

March 28, 2013

***By electronic delivery***

The Honorable Debbie Matz  
Chairman/FFIEC  
Chairman  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

The Honorable Thomas Curry  
Vice Chairman/FFIEC  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7th Street, SW  
Washington, D.C. 20219

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, DC 20429

The Honorable Daniel K. Tarullo  
Governor  
Federal Reserve Board  
Eccles Board Building  
20th Street and Constitution Avenue, N.W.  
Mail Stop 53  
Washington, D.C. 20551

The Honorable Jill Long Thompson  
Chairman and CEO  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

Re: The Federal Emergency Management Agency's decision to rescind the *Mandatory Purchase of Flood Insurance Guidelines*

Ladies and Gentlemen:

As you may be aware, on February 5, 2013, the Federal Emergency Management Agency (FEMA) announced that it has rescinded *Mandatory Purchase of Flood Insurance Guidelines* (the Guidelines). According to FEMA, it rescinded the Guidelines because it "contains outdated information and guidance that has been made obsolete by the [Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act)]."<sup>1</sup> While it is true that the Biggert-Waters Act will require significant changes to the National Flood Insurance Program (NFIP) and to bank compliance with the mandatory purchase requirement, those changes call for an update of the Guidelines, not a unilateral decision to rescind an indispensable compliance resource.

The American Bankers Association (ABA)<sup>2</sup> is writing to urge your support in ensuring the continued availability of the Guidelines to our members and your supervisory staff members.

<sup>1</sup> See FEMA Memorandum to Users of the Mandatory Purchase of Flood Insurance Guidelines (February 5, 2013), attached.

<sup>2</sup> ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

We believe that the regulatory agencies charged with implementing the laws that establish the mandatory purchase requirement – the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Farm Credit Administration, and the National Credit Union Administration (collectively, the Agencies) – should assume responsibility for revising the Guidelines to reflect the changes required by the Biggert-Waters Act.

Flooding is recognized as one of the costliest and most devastating—and unfortunately all too common— natural disasters in the United States. Therefore, ensuring compliance with the mandatory purchase requirement is a quintessential consumer protection and a responsibility that the banking industry takes very seriously. As a compliance *exercise*, however, our members report that it is among the most challenging compliance obligations they face. Bankers struggle to understand insurance terms and coverages as well as the complexities of the NFIP in order to establish compliant lending policies and procedures. The fact that there are 82 Interagency Questions and Answers Regarding Flood Insurance (Interagency Q & As) spanning 33 Federal Register pages illustrates and underscores this complexity.

Thus, the publication by FEMA of a “plain language” guide designed to “promote greater uniformity and understanding of the requirements of the law” has been greatly appreciated and widely relied upon.<sup>3</sup> It is an invaluable resource and training tool, for it is the only document that provides an historical and holistic overview of bank compliance requirements and how they fit within the larger NFIP framework for flood hazard mitigation. Although the banking industry appreciates the guidance provided by the Interagency Q & As, as *specific* questions and answers, they lack the comprehensiveness of the Guidelines. Moreover, the historical information about flooding in the United States and subsequent legislative responses to those events provides a context for understanding the evolution of the flood laws and NFIP. Both are critical to ensuring that bank employees truly understand the mandatory purchase obligation and can appropriately apply it to the complex fact patterns that arise.

Thus, the importance of the Guidelines to ensuring compliance with the mandatory purchase requirement cannot be overstated. In fact, the Interagency Q & As extensively discuss, and in many cases rely and build upon, information and guidance included in the Guidelines.<sup>4</sup> It is not hyperbole to say that the Guidelines document is considered THE reference to all whose jobs touch flood insurance compliance. As such, it is imperative that it continue to be available and that it is revised to reflect Biggert-Waters Act changes.

ABA strongly urges the Agencies to assume responsibility for updating and maintaining the Guidelines. As the Agencies work on Biggert-Waters Act implementation, we believe that the Regulatory Flexibility Act (RFA)<sup>5</sup> requires the publication of a compliance guide, or in this case

---

<sup>3</sup> *Mandatory Purchase of Flood Insurance Guidelines*, 2007 edition (Initially published in 1999, it was revised in 2007 to clarify “some of the complex issues that have arisen since the 1999 edition and [to] incorporate industry best practices and lessons learned for implementing statutory requirements.”).

<sup>4</sup> 74 Fed. Reg. 35914 (July 21, 2009) (citing the Guidelines on nineteen separate occasions).

<sup>5</sup> See 5 U.S.C. §601 et seq. See also SBA Office of Advocacy publication, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (May 2012) at 88, available at <http://www.sba.gov/content/guide-government-agencies-how-comply-with-regulatory-flexibility-act-0>. (For each rule (or related series of rules) requiring a final regulatory flexibility analysis, section 212 of SBREFA requires the agency to publish one or more small entity compliance guides.)

the revision of the existing Guidelines to reflect the Biggert-Waters Act changes. We note that updating the Guidelines is a much simpler task than starting from scratch to draft a small entity compliance guide.

Moreover, we believe that recent expressions of commitment to reducing regulatory burden for community banks call for the revision and maintenance of the Guidelines. The challenges of complying with the mandatory purchase requirement have pushed those banks that can afford it to hire insurance experts to guide their flood insurance compliance efforts. Community banks, however, often lack the resources to bring that expertise on board. They depend on the Guidelines to help their lending personnel understand the law, the NFIP, and the bank's compliance obligations.

ABA appreciates your support in ensuring the continued availability of the Guidelines. If you have any questions or would like to discuss this matter further, please contact the undersigned at 202-663-5222 or [wabernat@aba.com](mailto:wabernat@aba.com); or Richard Riese at 202-663-5051 or [rriese@aba.com](mailto:rriese@aba.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne A. Abernathy". The signature is fluid and cursive, with a prominent initial "W".

Wayne A. Abernathy  
Executive Vice President  
Financial Institutions Policy  
and Regulatory Affairs