



# ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

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Regulations Division, Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 10276  
Washington, DC 20410-0500

## **RE: ASFPM's COMMENTS ON HUD PROPOSED RULE ON Acceptance of Private Flood Insurance for FHA-Insured Mortgages (DOCKET FR-6084-P-01)**

To Whom It May Concern:

The Association of State Floodplain Managers (ASFPM) is pleased to submit comments on HUD's proposed rule to implement acceptance of private flood insurance as an alternative to NFIP insurance for FHA-insured mortgages. ASFPM, a scientific and educational non-profit organization, represents 37 chapters and more than 20,000 state and local officials, as well as members of the private sector and other professionals engaged in all aspects of flood risk management and flood hazard mitigation. All ASFPM members are concerned with reducing our nation's flood-related losses. For more information on the association, its 14 policy committees and 36 state chapters, visit [www.floods.org](http://www.floods.org).

Our first comment is to applaud HUD/FHA in rejecting the concept of "discretionary acceptance" that was published in the final joint rule put in place by banking regulators in July 2019 and to voice our support for HUD's proposed definition of private flood insurance. The tortured logic upon which the regulators based the concept of discretionary acceptance runs counter to Congressional intent of NFIP reforms to stimulate the private flood insurance market, especially when Congress carefully legislated an intended approach. It is quite clear by the definition of private flood insurance in Section 100239 of the Biggert-Waters Flood Insurance Reform Act of 2012, that Congress wanted clear sideboards on what qualified as a private flood insurance policy for the purposes of meeting the mandatory purchase requirement under the NFIP. It is extremely unfortunate that the regulator's final rule in 2019 created a way around these Congressional sideboards by enacting failed legislative proposals from 2016 through

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# Association of State Floodplain Managers, Inc.

rulemaking. Our more detailed comments on the regulators' joint notice of proposed rulemaking from 2016 that led to the 2019 rule can be found [here](#).

The practical reasons for rejecting the concept of "discretionary acceptance" is that without the Congressionally prescribed sideboards, important consumer and taxpayer protections are lost. For example, discretionary acceptance could lead to excessive deductibles, which while leading to lower insurance premiums, could result in far too high out-of-pocket costs for the mortgagor to then ultimately recover when an event occurs. This, in turn, would lead the insured to then rely on taxpayer-funded disaster assistance instead of making a claim and ultimately sticking taxpayers with added disaster losses. And in some instances, that may still not be enough to recover and the borrower walks away from the home, leaving it in the hands of the mortgagee.

Our second comment is that ASFPM believes it is more appropriate to give mortgagors discretion to accept private flood policies by saying that they "may" accept a private flood policy if it meets all of the definitions. While we respect that the borrower has the freedom of choice to find a private policy (provided the policy fits all of the required definitions/parameters), it is also important that the lender has a choice based on past experiences with providers and their own risk tolerance levels.

Our final comment is that ASFPM supports providing compliance aid to help lenders evaluate if a policy meets the definition of private flood insurance. We note that two specific areas in which guidance could be helpful would be further clarifying "at least as broad as" when it comes to deductibles and coverages—specifically cautioning against excessive deductibles and ensuring the policy has an equivalent to Increased Cost of Coverage (ICC) that is found in an NFIP policy. While we have explained our concerns about excessive deductibles earlier, our concern about ICC is that typically the private sector's equivalent to ICC (e.g., Increased Cost of Construction, Ordinance or Law) is often optional rather than mandatory as with NFIP policies. Further, ICC is very important in terms of helping insured borrowers with the floodproofing, relocation, elevation, or demolition costs of substantially damaged buildings in order to come into compliance with floodplain management requirements which are triggered after a flood damages a building.

ASFPM is pleased to see FHA addressing private flood and appreciates the opportunity to comment. Please do not hesitate to contact Larry Larson, ASFPM senior policy adviser, with any follow-up questions or comments at [larry@floods.org](mailto:larry@floods.org) or 608-828-3000.

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