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To: Clients and Friends

From: David F. Dulock

Subject: Flood Insurance Join Final Rule Implements Private Flood Insurance Provisions of Biggert-Waters Flood Insurance Reform Act of 2012

In the February 20, 2019, issue of the *Federal Register* (84 FR 4953, [click here](#)), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies, and individually, Agency) issued a joint final rule (Final Rule) amending the Agencies regulations regarding loans in special flood hazard areas to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Final Rule requires regulated lending institutions to accept policies that meet the Biggert-Waters Act’s definition of “private flood insurance” and, subject to certain restrictions, 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 Biggert-Waters Act’s definition of “private flood insurance.”

The rule, which takes effect July 1, 2019:

- Implements the Biggert-Waters Act requirement that regulated lending institutions accept private flood insurance policies that satisfy criteria specified in the Act.
- Allows regulated lending institutions to rely on an insurer’s written assurances in a private flood insurance policy that the criteria are met. This allows a regulated lending institution to determine that a policy meets the definition of “private flood insurance” without reviewing the policy if the policy, or policy endorsement, includes the compliance statement: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”
- Clarifies that regulated lending institutions may, under certain conditions, accept private flood insurance policies that do not meet the Biggert-Waters Act criteria. The key conditions are a requirement that the policy provide sufficient protection for a designated loan, 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.
- Allows regulated lending institutions to accept certain flood coverage plans provided by mutual aid societies, subject to Agency approval.
- Defines “Mutual aid society”, “Private flood insurance”, and “SFIP”.

Notwithstanding the Final Rule’s July 1, 2019 effective date, the Agencies’ preamble to the Final Rule notes that regulated lending institutions may comply with the Final Rule prior to July 1, 2019, pursuant to section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(b)(2)). The Agencies’ preamble further notes that until July 1, 2019, regulated lending institutions may continue to accept flood insurance policies issued by private insurers and coverage

(12 pages)

provided by mutual aid societies as currently permitted by the regulations of the applicable Agency.

The Final Rule amends the sections of the Agencies' respective Federal Regulations regarding loans in special flood hazard areas, as follows:

- OCC - 12 CFR Part 22: Section 22.2 is amended by redesignating current paragraphs (h) and (i) as paragraphs (i) and (j), current paragraphs (j) and (k) as (l) and (m), and current paragraphs (l) and (m) as (o) and (p); and adding new paragraphs (h), (k) and (n) to define "Mutual aid society", "Private flood insurance", and "SFIP". Section 22.3 is amended by adding paragraph (c). *See Exhibit A.*
- FRB - 12 CFR Part 208: Section 208.25 is amended by revising paragraphs (b)(7) through (b)(11) and adding paragraphs (b)(12) through (b)(14) to accommodate the addition of the definitions of "Mutual aid society", "Private flood insurance", and "SFIP" and by adding paragraph (c)(3). *See Exhibit B.*
- FDIC - 12 CFR Part 339: Section 339.2 is amended by adding the definitions of "Mutual aid society", "Private flood insurance", and "SFIP". Section 339.3 is amended by adding paragraph (c). *See Exhibit C.*
- FCA - 12 CFR Part 614: Section 614.4925 is amended by adding the definitions of "Mutual aid society", "Private flood insurance", and "SFIP". Section 614.4930 is amended by adding paragraph (c). *See Exhibit D.*
- NCUA - 12 CFR Part 760: Section 760.2 is amended by adding the definitions of "Mutual aid society", "Private flood insurance", and "SFIP". Section 760.3 is amended by adding paragraph (c). *See Exhibit E.*

Please note that the Agencies preamble advises that the Agencies cannot require a private flood insurance policy to include the statement "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation[.]" and that failure of the private flood insurance policy to include this statement 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 – *i.e.*, failure of a private flood insurance policy to include this statement means the institution is required to review the policy to determine whether it meets the definition of "private flood insurance" in the Final Rule.

Attach: Exhibit A–OCC Rules; Exhibit B–FRB Rules; Exhibit C–FDIC Rules; Exhibit D–FCA Rules; Exhibit E–NCUA Rules

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Exhibit A

Office of the Comptroller of the Currency

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Section 22.2 is amended by:

- a. Redesignating paragraphs (l) and (m) as (o) and (p), paragraphs (j) and (k) as (l) and (m), and paragraphs (h) and (i) as paragraphs (i) and (j); and
- b. Adding new paragraphs (h) and (k) and paragraph (n).

The additions 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.

* * * * *

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.

[End of Exhibit A]

Exhibit B FEDERAL RESERVE SYSTEM

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

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

§ 208.25 Loans in areas having special flood hazards.

(b) ***

(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:

(I) 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) * * *

(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 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.

* * * * *

[End of Exhibit B]

Exhibit C FEDERAL DEPOSIT INSURANCE CORPORATION

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Section 339.2 is amended by adding definitions for “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.

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.

[End of Exhibit C]

Exhibit D

FARM CREDIT ADMINISTRATION

PART 614—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Section 614.4925 is amended by adding definitions for “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.

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.

[End of Exhibit D]

Exhibit E

NATIONAL CREDIT UNION ADMINISTRATION

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Section 760.2 is amended by adding definitions for “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.

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.

[End of Exhibit E]