

# *The Final Piece of the Flood Puzzle*

By Jeff Thompson, CRCM

It's been nearly 7 years in the making, but on January 25, 2019 the federal regulators finally issued rules regarding the acceptance of private flood insurance policies, and those issued through mutual aid societies.

This odyssey began back in 2012, with the passage of the Biggert-Waters Act, which made substantial changes to the existing flood protection rules, including the acceptance of private insurance policies. One of those changes was a caveat that banks be required to accept private flood insurance policies. In 2013, regulatory agencies proposed rules that would meet the requirements of Biggert-Waters, but then in 2014, Congress threw them another curveball, and passed the Homeowner Flood Insurance Affordability Act (HFIAA) which included several changes and strengthened aspects of Biggert-Waters. Those changes included escrow and forced placement requirements. So the agencies issued new proposed rules in October of that year that became effective in 2015. For several reasons, the regulators decided to move forward with the escrow and detached structure requirements of HFIAA, and the force placed provisions of the Biggert-Waters Act, but postponed private insurance rules. With the private insurance aspects still outstanding, the regulators re-proposed those provisions in November 2016.

On January 25, 2019 the FDIC (soon to be followed by the other regulators) issued final rules based on the November 2016 proposal. The final rule is effective July 1, 2019 and it requires regulated lending institutions to accept flood insurance policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act, and permits them to exercise discretion in accepting flood insurance policies by private insurers and plans providing insurance policies issued by "mutual aid societies" that do not necessarily meet the definition of private flood insurance.

The final rule requires lending institutions to accept private insurance policies, which are now defined in the final regulation. The definition has several requirements including: issuance by a licensed insurance company; coverage as broad as that found in Standard Flood Insurance Policies (SFIPs); a requirement to provide written notice 45 days prior to cancellation; information about the availability of insurance under the NFIP; contains a proper mortgage interest clause; requires the insured to file suit no more than one year after the date of written denial, and cancellation provisions that are as restrictive as in a SFIP.

Based on comments received by the industry, the regulators also threw in a compliance aid. Rather than evaluate every policy to ensure it meets the above criteria, private insurance issuers will need to add the following statement to each policy: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation." The bank can rely on this statement, or make their own determination that the policy meets the requirements in the previous paragraph.

The new rules also provides banks, under certain circumstances, the discretion to accept policies issued by private insurers and mutual aid societies, that otherwise do not meet the definition of private flood insurance as defined earlier. To qualify as a mutual aid society, the organization must meet three criteria: 1) the members must share a common religious, charitable, educational, or fraternal bond; 2)

the organization must cover losses caused by flooding, in accordance with this common bond; and 3) the organization must have a demonstrated history of fulfilling the term of agreements to cover losses to members' property caused by flooding.

The most obvious example of a mutual aid society would be an Amish community, but several others might present themselves to your bank. The tough part of this definition will be the third prong of the definition, as a proven track record might be a high bar for something that just now is entering mainstream acceptability. It should also be noted that all insurance is subject to State law, so any prohibitions or restrictions set by your state could come into play.

In summary, the final piece of the flood puzzle has been issued to allow banks to accept private flood insurance policies, and use their discretion in accepting insurance from mutual aid societies. There are definitions for both private insurance policies and mutual aid societies that need to be taken into account, as well as the laws of your state.