



Private Flood Insurance Update and Examination Manual Revisions

November 5, 2019

*Presented by:
Heather Howell Wright*



Billions in Flood Losses

- Between 1980 and 2013, the United States suffered more than \$260 billion in flood losses
- These losses create significant flood insurance claims
 - Hurricane Katrina: \$16.3 billion
 - Superstorm Sandy: \$8 billion
- 2017 Total Losses - \$273 billion (insured and uninsured)
 - Hurricane Harvey: \$128.8 billion
 - Hurricane Maria at \$92.7 billion
 - Hurricane Irma at \$51.5 billion

Governing Federal Regulations

- National Flood Insurance Act of 1968
- Flood Disaster Protection Act of 1973 (FDPA)
- National Flood Insurance Reform Act of 1994
- Biggert-Waters Flood Insurance Reform Act of 2012
- Homeowners Flood Insurance Affordability Act of 2014

Flood Disaster Protection Act of 1973 (FDPA)

- First implemented flood insurance requirements for federally-regulated financial institutions
- FDPA and implementing regulations govern lending institutions that “make, increase, extend, or renew” loans secured by real property in special flood hazard areas
- Required agencies to promulgate regulations requiring lending institutions not to “make, increase, extend, or renew” loans secured by real property in special flood hazard areas unless covered by flood insurance

National Flood Insurance Reform Act of 1994

- Increased the focus on lender compliance
- Required lenders to escrow premiums and fees for flood insurance if the lender also required escrow for taxes and other property insurance
- Applied flood insurance requirements to any loans purchased by Fannie Mae or Freddie Mac

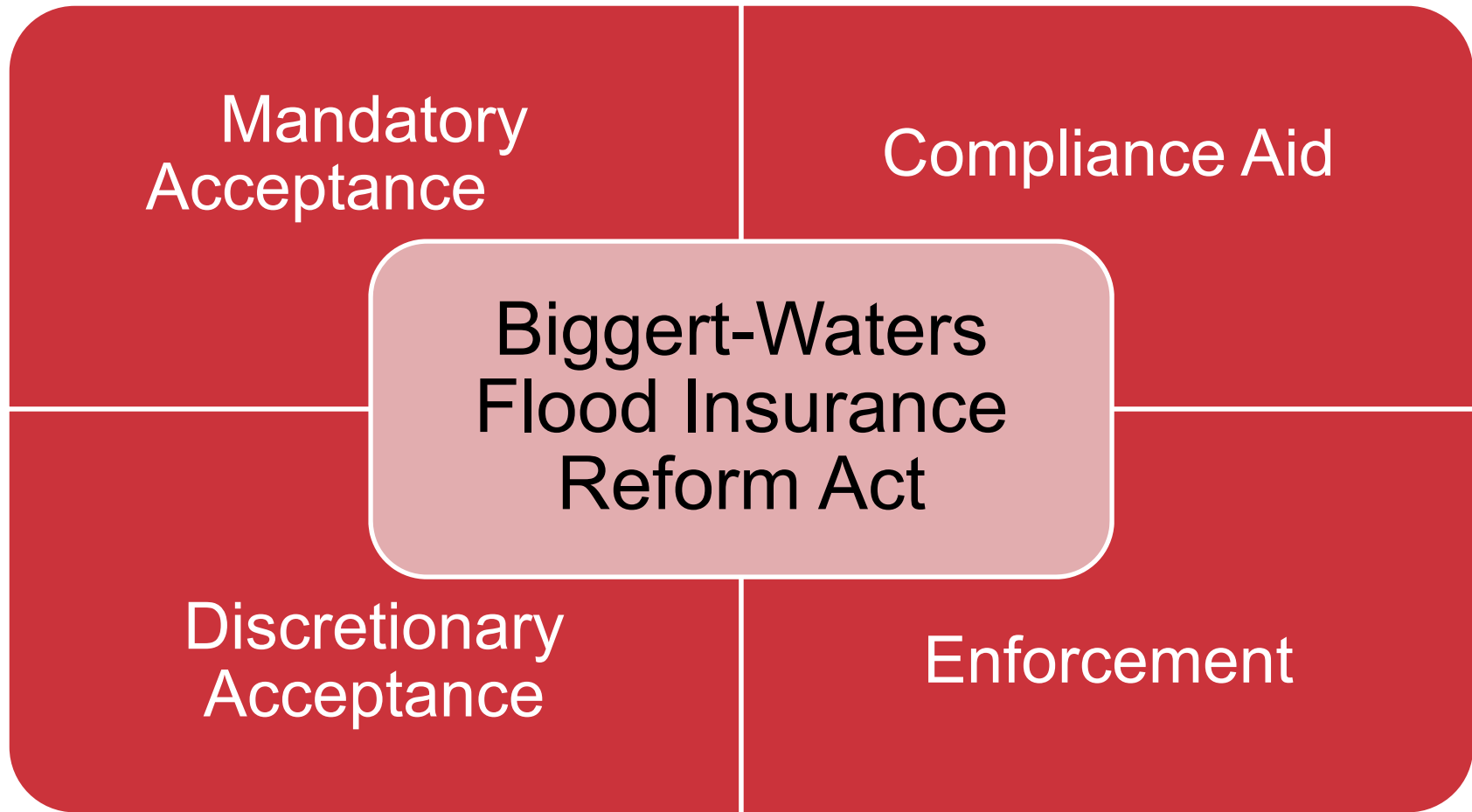


Bradley

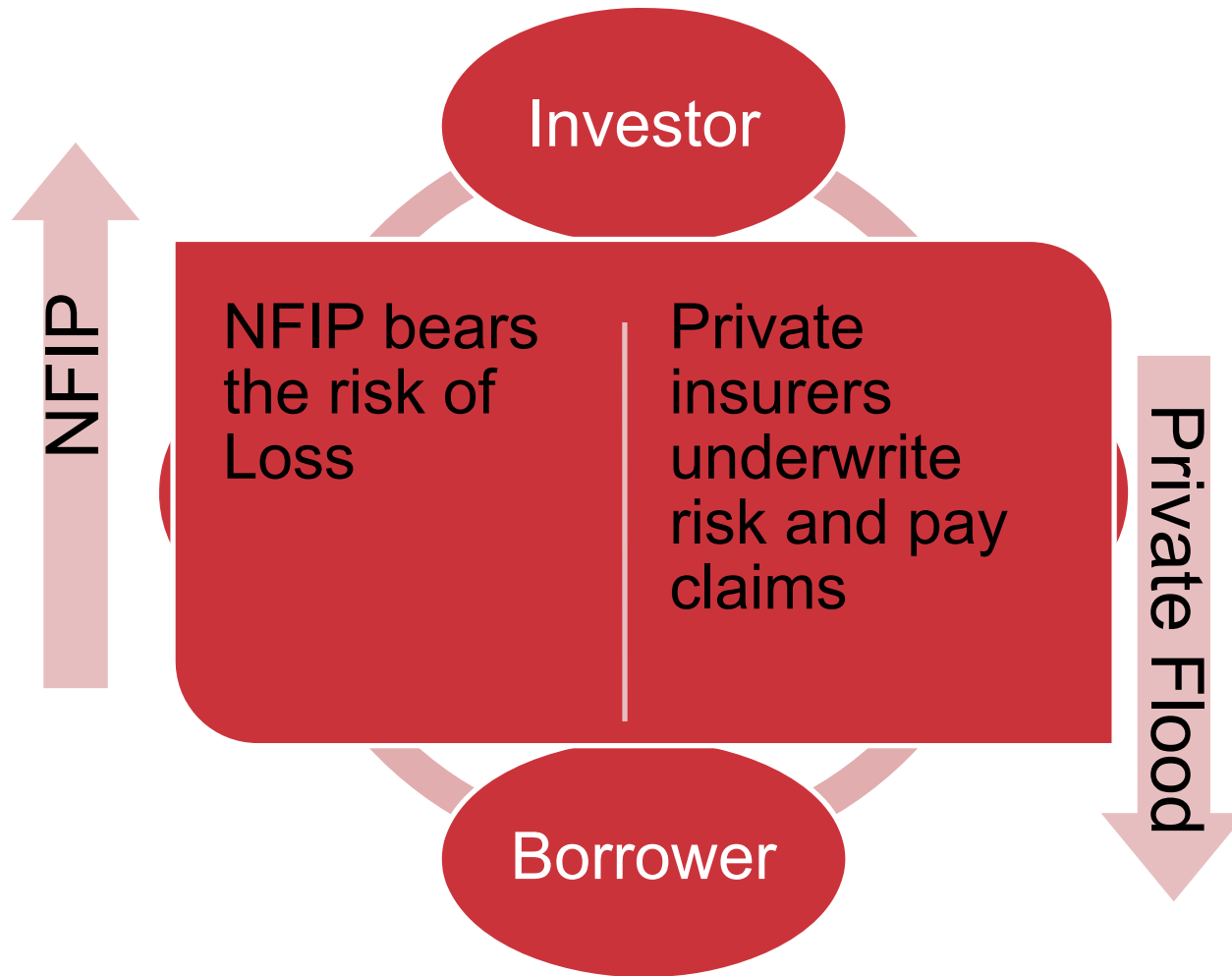
Biggert-Waters Flood Insurance Reform Act of 2012

- Designed to ensure NFIP's fiscal stability by:
 - Phasing out subsidized and grandfathered rates
 - Implementing full-risk pricing for all policies
- Increased monetary penalties and removed statutory caps for lender non-compliance
- Required lenders to accept private flood insurance

Private Flood Insurance Rules



NFIP v. Private Flood



Mandatory Acceptance

Biggert- Waters Flood Insurance Reform Act

Allows private flood insurance to satisfy the mandatory purchase requirement

Issued by an insurance company that is licensed, admitted, approved, or recognized in the jurisdiction where property is located

Provides flood coverage that is “at least as broad as” the NFIP coverage

Mandatory Acceptance

Maximum Limits of Coverage

- \$250,000: 1-4
- \$500,000: 5+ or commercial

Issued by Private Insurer

- Licensed or admitted insurer in jurisdiction OR
- Recognized surplus line insurer in jurisdiction

At Least As Broad As NFIP

- Six factors (or 9 elements) to evaluate
- Each must be considered – regulator expectation

Private Flood Insurance: “At Least as Broad As”

1. Definition of “flood”
2. Same coverage as SFIP – building, increased cost of compliance
3. Deductible maximums
 - \$10,000 for 1-4 residence
 - \$50,000 for 5+ or non-residential
4. No exclusions other than those in SFIP
5. No conditions that narrow coverage in SFIP
6. Must Include: 45 day notice of cancellation; NFIP availability; one year limitation after denial; cancellation provisions same as SFIP

Interagency Webinar – *expect full review*

Compliance Aid

- **“This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”**
- Interagency Guidance –
 - *only* this language
 - cannot reject policy that does not have this language
- By endorsement on Insurance Services Organization private flood forms

Discretionary Acceptance

- 1 Provides coverage in amount required
- 2 By insurer licensed, admitted, approved or recognized surplus lines insurer
- 3 Covers lender and borrower as loss payee (condo exception)
- 4 Provides sufficient protection of the loan consistent with safety and soundness principles
- 5 Conclusion of sufficiency documented in writing

Discretionary Acceptance - Safety and Soundness Considerations

Deductible

- Reasonable based on borrower's financial condition?

Cancellation

- Adequate notice of cancellation to obtain replacement?
- Adequate notice of cancellation to force place?

Conditions

- Mortgagee protection if foreclosure?

Mutual Aid Societies

- Regulator has determined such plans qualify as flood insurance
- Provides coverage amounts required by regulation
- Covers borrower and lender as loss payees
- Provides sufficient protection consistent with safety and soundness principles
- Sufficiency documented in writing

Examination Manual Overview

Section 5 of the FDIC
Consumer Compliance
Examination Manual

Updated September 30,
2019

Background on NFIP
and Flood Disaster
Protection Act

Flood Insurance
Requirements for
Lending Institutions

Practice Tip – Every member of the exam management team should review the Examination Manual prior to the examination

Examination Manual

Acceptance of Private Insurance Policies

V - 6.3 to V - 6.5



Mandatory Acceptance



Discretionary Acceptance



Mutual Aid Societies

Examination Objectives V – 6.11



Examination
Objectives

Determine compliance
with the private flood
insurance requirements of
the regulation

Examination Procedures V-6.11

By reviewing previous examinations and supervisory correspondence;

By obtaining and reviewing the institution's policies, procedures, and other pertinent information;

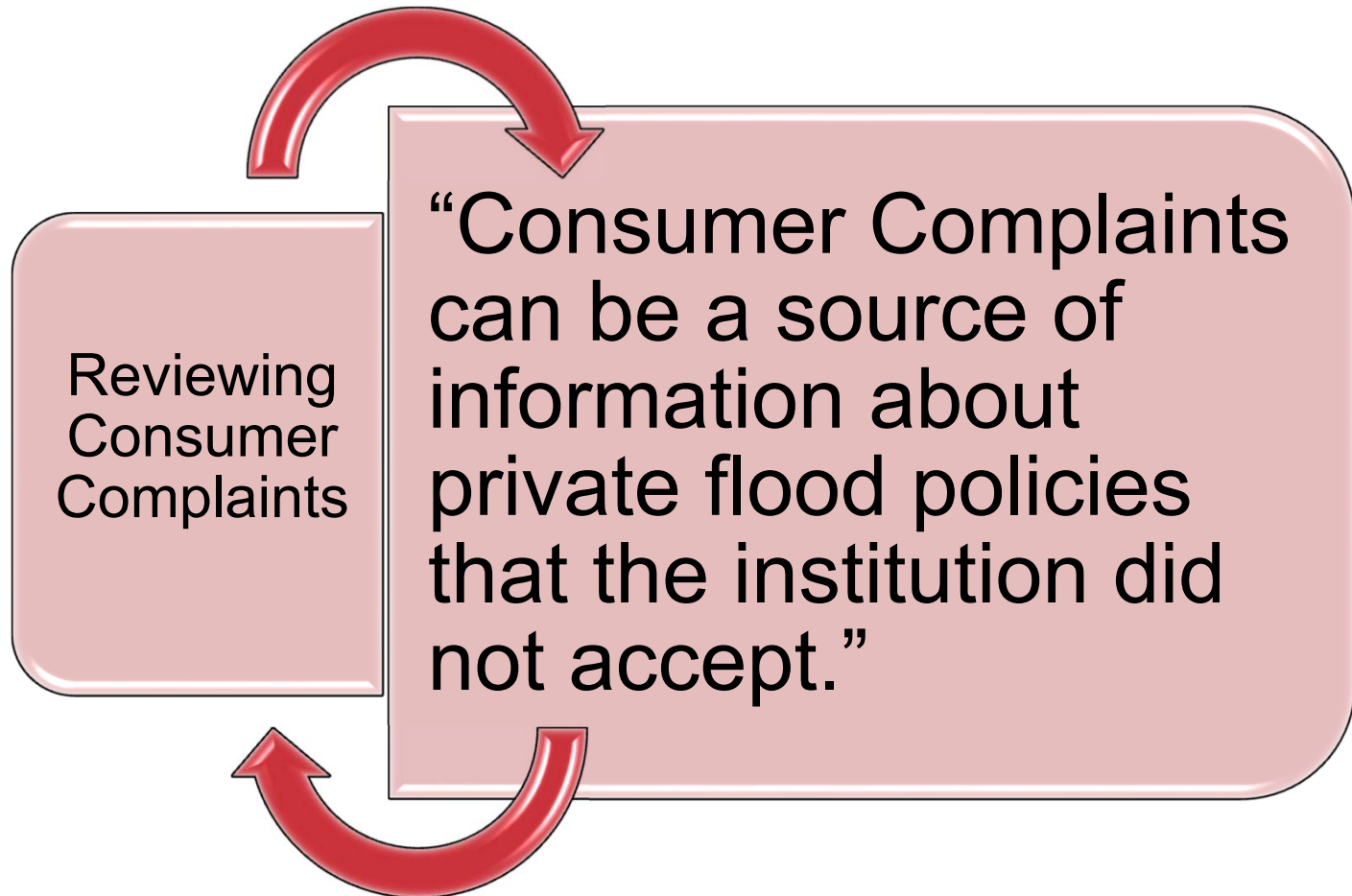
By reviewing the institution's system of internal controls;

By reviewing consumer complaints submitted to the institution.

By discussing procedures with management

By reviewing a sample of loan files

Examination Procedures V - 6.11



Examination Procedures

Purchase Requirements V - 6.12

1.a. “If the institution accepted a private flood insurance policy” under compliance aid or mandatory acceptance

1.b. “If the institution accepted a private flood insurance policy” under discretionary acceptance

1.c. “If the institution accepted a private flood insurance policy” issued by mutual aid society

FDPA Examination Checklist

If accept private flood under mandatory

- Verify policy contains compliance *exactly* as follows
- Verify policy meets the definition of “private flood insurance”

If institution exercises its discretion to accept private flood

- That does not meet the statutory definition of “private flood insurance?”
- Does the institution comply with the regulation’s discretionary acceptance requirements?

If the institution accepts mutual aid plans

- Are the plans accepted in accordance with the regulation’s requirements
- Remember FDIC requirements for mutual aid societies

Implementation Considerations

- Policies, procedures and systems updated
 - Responsibility for vendors
 - Who is reviewing the private policies?
 - Agencies expect review of complete policy
- Training for employees
 - Who/How training conducted
- Customer service – dedicated flood employees to take calls
- Written documentation for safety and soundness
 - Obligations to regulator and to investor

For Questions on Flood Insurance

hwright@Bradley.com



www.financialservicesperspectives.com

Questions?

Bradley