



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 4, 2021

[REDACTED]

Dear [REDACTED]

Re: Mutual Aid Society Flood Insurance Plans and State-Chartered Financial Institutions

You have requested that the Commonwealth of Pennsylvania's Department of Banking and Securities ("Department") clarify its position with respect to the issue of whether flood insurance plans ("Plans") offered by mutual aid societies<sup>1</sup> ("Society" or "Societies") are considered to be "insurance" under the Banking Code of 1965 ("Banking Code"), 7 P.S. § 101 *et seq.*, and can thus be accepted by state-chartered financial institutions.<sup>2</sup>

The Banking Code does not contain any provisions that apply to flood insurance coverage. Additionally, the term "insurance" is not a defined term in the Banking Code. *See*, 7 P.S. § 102.

Section 303(h) of the Banking Code, 7 P.S. § 303(h), provides:

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<sup>1</sup> "Mutual aid society" is defined as:  
"an organization—

- (i) Whose members share a common religious, charitable, educational, or fraternal bond;
- (ii) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and
- (iii) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding." 12 C.F.R. § 208.25(b)(7).

<sup>2</sup> Please be advised that the Department does not regulate insurance, nor does it administer the relevant insurance laws of this Commonwealth. *See generally*, The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, No. 285. As a general matter, the insurance laws of this Commonwealth are administered by the Pennsylvania Insurance Department and are subject to the exclusive jurisdiction of the Insurance Department.

“(h) INSURANCE— The agreement may provide for life, health, accident, loss-of-income or other permissible insurance related to an extension of credit under a group or individual policy subject to the option of the customer to furnish required insurance through an authorized insurer of the customer’s choice as provided in section 11 of the act of September 2, 1961 (P.L. 1232, No. 540), known as the “Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance,” and, if premiums for the insurance are paid to the institution, provisions shall be made for rebates of unearned premiums, if any, upon prepayment. *An institution may require that insurance be maintained, from an insurer acceptable to the institution, against loss or damage to property which is collateral security for the extension of credit and against liability arising out of the ownership or use of such property.* An institution may grant an extension of credit to finance the premiums for the insurance.”

7 P.S. § 303(h) (emphasis added).

Because the Banking Code lacks any explicit reference to flood insurance, the Department may look to Sections 103 and 104 of the Banking Code, 7 P.S. §§ 103, 104, to aid in its interpretation of the Plans.

Section 103 of the Banking Code, 7 P.S. § 103, enumerates the purposes of the Banking Code, and includes:

“(v) the opportunity for institutions subject to this act to remain competitive with each other, with financial organizations existing under other laws of this Commonwealth, and with banking and financial organizations existing under the laws of other states, the United States and foreign countries,

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(viii) a delegation to the department of adequate rule-making power and administrative discretion, subject to the provisions of this act and to the purposes stated in this subsection (a), in order that the supervision and regulation of institutions subject to this act may be flexible and readily responsive to changes in economic conditions and to changes in banking and fiduciary practices,

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(x) authorization of institutions to participate fully in interstate banking and branching and to be competitive with interstate banking organizations based in other states.”

7 P.S. §§ 103(a)(v), (viii), (x).

The 1965 Comment to Section 103 of the Banking Code states:

“Clauses (v) through (ix) of subsection (a) recognize that after satisfying the imperatives of safety and soundness there still remains a broad area in which the policies for banking legislation and regulation may create a progressive rather than restrictive atmosphere. The premises underlying such policies recognized by this act are that contemporary

banking faces, and should have the opportunity fairly to meet, a high degree of competition not only from other banks but also, in virtually all principal functions, from a large number and variety of other financial organizations; that banking should have the leeway to adapt itself to changing and expanding requirements of the community in order that it may make its proper contribution to economic progress; that, within the confines of appropriate restrictions to protect depositors and the public, the private business judgment of management should be free to guide the development of banking institutions; and that banking legislation should not be overly-detailed but should permit supervisory authorities to shape regulation, within statutory standards and guidelines, in order to meet changes in banking and economic conditions without repeated, detailed legislative amendment.”

7 P.S. § 103, *Comment—1965*.

Section 104 provides the rules of construction for the Banking Code. Section 104 states, in pertinent part:

“(a) USE OF COMMENTS— The comments of the commission which drafted this act may be consulted in the construction and application of its original provisions but the text of the act will control in the event of a conflict between text and comments.

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(d) CONSTRUCTION OF STATEMENTS OF POWERS OF INSTITUTIONS— A power of an institution stated in this act to be subject to regulation of the department may be exercised, subject to the provisions of this act, in the absence of such regulation but a power which is stated to be subject to approval or permission of the department may not be exercised in the absence of such written approval or permission.”

7 P.S. §§ 104(a), (d).

The 1965 Comment to Section 104 states:

“Subsection (a) gives a statutory basis for referring to the comments of the commission which drafted this act in the construction of its original provisions, although the text will control the comments in the event of conflict. Reference to the comments is especially important in determining the intention of this act with respect to changes in pre-existing law since there is extensive rewriting in this act of provisions of the prior Code, even as to matters which are not intended to be changed in substance. It is intended that the comments be available for reference not only by courts in the event of litigation but also by regulatory authorities, both state and federal, in the conduct of their regulatory and supervisory functions.

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Subsection (d) is intended to avoid any doubt concerning the availability of a power of an institution in the event there may be no current regulation of the department with respect to that power for any reason, even though the authority for regulation is expressed

in connection with the statement of the power in this act. The powers conferred by this act are, accordingly, not dependent on the existence of pertinent regulations although such regulations when issued with control the exercise of those powers. A distinction is made as to powers which require prior action of the department as a condition to their exercise, such as the power to make acceptances in an amount in excess of the basic limit in section 308 and the power to issue capital securities in section 1105.”

7 P.S. § 104, *Comment—1965*.

The Banking Code does not contain any provisions related specifically to the requirements of flood insurance. In fact, the Banking Code does not make “insurance” a defined term and the Department is left to interpret the term based upon its common meaning.

Section 303 of the Banking Code describes financial institutions’ general lending powers, and subsection 303(h) discusses insurance. 7 P.S. § 303(h). Subsection 303(h) states that, in connection with agreements for the extension of credit, “[a]n institution may require that insurance be maintained, from an insurer acceptable to the institution, against loss or damage to property which is collateral security for the extension of credit and against liability arising out of the ownership or use of such property.” 7 P.S. § 303(h). Therefore, a state-chartered financial institution may require flood insurance, such as the Plans, to insure “against loss or damage to property which is collateral security for the extension of credit and against liability arising out of the ownership or use of such property.”

Because the Banking Code is largely silent with respect to flood insurance, the Department may look to some of the broader purposes of the Banking Code to guide its interpretation of the Plans. Section 103 of the Banking Code and its 1965 Comment make clear that one purpose is to ensure that the Department has the flexibility and discretion to provide for the opportunity for state-chartered institutions to remain competitive with financial institutions that are chartered either in other states or nationally. Section 104(a) states that the comments may be consulted when construing and applying the provisions of the Banking Code.

Section 104(a) further provides that, with respect to powers granted to institutions, institutions may exercise their powers in the absence of departmental regulations, except when a specific power is subject to departmental approval or permission.

In conclusion, despite the fact that the Banking Code does not directly refer to flood insurance, such as the Societies’ Plans, there are ways for state-chartered financial institutions to include the Plans in the agreements related to extensions of credit under Section 303(h). *See*, 7 P.S. § 303(h). Under Section 303(h), the Plans may be required by financial institutions that want to protect against loss or damage to property that is collateral for a loan. Therefore, the Plans may be acceptable as protection against property damage or loss, but it must be required by the financial institution in the extension of credit agreement. Additionally, the Banking Code grants the Department discretion to interpret its provisions in a manner that ensures that state-chartered financial institutions are not placed at a disadvantage compared to national banking institutions, while ensuring the safety and soundness of state-chartered institutions. Financial institutions that are members of the Federal Reserve System should take note that the Department will find Plans acceptable if they conform with the requirements

for private flood insurance found in 12 C.F.R. § 208.25(c)(3)(iv).

For the Commonwealth of Pennsylvania  
Department of Banking and Securities  
Office of Chief Counsel

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Chief Counsel