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October 31, 2014

To: Clients and Friends

From: David F. Dulock

Subject: Proposed Flood Insurance Regulations Published in *Federal Register*

In the October 30, 2014 issue of the *Federal Register* (79 FR 64518, [click here](#)) the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Administration (collectively, the Agencies) published a joint proposed rule to amend their regulations regarding loans in special flood hazard areas to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which amends some of the changes to the Flood Disaster Protection Act of 1973 (FDPA) mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters).

For those wishing to comment on the Agencies' proposed regulations, follow the instructions for submitting written comments located on pages 64518 and 64519 of the above-cited issue of the *Federal Register*. Comments must be received by the Agencies no later than December 29, 2014.

The proposed rule would establish requirements with respect to the escrow of flood insurance payments, consistent with the changes set forth in HFIAA. It also would incorporate an exemption in HFIAA for certain detached structures from the mandatory flood insurance requirement, as summarized below:

- Require regulated lending institutions to escrow premiums and fees for flood insurance for loans secured by residential improved real estate or mobile homes that are made, increased, extended or renewed on or after January 1, 2016, unless the institution or loan qualifies for a statutory exception.
- Require institutions to provide borrowers of residential loans outstanding on January 1, 2016, the option to escrow required flood insurance premiums and fees.
- Includes new and revised sample notice forms and clauses concerning the escrow requirement and the option to escrow, including an amended Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance containing language concerning the escrow requirement.
- Eliminate the requirement to purchase flood insurance for a structure that is a part of a residential property located in a special flood hazard area if that structure is detached from the primary residential structure and does not also serve as a residence (lenders may, however, continue to require flood insurance on the detached structure to protect the collateral securing the loan).

The preamble to the proposed rule advises that these proposed regulations would implement only certain provisions of HFIAA over which the Agencies have jurisdiction and encourages lenders to consult Biggert-Waters and HFIAA for further information about revisions to the flood insurance statutes that will not be implemented through the Agencies' rulemakings.

The preamble also advises that the HFIAA amendments to the FDPA regarding the escrow requirement will not supersede the current escrow provisions during the July 6, 2012 through December 31, 2015 period and, thus, the FDPA escrow requirements in effect on July 5, 2012 (the day before Biggert-Waters was enacted) will continue to be enforced by the Agencies until December 31, 2015, as the Agencies' respective escrow provisions currently provide that a regulated lending institution must escrow all premiums and fees for required flood insurance if the institution requires the escrow of taxes, insurance premiums, fees or other charges.

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