



MANDATORY ACCEPTANCE OF PRIVATE FLOOD INSURANCE

A GUIDE TO THE FINAL
BIGGERT-WATERS ACT RULING



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Introduction

As of July 1st, a Final Ruling on the Biggert-Waters Act went in effect, mandating all lenders to accept Private Flood Insurance as an alternative to the Standard Flood Insurance Policy (SFIP) available through the National Flood Insurance Program (NFIP).

This can be a confusing issue for lenders nationwide. We at WTG are industry specialists focused solely on flood determinations. We navigate compliance and regulations better than anyone.

We've taken it upon ourselves to break down some of the key language from this Final Ruling and have created this easily digestible guide to the new changes in NFIP that mandate the acceptance of Private Flood Insurance.



Background

Back in 2012, the Biggert-Waters Flood Insurance Reform Act included a rule directing regulated lenders to accept “private flood insurance” as defined in the statute and notify borrower of availability. Inter-agency questions, commentary on the initial ruling, and subsequent reforms have led to years of review, clarification and re-proposed definitions.

The Agencies re-proposed the private flood insurance rule in November 2016 then, after receiving comments and feedback on the Proposed Rule, issued a Final Rule published on February 20, 2019 that went into effect on July 1, 2019.

The Final Rule mandates all lenders to accept Private Flood Insurance as an alternative to the Standard Flood Insurance Policy (SFIP) available through the National Flood Insurance Program (NFIP).





The Final Rule

The final rule requires regulated lending institutions to accept “private flood insurance” policies as an alternative to the Standard Flood Insurance Policy (SFIP) available through the National Flood Insurance Program.

These private flood insurance policies need to fit the criteria as defined in the Biggert-Waters Act, the details of which are broken down in the following sections:

- Requirements
- Compliance Aid Language
- Discretionary Acceptance
- Mutual Aid Societies Acceptance



Requirements

The Agencies' existing rules mandate statutory flood insurance purchase requirements, and provide that a regulated lending institution shall not make, increase, extend or renew any designated loan unless the building or mobile home (and any personal property securing the loan) is covered by a flood insurance policy for the term of the loan.

The coverage amount must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Federal flood insurance statutes.

Under existing requirements, the Agencies acknowledge that a declarations page is sufficient evidence of a borrower's purchase of flood insurance. However, if the declarations page does not provide enough information to confirm that the policy meets the statutory definition, it may be insufficient for a regulated lending institution to determine if the policy meets the flood insurance purchase requirements. In these circumstances, the regulated lending institution must request additional information about the policy to aid it in making its determination.

For these reasons, and because the Biggert-Waters Act specifically mandates regulated lending institutions to accept "private flood insurance" as defined in the statute, the Agencies adopted a mandatory acceptance requirement, with non-substantive changes to simplify the provision's wording and to add a cross-reference citation for the flood insurance purchase requirement.



Compliance Aid

The Agencies were concerned that many regulated lending institutions would have difficulty evaluating whether a flood insurance policy meets the definition of “private flood insurance”, particularly institutions lacking the related technical expertise.

For this reason, the proposed rule includes compliance aid verbiage. It’s guidelines deem that a policy meets the definition of “private flood insurance”

The policy includes the following statement within the policy or as an endorsement to the policy:

“This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation issued by private insurers.”

The Agencies note that this provision does not permit a regulated lending institution to reject a policy based solely on it’s *exclusion* of the statement.

Furthermore, the institution can choose not to rely on this statement and instead make its own determination.



Discretionary Acceptance

The final rule grants a discretionary acceptance provision, allowing regulated lending institutions to accept certain flood insurance policies issued by private insurers, even if the policies do not meet the statutory and regulatory definition of “private flood insurance”.

Four key criteria must be met:

1. The policy must provide coverage in the amount required by the flood insurance purchase requirement.
2. The policy must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or Jurisdiction.
3. The policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense.
4. The policy must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.



Mutual Aid Society

Regulated lending institutions may exercise discretion to accept plans providing flood coverage issued by “mutual aid societies” defined as an organization that:

1. Has members that share a common religious, charitable, educational, or fraternal bond.
2. Covers losses caused by damage to members’ property, including damage caused by flooding, pursuant to an agreement in accordance with this common bond.
3. Has a history of fulfilling the terms of agreements to cover losses to members’ property caused by flooding.

Regulated lending institutions may accept a plan issued by a mutual aid society, satisfying the flood insurance purchase requirements, provided that:

1. The regulated lending institution’s primary Federal supervisory agency has determined that such plans qualify as flood insurance for purposes of this Act;
2. The plan provides coverage in the amount required by the flood insurance purchase requirement;
3. The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees;
4. The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles. The regulated lending institution must document its conclusion in writing.





Conclusion

The only constant in the world of flood is change.

Clearly, Mandatory Acceptance of Private Flood Insurance is the first step towards reducing the role of the NFIP. The NFIP is currently over \$24B in debt. Congress and FEMA are motivated to remedy this issue with changes to the program. In 2018, FEMA issued over 5300 new maps in order to more accurately reflect flood risk. These steps will continue to result in policy and procedural changes that impact regulated lenders.

It's important for lenders to have a business practice that address these issues. WTG is the industry expert in flood determinations, regulation and compliance. Our reports offer superior accuracy with clear maps for visual verification, and our team in our Flood Resource Center deliver expert guidance and support.

Contact us for assistance or to learn more.



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