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To: Clients and Friends

From: David F. Dulock

Subject: Loans in Special Flood Hazard Areas – Joint Final Rule

In the July 21, 2015, issue of the *Federal Register* (80 FR 43216, [click here](#)), the Federal Reserve Board (FRB), the Farm Credit Administration (FCA), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) issued a joint final rule that amends their respective regulations that apply to loans secured by properties located in special flood hazard areas. The joint final rule implements provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) relating to the escrowing of flood insurance payments and the exemption of certain detached structures from the mandatory flood insurance purchase requirement. The joint final rule also implements provisions in the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act) relating to the force placement of flood insurance. Although the above agencies' regulations, as amended by the joint final rule, are substantively consistent, the format of the regulatory text varies to conform to each agency's current regulation.

The effective date of each amendment in the joint final rule is disclosed in the amendatory instructions to each agency's regulations beginning on page 43240 and ending on page 43263 of the above hyperlinked issue of the *Federal Register* – i.e., the effective date of amendatory instructions 1, 6, 7, 8, 10, 15, 16, 21 and 22 is October 1, 2015, and the effective date of amendatory instructions 2, 3, 4, 5, 9, 11, 12, 13, 14, 17, 18, 19, 20, 23, 24, 25, and 26 is January 1, 2016. Generally, this means that the escrow and option to escrow amendments in the joint final rule, as well as the amendments to Appendix A and the new Appendix B, will become effective on January 1, 2016. All other amendments in the joint final rule will become effective on October 1, 2015.

Please be aware, however, that the escrow provisions in the agencies' regulations in effect on July 5, 2012, the day before the Biggert-Waters Act was enacted, remain in effect, and will be enforced by the agencies, through December 31, 2015, the day before the effective date of the escrow and option to escrow amendments in the joint final rule.

In summary, the joint final rule:

- Requires regulated lending institutions (or their servicers) to escrow flood insurance premiums and fees 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 loan qualifies for a statutory exception.
- Exempts certain regulated lending institutions from this escrow requirement if they have total assets of less than \$1 billion.
- Adopts transition rules for regulated lending institutions that have a change in status and no longer qualify for this small-lender exception.
- Requires regulated lending institutions not excepted from the escrow requirement to provide borrowers of residential loans outstanding as of January 1, 2016, the option to escrow flood insurance premiums and fees and includes new and revised sample notice forms and clauses concerning the escrow requirement and the option to escrow.

- Includes a statutory exemption from the requirement to purchase flood insurance for a structure that is a part of a residential property if that structure is detached from the primary residence and does not also serve as a residence; however, lenders may nevertheless require flood insurance on the detached structures to protect the collateral securing the mortgage.
- Includes the Biggert-Waters Act provisions on force placement of flood insurance, which clarify that regulated lending institutions (or their servicers) have the authority to charge a borrower for the cost of force-placed flood insurance coverage beginning on the date on which the borrower's coverage lapses or becomes insufficient.
- Stipulates the circumstances under which regulated lending institutions (or their servicers) must terminate force-placed flood insurance coverage and refund payments to a borrower.
- Sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.
- Does not address the private flood insurance provisions in the Biggert-Waters Act, as the agencies plan to address these provisions in a separate rulemaking.

We advise recipients of this memorandum not to rely solely on the information contained herein but to read the amended text of the applicable agency's regulations in the above hyperlinked issue of the *Federal Register*.

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