



bankers' compliance group®

## Imposing PFI Review Fees

Effective July 1, 2019, lenders must accept private flood insurance (PFI) on designated loans if the PFI policy meets the “Eight Criteria.” BCG members have asked whether they may charge a fee for this review – that is, whether they may charge a fee for reviewing a PFI policy to determine whether it meets the Eight Criteria.

The banking agencies did not address this in the PFI final rule or during their June 18, 2019 interagency webinar. Thus, the answer is not perfectly clear and arguments could be made either way. The final rule does not specifically prohibit charging a PFI review fee, and on that basis one may argue that it is permissible. A possible counter-argument is that charging a PFI review fee is the equivalent to adding a “ninth criterion” to the Eight Criteria, which might be impermissible. Pursuant to Biggert-Waters and the PFI final rule, lenders must accept a PFI policy if it meets the Eight Criteria. If a lender is presented with a PFI policy that meets the Eight Criteria, it must accept it and arguably could not condition acceptance on the customer paying a PFI review fee.

In sum, until there is some legal authority on point, conditioning a PFI policy’s review (and thus acceptance) on the customer paying a review fee may or may not be permissible. If ultimately found to be impermissible the fee could constitute a flood insurance regulation violation. Contact the law firm for an update or specific advice.

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