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Joint Final Flood Insurance Rule Regarding Private Insurance

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Federal financial institution regulators recently [issued](#) a joint final rule to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the “Act”) that require regulated financial institutions to accept private flood insurance policies. The regulators are the Farm Credit Administration, Federal Deposit Insurance Corporation, Federal Reserve Board, National Credit Union Administration, and Comptroller of the Currency. The final rule takes effect on July 1, 2019.

To qualify as private flood insurance under the final rule, a policy must be issued by an insurance company that meets certain conditions, and the policy must provide flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP) issued under the National Flood Insurance Program (NFIP) for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. The final rule sets forth specific requirements that a policy must meet to be considered to provide coverage at least as broad as an SFIP.

The final rule requires that a regulated financial institution accept a private flood insurance policy that provides coverage at least as broad as an SFIP in satisfaction of the requirement for flood insurance under the applicable regulator’s flood insurance rules. The final rule allows a financial institution to determine that a private policy provides the necessary coverage if the following statement is included within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.” A financial institution can simply rely on the statement, without independently assessing the policy. However, the final rule does not require insurance companies to include such a statement in a private policy, and a financial institution cannot reject a private policy simply because the statement is not provided.

The final rule also allows a financial institution to accept a private flood insurance policy that does not provide coverage at least as broad as an SFIP, if the private policy meets a more limited set of requirements, and the financial institution documents in writing its determination that the policy provides sufficient protection of the applicable loan, consistent with general safety and soundness principles.

Additionally, the final rule permits a financial institution to accept a plan issued by a mutual aid society in satisfaction of the requirement for flood insurance under the applicable regulator’s flood insurance rules, subject to conditions. The conditions are that the applicable regulator has determined that the plan qualifies as flood insurance for purposes of the Act, the plan provides specified coverage for the mortgagor and mortgagee as loss payees, and the financial institution documents in writing its determination that the plan provides sufficient protection of the applicable loan, consistent with general safety and soundness principles. For purposes of the final rule, a “mutual aid society” is defined as an organization (1) whose members share a common religious, charitable, educational, or fraternal bond, (2) that covers losses caused by damage to members’ property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond, and (3) that has a demonstrated history of fulfilling the terms of agreements to cover losses to members’ property caused by flooding.

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