ACCEPTABILITY OF FLOOD INSURANCE –
FANNIE MAE SELLING NOTICE

Amendments enacted as part of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) require certain lending institutions and Fannie Mae to accept “private flood insurance,” as defined in the Biggert-Waters Act, in satisfaction of the flood insurance requirements. Pursuant to the Biggert-Waters Act, federal banking agencies adopted a regulation applying that Act’s “private flood insurance” requirement for financial institution subject to their supervision, which became effective on July 1, 2019.

In a “selling notice” issued by Fannie Mae on June 5, 2019, Fannie Mae notes that it is not subject to that regulation, nor is it bound by its interpretation of “private flood insurance” required for Fannie Mae under the Biggert-Waters Act. Fannie Mae noted that the Biggert-Waters Act treats it differently from other lending institution subject to the new regulation by authorizing Fannie Mae to establish requirements for financial solvency, strength or claims-paying ability for issuers of private flood insurance that it will accept.

Under the Fannie Mae selling guide, private flood insurance policies may be delivered as an alternative to National Flood Insurance Program (NFIP) policies. To qualify, the terms and amount of coverage must be at least equal to that provided under an NFIP policy based on a review of the full policy issued by the private insurer. In addition, the insurer must meet the rating requirements in the Selling Guide for property insurers.

Fannie Mae indicates that it will continue to apply its current Selling Guide eligibility standards and procedures to all loans in special flood hazard areas (SFHA) delivered to it, including the ratings requirements for issuers of private flood insurance. Fannie Mae will also continue to apply its current Servicing Guide eligibility and ratings requirements to all loans secured by residences that are in a SFHA at origination, or which are remapped into an SFHA after origination. These requirements apply to each lender and servicer subject to the federal banking agencies’ regulation regardless of the regulatory provision employed by it (“mandatory” or “discretionary”) in complying with the regulation. This applies despite an institution's reliance on “compliance aid” language in a policy asserting qualification as “private flood insurance” under that regulation. Further information regarding the Fannie Mae Selling Guide may be found at https://www.fanniemae.com/content/guide/selling/b7/3/07.html and the Servicing Guide at https://www.fanniemae.com/content/guide/servicing/b/3/01.html
Any questions or concerns regarding compliance with the new regulation as it relates to the requirements of Fannie Mae, should be referred to the Fannie Mae account team, portfolio manager, or its single–family service or support Center at 1-800–2Fannie (1-800-232-6643).

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.