pennsylvania
INSURANCE DEPARTMENT

January 6, 2017

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, D.C. 20219

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

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

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

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Loans in Areas Having Special Flood Hazards: Private Flood Insurance; Docket ID OCC-2016-0005; Docket No. R-1549; RIN 3133-AE64

Dear Sirs:

Thank you for the opportunity to comment on the joint notice of proposed rulemaking on "Loans in Areas Having Special Flood Hazards: Private Flood Insurance." Before I provide Pennsylvania's perspective, I would note that I wholeheartedly support the letter written on behalf of the National Association of Insurance Commissioners (NAIC) relating to this rulemaking. I am writing separately because providing additional flood insurance options for Pennsylvania consumers is a priority of the Pennsylvania Insurance Department. My department has been working diligently for nearly a year to provide information about private flood insurance options to Pennsylvanians through significant consumer outreach efforts. Because this is an issue we have been working on so extensively, I wanted to share our perspective on the proposed rulemaking.

I share the concern expressed in the NAIC letter that, by not specifying if personal lines residential policies offered by surplus lines insurers can be accepted by lenders for purposes of satisfying the mandatory purchase requirement, the proposed rule could seriously harm consumers' opportunities to get flood insurance for their homes at the best price. In Pennsylvania, nearly all of the residential flood policies offered by the private market are through surplus lines carriers. These policies are especially important as we are seeing a number of communities being placed in Special Flood Hazard Areas (SFHAs) through the Federal Emergency Management Agency's re-mapping when those communities were not designated in these areas previously. I have heard from many homeowners who have received notices from their mortgage lenders that they are now in a SFHA, and must get flood insurance to keep their mortgage, even though these homeowners have in some cases lived in their homes for two decades or more, and never or only very rarely experienced any flooding.

Office of the Insurance Commissioner
1326 Strawberry Square | Harrisburg, Pennsylvania 17120 | Phone: 717.783.0442 | Fax: 717.772.1969
www.insurance.pa.gov | ra-in-commissioner@pa.gov

Adding to the surprise of receiving this notice comes the sticker shock homeowners have experienced in some areas when considering National Flood Insurance Plan (NFIP) policies. In one case, a homeowner would have had to pay $2,700 a year for an NFIP policy, but got comparable private market coverage through the surplus lines market for $718 annually. Another homeowner faced a $2,000 annual NFIP premium, but was able to find private coverage, again through a surplus lines carrier, for $400 every two years. I heard recently that a surplus lines company is offering a three-year no premium increase policy to Pennsylvania homeowners.

While surplus lines insurers will not cover all residential properties in SFHAs, notably not writing policies for those properties with higher risks, many Pennsylvania homeowners can find acceptable coverage through this market at very substantial savings compared to the NFIP. Indeed, the neighborhoods and even entire communities that were recently re-mapped into SFHAs which have never or rarely experienced flooding are precisely the areas where surplus lines policies are likely to provide the greatest savings.

The NAIC letter notes the extensive authority state regulators have over surplus lines insurance, so I will not take the time to reiterate that authority. However, I would note that even with the increased surplus lines activity for residential flood coverage over the past 11 months, the Pennsylvania Insurance Department has not received a single complaint concerning a surplus lines carrier. I have no reason to believe consumers face any undue concerns from surplus lines providers. Therefore, I join the NAIC in recommending that the Agencies explicitly state that personal lines residential policies offered by surplus lines insurers can be accepted by lenders.

I also wish to echo the NAIC's comments with respect to allowing insurers to tailor their flood insurance policies for specific types of properties. We need to encourage innovation to increase the private flood insurance market and provide consumers with more choices when it comes to flood insurance.

The NFIP's Standard Flood Insurance Policy (SFIP) is an all-comers policy, providing broad terms and conditions meant to apply to any and all types of properties across the country. However, a private insurer may be able to charge less than the NFIP by providing coverage tailored for a specific type of property. If the flood insurance coverage provided for a specific property is at least as broad as that which is provided by the SFIP *for the specific property securing the loan,* then it should be accepted by lenders.

I understand that such a policy could be accepted by a lender under the discretionary acceptance provisions in the proposed rule, but there appears to be little incentive for lenders to make use of the discretionary acceptance provisions. In fact, it could be argued that the greater incentive would be for the lender to force-place the borrower with a broader policy at a higher cost to the borrower.

I therefore suggest that the mandatory acceptance provisions in the rulemaking be clarified to note that coverage needs to be at least as broad as the SFIP only when considering the mortgaged property securing the loan.

As an example of how these suggestions would affect the proposed rulemaking, I offer the following marked-up revisions to the proposed definition of *Private flood insurance* in Section 339.2:

"(2) Provides flood insurance coverage for the mortgaged property securing the loan (exclusive of detached structures not used as residences) that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(i) Defines the term "flood" to include the events defined as a "flood" in an SFIP;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Contains the coverage and provisions specified in an SFIP affecting the mortgaged property securing the loan (exclusive of detached structures not used as residences), including those relating to building property coverage; ~~personal property coverage, if purchased by the insured mortgagor(s);~~ other coverages; and the increased cost of compliance;

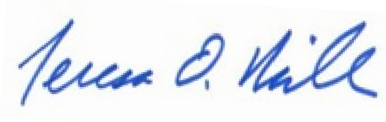
(iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. 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; and

(vi) May not contain conditions that narrow the coverage in an SFIP affecting the mortgaged property securing the loan (exclusive of detached structures not used as residences);".

Thank you again for the consideration of these comments. I appreciate your work on this critical issue, which impacts so many residents of the Commonwealth.

Sincerely,



Teresa D. Miller
Commissioner