

December 29, 2014

National Credit Union Administration  
Gerald Poliquin, Secretary of the Board  
1775 Duke Street  
Alexandria, VA 22314-3428

RE: Comments on Loans in Areas Having Special Flood Hazards; RIN 3133-AE40

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 400 credit union members and the 10 million members. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on the joint agency notice of proposed rulemaking regarding loans in areas having special flood hazards.

The proposed rule would amend the NCUA's regulations to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). Specifically, the proposal would establish requirements for credit unions with assets of \$1 billion or more, or servicers acting on their behalf, with respect to the escrow of flood insurance payments. It would also incorporate an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. The Leagues offer the following comments and suggestions on how proposal can be improved.

#### **Exemption for Detached Structures (Part 760.4)**

The HFIAA provides that mandatory flood insurance is not required, in the case of any residential property, for any structure that is part of such property but is detached from the primary residential structure and does not serve as a residence.

The proposed rule would implement this exemption, and the NCUA requests comment on whether and how "residential property" should be defined. The Leagues recommend that the NCUA adopt a definition consistent with the Flood Disaster Protection Act (FDPA) for residential improved real estate, that is "improved real estate for which the improvement is a residential building."  
(12 U.S.C. §4012a(d)(4)).

The Leagues agree with the statute's provision that while flood insurance may not be required on these structures, credit unions may nevertheless require flood insurance when it is in the member's best interest or as a matter of safety and soundness.

## **Escrow Requirements (Part 760.5)**

### Exceptions (Part 760.5(a)(2))

Under the proposed rule, a credit union, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any required flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the loan are made for the duration of the loan.

The proposed rule provides several exceptions to the escrow requirement, and the Leagues agree with and support the following proposed exceptions:

- The loan is an extension of credit primarily for business, commercial, or agricultural purposes;
- The loan is a home equity line of credit;
- The loan is a nonperforming loan that is more than 90 days past due;
- The loan has a term of not longer than 12 months; or
- Flood insurance coverage is provided by a policy that: meets the requirements; is provided by a condominium association (or similar group); and the premium for which is paid by the condominium association (or similar group).

### Subordinate Loans (Part 760.5(a)(2)(ii))

The proposed rule also provides an exception if the loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements. The Leagues have the following concerns with this proposed exception:

First, the primary lienholder is responsible for ensuring flood insurance is in place and an escrow account established for the flood insurance premiums on newly originated loans. For existing first lien loans, the primary lienholder must establish an escrow account for flood insurance premiums upon the borrower's request. The subordinate lender should be able to rely on the fact that the primary lienholder has complied. Second, the proposed rule does not provide how or by when a subordinate lender must establish adequate flood insurance coverage is in place. What is acceptable evidence, and what is an acceptable timeframe for the borrower to provide such evidence? Lastly, many credit unions service equity loans on their core processing systems and these systems do not have the functionality needed to support escrow

accounts. The purchase of software systems required to implement escrow accounts for equity loans would be costly and prohibitive, potentially forcing some credit unions to discontinue offering this desirable and needed product to their members.

For the reasons stated above, the Leagues recommend that all loans in a subordinate position be exempted from the escrow requirements.

### Home Equity Loans – First Position

The Leagues also request the NCUA provide an exemption for closed-end home equity loans that are in the first position. As previously stated, many credit unions service their equity loans on a core processing system that does not have the functionality needed to offer escrow accounts. If all equity loans are not fully exempted, then we ask the Agencies to provide an exemption for closed-end home equity loans in the first position of \$100,000 or less or those with a loan to value of 60 percent or less.

### Small Servicer Exception (Part 760.5(c))

The proposed rule exempts credit unions that have total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and on or before July 6, 2012: (A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and (B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

The Leagues recommend the \$1 billion asset threshold be increased to a minimum of \$2 billion and be consistent with other regulatory thresholds for small creditors under the Truth in Lending Act's (TILA) implementing Regulation Z, as promulgated by the Consumer Financial Protection Bureau (CFPB). For example, under the TILA escrow rule for higher-priced mortgage loans, the asset threshold for small creditors operating predominately in rural or underserved areas adjusts annually based on the year-to-year change in November in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers rounded to the nearest million dollars. The asset threshold for calendar year 2014 is \$2.028 billion.

### Offering Option to Escrow (Part 760.5(d))

The Leagues strongly disagree with the proposed requirement that credit unions, or servicers operating on their behalf, offer and make available to borrowers the option to escrow required flood insurance premiums and fees on existing loans outstanding prior to the January 1, 2016 effective date.

Credit unions will find it operationally challenging and burdensome to add an optional escrow account to outstanding loans. Most systems require the loan to be initially setup based on whether or not the loan has an escrow account. To establish an escrow account later will create system issues and possible manual tracking of escrow accounts which can lead to errors as well as being costly and inefficient. The Leagues urge the NCUA to remove this requirement and grandfather in outstanding loans.

## **Conclusion**

In conclusion, the Leagues strongly urge the NCUA to expand the escrow exceptions to exempt all subordinate loans as well as home equity loans in the first position, increase the asset size threshold for the small lender exception, and do not require credit unions to offer optional escrow of flood insurance premiums and charges to existing, outstanding loans. We thank you for the opportunity to comment on the proposed rule and for considering our views.

Sincerely,

Diana R. Dykstra  
President and CEO  
California and Nevada Credit Union Leagues

cc: CUNA, CCUL