
Statement for the Record
on behalf of the
American Bankers Association
before the
Subcommittee on Housing & Insurance
of the
House Financial Services Committee
March 10, 2023



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The American Bankers Association (ABA) appreciates the opportunity to provide a Statement for the Record for this hearing, *How Do We Encourage Greater Flood Insurance Coverage in America?* ABA is the voice of the nation’s \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend \$12.2 trillion in loans.

ABA appreciates the Subcommittee’s decision to hold this hearing regarding the uptake rates of private flood insurance, which often provides more affordable and comprehensive coverage than federally-supported flood insurance issued through the National Flood Insurance Program (NFIP). The banking industry welcomed the provision in the Biggert Waters Flood Insurance Reform Act of 2012 (BWA), which clarified that banks can accept private flood insurance to satisfy the Flood Disaster Protection Act’s (FDPA) mandatory purchase requirement for properties located in a special flood hazard area (SFHA). Both taxpayers and property owners benefit from widely available private flood insurance, as private insurance reduces the burden on the federal government and offers property owners an alternative for insuring against flood loss. While BWA sought to promote the availability and purchase of private flood insurance, we are concerned that regulatory inconsistency and confusion regarding the acceptability of private flood have hampered BWA’s goal and the development of the private insurance market.

By way of background, the FDPA requires banks, credit unions, and other federally regulated lenders to ensure that loans secured by property located in an SFHA purchase and maintain flood insurance that meets regulatory minimum coverage amounts. This mandatory purchase requirement also applies to federally insured mortgages, such as mortgages insured by the

Federal Housing Administration (FHA). Accordingly, the prudential regulators routinely examine banks for compliance with the FDPA’s mandatory purchase requirement. Despite periodic news coverage implying the contrary,¹ banks overwhelmingly strive to comply with the mandatory purchase requirements for insurance on mortgaged properties. ABA greatly appreciates that the witness for the Independent Insurance Agents and Brokers of America, Christopher Heidrick, noted this fact during the hearing.

Before the enactment of BWA, although private insurance was technically an acceptable alternative to an NFIP policy issued by FEMA, regulatory guidance on assessing the adequacy of private policies was limited and engendered significant uncertainty among lenders trying to determine whether a policy met the regulatory minimums. Accordingly, many lenders were unwilling to accept private policies out of concern that their decision regarding the adequacy of a policy could subject them to regulatory criticism or other risks if a private policy they accepted was later determined to be inadequate.

In an effort to encourage the development of a private market for flood insurance, BWA required lenders to accept private flood insurance meeting certain statutory criteria. This mandate, while well-intentioned, presented implementation challenges for lenders and the prudential regulators, and those challenges delayed widespread acceptance of private flood insurance. The Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Farm Credit Administration (collectively, the Prudential Regulators) did not issue a Joint Final Rule until 2019² -- nearly a decade after BWA’s passage -- that defines requirements for the acceptance of private flood insurance. Unfortunately, other federal entities have declined to follow the 2019 Joint Final Rule, introducing inconsistency among federal requirements and further hampering the adoption of private flood insurance.

¹ See Christopher Flavelle, *Hurricane Ian’s Toll is Severe. Lack off Insurance Will Make It Worse.*, N.Y. Times, Sept. 29, 2022, <https://www.nytimes.com/2022/09/29/climate/hurricane-ian-flood-insurance.html> (stating that of “homes inside the government-designated floodplain, the area most exposed to flooding, 47.3 percent of homes have flood insurance[.]”); see also Thomas Frank, *Fla. Lawmakers Force Homeowners to Buy Flood Insurance*, E&E News, Dec. 15, 2022, <https://www.eenews.net/articles/fla-lawmakers-force-homeowners-to-buy-flood-insurance/> (“Federal law requires people to have flood insurance on property inside a flood zone if it’s secured by a federally backed mortgage. Yet many people flout that requirement.”).

² Loans in Areas Having Special Flood Hazards, 84 Fed. Reg. 4953 (Feb. 20, 2019), <https://www.federalregister.gov/documents/2019/02/20/2019-02650/loans-in-areas-having-special-flood-hazards>.

Specifically, there are differences between the requirements of the government-sponsored enterprises' (GSEs), the Federal Housing Administration (FHA), and the Prudential Regulators in the 2019 Joint Final Rule. The 2019 Joint Final Rule provides for the use of a "Compliance Aid" to assist lenders in accepting private flood policies. However, the GSEs, which purchase over half of all U.S. mortgages,³ did not adopt the Compliance Aid. Further, in late 2022 FHA finalized a private flood insurance rule with yet another set of standards that vary from the 2019 Joint Final Rule.⁴ This inconsistency in the use of the Compliance Aid has created operational challenges for lenders who must accept private flood policies under the BWA statutory provisions but wish to sell those loans on the secondary market, and for lenders who make FHA loans but are subject to prudential supervision. These discrepancies have deterred some borrowers from obtaining private flood insurance when it would benefit the borrower by providing insurance against flood loss that is better and often less expensive than that provided by an NFIP policy.

Given these challenges that are limiting the purchase of private insurance, ABA urges Congress to encourage consistency in requirements for the acceptance of private flood insurance. According to GAO,⁵ at least ten federal entities oversee lender compliance with the mandatory purchase requirement. Congress should encourage these entities to simplify compliance with the mandatory purchase obligation and work together to facilitate, rather than impede, further development of the private market.

We urge Congress to take the following steps:

³ Fed. Hous. Fin. Agency, Blog, *What Types of Mortgages Do Fannie Mae and Freddie Mac Acquire?* (Apr. 14, 2021), <https://www.fhfa.gov/Media/Blog/Pages/What-Types-of-Mortgages-Do-Fannie-Mac-and-Freddie-Mac-Acquire.aspx>.

⁴ Acceptance of Private Flood Insurance for FHA-Insured Mortgages, 87 Fed. Reg. 70733, 70734 (Nov. 21, 2022), <https://www.federalregister.gov/documents/2022/11/21/2022-25258/acceptance-of-private-flood-insurance-for-fha-insured-mortgages> ("As stated in [FHA]'s proposed rule, due to the differences between [FHA]'s and the Federal regulators' rules, compliance with the Federal regulators' final rule should not be interpreted as compliance with [FHA]'s requirements.").

⁵ U.S. Gov't Accountability Off., GAO-21-578, National Flood Insurance Program: Congress Should Consider Updating the Mandatory Purchase Requirement (2021), <https://www.gao.gov/products/gao-21-578>.

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- Direct all federal agencies tasked with ensuring compliance with the mandatory purchase requirement to adopt one set of standards to govern the acceptance of private flood insurance. Specifically, it would be most helpful at this juncture for all federal agencies to adopt the same private flood acceptance criteria as the 2019 Joint Final Rule, including use of the Compliance Aid.
 - Consider revisiting the current framework of the mandatory purchase requirement to encourage broader uptake of flood insurance. Under the current “in or out” structure of SFHAs, there is little incentive for property owners outside of an SFHA to purchase flood insurance. If anything, requiring flood insurance for some properties but not others has encouraged the misperception that those outside of FEMA’s designated SFHAs do not face flood risk.
 - Require the prudential regulators to provide regular updates to flood compliance guidance using a notice-and-comment process. The provision mandating the acceptance of private flood insurance was passed in 2012, yet it took the prudential regulators *seven years* to issue the 2019 Joint Final Rule on the acceptance of private flood insurance. Further, the Interagency Questions and Answers were not updated for over a decade despite the passage of two major pieces of flood legislation. This lack of regulatory guidance is simply unacceptable when the penalties for non-compliance are rigidly assessed.

In addition, consistency in lender oversight of the mandatory purchase requirement, especially for private flood insurance acceptance, will further encourage the development of this market and may increase overall uptake rates for flood insurance, even outside of SFHAs. Supervision and enforcement are not evenly applied across all mortgage lenders. Non-depository lenders make the majority of mortgages originated today, and these lenders are not subject to federal supervision for compliance with the mandatory purchase requirement. ABA knows of no comprehensive study showing how many properties in SFHAs are made by such entities. While Fannie Mae and Freddie Mac audit flood compliance for loans they purchase from non-depositories, as noted previously, the GSEs use standards and assessments that are not consistent

with the prudential regulators. These inconsistencies hinder the goals of ensuring full compliance with the mandatory purchase requirement and a robust market for private insurance.

Thank you for the opportunity to comment on the need for greater uptake of flood insurance generally and for private insurance as well. We appreciate the Subcommittee's continued interest in ensuring that flood insurance is available in flood-prone areas and that borrowers have choices for this important insurance coverage. Consistency among regulators and other market participants will go a long way towards the goal of broader coverage, and we welcome the opportunity to provide additional information and input as the Subcommittee considers the barriers to growth in the private flood insurance market.