

July 26, 2017

Dana T. Wade  
General Deputy Assistant Secretary for Housing  
Federal Housing Administration  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

## **Re: FHA Flood Insurance Requirements**

Dear Ms. Wade:

On behalf of the undersigned organizations we wish to bring to your attention an important issue regarding Federal Housing Administration (FHA) flood insurance requirements. As further explained below, current FHA requirements concerning the acceptance of National Flood Insurance Program (NFIP) policies appear to conflict with lender requirements under the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters or the Act), as well as the intent of the Act to promote the growth of private flood insurance options for consumers. This conflict is resulting in otherwise suitable home loan transactions failing to close. As such, the undersigned organizations respectfully ask that FHA amend the agency's policy regarding the acceptance of private flood insurance by lenders for FHA-insured loans.

As you know, under the National Flood Disaster Protection Act, flood insurance is required for federally-related loans—including loans insured by the FHA—if the property securing the loan is located in a Special Flood Hazard Area (SFHA).<sup>1</sup> During the last reauthorization of the NFIP in 2012, Congress emphasized the need to increase private market participation in flood insurance to help ensure the long-term sustainability of the NFIP, increase consumer choice for flood insurance and increase the number of consumers covered by flood insurance.

Accordingly, Biggert-Waters took steps to encourage the use of private flood insurance. The intent of the Act was to permit the use of private insurance policies for all loans subject to the mandatory purchase requirement, including FHA-insured loans, by requiring federally regulated lenders, federal agency lenders and lenders who sell to or service on behalf of Fannie Mae and Freddie Mac, to accept private flood insurance policies in satisfaction of the mandatory purchase requirement if the private policy meets certain criteria.<sup>2</sup> The Act even mandates that lenders, including lenders for FHA-insured loans, provide borrowers a notice encouraging them to consider and compare private

---

<sup>1</sup> There are approximately 10 million homes that are located in a SFHA. See, "Lapses in the National Flood Insurance Program Jeopardize Home Sales" (Aug. 8, 2011). <http://economistsoutlook.blogs.realtor.org/2011/08/08/lapses-of-the-national-flood-insurance-program-jeopardize-home-sales/>

<sup>2</sup> See 42 U.S.C. § 4012a(b)(1) and (2).

market flood insurance policies with NFIP policies.<sup>3</sup> Since 2012, the private flood insurance market has been gradually expanding and for many borrowers private flood insurance policies now offer more robust coverage options at more affordable prices than NFIP policies.

Some lenders, however, are currently refusing to accept private flood insurance on FHA-insured loans when the property is located in an SFHA because Section 203.16a of FHA regulations and the corresponding implementing guidelines require flood insurance coverage in the form of a NFIP policy.<sup>4</sup> The net result of this is that home buyers—including many first time home buyers—are unable to complete the purchase of their chosen home. Currently, home loans are failing to close because the NFIP product is unaffordable for a potential homebuyer, and FHA policy results in lenders refusing to accept less costly private flood insurance that offers more comprehensive coverage to the consumer.

As such, the undersigned organizations urge FHA to amend the agency’s policy regarding acceptance of private flood insurance and to issue any guidance and/or adopt regulatory or handbook provisions that would permit NFIP insurance policies as well as private flood insurance coverage to be accepted in connection with FHA-insured loans. We note that both Fannie Mae and Freddie Mac currently permit both such policies under their guidelines.<sup>5</sup> It is further worth noting, that while there is legislation pending in Congress that would specifically direct HUD to accept private flood insurance in satisfaction of the mandatory purchase requirement on FHA-insured loans if the private policy meets certain criteria,<sup>6</sup> the acceptance of private flood insurance is an issue that FHA has the discretion to and should address under current law.

FHA serves to facilitate home ownership for home buyers. The undersigned organizations represent the main stakeholders involved in the home purchase process: the realtor, the mortgage lender, the insurance company, the insurance agent and the consumer. We all believe that FHA requirements regarding the acceptance of NFIP policies put up an unnecessary roadblock for otherwise capable borrowers, are contrary to the intent of Congress to encourage the use of private flood insurance and conflict with current requirements placed on lenders. Accordingly, the undersigned organizations respectfully urge FHA to consider adopting a policy that will allow borrowers to purchase private flood insurance on FHA-insured home loans.

We thank you for considering this important issue and we are happy to provide more information or additional comments if needed.

---

<sup>3</sup> See 42 U.S.C. §4012a(b)(6)(A)(iii).

<sup>4</sup> See 24 C.F.R. § 203.16a; HUD Handbook 4000.1 II.A.1.b.iv.(A)(1).

<sup>5</sup> See for example, Fannie Mae Selling Guide B7-3-07: *Flood insurance should be in the form of the standard policy issued under the NFIP or by a private insurer*; Freddie Mac Single-Family Seller/Servicer Guide, 8202.3: *The flood insurance policy may be issued by any insurer qualified under Section 8202.1...*

<sup>6</sup> See H.R. 1422, the “Private Flood Insurance Market Development Act of 2017.”

Sincerely,

Thomas Santos  
Vice President, Federal Affairs  
American Insurance Association  
(202) 828-7100  
[tsantos@aiadc.org](mailto:tsantos@aiadc.org)

Jennifer M. Webb  
Counsel, Federal Government Affairs  
Independent Insurance Agents & Brokers of America  
(202) 863-7000  
[jennifer.webb@iiaba.net](mailto:jennifer.webb@iiaba.net)

Sara K. Singhas  
Assistant Director, Public Policy  
Mortgage Bankers Association  
(202) 557-2826  
[ssinghas@mba.org](mailto:ssinghas@mba.org)

Jon Bergner  
Assistant Vice President, Federal Policy  
National Association of Mutual Insurance Companies  
(202) 628-1558  
[jbergner@namic.org](mailto:jbergner@namic.org)

Joe Ventrone  
Vice President, Regulatory & Industry Relations  
National Association of REALTORS®  
(202) 383-1095  
[jventrone@realtors.org](mailto:jventrone@realtors.org)

Nathaniel F. Wienecke  
Senior Vice President for Federal Government Relations  
Property and Casualty Insurers Association of America  
(202) 639-0499  
[nathaniel.wienecke@pciaa.net](mailto:nathaniel.wienecke@pciaa.net)

Anthony Cimino  
Senior Vice President and Head of Government Affairs  
The Financial Services Roundtable  
(202) 589-2533  
[anthony.cimino@FSRoundtable.org](mailto:anthony.cimino@FSRoundtable.org)

Amy Bach  
Executive Director  
United Policyholders  
(415) 393-9990  
[amy.bach@uphelp.org](mailto:amy.bach@uphelp.org)

CC: Robert Mulderig, Associate Deputy Assistant Secretary of Single Family Housing  
Ivery Himes, Director Office of Single Family Asset Management  
Elissa Saunders, Director Office of Single Family Program Development