

January 19, 2021

Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6084-P-01; RIN 2502-AJ43: Acceptance of Private Flood Insurance for
FHA-Insured Mortgages

To the Office of General Counsel:

On behalf of the National Association of Insurance Commissioners (NAIC)¹, we write today regarding the proposed rule on “Acceptance of Private Flood Insurance for FHA-Insured Mortgages.” Flooding remains the most widespread natural disaster in this country, impacting every state, and yet the ongoing flood insurance coverage gap means millions are uninsured for this risk. For that reason, state insurance regulators support facilitating the growth of the private flood insurance market as a complement to the National Flood Insurance Program (NFIP) to help provide consumers with additional choices for flood insurance products. We commend the Department of Housing and Urban Development (HUD) for proposing changes to Federal Housing Administration (FHA) regulations to allow for the acceptance of private flood insurance, which will expand consumers’ options for obtaining flood insurance that they do not have under current FHA rules.

While the NAIC supports HUD’s efforts to promote consumer choice for flood insurance coverage, we would encourage HUD to consider further aligning its rule with the federal banking regulators’ private flood insurance rule.² Specifically, unlike the federal banking regulators’ rule, HUD’s proposed rule would not allow mortgagees to exercise their discretion to accept private flood insurance policies that do not meet the proposed rule’s definition.³ The proposed definition is drawn from the Biggert-Waters Flood Insurance Reform Act of 2012’s (Biggert-Waters Act) provisions **requiring** lenders to accept private flood insurance policies that meet certain conditions, but do not in fact preclude discretionary acceptance of other policies by lenders under certain conditions. Limiting acceptance to only those policies that meet that specific definition

¹ As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

² Loans in Areas Having Special Flood Hazards, 84 Fed. Reg. 4953 (February 20, 2019).

³ The federal banking regulators’ rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by mutual aid societies and due consideration should be given to accepting those policies as well.

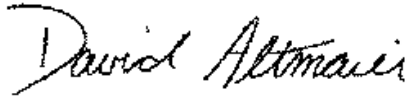
could impede consumers' access to additional options for flood insurance products. For example, drawing from the Biggert-Waters Act, the proposed rule stipulates that nonresidential commercial policies offered by surplus lines insurers may be accepted by mortgagees, but does not appear to allow personal lines residential policies offered by surplus lines insurers to be accepted. Given that surplus lines insurers are providing much of the private flood insurance coverage in the market at this time, restricting acceptance to only commercial surplus lines coverage could hinder access to additional choices for residential flood insurance products. Surplus lines carriers may also be able to offer residential consumers additional coverage features or greater limits than the NFIP potentially at a more affordable price.

Moreover, we feel it is important to highlight that insurance regulators oversee the surplus lines insurance marketplace through a combination of solvency requirements on eligible U.S.-based carriers, and through our regulation of surplus lines brokers. Surplus lines insurers domiciled in a U.S. state are regulated by their state of domicile for financial solvency and market conduct. Surplus lines insurers domiciled outside the U.S. may apply for inclusion in the NAIC's Quarterly Listing of Alien Insurers. The carriers listed on the NAIC Quarterly Listing of Alien Insurers are subject to capital and surplus requirements, a requirement to maintain U.S. trust accounts, and character, trustworthiness, and integrity requirements. Importantly, the insurance regulator of the state where the policyholder resides also has authority over the placement of the insurance by a surplus lines broker and enforces the requirements relating to the eligibility of the surplus lines carrier to write policies in that state. In the event a policyholder is the victim of misconduct by the broker, the insurance regulator can sanction the broker or revoke their license. If there is a problem with coverage and a claim being paid, whether resulting from acts of the broker or insurer, the insurance regulator can ultimately hold the broker liable for the full amount of the policy. This regime provides strong incentives for surplus lines brokers to not only comply with applicable laws themselves but also to sell policies from surplus lines carriers that are in a strong financial condition and in good standing. State insurance regulators can also use their authorities under the state Unfair Trade Practices Act and similar statutes to ensure consumers are protected, including that claims are paid, the insurer or broker is not misrepresenting what is in the policy, as well as remedying other bad conduct.

As the private flood insurance market grows and more companies offer coverage, state insurance regulation will continue to evolve to meet the size and breadth of the market as well as the needs of consumers. We have long believed that insurance consumers should have access to multiple flood insurance options in order to find their preferred coverage and price, and appreciate HUD's proposed changes to allow lenders to begin accepting private flood insurance policies for single family insured loans for homes located in Special Flood Hazard Areas. However, we would suggest HUD consider further aligning its proposal with the approach taken by the federal banking regulators.

Thank you for your consideration of the insurance regulatory perspective. Should you wish to discuss this comment or any other matter relating to the NAIC's views on this proposed rule, please do not hesitate to contact Brooke Stringer, Senior Financial Policy and Legislative Advisor, at (202) 471-3974 or Mark Sagat, Assistant Director, Financial Policy and Legislation, at (202) 471-3987.

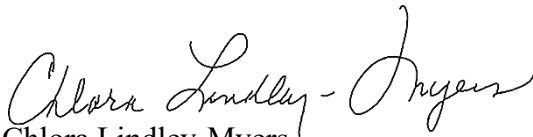
Sincerely,



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NAIC President
Commissioner
Florida Office of Insurance Regulation



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Director
Idaho Department of Insurance



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