

May 17, 2021

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**Re: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Private Flood Insurance; OCC Docket ID OCC-2020-0033; Federal Reserve System Docket No. R-1742; FDIC RIN 3064-ZA16; NCUA RIN 3133-AF31**

Dear Sir or Madam:

The member companies of the National Flood Association (NFA) appreciate the opportunity to provide written comments on the Interagency Questions and Answers Regarding Private Flood Insurance (Q&A) proposed by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA) and the National Credit Union Administration (NCUA) (Agencies).

Each year hundreds of thousands of Americans face the daunting reality of recovering from a flood. In fact, floods are the nation's most common and costliest natural disaster. The mandatory purchase of flood insurance requirement serves to ensure that families and businesses with mortgages secured by property in Special Flood Hazard Areas can recover more quickly because of flood insurance. Providing flood insurance options offered by the private flood market enables more Americans the opportunity to purchase coverage that not only meets the Regulatory definition of private flood insurance but that may be better tailored to the

specific risk presented by each property.

We applaud the Agencies' efforts to prepare and issue these proposed Q&As regarding private flood insurance. The member companies of the NFA know first-hand the confusion that can result from complex or conflicting guidance; therefore, we encourage the Agencies' consideration of these comments to better support those attempting to comply with the mandatory purchase of flood insurance requirements.

The following are the NFA's recommendations for select proposed Q&As (regulatory footnotes have been omitted):

#### *I. PRIVATE FLOOD INSURANCE – MANDATORY ACCEPTANCE*

##### **MANDATORY 2. Apart from loan origination, when must a lender review a flood policy issued by a private flood insurer?**

Once a flood insurance policy issued by a private insurer comes up for renewal or any time the borrower presents the lender with any new flood insurance policy issued by a private insurer, regardless of whether a triggering event occurred (making, increasing, extending, or renewing a loan), the lender must review the policy to determine whether it meets the mandatory acceptance criteria. A lender may determine that the policy meets the mandatory acceptance criteria without further review if the policy or an endorsement to the policy includes the compliance aid assurance clause. If the policy does not meet the mandatory acceptance criteria, the lender may still accept the policy if it meets the discretionary acceptance criteria or, if applicable, the mutual aid plan criteria. If the policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria, the lender must notify the borrower in accordance with the force placement provisions of the Regulation. If the borrower does not purchase flood insurance that complies with the Regulation, the lender must purchase insurance on the borrower's behalf.

If the lender has previously reviewed the flood insurance policy under the discretionary acceptance provision to ensure that the policy meets the private flood insurance requirements of the Regulation, the lender may rely on its previous review, provided there are no changes to the terms of the policy.

However, as required by the Regulation, the lender must document its conclusion regarding sufficiency of protection of the loan in writing. *See* Q&A Discretionary 4.

##### NFA Comments on Mandatory 2:

We recommend that this question and answer be revised to better focus on the statutory provisions that require a lender to separately determine 1) the acceptability of a private policy and 2) the sufficiency of that coverage for satisfaction of mandatory purchase obligations. Further, the answer should reflect the level of review required by statute or regulation at both a MIRE event and renewal of coverage. For example, it seems clear that there is a statutory obligation to determine acceptability and sufficiency at a MIRE event, but it is less clear whether there is a statutory obligation to do the same at renewal of the coverage versus doing this from a safety and soundness perspective.

More specifically, we feel the question could be re-stated to ask: *"If a private policy has been accepted in conjunction with a MIRE event, what level of review is required, upon the renewal of that policy, to demonstrate that the policy remains acceptable under the definition of private flood insurance?"*

Additionally, the current references to force placement in this answer seem unnecessary and further complicate the core message as to the level of review required upon the renewal of a private flood insurance policy. The current answer suggests that lenders must initiate force placement if a private flood policy fails to meet the various criteria for acceptance. However, the Regulation only requires force placement following a lapse or insufficiency in coverage<sup>1</sup>. Failure of a private flood policy to satisfy the definition outlined in the Regulation would only become a trigger for force placement if, and until, the policy is rejected, and that rejection creates a lapse or insufficiency. The rejection of a private flood policy based on the definition or structure of the policy may not create a lapse at all – the examination of the private flood policy may come prior to expiration of any

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<sup>1</sup> 42 U.S.C. § 4012a (e) Placement of insurance by lender

underlying coverage. For these reasons we recommend that the sentences specific to force placement be removed from this current answer as inconsistent with the Regulation.

Further, in this answer the Agencies seem to be indicating that there is a distinction between the level of review required upon a MIRE event (to initially accept a private flood policy) and the level of review required to accept a renewal of that same policy. We appreciate the distinction but feel that further clarification is needed to better understand the Agencies' expectation for the level of review required, especially upon renewal. The FDPA requires that a lender apply different sections of the statute when considering flood insurance coverage at MIRE events. It seems clear that lenders must review private flood insurance policies to determine conformity with the criteria outlined in the FDPA<sup>2</sup> and Regulation at a MIRE event. This review (presumably an "acceptability" or "conformity" review) allows a lender to either accept a private flood insurance policy or reject it in connection with the MIRE event. Subsequent to, or perhaps concurrent with, any determination of acceptability, the lender must also determine if the parameters of the coverage being provided satisfy the mandatory purchase obligations (specifically amount and term of coverage)<sup>3</sup>. We regard this review as a determination of whether the coverage is "sufficient". Collectively, therefore, in accordance with the FDPA, the lender must review a private flood insurance policy for both acceptability and sufficiency at a MIRE event. This opinion is reinforced by the Agencies in proposed Q&A Mandatory 7 and 9 which both indicate that, separate from a review of acceptability of the private policy, a lender must also ensure that policy satisfies the obligation for mandatory purchase. But it is not clear that the FDPA requires lenders to do this at renewal. We understand that lenders may in fact have a review process at renewal, but this may be for safety and soundness purposes and not expressly mandated by the FDPA.

Given the distinction between acceptability and sufficiency of a private flood policy, industry would appreciate additional guidance on whether there is a further distinction between the review(s) required during a MIRE event vs. renewal of coverage. NFA acknowledges and appreciates the statement in this proposed Q&A that, *"the lender may rely on its previous review, provided there are no changes to the terms of the policy"* however, we assume this is applicable to only the review of acceptability of the policy as coverage would still need to be reviewed annually to determine compliance with mandatory purchase obligations (i.e., amount and term of coverage). Therefore, we recommend the Agencies provide additional detail or a working example as to what elements of the prior review for acceptability may be relied upon during review of the same policy at renewal. The current use of *"no changes to the terms of the policy"* may need additional qualification to distinguish between structural elements of the policy that remain consistent year-over-year as opposed to individual terms that will naturally change as a function of the renewal.

**MANDATORY 4. Did the Agencies intend the compliance aid assurance clause to act as a conformity clause that would make a private policy conform to the definition of private flood insurance?**

No. The Agencies did not intend the compliance aid assurance clause to act as a conformity clause. Rather, the compliance aid assurance clause is intended to facilitate the ability of lenders, as well as consumers, to recognize policies that meet the definition of "private flood insurance" and promote the consistent acceptance of policies that meet this definition. The compliance aid provision is intended to leverage the expertise of insurers to assist lenders in satisfying the requirements of the Regulation.

NFA Comments on Mandatory 4:

The NFA understands that the compliance aid may not have been designed by the agencies to act as a conformity clause. Separately, we believe that the effects of the various approaches in which a private flood insurer may incorporate that language into their insurance contracts is best interpreted by state insurance regulation and contract law. Therefore, we recommend that the agencies revise their answer to reflect that distinction.

Additionally, we note the Agencies' addition of the terms "assurance clause" in describing the "compliance aid assurance clause". We recommend reverting to prior language in the Final Rule that simply refers to the compliance aid language or statement. The addition of "assurance clause" in this proposed Q&A could infer a meaning beyond that intended by the Agencies. The term "assurance clause" has broad meaning among insurance carriers, under state insurance regulation, and through application of contract law. The current

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<sup>2</sup> 42 U.S.C. §4012a (b)(7) Private flood insurance defined

<sup>3</sup> 42 U.S.C. §4012a (a) Amount and term of coverage, (b)(1) Regulated lending institutions, (2) federal agency lenders, (3) Government-sponsored enterprises for housing

compliance aid statement, as contemplated by the Agencies, may or may not be an “assurance clause”. For these reasons, we recommend that Agencies maintain the original label as “compliance aid language or statement” as this best conveys the intent of the language as reflected in the current answer.

**MANDATORY 5. Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid assurance clause? Conversely, may a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid assurance clause?**

A lender is not required to accept a flood insurance policy issued by a private insurer solely because the policy contains the compliance aid assurance clause if the lender chooses to conduct its own review and determines the flood insurance policy actually does not meet the mandatory acceptance requirements.

If a flood insurance policy issued by a private insurer does not include the compliance aid assurance clause, the lender must still review the policy to determine if it meets the requirements for private flood insurance as set forth in the Regulation before the lender may choose to reject the policy.

NFA Comments on Mandatory 5:

The NFA agrees with the Agencies that addressing these two questions in the final guidance to lenders is important. Lenders need to know what is required and what is optional based upon their own determination. The NFA recommends, however, that the Agencies modify the response 1) to use the plain language within the Final Rule in order to provide clearer and unambiguous guidance, and 2) to use consistent language to avoid confusion regarding key compliance concepts.

Our recommendation that the Agencies use the plain language from the Final Rule is in reference to the answers to both questions posed in Mandatory 5. With respect to the first question “Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid assurance clause?”, the Agencies address this in the Final Rule directly as follows:

“To clarify, if a policy includes this statement, the regulated lending institution may rely on the statement and would not need to review the policy to determine whether it meets the definition of ‘private flood insurance.’ However, the institution could choose not to rely upon this statement and instead make its own determination.” (84 F.R. 4959)

In the proposed response to this first question in Mandatory 5, the Agencies go further than necessary and by so doing make an assumption about a given lender’s processes by concluding that the lender would go to review of a policy under mandatory acceptance criteria before the lender would go to review under discretionary acceptance criteria even though the Agencies make clear under Mandatory 8 that a lender “may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision”.

With respect to the second question “[M]ay a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid assurance clause”, the Final Rule states:

“The Agencies note, however, that this provision does not relieve a regulated lending institution of the requirement to accept a policy that both meets the definition of ‘private flood insurance’ and fulfills the flood insurance coverage requirement, even if the policy does not include the statement. In other words, this provision does not permit regulated lending institutions to reject policies solely because they are not accompanied by the statement.” (84 F.R. 4959)

Likewise, here we believe the Agencies go further than necessary in the proposed response and seem to dictate certain processes for the lender by stating the lender “must still review the policy to determine if it meets the requirements for private flood insurance” (emphasis added). Again, as clearly stated in Mandatory 8, a lender may choose to review a policy first under discretionary acceptance criteria and, if acceptable, has no reason to review the policy under the mandatory acceptance criteria.

Additionally, we recommend that the Agencies use consistent language about certain key concepts to avoid confusion in guidance intended to support lenders. The key concept is that lenders need to be able to identify private flood insurance policies that must be accepted under the federal mandatory purchase of flood insurance regulations (12 C.F.R. §22, et al.) and the language consistently used is a version of “a policy meets the definition of private flood insurance”. In the proposed response to Mandatory 5, the Agencies use two new phrases to describe a policy that meets the definition of “private flood insurance” as emphasized below:

A lender is not required to accept a flood insurance policy issued by a private insurer solely because the policy contains the compliance aid assurance clause if the lender chooses to conduct its own review and determines the flood insurance policy actually does not **meet the mandatory acceptance requirements**.

If a flood insurance policy issued by a private insurer does not include the compliance aid assurance clause, the lender must still review the policy to determine if it **meets the requirements for private flood insurance as set forth in the Regulation** before the lender may choose to reject the policy.

These two phrases— “meet the mandatory acceptance requirements” and “meets the requirements for private flood insurance as set forth in the Regulation”—only appear twice each in this proposed Q&A and both instances are in relation to Mandatory 5, each appearing once in the Preamble describing Mandatory 5 and then appearing once each in the proposed Q&A Mandatory 5. Further, there is no reference to either in the Regulation. On the contrary, a version of “a policy that meets the definition of private flood insurance” appears in the Regulation, more than 25 times in this proposed Q&A, and appears consistently in the 2016 Proposed Rule and the 2019 Final Rule.

We recommend that the Agencies continue the use of “definition of private flood insurance” or even the alternatively use “policy meets the mandatory acceptance provision or criteria” rather than using phrases with the word “requirements”. Use of the word “requirements” in relation to a policy may be confusing given the ubiquitous use of “requirements” in relation to the broad “mandatory purchase of flood insurance requirements” and the “requirement” that a lender accept a policy that meets the definition. In addition, a lender may infer that a given flood insurance policy is “required” to have each provision set forth in the definition even though the Regulation makes clear that a policy may be acceptable even if it does not contain each provision.

To address each of the above points of consideration, the NFA offers the following alternative Q&A:

**MANDATORY 5. Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid statement? Conversely, may a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid statement?**

If a private flood insurance policy includes the compliance aid statement, the lender may choose to rely upon the statement and would not need to review the policy further to determine if the policy meets the definition of “private flood insurance”.

However, the lender is not required to accept this policy based upon inclusion of the compliance aid statement alone and may choose to make its own determination about whether the policy meets the definition of “private flood insurance” or whether the policy is acceptable under discretionary review criteria.

If a private flood insurance policy does not include the compliance aid statement, the lender may not reject the policy solely because it does not include this statement. The lender is not relieved from the requirement to accept a policy that meets the definition of “private flood insurance”. Further, the lender may determine the policy is acceptable under discretionary review criteria.

**MANDATORY 7. What additional reviews does a lender need to conduct if the flood insurance policy issued by a private insurer includes the compliance aid assurance clause?**

Although a lender may rely on the compliance aid assurance clause to determine that a flood insurance policy meets the definition of private flood insurance in the Regulation, the lender must also ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the Act. The lender should also ensure that other key aspects of the policy are accurate, such as the borrower's name and property address. *See also* Q&A Mandatory 6.

NFA Comments on Mandatory 7:

The NFA appreciates the Agencies' efforts to further clarify the lender's responsibilities for reviewing private flood policies with the proposed Mandatory 7 Q&A; however, we recommend that the Agencies revise Mandatory 7 and then include a new Q&A under the Private Flood Compliance section to more generally and consistently address the issue. We understand the Agencies are attempting to reassure lenders who may be reluctant to simply accept a private flood insurance policy merely because the policy includes the compliance aid statement. At the same time, the Agencies likely do not want lenders to overlook the "requirements for coverage" (84 F.R. 4958) review fundamental to the mandatory purchase of flood insurance requirements (12 C.F.R. §22.3(c)).

Given that the final Q&A sections on private flood insurance are going to be issued as part of the overall "Interagency Questions and Answers Regarding Flood Insurance", we suggest that the Agencies consider additional opportunities to leverage the other sections (e.g., Coverage, Amount) for consistency and applicability of content within the private flood insurance sections. Also, given this integration, the Agencies may determine that such fundamental reminders are not necessary or can be handled in other ways, such as via section cross-references.

Specifically with respect to Mandatory 7, if the intent is to reassure lenders that they can rely upon the compliance aid statement to determine that a flood insurance policy meets the definition of private flood insurance, then perhaps reword the Q&A to be more direct to this issue. And if this is the intent, we would suggest that perhaps this point is adequately addressed in other of the proposed questions and answers (e.g., Mandatory 2, Mandatory 5, Mandatory 6, Mandatory 9, Private Flood Compliance 5, Private Flood Compliance 11). If this is, in fact, the Agencies' intent, then we recommend Mandatory 7 be revised to the following question and answer:

**MANDATORY 7. If a private flood insurance policy includes the compliance aid statement, does the lender need to conduct any further review to determine if the policy meets the definition of private flood insurance in the Regulation?**

If a private flood insurance policy includes the compliance aid statement, the lender may choose to rely upon the statement and would not need to review the policy further to determine if the policy meets the definition of "private flood insurance".

If, however, the Agencies' intent is to remind lenders that each private flood insurance policy needs to be reviewed to ensure that the policy is going to satisfy the mandatory purchase of flood insurance requirements, just as with a NFIP policy, then the NFA recommends that this question and answer be addressed in the Private Flood Compliance section as this is broadly applicable beyond private flood insurance policies that include the compliance aid statement. In this case, we recommend the following new question and answer be added to the Private Flood Compliance section (final number based upon any other changes in the final rule):

**PRIVATE FLOOD COMPLIANCE [NEW]. What review does a lender need to conduct on a private flood insurance policy in addition to a review under the mandatory acceptance, discretionary acceptance, or mutual aid plan acceptance criteria?**

In addition to determining if a policy can or must be accepted under the private

flood insurance policy review, the lender must determine if the policy meets the requirements for coverage under the Regulation which is defined as “the policy must cover the building or mobile home and any personal property securing the loan in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Federal flood insurance statutes with respect to the particular type of property, whichever is less” (84 F.R. 4958).

This review includes a review to confirm that the mortgagee and mortgagors are named as loss payees and that other applicable loan requirements are satisfied (e.g., policy effective date, covers collateral address).

While aspects of this review are incorporated into the discretionary review criteria, we do not believe it problematic or confusing to address the fundamentals in a general way in this section. In this approach, we recommend the Agencies include appropriate cross-references between Mandatory 7 and Private Flood Compliance [NEW], as well as to applicable questions under other sections, to further assist lenders.

## *II. PRIVATE FLOOD INSURANCE – DISCRETIONARY ACCEPTANCE*

**DISCRETIONARY 2. If the lender determines that a flood insurance policy meets the discretionary acceptance criteria and accepts that policy, what documentation will demonstrate that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles?**

The Regulation requires the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles (*see also* Q&A Coverage 1). While the Regulation does not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, lenders may include any information that reasonably supports the lender’s conclusion following review of the policy.

### NFA Comment on Discretionary 2:

We recommend that the Agencies amend the phrase “*document its conclusions in writing*” to allow for source-system data to stand as sufficient documentation of the acceptance of a policy for safety and soundness principles. The industry devotes considerable resources to developing and maintaining systems that capture and interrogate data in an electronic format whereby compliance (or non-compliance) with regulation as well as consideration for factors fundamental to the institution’s safety and soundness are inherent in the systems’ output. Systems output in the form of electronic records combined with current policy and procedure demonstrate that the policy provides sufficient protection of the loan. In instances where the Agencies have indicated that lenders “*must document their conclusion in writing*” we recommend adding: “... *this review may be performed and recorded electronically, and a description of the process, edits and results of any systematic review is sufficient to demonstrate compliance.*”

**DISCRETIONARY 3. How can a lender evaluate the sufficiency of an insurer’s solvency, strength, and ability to satisfy claims when determining whether a flood insurance policy provides sufficient protection of the loan, consistent with general safety and soundness principles?**

A lender may evaluate an insurer’s solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator’s office of the State in which the property securing the loan is located, among other options. A lender can rely on the licensing or other processes used by the State insurance regulator for such an evaluation. See Q&A Coverage 1.

### NFA Comments Discretionary 3:

The NFA recommends including additional sources of information that a lender may use as examples of “among other options” referenced in the current proposed answer:

**DISCRETIONARY 3. How can a lender evaluate the sufficiency of an insurer’s solvency, strength, and ability to satisfy claims when determining whether a flood insurance policy provides sufficient protection of the loan, consistent with general safety and soundness principles?**

A lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator's office of the State in which the property securing the loan is located, among other options. Such other options can include third-party sources of relevant information, such as credit rating agencies including, but not necessarily limited to, AM Best, Moody's, Standard and Poor's, Demotech, Fitch Ratings or Kroll Bond Rating Agency. A lender can rely on the licensing or other processes used by the State insurance regulator for such an evaluation. See Q&A Coverage 1.

**DISCRETIONARY 4. If a flood insurance policy issued by a private insurer that was originally accepted in accordance with the discretionary acceptance requirements is renewed annually, is the lender required to review the policy upon renewal?**

If a lender had accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements and the policy is renewed, the lender must review the policy upon renewal to ensure that it continues to meet the discretionary acceptance requirements. The lender must also document its conclusion regarding sufficiency of the protection of the loan in writing upon each renewal to indicate that the policy continues to provide sufficient protection of the loan.

NFA Comments on Discretionary 4:

Please see related comments provided under Mandatory 2. We feel the Agencies should better distinguish between the types of review required under the statute (i.e., a review to determine the acceptability of a private flood insurance policy vs. the review to determine whether coverage submitted is sufficient to satisfy the mandatory purchase obligation). These various determinations performed by the lender are further complicated when considering the obligation to review the acceptability of a private policy upon a MIRE event vs. renewal of a policy. In developing guidance for industry, it would be beneficial to identify the level of review in terms of acceptability vs sufficiency and MIRE events vs renewal.

We suggest the wording in the question be revised to ask: *"If a flood insurance policy issued by a private insurer was originally accepted in accordance with the discretionary acceptance criteria upon a MIRE event, what level of review is required to demonstrate that the policy remains acceptable upon renewal of that policy?"*

### *III. PRIVATE FLOOD INSURANCE – PRIVATE FLOOD COMPLIANCE*

**PRIVATE FLOOD COMPLIANCE 4. If the policy is not available prior to closing, what can the lender rely on to make sure the policy meets the requirements of the Regulation?**

The Act and Regulation do not specify the acceptable types of documentation for a lender to rely on when reviewing a flood insurance policy issued by a private insurer. Lenders should determine whether they have sufficient evidence to show the policy meets the requirements under the Regulation.

Lenders can take steps to help mitigate against closing delays such as designating employees responsible for reviewing flood policies, training employees, and requesting additional information from insurers early in the process. If the lender does not have enough information to determine if the policy meets the private flood insurance requirements under the Regulation, then the lender should timely request additional information as necessary to complete its review.

NFA Comments to Private Flood Compliance 4:

We recommend modifications to the answer to better address practical considerations with respect to the timing of the purchase of insurance during a loan origination. The proposed Q&A does not reflect the variation that occurs with respect to when evidence of insurance is available prior to a loan closing. Lenders may not be provided with a full policy until after the closing. This may be especially true if the property is new construction and there is no insurable interest prior to closing. Often, prior to loan closing, lenders will rely upon a paid application for coverage and will receive a declarations page (or electronic equivalent) only after the loan closing – this is especially true with a NFIP policy. Also, many carriers will electronically bind coverage to be concurrent with a loan closing although the payment for the policy and fulfilment by the carrier will occur in the weeks following the closing date (even though coverage was effective concurrent with the closing).



Additionally, as we indicated in our comments to Mandatory 2 and Discretionary 4, we feel this answer should also consider the separate review necessary for both 1) the review of acceptability of a private policy and 2) the review of sufficiency for compliance with mandatory purchase obligations. The level of documentation necessary for each review differs and a review for acceptability of the private policy may not be feasible based on the limited information on a declarations page or exchanged with a servicer in conjunction with a loan closing.

**PRIVATE FLOOD COMPLIANCE 5. Under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of a flood insurance policy. Does the declarations page have sufficient information for a lender to determine whether the policy complies with the Regulation?**

It depends. If the declarations page provides enough information for the lender to determine whether the policy meets the mandatory acceptance provision or discretionary acceptance provision of the Regulation or if the declarations pages contains the compliance aid assurance clause, then the lender may rely on the declarations pages. However, if the declarations page does not provide enough information for the lender to determine whether the policy satisfies the mandatory acceptance provision or discretionary acceptance provision of the Regulation, the lender should request additional information about the policy to aid in making its determination.

NFA Comments to Private Flood Compliance 5:

The NFA agrees that, in general, the declarations page contains sufficient information that enables a lender to determine whether a policy is sufficient to satisfy the mandatory purchase requirement; however, that same declarations page may be (and is likely to be) insufficient for purposes of determining acceptability of the policy under the criteria for private flood insurance. Consistent with our comments in Mandatory 2 and Discretionary 4, we recommend that this Q&A better distinguish between the review of acceptability vs. sufficiency.

The Regulation defines that sufficient evidence of insurance as including: the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.<sup>4</sup> This provision in the Regulation establishes a baseline for the data elements that must be included to demonstrate that there is coverage for the property. Once that evidence of coverage is received, lenders then apply additional sections of the Regulatory<sup>5</sup> language (as well as investor and contractual standards) to determine acceptability and sufficiency of that coverage, including but not limited to amount of coverage, deductible, carrier rating, term of the policy, and elements of any private policy. It would be helpful for industry if this proposed Q&A included guidance as to whether the standards for evidence of insurance for cancellation of force placement apply equally when a lender is evaluating a private policy for acceptability as well as sufficiency.

We note that the Agencies have previously opined that once evidence of insurance (that meets the Regulatory definition for "sufficiency of demonstration") is received by a lender, the lender retains the authority to further assess the insurance coverage for compliance with the mandatory purchase obligations. In commentary to amendments to regulations regarding loans in areas having special flood hazards to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), the Agencies acknowledged that while the Flood Act establishes a standard for those elements which are considered sufficient to demonstrate coverage, the servicer still has the authority/obligation to determine whether the coverage being submitted is acceptable. In that commentary, the Agencies noted, "*consistent with Biggert-Waters, regulated lending institutions and servicers are afforded 30 days from the receipt of the borrower's confirmation of existing flood insurance to conduct all necessary inquiries regarding whether the borrower's flood insurance policy satisfies the minimum mandatory purchase requirement.*"

The industry would benefit from similar guidance with respect to the lender's authority to require additional documentation and time to ensure compliance with the obligation to determine the acceptability of a private

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<sup>4</sup> 42 U.S. Code § 4012a (e)(4) Sufficiency of Demonstration. "For purposes of confirming a borrower's existing flood insurance coverage, a lender or servicer for a loan shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent."

<sup>5</sup> Reference mandatory and discretionary acceptance language in the FDPA here

flood insurance policy. Additionally, for purposes of this Q&A, we encourage greater recognition that data may be provided on a physical declarations page or received through other media including electronic means.

**PRIVATE FLOOD COMPLIANCE 11. May a lender accept a private flood insurance policy that includes a compliance aid assurance clause, but also includes a disclaimer explaining that the “insurer is not licensed in the State or jurisdiction in which the property is located,” which suggests that the policy is issued by a surplus lines insurer?**

Even if the policy includes a statement indicating that the insurer is not licensed in the State or jurisdiction in which the property is located, suggesting that the policy is issued by a surplus lines insurer, there are circumstances under which lenders may accept the policy. A lender may accept a policy issued by a surplus lines insurer recognized or not disapproved by the relevant State insurance regulator as protection for loan collateral that is a commercial property. Also, a lender may accept a policy issued by a surplus lines insurer as protection for loan collateral that is a noncommercial property as a policy issued by an insurance company that is “otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located.” See Q&A Private Flood Compliance 10.

**NFA Comments to Private Flood Compliance 11:**

We believe the intent of this Q&A is to clarify that the disclaimer explaining that the “insurer is not licensed in the State or jurisdiction in which the property is located”, commonly found on a private flood insurance policy issued by a surplus lines insurer, does not preclude a private flood insurance policy from being accepted. If our interpretation is accurate, we recommend revising the answer to be more direct and remove language that is addressed in Private Flood Compliance 10:

**PRIVATE FLOOD COMPLIANCE 11. May a lender accept a private flood insurance policy that includes a compliance aid statement, but also includes a disclaimer explaining that the “insurer is not licensed in the State or jurisdiction in which the property is located,” which suggests that the policy is issued by a surplus lines insurer?**

Even if the policy includes a statement indicating that the insurer is not licensed in the State or jurisdiction in which the property is located, suggesting that the policy is issued by a surplus lines insurer, lenders may accept the policy as long as all other regulatory and compliance conditions exist. See Q&A Private Flood Compliance 10.

In addition to the preceding comments on this proposed private flood Q&A, the NFA has recognized that there is guidance in the broader Q&A into which this additional guidance will be incorporated that warrants attention as it relates to the NFIP vs. private flood policies.

**Notice to Administrator**

12 CFR 22.10(a) {OCC Cite} [<https://www.govinfo.gov/content/pkg/CFR-2010-title12-vol1/pdf/CFR-2010-title12-vol1-sec22-10.pdf> [govinfo.gov]] requires that the servicer notify the Administrator of FEMA or the Administrator’s designee of the identity of the servicer at the time of a MIRE event or a change in servicer. Currently the industry accomplishes this through the regular maintenance of the Mortgagee clause with the WYO insurer who is the designee. Current Q&A 45 (Proposed Servicing 2) further provides guidance on this issue.

**SERVICING 2. When a lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Administrator of FEMA or the Administrator’s designee, i.e. the insurance provider?**

The Regulation states that the Administrator’s designee is the insurance company issuing the flood insurance policy. The borrower’s purchase of an NFIP policy (or the lender’s force placement of an NFIP policy) will constitute notice to FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a

change.

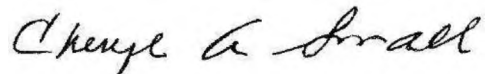
With the introduction of private flood policies, the Administrator of FEMA should not need to be notified. Further, private flood insurers would not seem to be qualified as a designee of the administrator. It is the belief of industry that this requirement is not needed in the case of private flood and request that the agencies acknowledge this through their final publication of the Q&A document.

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The NFA's membership includes a diverse group of companies that offer or support private flood insurance; therefore, our hope is that the proposed private flood Q&As provide valuable guidance to lenders to clarify, streamline and encourage their understanding and acceptance of private flood insurance. However, the private flood insurance market conducts business separately and distinctly from the federal lending regulations; thus, we want to avoid commingling of your guidance to lenders with comments or guidance outside of federal purview and perhaps reserved for the states in which the products are sold.

We appreciate the Agencies' efforts to provide this important guidance and we encourage the Agencies to identify and consider opportunities for simplification in the guidance to support the lenders' processes and the borrowers' options, alike.

Sincerely,

A handwritten signature in black ink that reads "Cheryl A. Small". The signature is written in a cursive, flowing style.

Cheryl Small, Executive Director  
National Flood Association