December 10, 2013

Office of the Comptroller of the Currency
400 7th Street SW, Ste 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC-2013-0015

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1462; RIN 7100 AE-00

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 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, Virginia 22314–3428
RIN 3133-AE18

Re: Joint Notice of Proposed Rulemaking on Loans in Areas Having Special Flood Hazards

Dear Sir or Madam:

The National Flood Determination Association ("NFDA") appreciates the opportunity to comment on the joint notice of proposed rulemaking released by the Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Farm Credit Administration (collectively, the "Agencies") which would amend existing federal flood insurance regulations governing lending institutions pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012 ("BW 12").

The NFDA is a professional association of companies that works with federally regulated lenders to facilitate compliance with the mandatory purchase requirements under the National Flood Insurance Program ("NFIP"). The NFDA has seen firsthand the value that the NFIP has brought to the nation by offering its citizens quality coverage at affordable rates, by ensuring properties at risk of flooding which secure loans backed by the federal government are protected by flood insurance, by encouraging the education of property owners about the hazards of flood, and by guiding communities to govern development in ways which mitigate future risks through adoption and enforcement of sound ordinances.

I. NFDA supports the unanimous positions outlined in the detailed letters submitted by experts in the banking, mortgage and insurance industries.

NFDA supports the positions raised by the Mortgage Bankers Association, the American Insurance Association, and collectively by the American Bankers Association, Consumer Bankers Association and the American Bankers Insurance Association in their respective comment letters, and we urge the Agencies to consider their recommendations in preparing the final rules. While each association's comments vary slightly based on the perspective of its members, certain recommendations appear to be uncontroversial amongst those with expertise in banking, mortgage and insurance, including—

1. With respect to private flood insurance, the Agencies should permit lenders to rely upon the expertise of the insurance company to affirm that a company's policy satisfies the mandatory purchase of flood insurance requirements under the Flood Disaster Protection Act of 1973. Further, the Agencies should clarify that the safe harbor applies also to policies offered by surplus line carriers; and,
2. With respect to the expansion of the escrow requirement, the Agencies should clarify that the new escrow requirement does not apply to junior liens, outstanding liens, loans transferred or sold, or loans of a special category such as non-performing, lines of credit, reverse mortgages, chattel mortgages made on manufactured homes, and loans subject to force-placed flood insurance. In addition, the Agencies should delay the enforcement date for at least another year.

II. NFDA recommends that the Agencies do not revise the regulatory language describing minimum coverage requirements.

NFDA is not aware that the existing regulatory language causes concern or that lending institutions are requesting that it be changed; therefore, in the absence of strong support from lending institutions or other stakeholders submitted during this comment period, we propose that the Agencies do not revise the existing language related to the flood insurance coverage limit.

The Agencies propose to amend fundamental language within the federal flood regulations which has been in place since the 1996 Joint Final Rule (61 FR 45684 et seq.). The existing regulatory language—"Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located"—was added in order to provide clarification to the "maximum limit of coverage available for the particular type of property under the Act" (OCC: 12 CFR 22.3(a); Board: 12 CFR 208.25(c); FDIC: 12 CFR 339.3(a); FCA 12 CFR 614.4930(a); NCUA: 12 CFR 760.3(a)). Taken in context, the language attempts to clarify that if the lesser of the given criteria is the limit under the Act then the amount of flood insurance required should be limited to the value of the building and or personal property securing the loan. The Agencies' proposed language appears to give the statement a different meaning than originally intended. Thus, we believe that the existing language should be retained and the proposed changes not be made.

III. NFDA urges the Agencies to work with FEMA and the impacted stakeholders groups on the preparation and release of a new supplement to the federal flood regulations to replace the *Mandatory Purchase of Flood Insurance Guidelines.*

Since February 2013 when FEMA announced its rescission of the *Guidelines* booklet, NFDA member companies have heard from hundreds of representatives from lending institutions who have expressed concern about the absence of a clarifying resource to assist them in their compliance obligations. While FEMA was concerned that the *Guidelines* were being misused as authoritative and regulatory, our experience was that lenders and other stakeholders properly utilized the information within the *Guidelines* as a supplement to help place the lender regulations within the context of the larger flood program, including floodplain mapping, floodplain management, and flood insurance.

The *Guidelines*, which were originally published in 1974, have long been a useful resource for the various stakeholder groups as a means to address questions that arise with respect to the mandatory purchase requirement. In 1989, FEMA affirmed the purpose of the *Guidelines* as being—

"… designed to provide such guidance concerning the insurance purchase requirements as might be helpful in promoting greater uniformity and understanding of the requirements among Federal agencies, Federal instrumentalities, private lending institutions and their trade associations, and the public. … While [the] Guidelines are not binding upon these groups, [FEMA] was encouraged by the Federal Financial Institutions Examination Council to update the earlier Guidelines." (54 FR 29666-29695)

While the FFIEC's "Interagency Questions and Answers Regarding Flood Insurance" provides useful information (although dated now due to BW 12) and the NFIP's Flood Insurance Manual includes the flood insurance guidelines, there is currently not a reliable source of information which brings the various aspects of the flood program together along with the valuable narrative which helps the lender to understand mapping and insurance as part of its compliance plan. Additionally, several topics are not addressed in other resources with lenders in mind as previously found in the *Guidelines*, including the significance of the building's location, the impact of a Letter of Map Amendment or Revision, a policy's waiting period, or the MPPP.

Thus, NFDA joins the many others who share the opinion that the Agencies, perhaps via the FFIEC, should work with FEMA to create a supplemental resource which will help promote "greater uniformity and understanding of the requirements among Federal agencies, Federal instrumentalities, private lending institutions, and their trade associations, and the public" (*Ibid.*).

In conclusion, the NFDA appreciates this opportunity to provide comment on these proposed changes. We encourage your consideration of these recommendations along with the thoughtful recommendations made by the Mortgage Bankers Association, the American Insurance Association, and collectively by the American Bankers Association, Consumer Bankers Association and the American Bankers Insurance Association.

Thank you for your work.

Sincerely,

Steve Murchison, President
National Flood Determination Association