DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 22 and 172

[Docket ID OCC-2014-0016]

RIN 1557-AD84

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R-1498]

RIN 7100 AE-22

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064-AE50

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AC93

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133-AE64

Loans in Areas Having Special Flood Hazards

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) are amending their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). Specifically, the final rule requires regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act; and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of "private flood insurance," subject to certain restrictions.

DATES: This rule is effective on July 1, 2019.

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649-5405; Sadia Chaudhary, Counsel, (202) 649-6350, Heidi M. Thomas, Special Counsel, or Melissa Lisenbee, Senior Attorney, (202) 649-5490, Chief Counsel's Office. For persons who are hearing impaired, TTY, (202) 649-5597.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst, (202) 452-2705; Vivian W. Wong, Senior Counsel, (202) 452-3667, Division of Consumer and Community Affairs; or Daniel Ericson, Senior Counsel, (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Simin Ho, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898-6907, *sho@fdic.gov*; Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, *nchoudnury@fdic.gov* (202) 898-6526.

FCA: Paul K. Gibbs, Associate Director, Office of Regulatory Policy (703) 883-4203, TTY (703) 883-4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

NCUA: Sarah Chung, Senior Staff Attorney, or Thomas Zells, Staff Attorney, Office of General Counsel, (703) 518–6540; or Jeff Marshall, Policy Officer, (703) 518-6360.

SUPPLEMENTARY INFORMATION:

I. Background

A. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)[1] and the Flood Disaster Protection Act of 1973 (FDPA),[2] as amended, (collectively referenced herein as the Federal flood insurance statutes) govern the National Flood Insurance Program (NFIP).[3] These laws make Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in participating communities and require the purchase of flood insurance in connection with a

[1] Pub. L. 90-448, 82 Stat. 572 (1968).
[2] Pub. L. 93–234, 87 Stat. 975 (1973).
[3] These statutes are codified at 42 U.S.C. 4001-4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

loan made by a regulated lending institution[4] when the loan is secured by improved real estate or a mobile home located in a special flood hazard area (SFHA)[5] in which flood insurance is available under the NFIP. The laws specify the amount of insurance that must be purchased, and also require such insurance be maintained for the term of the loan. (The requirement for flood insurance, and the term and amounts of such coverage, are hereinafter described as "the flood insurance purchase requirement.") The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) each have issued regulations implementing these statutory requirements for the lending institutions they supervise.[6]

The Biggert-Waters Act[7] amends the Federal flood insurance statutes that the Agencies have authority to implement and enforce. Among other things, the Biggert-Waters Act: (1) requires the Agencies to issue a rule regarding the escrow of premiums and fees for flood insurance;[8] (2) clarifies the requirement to force place insurance;[9] and (3) requires the Agencies to issue a rule to direct regulated lending institutions to accept "private flood insurance," as defined by the Biggert-Waters Act, and to notify borrowers of the availability of flood insurance coverage issued by private insurers.[10]

[4] The FDPA defines "regulated lending institution" to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).
[5] An SFHA is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. 44 CFR 59.1. SFHAs are delineated on maps issued by FEMA for individual communities. 44 CFR part 65. A community establishes its eligibility to participate in the NFIP by adopting and enforcing flood plain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage. 44 CFR part 60.
[6] *See* 12 CFR part 22 (OCC), part 208 (Board), part 339 (FDIC), part 614 Subpart S (FCA), and part 760 (NCUA).
[7] Pub. L. 112-141, 126 Stat. 916 (2012).
[8] Section 100209 of the Biggert-Waters Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).
[9] Section 100244 of the Biggert-Waters Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).
[10] Section 100239 of the Biggert-Waters Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

B. Regulatory History

In October 2013, the Agencies jointly issued a proposed rule to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act (the October 2013 Proposed Rule).[11] With respect to private flood insurance, the October 2013 Proposed Rule would have required a regulated lending institution to accept all policies meeting the statutory definition of "private flood insurance" in the Biggert-Waters Act (mandatory acceptance). The October 2013 Proposed Rule also included a safe harbor provision that would have allowed regulated lending institutions to rely on the expertise of State insurance regulators to determine whether a policy meets the statutory definition of "private flood insurance" and must be accepted by the institution. Additionally, the Agencies specifically solicited comment on whether the rule should include a provision expressly permitting regulated lending institutions to exercise their discretion to accept flood insurance provided by private insurers that does not meet the Biggert-Waters Act's definition of "private flood insurance" (discretionary acceptance) and what criteria the Agencies might require for such a policy.

Of the 81 written comments received on the October 2013 Proposed Rule, 51 comments addressed some aspect of private flood insurance. Most commenters requested more guidance regarding the statutory definition of "private flood insurance." Most commenters also supported a provision specifically permitting the discretionary acceptance of flood insurance issued by private insurers. However, many of these commenters raised concerns about including prescriptive criteria in the discretionary acceptance provision, noting that private flood insurance policies vary based on the nature of the property and the needs and financial capability of the

[11] 78 FR 65108 (Oct. 30, 2013).

borrower. Commenters also supported a safe harbor provision although some commenters, including State insurance regulators, had concerns with the safe harbor as proposed.

In March 2014, the Homeowner Flood Insurance Affordability Act (HFIAA)[12] was enacted, which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the flood insurance purchase requirement for certain detached structures. Accordingly, the Agencies jointly issued a new proposed rule in October 2014 to implement these HFIAA provisions.[13] Based on comments received in response to the private flood insurance provisions of the October 2013 Proposed Rule, and the statutory effective date for the escrow provisions of HFIAA, the Agencies decided to finalize the Biggert-Waters Act force-placement insurance provisions and the HFIAA escrow and detached structure provisions in July 2015[14] and to revise and re-propose the private flood insurance provisions. The Agencies re-proposed the private flood insurance rule in November 2016 (the November 2016 Proposed Rule or proposed rule),[15] and this rulemaking sets forth the final rule.[16]

II. Overview of Proposed Rule and Public Comments

The November 2016 Proposed Rule significantly revised the October 2013 Proposed Rule. In addition to provisions requiring regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act, the November 2016 Proposed Rule provided a compliance aid and further clarifications to assist

[12] Pub. L. 113-89, 128 Stat. 1020 (2014).
[13] 79 FR 64518 (Oct. 30, 2014).
[14] 80 FR 43216 (July 21, 2015).
[15] 81 FR 78063 (November 7, 2016).
[16] In connection with the issuance of the final rule, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the Federal flood insurance statutes. *See* 42 U.S.C. 4012a(b)(1). Four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

regulated lending institutions in determining whether a policy meets the definition of "private flood insurance." The November 2016 Proposed Rule also included a provision to permit regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers that do not meet the statutory definition of "private flood insurance," subject to certain restrictions, and permitted the acceptance of certain flood coverage provided by "mutual aid societies."

The Agencies received approximately 60 comments on the proposed rule from a wide range of commenters, including: financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, and home building and realtor trade associations); the insurance industry (including insurance companies, trade associations, and brokers); individuals; nonprofit organizations; a flood risk management association; a State non-profit corporation; a State-regulatory organization; a Federal agency; and a State agency.[17] The commenters addressed specific issues, such as: the regulatory definition of "private flood insurance;" the use of a compliance aid or regulatory safe harbor to facilitate compliance by regulated lending institutions; whether private flood insurance that does not conform to the statutory definition of "private flood insurance" can be accepted by regulated lending institutions; whether and what type of alternative criteria for such non-conforming private flood insurance should be required by the Agencies; and whether regulated lending institutions should be permitted to accept certain non-traditional, non-conforming flood insurance coverage, such as mutual aid society plans. These comments and the Agencies' responses to them are discussed in the summary and section-by-section analysis of the final rule that follows.

[17] In addition to receiving written comments, the Agencies conferred with National Association of Insurance Commissioners (NAIC) staff to obtain further information on State regulation of insurance companies.

III. Summary of the Final Rule

The final rule requires regulated lending institutions to accept "private flood insurance," as defined in the Biggert-Waters Act.[18] As suggested by commenters, the final rule also includes a streamlined compliance aid provision to help regulated lending institutions evaluate whether a flood insurance policy meets the definition of "private flood insurance." This compliance aid allows a regulated lending institution to conclude that a policy meets the definition of "private flood insurance" without further review of the policy if the policy, or an endorsement to the policy, states: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

In addition, the final rule permits regulated lending institutions to choose to accept certain flood insurance policies issued by private insurers, even if the policies do not meet the statutory and regulatory definition of "private flood insurance." The proposed rule included conditions for accepting these policies. In response to commenters, the Agencies removed some of these conditions from the final rule. The key conditions in the final rule are a requirement that the policy provide sufficient protection for a designated loan,[19] consistent with general safety and soundness principles, and a requirement that the regulated lending institution document its conclusion regarding the sufficiency of protection in writing. The final rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by "mutual aid societies."

IV. Section-by-Section Analysis of the Final Rule

[18] *See* 42 U.S.C. 4012a(b)(7).

[19] The Agencies' rules define "designated loan" to mean "a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act." 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board), 12 CFR 339.2 (FDIC), 12 CFR 614.4925 (FCA), and 12 CFR 760.2 (NCUA).

A. Definitions

Mutual aid society. As discussed below, the Agencies proposed, and are including in the final rule, a provision that would permit regulated lending institutions to accept, in satisfaction of the flood insurance purchase requirement, certain plans providing flood coverage issued by mutual aid societies. In connection with this provision, the Agencies proposed to add a definition of "mutual aid society" to their rules. Specifically, the proposal defined the term "mutual aid society" as an organization that meets three criteria: (1) the members must share a common religious, charitable, educational, or fraternal bond; (2) the organization must cover losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and (3) the organization must have a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

Although the Agencies received comments in support of the proposed mutual aid provisions, several commenters asserted that regulated lending institutions would find it difficult to determine whether an organization has "a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding" because there is no established source for that information.

The Agencies believe that a demonstrated history requirement is necessary for reasons of safety and soundness, namely, to ensure that property securing a loan extended by a regulated lending institution is adequately protected. Moreover, the Agencies believe that it will be feasible for regulated lending institutions to obtain sufficient information regarding an organization's history in covering losses to members' property caused by flooding. Regulated lending institutions may make determinations based on factors such as their experiences with

mutual aid societies or examples that the mutual aid society provides of previously-covered losses. Therefore, the Agencies are retaining this prong of the definition in the final rule.

One commenter requested that the Agencies add a fourth criterion to the definition that would require an organization to demonstrate that it meets a specified exemption under State insurance or licensing rules allowing mutual aid societies to provide insurance. This commenter asserted that this additional criterion is needed to prevent the definition from including unlawful insurers. The Agencies have considered this suggestion and believe that it is not necessary. Although this final rule would permit regulated financial institutions to accept plans providing flood coverage issued by mutual aid societies, the rule would not interfere with a State's ability to regulate the provision of such coverage, including a State's ability to explicitly prohibit such coverage from being issued in a particular State. Moreover, it is the Agencies' understanding that many States may not have explicit policies, rules, or laws addressing mutual aid societies, which may result in mutual aid society coverage being inadvertently prohibited if organizations are required to demonstrate that State law affirmatively permits them to provide coverage. Therefore, the Agencies are not adding the suggested criterion and are adopting the definition as proposed.

Private flood insurance. The proposed rule included the definition of "private flood insurance" as specified in section 100239 of the Biggert-Waters Act, which added a new section 102(b)(7) to the FDPA.[20] Specifically, the proposed rule defined "private flood insurance" consistent with the statutory definition, with some clarifying edits, to mean an insurance policy that: (1) is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be

[20] 42 U.S.C. 4012a(b)(7).

insured is located, by the insurance regulator of that State or jurisdiction or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the State insurance regulator of the State or jurisdiction where the property to be insured is located; (2) provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy issued under the NFIP (SFIP), including when considering deductibles, exclusions, and conditions offered by the insurer; (3) includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution's behalf; (4) includes information about the availability of flood insurance coverage under the NFIP; (5) includes a mortgage interest clause similar to the clause contained in an SFIP; (6) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and (7) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

As discussed in more detail below, the proposed rule also contained criteria that regulated lending institutions would apply to determine whether a policy's coverage is "at least as broad as" SFIP coverage.

The Agencies received both general and specific comments on the proposed definition of "private flood insurance." Some commenters stated that, as a general matter, the proposed definition would make it more difficult for insurers, regulators, and regulated lending institutions to develop, obtain approval for, and accept flood insurance policies issued by private insurers. Others stated that the definition contained in the Biggert-Waters Act, from which the proposed definition derived, is unworkable and based on outdated FEMA guidelines. Other commenters

stated that the definition should be broader or that State laws and regulations should dictate flood insurance requirements. While acknowledging commenters' concerns, the Agencies note that "private flood insurance" is a term defined in the Biggert-Waters Act, and the Agencies' definition is based on that statutory definition.

The Agencies received specific comments on the section of the proposed definition of "private flood insurance" relating to the State licensing of insurers. These commenters expressed concern that this definition could be interpreted to exclude policies issued by surplus lines insurers for noncommercial properties. In response to these commenters, the Agencies confirm that policies issued by surplus lines insurers for noncommercial properties already are covered in the definition of "private flood insurance" as policies that are issued by insurance companies that are "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."[21] Therefore, the Agencies do not believe it is necessary to amend the proposed regulatory text to address this issue and adopt this section of the definition of "private flood insurance" as proposed, with nonsubstantive changes to simplify its wording.

In addition, the Agencies received specific comments on the section of the proposed definition of "private flood insurance" that states that the policy must include a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage. Although one commenter supported the notification requirement, others stated that

[21] During discussion of the Biggert-Waters Act on the Senate floor, Sen. Crapo noted that surplus lines insurers can provide coverage for residential properties and asked for clarification regarding the inclusion of surplus lines coverage in the definition of "private flood insurance." In his response, Sen. Johnson stated, "[T]he definition of 'private flood insurance' includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties. While the Senator is correct that surplus lines insurance is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are 'licensed, admitted, or otherwise approved' in the State where the property is located." 158 Cong. Rec. S6051 (daily ed. Sept. 10, 2012).

NFIP cancellation rules are not contained in an SFIP and such a notification requirement would generate confusion about whether "private flood insurance" policies must be broader than an SFIP. The Agencies decline to modify this section because the statutory definition states that to meet the definition of "private of flood insurance," a policy must include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution.[22] Therefore, the Agencies are adopting this section of the definition as proposed.

The Agencies also received a comment on the section of the proposed definition that would require a policy to include information about the availability of flood insurance coverage under the NFIP. This commenter stated that private flood insurance policies do not contain NFIP information and such information is unnecessary because the customer already receives such information with the Notice of Special Flood Hazards. The Agencies cannot modify this section because the statutory definition states that the policy must include "information about the availability of flood insurance coverage under the [NFIP]."[23] Accordingly, the Agencies are adopting this part of the definition as proposed.

The Agencies received a variety of comments on the section of the proposed definition that would require a policy to contain a mortgage interest clause similar to the clause contained in an SFIP. The mortgage interest clause in an SFIP typically covers the borrower and the regulated lending institution. One commenter supported the provision, but others stated that requiring a policy to have a mortgage interest clause would be incompatible with condominium and planned community policies that provide coverage for multiple properties without explicitly naming the borrower's regulated lending institution as a loss payee. The Agencies note that this

[22] 42 U.S.C. 4012a(b)(7)(C)(i).
[23] 42 U.S.C. 4012a(b)(7)(C)(ii).

provision is part of the statutory definition and, therefore, are adopting it in the final rule consistent with the statute.

Commenters asserted that the section of the proposed definition stating that a policy must require an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy would disqualify private policies with different or no statutes of limitations. However, this provision also is part of the statutory definition, [24] and, therefore, the Agencies are retaining it in the final rule.

"At least as broad as." Many commenters on the October 2013 Proposed Rule stated that it would be difficult for regulated lending institutions to determine whether private flood insurance coverage is "at least as broad as" the coverage provided under the SFIP, as required by statute. In response to these comments, the Agencies proposed to clarify the meaning of this phrase. Specifically, the proposed definition of "private flood insurance" provided that a policy is "at least as broad as" the coverage provided under an SFIP if the policy, at a minimum: (1) defines the term "flood" to include the events defined as a "flood" in an SFIP; (2) covers both the mortgagor(s) and the mortgagee(s) as loss payees; (3) contains the coverage and provisions specified in an SFIP, 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; (4) contains deductibles no higher than the specified NFIP 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 regulated lending institution; (5) provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP (any additional or

[24] 42 U.S.C. 4012a(b)(7)(C)(iv).

different exclusions than those in an SFIP may only pertain to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP); and (6) does not contain conditions that narrow the coverage that would be provided in an SFIP.

Although some commenters supported the proposed definition of "at least as broad as," others generally criticized the definition of this phrase as overly technical, too narrow, insufficiently detailed, too subjective, and unnecessarily burdensome. The Agencies also received specific comments on the proposed individual requirements defining this phrase, as discussed below.

Several commenters addressed the requirement that the private flood insurance policy cover both the mortgagor(s) and the mortgagee(s) as loss payees. Similar to comments raised about the mortgage interest clause in the definition of "private flood insurance," discussed previously, several commenters noted concerns for condominium buildings and planned unit developments that use policies that provide coverage for multiple properties without explicitly naming the mortgagor or mortgagee as loss payees. After reviewing this provision, the Agencies are removing the proposed requirement here because it is unnecessary given the statutory requirement for a policy to include a mortgage interest clause similar to that contained in an SFIP, which, in general, provides for coverage of the mortgagor and mortgagee.[25]

Several commenters criticized the proposed criteria that the policy must contain the coverage specified in an SFIP, including building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage. Generally, commenters supported requiring increased cost of compliance coverage,

[25] The SFIP currently includes the following language, in section Q, Mortgage Clause: "Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages."

which assists mortgagors whose property is damaged by a flood to meet certain local ordinances or regulatory requirements relating to the reduction of future flood damage before the mortgagor can repair or rebuild the property. One commenter stated that overall, the provision could be interpreted as a requirement that private flood insurance policies exactly replicate the SFIP. The Agencies note that the enumerated minimum coverage requirements in this provision mirror those in an SFIP and implement the statutory requirement that private flood insurance be "at least as broad as" an SFIP policy. For this reason, the Agencies are adopting this provision as proposed. The Agencies also note that under this provision, as proposed and as adopted, the coverage specified in an SFIP is only a minimum requirement.

A few commenters addressed the proposed requirement that a policy must contain deductibles no higher than the specified maximum for the same type of property, and include similar non-applicability provisions, as in 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 regulated lending institution. The commenters noted that in certain cases, reasonable deductibles may not match those contained in the SFIP and that there is no equivalent coverage for comparison for policies with coverage exceeding that available under the NFIP.

In response to this concern, the Agencies clarify that for purposes of the mandatory acceptance requirement, deductibles must be "at least as broad as" an SFIP. For policies with coverage exceeding that available under the NFIP, the policy must only meet the deductible for the amount of coverage available in an SFIP. For example, a regulated lending institution cannot make a designated loan unless the policy is at least equal to the lesser of the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the NFIP. If a private policy for a commercial structure provided coverage of $1,000,000, in

excess of the NFIP maximum of $500,000 for that type of structure, then the policy only would need to match the SFIP deductible for the first $500,000. It would be acceptable for that policy to have deductibles higher than the maximum deductible for a policy available under the NFIP for the coverage over $500,000. Therefore, the Agencies do not believe they need to modify this provision to address these commenters' concern.

However, the Agencies are making one technical change to this provision. As proposed, this provision provides that the deductibles in the policy must be compared to the SFIP deductibles for the same type of property. Because the phrase "for the same type of property" applies to other factors necessary to be considered "at least as broad as," the Agencies have moved this phrase to the introductory text of this provision.

One commenter addressed the proposed requirement that "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." The commenter noted that this criterion could generate confusion because "different exclusions" may actually have the effect of providing broader coverage. This is contrary to the Agencies' intention in specifying when coverage is "at least as broad as" an SFIP. Therefore, the final rule provides that regulated lending institutions need not accept policies with additional exclusions unless the exclusions have the effect of providing broader coverage to the policyholder.

Other commenters asked the Agencies to clarify whether a policy with an anti-concurrent causation clause can qualify as a policy that is "at least as broad as an SFIP." These clauses provide that if a loss is caused by two perils, one of which is excluded and one of which is covered, the loss is not covered. The SFIP includes a provision regarding concurrent perils, which is effectively an anti-concurrent clause. As long as the private policy's anti-concurrent

causation clause excludes losses to no greater degree than an SFIP, the policy will be "at least as broad as" an SFIP.

The Agencies also received many comments stating that various aspects of the definitions of "private flood insurance" and "at least as broad as" would interfere with existing State law. These comments are discussed in more detail in the mandatory acceptance requirement section that follows.

In addition to these changes, the Agencies have made nonsubstantive technical changes to the proposed definitions of "private flood insurance" and "at least as broad as" in the final rule.

"SFIP." The proposed rule defined "SFIP" to mean a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a regulated lending institution. The Agencies requested comment on whether this is the correct time-frame for determining what version of the SFIP a regulated lending institution should use to evaluate private policies.

One commenter on the proposed definition of "SFIP" expressed concern that the definition would require FEMA to give adequate advance notice of changes it makes to the Federal flood policies. Another commenter suggested that regulated lending institutions be given a reasonable period of time to update systems and change processes to accommodate material changes to the SFIP forms. Other commenters supported the proposed definition. Given the infrequency of SFIP changes, the Agencies expect that the burden of changing systems to compare against new versions of the SFIP will be minimal. Therefore, the Agencies are adopting the definition as proposed, with one technical change. Instead of defining SFIP with

reference to the date a "private policy" is provided to a regulated lending institution, the definition references the date private flood insurance is provided to the institution.

Commenters also asked the Agencies to clarify which version of an SFIP a regulated lending institution should use for comparison with a private flood insurance policy. As stated in the Supplementary Information section of the proposed rule, when determining whether coverage is at least as broad as coverage provided under an SFIP, regulated lending institutions should compare like policies (*e.g.*, a policy covering a 1–4 family residence or a single family dwelling unit in a condominium to an SFIP dwelling policy, a policy covering all other buildings except residential condominium buildings to an SFIP general property policy, or a policy covering a residential condominium building to an SFIP Residential Condominium Building Association Policy). As noted previously, the "at least as broad as" provision in the final rule now includes language requiring a comparison with an SFIP for the same type of property.

B. Requirement to Purchase Flood Insurance

The Agencies' existing rules implement the statutory flood insurance purchase requirement and provide that a regulated lending institution shall not make, increase, extend, or renew any designated loan[26] unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. Furthermore, the coverage amount must be 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 Federal flood insurance statutes. The rules also provide that flood insurance coverage under the Federal flood insurance statutes is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

[26] *Supra* footnote 19 defining "designated loan."

The Agencies proposed to amend this section of their rules to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Biggert-Waters Act, which requires that all regulated lending institutions accept "private flood insurance," as defined in the statute, in satisfaction of the flood insurance purchase requirement if the policy meets the requirements for coverage under the flood insurance purchase requirement.[27] Meeting the "requirements for coverage" means that 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.

Although some commenters supported the proposed mandatory acceptance requirement, several commenters expressed concern that the proposed requirement would not permit regulated lending institutions to reject policies for reasons of safety and soundness. In response to these concerns, the Agencies note that the private flood insurance definition already contains criteria that address safety and soundness, such as the requirement for the insurance company to be licensed, admitted, or otherwise approved to engage in the business of insurance by a State regulator.

Other commenters asserted that regulated lending institutions would be unable to comply with the proposed mandatory acceptance requirement because they would not have timely access to the necessary documents. These commenters stated that regulated lending institutions typically only receive a declarations page and often do not receive copies of the full policies or only receive them after considerable time has passed. One commenter was unsure how the

[27] 42 U.S.C. 4012a(b)(1)(B).

mandatory acceptance requirement would affect preexisting force placement requirements[28] that provide for the release of a force placed policy following the presentation of a declarations page by the borrower evidencing the borrower's purchase of flood insurance. Another commenter asked whether regulated lending institutions are expected to force place insurance if the full policy is not available.

The Agencies acknowledge that under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of flood insurance. However, a declarations page may be insufficient for a regulated lending institution to make a determination that the institution must accept a private flood insurance policy in satisfaction of the flood insurance purchase requirement if the declarations page does not provide enough information for the institution to determine that the policy meets the statutory definition of "private flood insurance." In these circumstances, the regulated lending institution should request additional information about the policy to aid it in making its determination.

Several commenters requested that the Agencies provide flexibility for private flood insurance that exceeds the coverage required by the flood insurance purchase requirement. The Agencies believe that there is no need for such additional flexibility because the mandatory acceptance requirement applies only to private flood insurance provided in satisfaction of the flood insurance purchase requirement. Regulated lending institutions can exercise their discretion to accept any policy provided by a private insurer offering additional coverage beyond the flood insurance purchase requirement.

As previously mentioned, some commenters raised concerns that the mandatory acceptance requirement would conflict with existing State laws. Some of the examples

[28] *See* 12 CFR 22.7(b)(2) (OCC); 12 CFR 208.25(g)(2)(ii) (Board); 12 CFR 339.7(b)(2) (FDIC); 12 CFR 760.7(b)(2) (NCUA); 12 CFR 614.4945(b)(2) (FCA).

commenters cited involved the restrictiveness of cancellation provisions, the 45-day cancellation notice, the one-year maximum for filing suit from date of a claim denial, and the inclusion of information on the availability of NFIP policies. The Agencies recognize that there may be conflicts between the definition of "private flood insurance" and State laws, and that the laws of certain States may prevent flood insurance policies issued by companies regulated by these States from meeting the definition of "private flood insurance." In such cases, regulated lending institutions are not required to accept policies that comply with State laws and conflict with the definition of "private flood insurance." However, as discussed in greater detail below, regulated lending institutions may still exercise their discretion to accept certain policies issued by private flood insurers, even if the policies do not conform to the definition of "private flood insurance."

For the reasons stated previously, and because the Biggert-Waters Act specifically mandates that regulated lending institutions accept "private flood insurance" as defined in the statute, the Agencies are adopting the mandatory acceptance requirement as proposed, with nonsubstantive changes to simplify the provision's wording and to add a cross-reference citation for the flood insurance purchase requirement.

C. Compliance Aid for Mandatory Acceptance

The Agencies were concerned that many regulated lending institutions, especially small institutions with a lack of technical expertise regarding flood insurance policies, would have difficulty evaluating whether a flood insurance policy meets the definition of "private flood insurance." For this reason, the proposed rule included a compliance aid that provided a policy would be deemed to meet the definition of "private flood insurance" if the following three criteria were met: (1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of "private flood insurance" by identifying the

provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition; (2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and (3) the policy includes the following statement 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."

The Agencies received numerous comments on the proposed compliance aid. Although there was broad support for the inclusion of a compliance aid to facilitate regulated lending institutions' determinations, commenters largely reacted negatively to the specific proposed criteria and contended that the proposed compliance aid would not be helpful. Moreover, commenters stated that the proposed compliance aid would not cause insurance providers to alter their policies to include all of the requirements in the compliance aid simply to demonstrate that their policies meet the definition of "private flood insurance." A number of commenters suggested that it would be more useful to include a safe harbor to shield regulated lending institutions.

With respect to the first criterion, commenters stated that permitting a policy to be deemed to meet the definition of "private flood insurance," only if it includes or is accompanied by a written summary that, among other requirements, demonstrates how the policy meets the definition of "private flood insurance," would be unworkable and unnecessarily burdensome for insurance companies and therefore prevent the compliance aid from becoming widely adopted. These commenters further indicated that insurers would be reluctant to take on the additional liability potentially associated with a summary, especially because regulated lending institutions

would be required to accept a policy that meets the definition of "private flood insurance" even if the policy were not accompanied by a summary. Some commenters stated that a summary would provide assurance and recourse for regulated lending institutions, but others stated that the summary may lead to increased confusion about the breadth of coverage.

In response to the second criterion, commenters contended that requiring a regulated lending institution to provide written verification that the policy includes the provisions identified by the insurer in its summary would be unnecessarily burdensome for regulated lending institutions, especially those that do not immediately receive all of the documentation associated with the insurance policy in a timely manner or that do not have relevant insurance expertise. Some commenters noted that this criterion would require regulated lending institutions to duplicate the insurance company's work under the first and third criteria and still not relieve institutions of liability for their determinations. Others noted that this criterion would cause delays for borrowers. One commenter proposed only requiring regulated lending institutions to verify effective dates, coverage amounts, and names of insurers for the purpose of the compliance aid.

With respect to the third criterion, some commenters suggested that insurers would be unwilling to provide the proposed statement because it could lead to unwanted liability for the insurance company. Other commenters stated that the statement would be unnecessarily burdensome for the insurance industry because insurers would need to compare their policies to the SFIP and possibly consult with State regulators for review or approval. Another commenter stated that many private flood insurance policies already contain assurance clauses. Several commenters stated that the proposed statement would provide regulated lending institutions and policyholders with adequate recourse in cases where the coverage does not actually meet the

definition of "private flood insurance." Other commenters requested that the Agencies modify the mandatory acceptance requirement to permit or require regulated lending institutions to reject policies that are not accompanied by the statement.

Many commenters suggested alternative approaches to make it easier for regulated lending institutions to apply the mandatory criteria and to relieve regulated lending institutions of liability for their determinations. One commenter suggested a safe harbor based on State regulatory approval. Two other commenters requested that the Agencies provide a template or model language for a compliance aid that could be used in insurance policies. Several commenters supported a safe harbor that would permit regulated lending institutions to rely on insurer certifications. Some commenters contended that this type of safe harbor would remove burden and delays, reduce risk and uncertainty, improve consistency across the market, and promote the acceptance of private flood insurance. One commenter stated that permitting regulated lending institutions to rely on insurer certifications would align flood insurance with the larger hazard insurance market. Another commenter stated that regulated lending institutions should be permitted to rely on any type of assurance that is legally enforceable against the insurer, rather than only allowing the statement as a provision of, or endorsement to, a private flood insurance policy.

In response to commenter concerns, the Agencies have simplified the compliance aid in the final rule by removing the first two criteria – the insurer's written summary demonstrating how the policy meets the definition of "private flood insurance" and the regulated lending institution's written verification of the accuracy of this summary. Furthermore, the Agencies have revised the third proposed criterion to clarify that a regulated lending institution may determine that a policy meets the definition of "private flood insurance" without further review

of the policy 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." 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 on this statement and instead make its own determination.

The Agencies do not generally regulate insurers and cannot require an insurance policy to include this compliance aid statement. However, if insurers choose to include this statement in their policies, it will facilitate the ability of regulated lending institutions, 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 across the market. In this way, the compliance aid is intended to leverage the expertise of insurers to assist regulated lending institutions. Additionally, a policy that includes this statement may provide policyholders and regulated lending institutions with recourse against insurance companies that fail to abide by the terms included in the definition of "private flood insurance," consistent with relevant State law. 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.

D. Discretionary Acceptance

As noted in the Supplementary Information section of the proposed rule, although section 102(b)(1)(B) of the FDPA[29] (as added by section 100239(a)(1) of the Biggert-Waters Act) requires a regulated lending institution to accept "private flood insurance," as that term is defined by statute, in satisfaction of the flood insurance purchase requirement, the Biggert-Waters Act is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance." Furthermore, the Agencies observe that the Biggert-Waters Act did not disturb the "flood insurance" purchase requirement in section 102(b) of the FDPA and that the term "flood insurance" in the FDPA remains undefined after the passage of the Biggert-Waters Act. Accordingly, consistent with the Congressional intent of the Biggert-Waters Act to stimulate the private flood insurance market,[30] the Agencies are construing the term "flood insurance" in the flood insurance purchase requirement in section 102(b) of the FDPA to continue to permit regulated lending institutions to exercise their discretion to accept certain policies issued by private insurers that do not contain all of the criteria in the statutory definition of "private flood insurance."

To this end, the proposed rule provided that regulated lending institutions could accept, on a discretionary basis, a flood insurance policy issued by a private insurer if the policy meets the amount and term requirements specified in the flood insurance purchase requirement, and: (1) is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions,

[29] 42 U.S.C. 4012a(b)(1)(B).

[30] The Biggert-Waters Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to "increase the role of private markets in the management of flood insurance risk." H. Rep. No. 112-102, at 1 (2011); *see also* 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located; (2) covers both the mortgagor and mortgagee as loss payees; (3) provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and (4) is either "at least as broad" as the coverage provided under an SFIP or provides coverage that is "similar" to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer.[31]

The proposed rule stated that to determine whether the coverage "is similar" to coverage provided under an SFIP, a regulated lending institution would have to: (1) compare the private policy with an SFIP to determine the differences between the private policy and an SFIP; (2) reasonably determine that the private policy provides sufficient protection of the loan secured by the property located in an SFHA; and (3) document its findings.

The Agencies received numerous comments on this provision. Although a few commenters were critical of allowing the discretionary acceptance of private flood insurance, the majority of commenters expressly supported having some type of discretionary acceptance provision in the regulation. One commenter critical of this provision stated that private flood insurance that does not meet the statutory minimum standards is likely to lead to abuse of homeowners, and that to protect consumers, the Agencies should eliminate the discretionary acceptance of private polices that do not meet the minimum statutory requirements. Another

[31] The Agencies included this proposed provision pursuant to their authority under the FDPA to issue regulations directing regulated lending institutions not to make, increase, extend, or renew any loan secured by property located in an SFHA unless the property is covered by "flood insurance." *See* 42 U.S.C. 4012a(b).

commenter stated that permitting discretionary acceptance would leave room for errors and increased risks of liability.

In response to these concerns, the Agencies note the important role that State insurance laws and regulators play regarding the oversight of insurance activities in each State. This role is acknowledged in the discretionary acceptance provision, which provides that a regulated lending institution may only accept a flood insurance policy issued by a private insurer, including a policy for residential property issued by a surplus lines insurer, that is licensed, admitted, or otherwise approved to engage in the business of insurance by a State insurance regulator. In the case of a policy insuring nonresidential commercial property issued by a surplus lines insurer, the insurer must be recognized, or not disapproved, by a State insurance regulator.

A third commenter disagreed with the interpretation in the proposed rule that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance" in the Biggert-Waters Act. However, as discussed previously, section 100239 of the Biggert-Waters Act, which requires the acceptance of policies that meet the definition of "private flood insurance," did not disturb the "flood insurance" purchase requirement in section 102(b) of the FDPA. Furthermore, the term "flood insurance" as used in section 102(b) of the FDPA remains undefined after the passage of the Biggert-Waters Act. Therefore, the Agencies find that the statute may be interpreted, consistent with the Congressional intent of the Biggert-Waters Act, to permit regulated lending institutions to accept certain flood insurance policies issued by private insurers that may not contain all of the criteria in the statutory definition of "private flood insurance."

Those commenters in favor of this provision stated that discretionary acceptance is consistent with Congressional intent, and that current law and regulations permit regulated lending institutions to accept private flood insurance. However, most of these commenters criticized the criteria for discretionary acceptance in the proposed rule as overly burdensome and restrictive.

The Agencies received many general comments indicating that the proposed criteria would not provide regulated lending institutions with the flexibility or certainty needed to encourage the acceptance of flood insurance policies issued by private insurers. Two of these comments stated that the proposed discretionary acceptance criteria were too similar to the mandatory acceptance criteria and would prevent the development of an alternative private flood insurance market. One commenter noted that the proposed criteria would result in the rejection of many private policies that are widely accepted by regulated lending institutions today.

Commenters also addressed the difficulty for regulated lending institutions in applying the criteria. Some commenters noted that the analysis required by the proposed provision would be overly burdensome for regulated lending institutions and that institutions would struggle to apply all of the criteria because they do not have the insurance expertise required for the necessary determinations. One commenter stated that the criteria were insufficiently detailed, which would result in inconsistent application of the rule. Some commenters asserted that regulated lending institutions would be unwilling to perform the analysis required by the proposed provision due to the potential liability associated with discretionary acceptance. These commenters maintained that lenders would be concerned that they would be held liable if they approve a private flood policy later found not to have met the definition of "private flood

insurance." Commenters also stated that these criteria would be difficult for regulated lending institutions to apply, and therefore would create delays in mortgage loan closings.

Two commenters suggested adopting the "mutual aid society" criteria for all discretionary acceptance, which would involve applying a standard based on whether a policy provides sufficient protection of the loan consistent with general safety and soundness principles. Other commenters advocated for leaving the discretion to accept private policies with the regulated lending institution. Several commenters maintained that discretionary acceptance should rely on the State insurance regulatory system.

Another commenter requested the Agencies to make clear that the requirements in the Agencies' private flood insurance rule are in addition to requirements related to private flood insurance imposed by secondary market investors (such as Fannie Mae and Freddie Mac) that apply if the mortgage loan is sold to these investors.

With respect to specific aspects of the provision, some commenters noted that the cancellation requirement would not conform to State insurance laws. Two commenters noted that State laws generally provide for the circumstances under which cancellation of a policy is permitted, but they may not require a policy to be cancelled if such circumstances occur, as provided for in the proposed rule. One commenter stated that private policies are unlikely to conform to SFIP time frames and supported having "reasonable" cancellation notices. Two commenters supported having a mandatory 45-day notice of cancellation to protect consumers.

Many commenters were opposed to a requirement that policies be "at least as broad as" an SFIP for the purposes of discretionary acceptance and raised similar issues to those raised about this standard in the mandatory acceptance requirement, described previously. Several commenters requested further clarification of the "similar" standard, especially regarding

deductibles that do not align with the SFIP. One commenter supported replacing "similar" with "comparable" to prevent a rigid feature-by-feature approach, while another commenter stated that regulated lending institutions only should be permitted to accept "at least as broad as" policies because "similar" policies would endanger consumers. Another commenter suggested that instead of the "similar" standard, regulated lending institutions should be permitted to accept policies that provide sufficient protection of the loan consistent with general safety and soundness principles, noting that this standard would reduce ambiguity, complexity, and inconsistent application of the discretionary standard and that institutions already have processes to assess the safety and soundness of insurance policies. Another commenter stated that a private policy may offer equal or better overall protection even though it has provisions that are not entirely equivalent to those of an SFIP. One commenter suggested allowing consumers to determine the amount and extent of personal property coverage, rather than requiring the policy to match the coverage specified in an SFIP.

Several commenters noted that the proposal's requirement that regulated lending institutions compare a private policy to an SFIP to determine the differences between the two policies would be burdensome for institutions. One commenter specifically stated that this provision would require an unnecessarily detailed comparison with the SFIP and that regulated lending institutions instead should be permitted to accept (without conducting further analysis) any policy that provides sufficient protection of the loan, meets the other discretionary acceptance criteria, and has similar deductibles, exclusions, and conditions. Another commenter asserted that this requirement is redundant given the requirement that regulated lending institutions evaluate how a private policy's coverage compares to an SFIP.

Several commenters also requested the Agencies to clarify the phrase "sufficient protection of the loan." One commenter recommended focusing on safety and soundness similar to the standard for the proposed mutual aid societies provision. Another commenter suggested that current due diligence practices would be sufficient to meet this standard. One commenter stated that "sufficient protection of the loan" is adequately clear.

Some commenters opposed the requirement that regulated lending institutions document both their findings relating to the comparison of the policy to an SFIP, and the determination that the policy provides sufficient protection of the loan. One commenter stated that regulated lending institutions will avoid accepting private policies because they will be unwilling to undergo the work necessary to document decisions. Another commenter supported allowing regulated lending institutions to use existing practices and a basic checklist instead of the more burdensome process required by the proposal.

Several commenters stated that regulated lending institutions should have the discretion to accept private flood insurance for residential properties, in addition to nonresidential properties, issued by surplus lines insurers. Several of these commenters noted that State insurance regulators impose requirements on surplus lines insurers and that surplus lines insurance constitutes a substantial portion of the private flood insurance market.

Several commenters expressed support for a separate approach under discretionary acceptance for nonresidential flood insurance policies. These commenters noted that owners of such properties are often more sophisticated than owners of residential properties. They also noted that private commercial policies are frequently very different from SFIPs in that they cover multiple perils, have higher deductibles, and may cover multiple properties located in different States, and therefore, would not meet the discretionary acceptance criteria. One commenter

stated that the rule would impose unnecessary burdens on nonresidential and commercial property owners and that regulated lending institutions should have more discretion to accept flood insurance policies related to commercial properties. Some commenters also stated that regulated lending institutions do not have the expertise to conduct the review of complex commercial and multifamily policies necessary to apply the criteria. One commenter advocated for allowing regulated lending institutions to accept a nonresidential policy based on a determination that the policy provides sufficient protection of the loan consistent with safety and soundness.

As with the proposed definition of "private flood insurance," commenters also raised concerns with respect to the application of the proposed discretionary criteria to condominium mortgage loans or mixed-use community associations. Some commenters specifically requested an exception for policies covering condominiums from the proposed requirement that the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees because regulated lending institutions are often not listed as loss payees in policies that cover loans for individual condominium units. These commenters stated that a regulated lending institution would not be permitted to accept a policy issued to a homeowners' association for a condominium building or planned unit development in satisfaction of the flood insurance purchase requirement because policies, such as a Residential Condominium Building Association Policy (RCBAP), are purchased by homeowners' associations for the benefit of the association and its unit owners, and typically do not include as beneficiary each regulated lending institution that provides mortgage loans to individual unit owners.

Several commenters requested a compliance aid, as provided for the proposed mandatory acceptance requirement, to assist regulated lending institutions in performing the discretionary

acceptance analysis. One commenter suggested that a compliance aid could take the form of a model disclosure form.

After reviewing the comment letters, the Agencies have concluded that the final rule should include a discretionary acceptance provision, but that the provision should be less burdensome and restrictive than that included in the proposed rule, and more closely reflect the current policy of the Agencies with respect to both private flood insurance and hazard insurance. Therefore, the discretionary acceptance provision in the final rule no longer includes some of the proposed criteria, including the requirement that a policy include a specific cancellation clause, and the requirement that coverage in a flood insurance policy issued by a private insurer be "at least as broad as" or "similar to an SFIP." By eliminating the cancellation provision and the "at least as broad as" and "similar to an SFIP" criteria, the final rule addresses commenters' concerns that the proposed criteria would be difficult to apply to commercial policies. Thus, the Agencies have concluded that a separate provision specifically applicable to commercial policies is not necessary. Furthermore, the Agencies believe that the simplification of the discretionary acceptance provision negates the need for a compliance aid provision for discretionary acceptance as some commenters advocated.

The Agencies also have modified the mortgage interest clause provision to address commenters' concerns related to condominium properties. The final rule now provides that to be accepted under the discretionary acceptance provision, the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association or other applicable group as a common expense. This exception is identical to the

exception provided for the requirement to escrow flood premiums currently contained in the Agencies' flood insurance rules.[32]

Finally, the Agencies have made a number of technical amendments to the discretionary acceptance provision in the final rule. First, the proposed rule provided that the policy must meet the "amount and term requirements" of the flood insurance purchase requirement. As indicated previously, these requirements provide that the property securing a designated loan must be covered by flood insurance for the term of the loan and that the amount of insurance coverage must be 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 Federal flood insurance statutes. However, the requirement that the property be covered for the term of the loan applies to the regulated lending institution, and is not a provision that must be included in the flood insurance policy. Therefore, the final rule removes the reference to the term requirement. The Agencies also have moved the amount requirement from the introductory text to a separate prong of the provision to more clearly delineate it as a criterion of acceptance.

Second, the agencies have replaced the phrase "loan secured by the property located in a special flood hazard area" each time it appears with the more accurate defined term "designated loan." Third, the Agencies have added "jurisdiction" each time "State" is referenced to correct inconsistencies in the proposed rule. Finally, the Agencies have made nonsubstantive changes to simplify wording.

[32] 12 CFR 22.5(a)(2)(iii) (OCC), 12 CFR 208.25(e)(1)(ii)(C) (Board), 12 CFR 339.5(a)(2)(iii) (FDIC), 12 CFR 614.4935(a)(2)(iii) (FCA), and 12 CFR 760.5(a)(2)(iii) (NCUA).

Accordingly, the final rule permits regulated lending institutions to accept flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of "private flood insurance" if four criteria are met.[33]

First, the policy must provide coverage in the amount required by the flood insurance purchase requirement.

Second, the policy must be issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located. As indicated in the proposed rule, this criterion is included in the definition of "private flood insurance" in the Biggert-Waters Act, and the Agencies find that it is appropriate to include it as a criterion for discretionary acceptance in the final rule as well. As noted previously in the discussion of mandatory acceptance, the Agencies believe that surplus lines insurers for noncommercial properties are covered as insurance companies that are "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."

Third, the policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the

[33] The Agencies note that regulated lending institutions intending to sell mortgages into the secondary market also should review the requirements of such secondary market investors regarding acceptable private flood insurance.

condominium association, cooperative, homeowners association, or other applicable group as a common expense.

Fourth, the policy must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.

Basing the discretionary acceptance provision on loan protection appropriately focuses the ability of a regulated lending institution to accept a flood insurance policy issued by a private insurer on a key purpose of the Agencies' flood insurance rules. It also simplifies this provision, thereby facilitating the ability of regulated lending institutions, especially community financial institutions, to accept flood insurance policies issued by private insurers that do not satisfy the definition of "private flood insurance" in the Biggert-Waters Act. Furthermore, the addition of a safety and soundness criterion makes the final rule's standard for discretionary acceptance similar to the standard included in both the proposed and final "mutual aid society" provision, and reflects suggestions made by public commenters.

The Agencies note that some factors, among others, that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection of a loan include: whether the flood insurance policy's deductibles are reasonable based on the borrower's financial condition; whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary; whether the terms and conditions of the flood insurance policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; whether the flood insurance policy complies with

applicable State insurance laws; and whether the private insurance company has the financial solvency, strength, and ability to satisfy claims.

E. Mutual Aid Societies

The proposed rule permitted regulated lending institutions to accept certain flood coverage provided by mutual aid societies, which by their nature do not meet all of the requirements for discretionary acceptance in the proposed rule. As indicated previously, the final rule defines "mutual aid society" 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. Under the proposed rule, a regulated lending institution could accept a private policy issued by a "mutual aid society" in satisfaction of the flood insurance purchase requirement provided four criteria are met: (1) the institution's primary supervisory agency has determined that such types of policies qualify as flood insurance for purposes of the Federal flood insurance statutes; (2) the policy meets the amount of coverage for losses and term requirements specified in the flood insurance purchase requirement; (3) the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and (4) the regulated lending institution has determined that the policy provides sufficient protection of the loan secured by the property located in an SFHA. The proposed rule required that in meeting this last criterion, the institution would need to verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition; consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses;

and document its conclusions. The Agencies included this mutual aid societies provision in the proposal in response to several commenters on the October 2013 Proposed Rule that supported adding provisions permitting regulated lending institutions to accept certain non-traditional coverage, such as certain Amish Aid Plans.

Most commenters were generally supportive of this mutual aid societies provision. One commenter noted that having the ability to accept coverage issued by mutual aid societies would better meet the needs of certain communities and the regulated lending institutions that serve them by keeping down costs and respecting the borrower's religious or other beliefs. Another commenter noted that the Agencies' proposed provision for mutual aid societies contained requirements that more closely reflect the manner in which regulated lending institutions actually evaluate private policies today. One commenter in particular noted that the provision for mutual aid societies would be very useful for Farm Credit System institutions.

A few commenters questioned the scope of the mutual aid societies provision. One commenter recommended that loans secured by commercial and multifamily properties should be exempted from a provision that permits the acceptance of coverage provided by mutual aid societies because mutual aid societies would be unable to repair large commercial and multifamily buildings.

The Agencies believe there is no need to limit the mutual aid societies provision in this fashion as the final rule does not require regulated lending institutions to accept coverage issued by mutual aid societies. The mutual aid societies provision only makes it possible for regulated lending institutions to exercise their discretion to accept coverage issued by mutual aid societies in satisfaction of the flood insurance purchase requirement, provided the coverage meets the criteria adopted by the Agencies. Furthermore, such coverage only can be accepted if the

institution determines that the coverage provides sufficient protection of the loan consistent with general safety and soundness principles.

A few commenters encouraged the Agencies to expand the mutual aid societies provision to include other variations of traditional private flood insurance, including self-insurance and captive insurance companies, which employ risk shifting and distribution mechanisms or otherwise mitigate risks by partnering with unrelated insurance companies. The Agencies note that other forms of insurance, including captive insurance, self-insurance, and other types of alternative insurance policies, are permissible if they meet the requirements of discretionary acceptance and otherwise comply with applicable laws. Therefore, the Agencies decline to expand the mutual aid societies provision in this manner.

One commenter stated that the proposed rule did not address how to comply with the escrow requirement for mutual aid society agreements. The Agencies note that the escrow requirement only applies if the borrower is paying a premium for the flood coverage. If there is no premium collected for flood coverage provided by mutual aid societies, the escrow requirement would not apply.

The Agencies also received comments on the specific criteria for accepting mutual aid society coverage included in the proposed rule. One commenter requested clarification with respect to the first criterion, which required the regulated lending institution's primary supervisory agency to have determined that mutual aid society policies qualify as flood insurance. This commenter requested that the Agencies provide clarifying guidance as to how the Agencies will determine that policies issued by mutual aid societies will be acceptable. This commenter also suggested that the Agencies provide an approved list of acceptable mutual aid societies. As noted in the proposed rule, the OCC and FCA will conduct their own evaluations

of mutual aid societies using the criteria that regulated lending institutions are expected to consider under 12 CFR 22.3(c)(4) or 12 CFR 614.4930(c)(4), respectively. Based on their current practices regarding non-traditional flood insurance, the Board, FDIC, and NCUA expect that cases in which they approve policies issued by mutual aid societies will be rare and limited.

Another commenter criticized the proposed rule for permitting the Agencies to adopt different approaches to accepting mutual aid society coverage. Specifically, this commenter opined that mutual aid society coverage should be treated similarly by each Agency, and that inconsistent acceptance will create unnecessary confusion and barriers for borrowers who may already be limited in their banking options due to the rural location of many communities, and who would be further limited if only certain banks are able to accept mutual aid society policies. However, the Agencies believe that this provision maintains the status quo for how the Agencies currently regulate their institutions and, therefore, should not create additional difficulties for borrowers or regulated lending institutions.[34] The Agencies, therefore, adopt this first criterion as proposed, with technical changes. The Agencies have replaced the word "policy" with "plan" in this criterion, as well as throughout the mutual aid societies provision, to more accurately describe the type of agreement issued by mutual aid societies. The Agencies also have removed the superfluous phrase "types of" in this criterion.

[34] The OCC notes that it currently permits national banks and Federal savings associations to accept mutual aid society plans, such as plans issued by the Amish, in satisfaction of the flood insurance purchase requirement. The FCA also permits its System institutions to accept this coverage. Such plans are written agreements issued by members of a community who share a common religious bond and have a demonstrated history of covering losses to members' property caused by flooding in accordance with this common bond, either by paying to cover the cost of damaged structures or by repairing or rebuilding the structures. Accordingly, the OCC and FCA believe that such plans provide sufficient protection of a loan secured by the property, protect the institution as well as the borrower, and are issued by an organization that meets the definition of "mutual aid society" included in the final rule. Therefore, the final rule maintains the status quo by continuing to allow national banks, Federal savings associations, and Farm Credit System institutions to accept flood coverage issued by mutual aid societies, such as Amish Aid Plans.

One commenter requested that the Agencies clarify their expectations for the requirements in the mutual aid societies provision, particularly with respect to "the amount of coverage for losses and term requirements" and identification of "loss payees," as included in the second and third criteria, respectively. This commenter maintained that strict compliance with these expectations would prohibit a regulated lending institution from offering a mortgage secured by property located in an SFHA to a member of a mutual aid society because the written agreements provided by mutual aid societies do not necessarily include such specific details, do not state the insurable value of a property, and do not name the regulated lending institution as a loss payee. Instead, this commenter continued, these agreements are simply assurances by the community to rebuild a structure in the event that it is damaged or destroyed by a flood.

The Agencies understand that coverage provided by mutual aid societies may not contain all of the same information included in private flood insurance policies issued by regulated insurance companies. However, mutual aid society plans reviewed by the Agencies to date have contained clauses that name the regulated lending institution and the borrower as loss payees and have stated the insurable amount. Therefore, the Agencies are adopting the second and third criteria as proposed, with one technical change to the second criterion. The Agencies have removed the reference to term requirements, because this reference, as noted in the discretionary acceptance discussion, is the separate responsibility of the lender, and not a provision that must be included in the policy. Instead, as with the discretionary acceptance provision, the final rule provides that the mutual aid society plan must provide coverage in the amount required by the flood insurance purchase requirement, *i.e.,* the amount of coverage must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the Federal flood insurance statutes.

As indicated previously, the fourth criterion in the proposed rule provided that, to accept flood coverage from a mutual aid society, a regulated lending institution would need to determine that the coverage provides sufficient protection of the loan secured by the property located in an SFHA. In meeting this criterion, the regulated lending institution would need to: (1) verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition; (2) consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and (3) document its conclusions.

Several commenters stated that the "demonstrated record of covering losses" provision in this criterion would create a major impediment to accepting mutual aid society policies because regulated lending institutions would struggle to determine and document the policy provider's demonstrated record of covering losses. As previously explained in the discussion of the analogous term "demonstrated history" in the definition of "mutual aid society," the Agencies view this criterion as necessary for preventing abuse and believe regulated lending institutions will be able to obtain the information they need to document their determinations.

However, after further review, the Agencies are simplifying and streamlining this criterion in the final rule. Because the definition of "mutual aid society" already requires that the entity "has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding," the proposed requirement that the regulated lending institution consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses, is duplicative and unnecessary. Therefore, the Agencies have removed this "ability to satisfy claims" language, and have included a specific cross-reference to the definition in the introductory text of this provision.

The Agencies also have removed the reference to deductibles in this criterion so that it is similar to the language included in the revised discretionary acceptance provision, which does not specifically list factors that a regulated lending institution could consider when determining whether a private insurance policy is consistent with safety and soundness. However, as previously indicated in the discretionary acceptance provision discussion, regulated lending institutions can still consider the reasonableness of deductibles when determining whether the mutual aid society coverage provides sufficient protection of a loan.

Accordingly, the final rule provides that a regulated lending institution may accept a plan issued by a mutual aid society in satisfaction of the flood insurance purchase requirement provided that the following four criteria are met:

First, the regulated lending institution's primary Federal supervisory agency has determined that such plans qualify as flood insurance for purposes of this Act;

Second, the plan must provide coverage in the amount required by the flood insurance purchase requirement;

Third, the plan must cover both the mortgagor(s) and the mortgagee(s) as loss payees; and

Fourth, the plan must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.

F. Effective Date

The Agencies received comments regarding the amount of time regulated lending institutions would need to implement a final rule on the private flood insurance provisions of the Biggert-Waters Act. Some commenters requested that the Agencies provide at least one year to

implement the final rule. One commenter stated that the Agencies should provide at least 180 days from the time the final rule is published in the *Federal Register* to implement the rule.

The Agencies are adopting an effective date of July 1, 2019. The Agencies believe this date affords regulated lending institutions sufficient time to make necessary changes to their policies and procedures as well as operating systems, and to train staff on such changes to ensure compliance with the final rule, without unnecessarily delaying the implementation of the rule. Moreover, this date complies with requirements in the Administrative Procedure Act (APA) and section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), as discussed in the Regulatory Analysis section below regarding the Effective Date. In addition, the Agencies note that section 302(b)(2) of the RCDRIA provides that a person may comply with the regulation before the effective date of the regulation.[35] Therefore, those regulated lending institutions that are able to and would like to comply with the final rule prior to July 1, 2019, may do so. The Agencies note that until July 1, 2019, regulated lending institutions may continue to accept flood insurance policies issued by private insurers and coverage provided by mutual aid societies as currently permitted by each Agency.

V. Regulatory Analysis

A. *Regulatory Flexibility Act*

OCC: Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.[36] Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial

[35] 12 U.S.C. 4802(b)(2).
[36] *See* 5 U.S.C. 601 *et seq.*

number of small entities and publishes its certification and a short explanatory statement in the *Federal Register* along with its rule.

The OCC currently supervises 1,246 banks (national banks, Federal savings associations, and branches or agencies of foreign banks). The OCC finds that 1,094 OCC-supervised banks may be affected by the rule,[37] of which approximately 774 are small entities.[38] Thus, the OCC assumes the rule impacts a substantial number of small banks.

Because a limited number of borrowers are required to have flood insurance, part of the OCC cost estimate is based on the reported number of flood insurance policies in place for designated loans in July 2018, which is 3,226,416.[39] Assuming that no more than 10 percent[40] of these policies (per year) could be issued by private insurance companies going forward, the OCC's estimated compliance cost related to the acceptance of private flood insurance policies is approximately $40.31 million.[41]

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5

---

[37] To estimate the number of banks that may be affected by the final rule the OCC determined the number of banks that (a) self-identify by reporting mortgage servicing assets, reporting loans secured by real estate, or as originating 1-4 family residential mortgage loans on a Call Report submitted for any quarter in calendar year 2017 or one of the first three quarters of 2018 or (b) are identified by OCC examiners as originating residential mortgage loans or as Home Mortgage Disclosure Act (HMDA) filers.

[38] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[39] The reported numbers are found at Policy & Claim Statistics for Flood Insurance. The OCC's cost estimate may be overstated because the estimate does not exclude loans serviced by institutions for which another agency is the primary Federal regulator.

[40] The RFA discussion in the proposed rule also specified a 10 percent increase in private flood insurance policies as a result of this rulemaking. The OCC did not receive any comments on this number.

[41] This amount is based on an estimated per policy cost of $117 applied to 10 percent of the policies (322,642 policies × $117 per policy = $37.75 million), plus the cost to update policies and procedures of approximately $2.56 million. The time required to comply with the final rule is based on an estimate of approximately 1 hour per policy.

percent of total non-interest expense. The OCC estimates that the average cost per small bank is approximately $12,900 per year,[42] which is a combination of per policy costs ($10,544) [43] and costs associated with modifying existing policies and procedures ($2,340).[44] Using this cost estimate, the OCC believes the final rule will have a significant economic impact on two small banks, which is not a substantial number. Therefore, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a regulatory flexibility analysis is not required.

Board: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*., requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule*. The Board is adopting revisions to Regulation H to implement the private flood insurance provisions of the Biggert-Waters Act. Consistent with the Biggert-Waters Act, the final rule would require regulated lending institutions to accept any private insurance policy that meets the Biggert-Waters Act's definition of "private flood insurance" in satisfaction of the flood insurance purchase requirement. The final rule would also include a compliance aid that would permit a regulated

---

The time required to update policies and procedures to address the final rule is based on an estimate of 20 hours per bank. To estimate compensation costs associated with the rule, the OCC uses $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation, plus an additional 34.2 percent to cover private sector benefits, based on our review of data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100).

[42] Because the OCC assumes that the 20 banks that reported mortgage servicing assets in excess of $100 million will bear more of the costs than the average bank, the OCC allocates 70 percent of the per policy costs to these 20 banks.

[43] This number is derived as follows: 322,642 policies × $117 per policy × .30 (percent of policies allocated to banks that did not report mortgage servicing assets in excess of $100 million) ÷ 1,074 banks (1,094 total banks minus the 20 banks that reported mortgage servicing assets in excess of $100 million). The estimated cost per bank to modify policies and procedures is $2,340.

[44] Twenty hours × $117 per hour.

lending institution to conclude that a policy meets the Biggert-Waters Act definition of "private flood insurance" without further review of the policy if the policy, or an endorsement to the policy, states: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation." The final rule would also permit lenders to accept, at their discretion, flood insurance policies issued by private insurers, and plans issued by mutual aid societies, that do not meet the definition of "private flood insurance," provided they meet certain conditions.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis*. The Board did not receive any comments on the initial regulatory flexibility analysis.

3. *Small entities affected by the final rule*. All state member banks that are subject to the Federal flood insurance statutes and the flood insurance provisions of Regulation H would be subject to the final rule. As of January 2, 2019, there were 794 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of $550 million or less are considered small. Approximately 528 State member banks would be considered small entities by the SBA.

4. *Recordkeeping, reporting and compliance requirements*. The Board believes the final rule will not have a significant impact on small entities. First, the Board believes, based on comments received by the Agencies in response to the October 2013 and November 2016 Proposed Rules, that most existing flood insurance policies issued by private insurers would not meet the definition of "private flood insurance" under the Biggert-Waters Act and that insurers would likely request that lenders accept the policies under the more flexible discretionary acceptance provisions. The provisions on discretionary acceptance, including acceptance of plans issued by mutual aid societies, do not impose affirmative obligations upon lenders.

Accordingly, regulated lending institutions may choose not to accept policies under those provisions and therefore would have no associated compliance burden.

Second, with respect to flood insurance policies that a private insurer would seek to have a lender accept under the mandatory acceptance provisions, the Board notes that those regulated lending institutions, including those that are considered small entities, accepting flood insurance policies issued by private insurers today already have experience evaluating policies with the criteria in the Biggert-Waters Act definition of "private flood insurance." The Biggert-Waters Act criteria are almost identical to the criteria referenced in guidance that currently governs the acceptance of private policies by Federal Reserve-supervised institutions. Third, as discussed in the **SUPPLEMENTARY INFORMATION**, the Board believes the final rule would alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" under the mandatory acceptance provisions with the addition of a compliance aid that leverages the expertise of the insurer issuing the policy.

Although the final rule could impact a substantial number of small entities, the Board estimates that the costs to these entities will not be significant. The Board estimates that the cost for each covered small entity will be approximately $7,630 during the first year the proposal goes into effect. This estimate includes first year compliance costs[45] and ongoing costs[46] and

[45] Fixed compliance costs are estimated assuming each small entity requires one full-time employee working 20 hours at a rate of $117 an hour. The total fixed cost of compliance for all 794 covered entities is approximately $1.858 million, or $2,340 for each small entity in the first year.

[46] Ongoing compliance costs are estimated based upon available data. According to FEMA's *Policy and Claim Statistics for Flood Insurance* there are approximately 5,080,300 flood insurance policies nationally as of October 2018. Only 3,182,833 of these policies are located in "High Risk Areas" and would therefore require flood insurance. The Board estimated the future adoption rate of private flood insurance will be approximately 10 percent of the total of flood insurance policies in any given year. Further, small entities hold approximately 7.5 percent of all loans secured by real estate held in portfolio by all Federal Reserve-supervised banks as of September 30, 2018. The Board therefore assumed that small entities will have to review a similar share of annual private flood insurance

assumes that the usage of private flood insurance policies by borrower, as defined by the final rule, is distributed consistently across small entities. The actual ongoing cost estimate may be lower than stated because the estimate assumes that all of the policies for properties in High Risk Areas will cover loans held by Federal Reserve-supervised institutions when some of these loans may be held by institutions supervised by other Agencies.

5. *Significant alternatives to the final revisions*. The Board has not identified any significant alternatives that would reduce the regulatory burden associated with this final rule on small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*., generally requires an agency, in connection with a final rule, to prepare and make available a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[47] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to $550 million.[48]

Description of Need and Policy Objectives

The objective of this rule is to enact the private flood insurance provisions of the Biggert Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). Existing regulations require

policies. Ongoing policy review costs are estimated to be approximately $5,290 per year for each small entity, assuming one labor hour per year, per policy, at $117 per hour.

[47] 5 U.S.C. 601 *et seq*.

[48] The SBA defines a small banking organization as having $550 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* 13 CFR 121.201 (as amended, effective December 2, 2014). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

lending institutions to ensure that loans secured by properties located in Special Flood Hazard Areas (SFHAs) are covered by flood insurance that provides sufficient protection for the loan. This rule requires lenders to accept private flood insurance policies in order to meet flood insurance requirements, if the private policies meet the statutory definition of "private flood insurance" as defined in Biggert-Waters. The rule also provides lending institutions with broad discretion to accept private flood insurance that does not meet the Biggert-Waters definition of "private flood insurance" provided that the policies meet minimum criteria such as providing sufficient protection for the lender and borrower and meeting existing flood insurance requirements.

Description of the Final Rule

A description of the rule is presented in Section III: Summary of the Final Rule. Please refer to it for further information.

Other Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflicts between the final rule and any other Federal rule.

Response to Comments Regarding the Regulatory Flexibility Act

The FDIC did not receive any public comments on the supporting information it presented in the RFA section of the Notice of Proposed Rulemaking.

The Agencies did receive public comments on the proposed rulemaking. A summary of those comments, and the Agencies' consideration of them, is presented in Section II. Many commenters stated that small institutions would be heavily burdened by the need to review private flood insurance policies to determine if the policies met the criteria for discretionary acceptance in the proposed rule. The Agencies have simplified the criteria for discretionary

acceptance in the final rule so as to create less regulatory burden for lenders in general and for small institutions in particular.

Economic Impacts on Small Entities

The FDIC supervises 3,533 depository institutions, of which 2,726 are defined as small banking entities by the terms of the RFA.[49] This rule potentially affects all small entities that make loans secured by real estate. There are 2,716 FDIC-supervised small entities that hold some volume of loans secured by real estate and would therefore be affected by this rule,[50] so the rule potentially affects a substantial number of small entities. However, the FDIC does not believe the economic impact of the rule will be significant.

Banks do not report the number of loans issued that are secured by properties located in Special Flood Hazard Areas (SFHAs). However, FEMA reports that as of October 2018 there were 5,080,300 total flood insurance policies in force in the United States, and that 3,182,833 cover properties located in High Risk Areas and would therefore require flood insurance under existing regulations.[51] We assume that between one and ten percent, or 31,828 to 318,283 flood insurance policies, would be covered by private flood insurance as a result of adopting this rule.[52] This estimate does not count the number of existing private flood insurance policies;

[49] Call Report data, September 2018.
[50] *Ibid*.
[51] Federal Emergency Management Agency (FEMA). *Policy & Claim Statistics for Flood Insurance.* Accessed December 20, 2018. https://www.fema.gov/policy-claim-statistics-flood-insurance.
[52] A 2018 study estimated that private flood insurance accounts for 3.5 to 4.5 percent of primary residential flood insurance policies. This rule applies to both residential and commercial properties, so for this exercise we use an estimated maximum of 10 percent in order to arrive at a conservative estimate of the number of flood insurance policies covered by private flood insurance and to account for the fact that the prevalence of private flood insurance is likely to increase in the future. *See* Kousky, Carolyn, Howard Kunreuther, Brett Lingle, and Leonard Shabman, *The Emerging Private Residential Flood Insurance Market in the United States*, Wharton Risk Management and Decision Process Center: July 2018.

however, the FDIC believes that any such policies are likely included in the estimated range of flood insurance policies covered by private flood insurance.

The Federal Reserve estimates the total outstanding value of mortgage debt in the United States as of September 2018 at $15,269,457,000,000 and reports that $4,897,585,000,000 (32.07 percent) of mortgage debt is held by depository institutions.[53] Assuming that FDIC-insured institutions hold the same percentage of all flood insurance policies in SFHAs as they do of total outstanding mortgage debt, then FDIC-insured depository institutions hold a total of 1,020,735 loans in SFHAs covered by flood insurance policies,[54] of which 10,207 to 102,073 are assumed to be covered by private flood insurance.

Using Call Report data[55] and assuming that all FDIC-insured institutions hold the same percentage of total loans covered by flood insurance policies in SFHAs as they do of all mortgage debt, the FDIC calculates that depository institutions supervised by the FDIC hold between 2,971 and 29,707 loans covered by private flood insurance policies for properties located in SFHAs, and FDIC-supervised small entities hold between 535 and 5,350 loans covered by private flood insurance policies for properties located in SFHAs.

We assume that institutions will spend 45 minutes reviewing each private flood insurance policy and an additional 15 minutes documenting their conclusions (1 hour total) as a result of this rule. Under that assumption, and assuming an hourly cost of $112.32,[56] no small entities

[53] Board of Governors of the Federal Reserve System. *Mortgage Debt Outstanding.* Accessed December 20, 2018. https://www.federalreserve.gov/data/mortoutstand/current.htm

[54] 3,182,833 x .3207 = 1,020,735.

[55] Call Report data for September 2018 data show a total value of mortgage debt at depository institutions of $4,874,383,173,000 which is sufficiently close to the Federal Reserve's estimate to provide confidence that Call Report data and Federal Reserve data can be used together for this analysis.

[56] The estimate includes the May 2017 75th percentile hourly wage rate for Lawyers ($99.89) and Compliance Officers ($40.55) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2017 and June 2018 (2.85 percent) and grossed up by 55.5 percent to account for non-

will incur costs resulting from this rule that exceed 2.5 percent of annual noninterest expense or 5 percent of annual salary expense.

Based on the information presented above, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Alternatives Considered

This final rule differs from the proposal by simplifying the criteria that a private flood insurance policy must meet in order for lenders to accept the policy so as to comply with existing flood insurance requirements. The Agencies retained some criteria that private flood insurance policies must meet in order for an institution to accept them.

The Agencies considered not including any discretionary acceptance criteria in the final rule, which would allow institutions to accept any private flood insurance policy and would potentially be less burdensome for small institutions. The Agencies included minimum criteria in order to ensure that flood insurance, whether from a public or private insurer, sufficiently protects lenders and borrowers. The Agencies also understand that many institutions are reluctant to accept private flood insurance at all since existing regulations are unclear about what they can and cannot accept. This final rule outlines minimum criteria for discretionary acceptance in order to clarify the regulatory treatment of private flood insurance policies for loans in SFHAs.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with

monetary compensation as reported by the June 2018 Employer Costs for Employee Compensation Data. The calculation assumes that Lawyers and Compliance Officers would each complete 50 percent of the task of reviewing private flood insurance policies. The hourly cost estimate is calculated as (.50*$159.77 + .50*$64.86 = $112.32).

its affiliated associations, has assets and annual income more than the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

NCUA: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[57] Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the *Federal Register* along with its rule.[58] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[59] As of September 30, 2018, there are 3,862 small, Federally insured credit unions, and only about 2,593 of these credit unions would be affected by the final rule.

NCUA classifies the economic impact of total costs on a credit union as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. NCUA estimates that the average cost per small credit union is approximately $2,409 per year. Using this cost estimate, NCUA believes the final rule will have a significant economic impact on 62 small credit unions, which is not a substantial number. Therefore, NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

[57] 5 U.S.C. 603(a).
[58] 5 U.S.C. 605(b).
[59] 80 FR 57512 (September 24, 2015).

B. *Unfunded Mandates Reform Act of 1995*

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[60] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated annual UMRA cost is approximately $37.75 million.[61] This number is based on the cost of compliance with the final rule described in the OCC's RFA analysis of this final rule, minus the cost of updating policies and procedures, which is not mandated by the rule. Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

C. Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)[62] have determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 et seq.).

The OCC, FDIC, and NCUA each made a submission to OMB in connection with the proposed rule under the PRA. OMB instructed the OCC, FDIC, and NCUA to examine public comment in response to the proposed rule and include in the supporting statement of their

[60] Pub. L. 104-4, 109 Stat. 48 (1995), codified at 2 U.S.C. 1501 *et seq*.
[61] This is a conservative estimate because, although not required by UMRA, it includes the statutory mandate that banks accept policies that meet the definition of "private flood insurance."
[62] Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

submissions in connection with the final rule, a description of how they have responded to any public comments on the information collection, including comments on maximizing the practical utility of the collection and minimizing the burden. No comments were received regarding the information collection.

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB).

The collection of information that is subject to the PRA by this final rule is found in 12 CFR 22.3, 208.25(c), 339.3, and 760.3.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557-0326 (OCC), 7100-0280 (Board), 3064-0120 (FDIC), and 3133-0190 (NCUA).

Under §§ 22.3(c)(3), 208.25(c)(3)(iii), 339.3(c)(3), and 760.3(c)(3), institutions have the discretion to accept a flood insurance policy issued by a private insurer that does not meet the definition of "private flood insurance" if, among other things, the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Under §§ 22.3(c)(4), 208.25(c)(3)(iv), 339.3(c)(4), and 760.3(c)(4), institutions may accept a private policy issued by a mutual aid society if, among other things, the coverage provides sufficient protection of the designated loan, consistent with general safety and

soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Burden Estimates

OCC:

Number of Respondents: 56,469 responses from 1,094 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 14,118 hours.

Board:

Number of Respondents: 15,904 responses from 791 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 3,976 hours.

FDIC:

Number of Respondents: 29,711 responses from 3,509 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 7,428 hours.

NCUA:

Number of Respondents: 10,990 responses from 4,164 respondents.

Estimated average hours per response: 0.25 hours.

Proposed revisions estimated annual burden hours: 2,705 hours.

These collections are available to the public at *www.reginfo.gov*.

Comments are invited on:

(a) Whether the information collections are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

D. *Effective Date*

The APA[63] requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction.[64] Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations issued by a Federal banking agency[65] imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[66] The July 1, 2019 effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and on the first day of a calendar quarter following publication, July 1, 2019.

[63] Codified at 5 U.S.C. 551 *et seq*.
[64] 5 U.S.C. 553(d).
[65] For purposes of RCDRIA, "Federal banking agency" means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.
[66] 12 U.S.C. 4802(b).

E. *Riegle Community Development and Regulatory Improvement Act of 1994*.

Section 302(a) of the RCDRIA requires that each Federal banking agency,[67] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[68]

With respect to the effective date, the Federal banking agencies have considered the changes made by this final rule and believe that the effective date of July 1, 2019 should provide regulated lending institutions with adequate time to make appropriate adjustments to their review and closing process for designated loans to comply with these changes. With respect to administrative compliance requirements, the Federal banking agencies have considered the administrative burdens and the benefits of this final rule, and addressed them by modifying the proposed provision regarding the compliance aid for mandatory acceptance and the discretionary acceptance provision to make them simpler and less burdensome for regulated lending institutions. Further discussion of the Federal banking agencies' consideration of these provisions is found in other sections of this SUPPLEMENTARY INFORMATION section.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

[67] *Supra*, footnote 50.
[68] 12 U.S.C. 4802(a).

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and Recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 22 continues to read as follows:

AUTHORITY: 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 22.2 is amended by:

a. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), paragraphs (j) and (k) as (l) and (m), and (l) and (m) as (o) and (p); and

b. Adding new paragraphs (h), (k) and (n) to read as follows:

§ 22.2 Definitions.

* * * * *

(h) *Mutual aid society* means 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.

* * * * *

(k) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or 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; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ‘‘flood’’ to include the events defined as a ‘‘flood’’ in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include 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;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

(n) *SFIP* means, for purposes of §§ 22.2(k), a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a national bank or Federal savings association.

* * * * *

3. Section 22.3 is amended by adding paragraph (c) to read as follows:

§ 22.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*. (1) *Mandatory acceptance*. A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(k), in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance*. A national bank or Federal savings association may determine that a policy meets the definition of private flood insurance in § 22.2(k), without further review of the policy, 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.”

(3) *Discretionary acceptance*. A national bank or Federal savings association may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 22.2(k) in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the national bank or Federal savings association documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a national bank or Federal savings association may accept a plan issued by a mutual aid society, as defined in § 22.2(h), in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The OCC has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the national bank or Federal savings association documents its conclusion regarding sufficiency of the protection of the loan in writing.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is revised as set forth below:

4. The authority citation for part 208 continues to read as follows:

AUTHORITY: 12 U.S.C. 36, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

5. Amend § 208.25 by revising paragraphs (b)(7) through (b)(11) and adding paragraphs (b)(12) through (b)(14) and (c)(3) to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(b) Definitions. For purposes of this section:

* * * * *

(7) Mutual aid society means an organization–

(i) Whose members share a common religious, charitable, educational, or fraternal bond;

(ii) 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

(iii) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

(8) NFIP means the National Flood Insurance Program authorized under the Act.

(9) Private flood insurance means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or 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; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(ii) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

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

(B) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(C) Contain deductibles no higher than the specified maximum, and include 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;

(D) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and

(E) Not contain conditions that narrow the coverage provided in an SFIP;

(iii) Includes all of the following:

(A) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(1) The insured; and

(2) The member bank that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in an SFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

(10) Residential improved real estate means real estate upon which a home or other residential building is located or to be located.

(11) Servicer means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(12) SFIP means, for purposes of paragraph (b)(9) of this section, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a member bank.

(13) Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(14) Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) Requirement to purchase flood insurance where available.

* * * * *

(3) Private flood insurance. (i) Mandatory acceptance. A member bank must accept private flood insurance, as defined in paragraph (b)(9) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy meets the requirements for coverage in paragraph (c)(1) of this section.

(ii) Compliance aid for mandatory acceptance. A member bank may determine that a policy meets the definition of private flood insurance in paragraph (b)(9) of this section, without further review of the policy, 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."

(iii) Discretionary acceptance. A member bank may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition

of private flood insurance in paragraph (b)(9) of this section in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if the policy:

(A) Provides coverage in the amount required by paragraph (c)(1) of this section;

(B) Is issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(C) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(D) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

(iv) Mutual aid societies. Notwithstanding the requirements of paragraph (c)(3)(iii) of this section, a member bank may accept may accept a plan issued by a mutual aid society, as defined in paragraph (b)(7) of this section, in satisfaction of the flood insurance purchase requirement in paragraph (c)(1) of this section if:

(A) The Board has determined that such plans qualify as flood insurance for purposes of the Act.

(B) The plan provides coverage in the amount required by paragraph (c)(1) of this section;

(C) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(D) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the member bank documents its conclusion regarding sufficiency of the protection of the loan in writing.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, part 339 of chapter III of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

6. The authority citation for part 339 continues to read as follows:

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

7. Section 339.2 is amended by adding the definitions of “Mutual aid society”, “Private flood insurance”, and “SFIP” in alphabetical order to read as follows:

§ 339.2 Definitions.

* * * * *

Mutual aid society means 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.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or 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; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

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

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include 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;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The FDIC-supervised institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of §§ 339.2, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to an FDIC-supervised institution.

* * * * *

8. Section 339.3 is amended by adding paragraph (c) to read as follows:

§ 339.3 Requirement to purchase flood insurance where available.

* * * * *

(c) Private flood insurance. (1) Mandatory acceptance. An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) Compliance aid for mandatory acceptance. An FDIC-supervised institution may determine that a policy meets the definition of private flood insurance in § 339.2, without further review of the policy, 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."

(3) Discretionary acceptance. An FDIC-supervised institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 339.2 in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) Mutual aid societies. Notwithstanding the requirements of paragraph (c)(3) of this section, an FDIC-supervised institution may accept a plan issued by a mutual aid society, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The FDIC has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

Farm Credit Administration

12 CFR CHAPTER IV

Authority and Issuance

For the reasons set forth in the joint preamble, part 614 Subpart S of chapter VI of title 12 of the Code of Federal Regulations is revised as set forth below:

PART 614—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

9. The authority citation for part 614 continues to read as follows:

AUTHORITY: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12,4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of Pub. L. 92-181, 85 Stat. 583 (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

10. Amend Section 614.4925 by adding the definitions of “Mutual aid society”, “Private flood insurance”, and “SFIP” in alphabetical order to read as follows:

§ 614.4925 Definitions.

* * * * *

Mutual aid society means 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.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or 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; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

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

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include 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;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The System institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of § 614.4925, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a System institution.

* * * * *

11. Section 614.4930 is amended by adding paragraph (c) to read as follows:

§ 614.4930 Requirement to purchase flood insurance where available.

* * * * *

(c) Private flood insurance. (1) Mandatory acceptance. A System institution must accept private flood insurance, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) Compliance aid for mandatory acceptance. A System institution may determine that a policy meets the definition of private flood insurance in § 614.4925, without further review of the policy, 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."

(3) Discretionary acceptance. A System institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 614.4925 in satisfaction of the flood insurance purchase requirement of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) Mutual aid societies. Notwithstanding the requirements of paragraph (c)(3) of this section, a System institution may accept a plan issued by a mutual aid society, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement of this section if:

(i) The FCA has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA Board amends part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

12. The authority citation for part 760 continues to read as follows:

AUTHORITY: 12 U.S.C. 1757, 1784(e), 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

13. Section 760.2 is amended by adding the definitions of “Mutual aid society”, “Private flood insurance”, and “SFIP” in alphabetical order to read as follows:

§ 760.2 Definitions.

* * * * *

Mutual aid society means 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.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or 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; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

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

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include 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;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The credit union that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of § 760.2, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a credit union.

* * * * *

14. Section 760.3 is amended by adding paragraph (c) to read as follows:

§ 760.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*. (1) *Mandatory acceptance*. A credit union must accept private flood insurance, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance*. A credit union may determine that a policy meets the definition of private flood insurance in § 760.2, without further review of the policy, 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."

(3) *Discretionary acceptance*. A credit union may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 760.2 in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or 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; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by

a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a credit union may accept a plan issued by a mutual aid society, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The NCUA has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing.

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY FINAL RULE TITLED "LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS."]

Dated: January 24, 2019

/signed/

_____

Joseph M. Otting,

Comptroller of the Currency.

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY FINAL RULE TITLED “LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS.”]

By order of the Board of Governors of the Federal Reserve System, February 7, 2019.

/signed/

_____

Ann E. Misback,

Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY FINAL RULE TITLED "LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS."]

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, on 25th day of January, 2019.

/signed/

_____

Valerie J. Best,

Assistant Executive Secretary.

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY FINAL RULE TITLED “LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS.”]

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 5th day of February 2019

/signed/

_____

Dale L. Aultman,

Secretary.

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY FINAL RULE TITLED "LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS."]

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, this 31st day of January, 2019.

/signed/

_____

Gerard S. Poliquin,

Secretary of the Board.