

Amendments Proposed to Federal Flood Insurance Regulations

October 23, 2013

Federal banking agencies have issued a joint notice of proposed rulemaking to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the “Act”). The proposed rule will amend each agency’s flood insurance regulations to clarify the rules regarding force-placed flood insurance and to require regulated lending institutions to accept private flood insurance and escrow flood insurance payments.

The proposal was issued jointly by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, National Credit Union Administration and Farm Credit Administration. Comments on the proposal must be submitted to the agencies by December 10, 2013.

The proposed rule:

- Requires regulated lending institutions or servicers acting on their behalf to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home. In addition, these premiums and fees must be payable with the same frequency as payments on the loan are made for the duration of the loan. A regulated lending institution is exempt from this requirement if it has total assets of less than \$1 billion and, as of the Act’s date of enactment, July 6, 2012, was not required by federal or state law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance. For loans requiring flood insurance that are made on or after July 6, 2014, lending institutions will be required to begin escrowing upon origination. For loans that are outstanding on July 6, 2014, lending institutions will be required to begin escrowing with the first loan payment after the first renewal date of the borrower’s flood insurance policy on or after July 6, 2014.
- Requires regulated lending institutions to accept private flood insurance to satisfy the mandatory purchase requirement if the private flood insurance meets the statutory definition of the term “private flood insurance” as set forth in the Act. To facilitate compliance in this regard, the proposed rule offers a safe harbor to lenders who rely on the written expertise of state insurance regulators in determining whether a flood insurance policy meets the definition of “private flood insurance.”
- Amends the force-placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower’s coverage lapsed or became insufficient.
- Requires a lending institution to terminate a force-placed flood insurance policy and refund any payments a borrower made for overlapping coverage within 30 days of the borrower presenting evidence of flood insurance coverage.
- Issues new and revised sample notice forms to disclose the availability of flood insurance from private flood insurance companies and to inform borrowers about the new escrow requirements. The notice describing the escrow requirements must be sent at least 90 days before the regulated lending institution must begin escrowing.

The complete proposed rule can be found [here](#).

As noted above, comments on the proposed rule must be submitted to the agencies on or before December 10, 2013. If you have any questions regarding the proposed rule, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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