Freddie Mac
MULTIFAMILY

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Office of the Comptroller of the Currency
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Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
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Alexandria, VA 22134-3428

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

RE: Loans In Areas Having Special Flood Hazards – Private Flood Insurance; RIN 1557-AD67; RIN 7100-AE60; RIN 3064-AE50; RIN 3052-AD11; RIN 3133-AE64

Dear Sir or Madam:

Freddie Mac appreciates the opportunity to comment on Loans in Areas Having Special Flood Hazards-Private Flood Insurance Joint Notice of Proposed Rulemaking.[1] The proposed rulemaking is designed to implement provisions in the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) that require regulated lending institutions to accept private flood insurance policies that meet the statutory definition of private flood insurance in the Act as well as permit lenders to accept private policies that do not meet the Act's definition.

Freddie Mac supports the intent of the Biggert-Waters Act to stimulate and expand a private flood insurance market. However, we believe it is important that the Agencies clarify that their implementing rule is not intended to prevent a regulated lender from tailoring its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral.

Our comments address private flood insurance policies that insure multifamily properties. As written the proposed rule appears to focus on issues related to the single-family residential market, and does not appear to recognize the unique circumstances associated with private flood insurance in the multifamily market. Unlike in the single family market, private flood insurers already have a significant presence in providing flood insurance in the multifamily

[1] 81 Fed. Reg. 78063 – 78080 (November 7, 2016).

mortgage space to meet flood insurance requirements customarily imposed by regulated lenders and the Enterprises.

Background on Multifamily Flood Insurance Market

Currently, the Standard Flood Insurance Policy (SFIP)[2] available for multifamily buildings through the National Flood Insurance Program (NFIP) is limited to the actual cash value[3] of buildings and does not include the value of business income or rents; whereas the SFIP available for single family dwellings, condominiums, and mobile homes provides replacement cost coverage for buildings. Regulated lenders, as well as the Enterprises as secondary market investors, impose flood insurance coverage requirements that go beyond the minimum requirements of the Flood Disaster Protection Act ("FDPA") and current implementing regulations to ensure appropriate collateral protection.

In the multifamily residential market, regulated lenders and the Enterprises customarily require property insurance, including flood insurance, to cover replacement cost of buildings, plus the business income/rental value that is a substantial part of multifamily loan collateral. As a result, borrowers typically must purchase a NFIP policy as a primary insurance layer to meet the mandatory purchase requirements of the FDPA, plus purchase a private flood policy in excess of the maximum limit available under NFIP ($500,000 per building) with limits up to full replacement cost of buildings, plus business income/rental value coverage. Not only is private flood insurance available on multifamily properties, these policies provide better or more broad coverage than the standard policies available to multifamily buildings through NFIP.

Discussion

The additional requirements discussed above are necessary to adequately protect multifamily collateral and to minimize out-of-pocket costs incurred by borrowers, lenders, and secondary market investors, including the Enterprises, that could result from the repair or replacement of properties damaged by floods. The Agencies recognize the importance of such protection in their 2009 Interagency Questions and Answers Regarding Flood Insurance.[4] Freddie Mac recommends that the Agencies clarify in the implementing rule that regulated lenders may continue to tailor their flood insurance policies and procedures to suit their business needs and protect their ongoing interests in collateral.

Without this clarification, regulated lenders or borrowers could interpret the Agencies' rule as requiring regulated lenders to accept private flood insurance policies that meet the provisions of the Biggert-Waters Act, but that provide less coverage than do existing flood insurance policies

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[2] The proposed rule defines the acronym "SFIP" to mean a standard flood insurance policy issued under the National Flood Insurance Program in effect as of the date the private policy is provided to a regulated lending institution. 81 Fed. Reg. at 78075.

[3] Under the actual cash value method, the reimbursement value of damaged property is based on the market value or the initial cost of the home and includes depreciation. However, the replacement cost method determines the value of damaged property based on the amount of money it would take to replace the property with the exact same or a similar home in today's market.

[4] 74 Fed. Reg. 35914 (July 21, 2009). Q/A-16 clarifies that lenders can require more flood insurance than the minimum required by flood insurance regulations and that the lender or borrower may have to seek such coverage outside the NFIP.

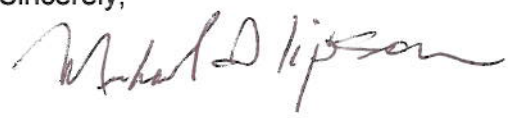
that insure multifamily properties. Clarification would acknowledge secured lenders and borrowers' flexibility to accept a private flood insurance policy that adequately protects the collateral and, therefore, avoid the assumption of additional risk, and would ensure that such loans continue to meet requirements of secondary market investors and financial market participants.

The clarification suggested would also align the rule with the intention of the Biggert-Waters Act, as it would be inconsistent with that Act to implement it in a manner that could increase the risk of loss from flood assumed by federally insured regulated lenders and the Enterprises, particularly where the Act itself contemplates additional standards.[5] In addition, promoting actual cash value policies that are similar to SFIP policies currently available for multifamily properties is not consistent with the Federal Emergency Management Agency's definition of "insurable value," which states that flood insurance coverage for residential properties should be written based on replacement cost value.[6]

Finally, the replacement cost value and business income coverage that private insurers currently provide in the multifamily market should be directly promoted. Ideally, any implementing rule would encourage private flood insurers providing excess coverage for multifamily collateral to "drop down" to provide first-layer coverage that meets the statutory definition of private flood insurance, as well as to provide coverage that fully meets customary multifamily lender requirements. Such a comment could be made expressly in the preamble to a final rule.

Thank you for considering Freddie Mac's views. Please contact me if you have any questions or need additional information.

Sincerely,



Michael I. Lipson, CMB
Senior Vice President
Asset Management and Operations

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[5] 42 USC §4012a (b)(3) and (5).

[6] 76 Fed. Reg. 64177-64178 (October 17, 2011).