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SENT VIA EMAIL: regs.comments@federalreserve.gov
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218 (mail stop 9W-11)
Washington, District of Columbia 20219

RE: Proposed Rulemaking - Docket ID OCC-2016-0005
Loans in Areas Having Special Flood Hazards – Private Flood Insurance

To Whom It May Concern:

This letter is in response to the Office of the Comptroller of the Currency (OCC) November 7, 2016 Request for Comments related to the Proposed Rulemaking for Private Flood Insurance Loans in Areas Having Special Flood Hazards.

By way of background, Insurance Services Office, Inc. (ISO) is licensed as a rating and/or advisory organization under state insurance law in all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands and operates as a statistical agent through its ISO Data, Inc. subsidiary. Since 1971, ISO has been a leading source of information about property/casualty insurance risk. For a broad spectrum of commercial and personal lines of insurance, the company provides statistical, actuarial, underwriting and claims information; policy language; fraud-identification tools; and various other technical services. ISO serves insurers, reinsurers, agents and brokers, insurance regulators, risk managers, and other participants in the property/casualty insurance marketplace.

ISO welcomes this opportunity to provide the Office of the Comptroller of the Currency with feedback related to the proposed rulemaking. Specifically, the three (3) broad aspects of the proposed rule we wish to comment on are: (1) mandatory acceptance (based on certain coverage criteria), (2) compliance aid for mandatory acceptance, and (3) discretionary acceptance.

Mandatory Acceptance

As described in the proposed rulemaking, mandatory acceptance relates to, among other things, the requirement that a regulated lending institution accept a private flood insurance policy that meets both: (1) the mandatory purchase requirement set forth under the National Flood Insurance Act of 1968 (see page 17) and the statutory definition of "private flood insurance" under the Biggert-Waters Act (see pages 41-43). Some important considerations regarding whether aspects of the definition of "private flood insurance" will potentially impact insurers and insureds could include:

- Item k.(2)(iii) of the definition requires that private flood insurance ***"Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage…; other coverages; and the increased cost of compliance."*** **(Emphasis added.)** On its face, this provision may be interpreted as a requirement that private flood insurance policies must be written as exact copies of the SFIP, or at least that private insurers be forced to write parallel policy provisions. Moreover, these provisions may also be construed as internally inconsistent because the purpose or intent of the broad lead-in clause of item k.(2)(iii) is essentially undermined by the more specific provisions that follow. Perhaps the "fix" to these issues would be to explicitly state that private flood insurance should contain coverage provisions *at least as broad as* the SFIP[1].

- The question of interpretation mentioned above (i.e., whether coverage may be written at least as broad as the coverage provided under an SFIP) may also apply to the issue of whether an alternative base policy and coverage structure is permitted. For example, while the SFIP Dwelling Form can be used for either a 2-4 family dwelling, a single family non-condominium residence (i.e., a tenant in an apartment), or a dwelling unit in a residential condominium building, the ISO Homeowners Policy Program currently has three separate policies for a one-to-four family dwellings, tenants, and condominium or cooperative units.

- Item k.(2)(v) of the definition provides that ***"Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP."*** **(Emphasis added.)** This may cause confusion because a "different" exclusion could actually have the effect of providing broader coverage.

- Further, the aforementioned provision appears to support what we consider to be a given, which is that equivalency requirements do not apply to coverage written as excess over the NFIP maximum limits.

- With respect to comparison and equivalency of SFIP and private flood insurance (see page 43), an SFIP means the NFIP policy "in effect as of the date the private policy is provided [to the lender]." For that requirement to work as intended, FEMA would have to give private insurers adequate advance notice of changes to the federal flood policies.

- A portion of the proposed definition requires that private flood insurance contain the coverage and provisions specified in an SFIP, including those relating to building property coverage, other coverages, and the increased cost of compliance. Many of the coverage provisions contained in the current SFIP's base forms are contingent upon the applicable NFIP flood zone where the risk is located (A, V, B, C, X OR D Zones). For a private flood insurer choosing to introduce new and

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[1] This concept appears to be alluded to in Footnote 16 on Page 13 of the commentary for the proposed rule, which discusses the following in relation to the proposed definition of "private flood insurance":

> *When determining whether coverage is at least as broad as coverage provided under an SFIP, regulated lenders should* <u>*compare like policies*</u> *(e.g., a policy covering a 1-4 family residence or a single family dwelling unit in a condominium to an SFIP dwelling policy, a policy covering all other buildings except residential condominium buildings to an SFIP general property policy, or a policy covering a residential condominium building to an SFIP Residential Condominium Building Association Policy). (Emphasis added.)*

improved rating characteristics as part of the private flood product, use of existing SFIP coverage and provisions would likely be problematic.

- Finally, despite the issues mentioned above regarding items k.(2)(iii) & (v), the definition of "private flood insurance" appears to allow coverage that is "at least as broad as" the coverage provided under an SFIP. However, it appears that the cancellation provision to be included in a policy of "private flood insurance" must contain cancellation provisions that "…are as restrictive as the provisions contained in an SFIP". Respectfully, the two areas appear inconsistent in approach and merit clarification.

Compliance Aid for Mandatory Acceptance

The proposed compliance aid for mandatory acceptance (see page 44) could be very administratively burdensome for insurers because item (i) requires a summary of how the private flood policy meets each criterion of the definition of private flood insurance. Potentially, virtually every provision of the SFIP would have to be accounted for in the summary.

Moreover, item (iii) requires that the private flood policy include a statement indicating that it meets the definition of private flood insurance; however, there is no provision indicating what the consequences would be if such statement were found to be in error. For example, there are currently some private market flood policies which explicitly state that the policy will cover any loss that would be covered under the federal flood policy.

Discretionary Acceptance

The allowance for "similar" coverage under sub-paragraph (3)(iv)(B) provides some measure of latitude for insurers, which (from a market perspective) might be particularly useful for policies covering commercial properties on a primary basis. But wide-scale acceptance could be hampered by the fact that the onus is on the lender to compare coverage to the SFIP, determine the differences and document those findings. The concept inherent in the compliance-aid-for-mandatory-acceptance could be applied here, to help facilitate discretionary acceptance.

Finally, with respect to discretionary acceptance of surplus lines policies being recognized and limited to just nonresidential commercial properties – see sub-paragraph (3)(i), the proposed rule may have an unnecessary consequence of stifling entrance into the private flood insurance market for the residential homeowners market, where a vast number of policies potentially could be written.

As you consider the facilitation of the development of a private flood insurance market, keep in mind that federally backed loans have long relied on the acceptance of private insurance policies for other non-flood insurance related perils (i.e. wind, hail, fire, etc) with no apparent ill affect on lenders' interest. Therefore, it is worth considering mirroring and adopting parallel policy acceptance requirements for private flood insurance to align with other perils that most policyholders are familiar with and which carriers utilize currently. By doing so, it would help facilitate the private flood market and make clear that the acceptance of a private flood policy will satisfy lending requirements.

Finally, in order for a private flood insurance market to develop under current conditions, insurers will need to comply with the regulatory and/or statutory compliance requirements of every state. Along those lines, one example of an issue that may create potential problems for insurers relates to §614.4925 Private Flood Insurance**:** the 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." In some states, this one (1) year date contradicts existing state law(s). For example, the State of South Carolina currently has a law for property losses

specifying a three (3) year limitation on suits (SC Code Ann. Sec. 15-3-530(8)) as does the State of Mississippi (Miss. Code Ann. Sec. 15-1-49). This is an example where the proposed rule may conflict with the insurance laws and regulations of a state's regulatory framework thus creating potential issues for the marketplace.

In closing, as the Office of the Comptroller of the Currency seeks comments from industry stakeholders related to the private flood insurance market, ISO would welcome the opportunity to provide the OCC with additional information in support of your process at your convenience. Should you have any questions regarding the foregoing, please do not hesitate to contact me at 201-459-2662.

Respectfully submitted,

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Director of Federal Affairs