introduced him. Tears were coming from his eyes.

The President's and Mrs. Obama's messages were very clear. They did so well.

In Charlotte Democrats presented Americans with a clear and honest assessment of the challenges we face as a nation and a concrete plan to overcome the problems we have together. That is why President Obama has seen a significant rise in the polls since that convention and all of those speeches—not just his speech but all of them. Even the Republican-skewed Rasmussen poll had him ahead by 5 points.

In fact, we presented Americans with clear choices. It was not a choice between two candidates or two parties; it

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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issues associated with every controversial foreign arms sale proposal that has come before them. Since 1982 he has produced a comprehensive annual report for the Congress detailing the agreements and deliveries concluded by the world's conventional weapons suppliers, a work that has set the gold standard on this subject. Richard was also the editor and coauthor of the Senate Foreign Relations Committee print "Treaties and Other International Agreements: The Role of the United States Senate" the definitive reference document on this subject.

In the area of arms export control and oversight legislation, Richard has provided continuing expert support and advice to the Senate Foreign Relations Committee and the House Foreign Affairs Committee, from the original drafting of the Arms Export Control Act in 1976 through its various periods of amendment to the present day. More recently, he directly supported the Senate Foreign Relations Committee's exhaustive review of the Defense Trade Cooperation Treaty between the United States and the United Kingdom. In this endeavor, Richard provided his specialized expertise to the committee on the complex issues posed by this treaty, from its proposal by the President in 2007 through the Committee's consideration and the Senate's advice and consent to it in September 2010.

In all of the examples I have noted, Richard Grimmett's institutional memory and command of the substance of the issues for which he has been responsible has made him an invaluable resource for the U.S. Congress at large and the Senate Foreign Relations Committee in particular. I am confident that the Members of the Senate and the House join me in expressing our deepest appreciation to Richard for the extraordinary service he has provided to us over his long and distinguished career.

PRIVATE FLOOD INSURANCE

Mr. CRAPO. Mr. President, I would like to discuss a provision of the Biggert-Waters Flood Insurance Reform Act of 2012 which reaffirms that private flood insurance can be used to satisfy a mandatory purchase requirement. This provision defines the term "private flood insurance," and the definition makes a specific reference to private flood insurance from a surplus lines insurer in connection with nonresidential commercial property coverage. I would note, however, that insurance provided by surplus lines insurers also can cover residential properties—particularly when licensed and admitted insurers are unwilling or unable to provide the desired coverage—and this is authorized under state insurance law. The provision defines private flood insurance to include insurance provided by an insurer "licensed, admitted, or otherwise approved" to engage in the business of insurance by a State. Surplus lines insurers, also sometimes known as nonadmitted insurers, are approved to conduct such business by States. Is it the understanding of the Chairman that the "private flood insurance" definition includes surplus lines flood insurance coverage?

Mr. JOHNSON. I thank the Senator from Idaho for his question. The answer is yes—the definition of "private flood insurance" includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties. While the Senator is correct that surplus lines insurance is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are "licensed, admitted, or otherwise approved" in the State where the property is located.

Mr. CRAPO. I thank my friend from South Dakota for this important clarification. This is an important issue, particularly in those limited high-risk areas where surplus lines insurance serves as an essential part of the homeowners insurance market. I agree with his reading of the statute, because state law already sets the parameters as to when surplus lines insurance is acceptable.

HONOR FLIGHT 2012

Mr. BEGICH. Mr. President, I wish to recognize the Honor Flight Network and the four Alaskan World War II veterans who are participating in this year's flight: Robert J. Ingram, a veteran of the Navy from Fairbanks; and Louis E. Fessler, a veteran of the Army, Marc Stella, a veteran of the Marine Corps, and Joseph William Nugent, a veteran of the Army Air Corps, all from Anchorage.

The Honor Flight Network is a national program that provides free transportation to aging and ailing veterans to travel to Washington, DC, to visit and reflect at the memorials associated with the war in which they served.

Later this month, these four heroes are scheduled to go to military- and veteran-related museums and tour the Capitol. The highlight of this trip of a lifetime is a long anticipated visit to the World War II Memorial on the Mall. These veterans of the war to end all wars deserve our highest praise for their service. Like so many men of that great generation, they selflessly did their duty and are among the fortunate ones who were able to return to the civilian community and lead long and productive lives.

Mr. Ingram, Mr. Fessler, Mr. Stella, and Mr. NUGENT have our undying thanks and gratitude. Thanks are also in order to the Honor Flight Network for conceiving this program, to the flight guardians Julie Engfer and Heidi Matson from Fairbanks, and Val Stella from Anchorage, and to Alaska Airlines for donating airline tickets to all of the travelers.

I urge all Alaskans and Americans to reflect on the service of Bob, Louie, Marc, and Bill and our other remaining World War II vets and all veterans who have made sacrifices for our Nation throughout its history.

RECOGNIZING LOUISBURG COLLEGE

Mr. BURR. Mr. President, I am very proud to extend my recognition and congratulations to Louisburg College in Louisburg, NC as this wonderful academic institution celebrates 225 years of maintaining an engaging and enriching community for its students, faculty, and staff.

This year, marking the 225th anniversary of the founding of Louisburg College, we give the members of the Louisburg community as well as the State of North Carolina the opportunity to pay tribute and homage to a place of academic excellence that has impacted many and helped thousands continue on the journey of excellence in all academic fields.

Louisburg College traces its historical roots back to the 18th century during the American Revolution. Having evolved from three earlier institutions—Franklin Male Academy, Louisburg Female Academy, and Louisburg Female College—Louisburg College is the oldest two-year residential college in the Nation and the only one in North Carolina.

The college is praised for years for its value, personal teaching methods, diversity, familial environment, and the way it prepares its students for future success. Today, Louisburg College is led by Dr. Mark D. LaBranche, who became the College's 27th president in January of 2009.

I ask my colleagues to join me in paying tribute to Louisburg College in Louisburg, NC for its continued outstanding achievement in upholding, protecting, and pioneering academic standards and providing an enriching community for its students, faculty, and staff. May Louisburg College's achievements and successes be recognized and forever appreciated by the citizens of North Carolina as well as this Congress.

ADDITIONAL STATEMENTS

HONORING WILLIAM E. SCHULZE

• Mr. TESTER. Mr. President, today I wish to honor William E. Schulze, a veteran of World War II.

It is my honor to share the story of William's service in World War II, because no story of bravery—and especially not one from our "greatest generation"—should ever be forgotten.

Bill was born in Milwaukee, WI. A Golden Glove Boxing Champion, Bill was working for the Pacific Bridge Company at Pearl Harbor as a welder when our Nation came under attack on December 7, 1941. Bill soon joined the Navy and put his skills to use in the