



Credit Union National Association

cuna.org

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December 10, 2013

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

Re: Comments on Loans in Areas Having Special Flood Hazards; RIN 3133-AE18

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments on the proposed notice of joint rulemaking on Loans in Areas Having Special Flood Hazards. By way of background, CUNA is the nation's largest credit union trade organization, representing state and federal credit unions, which serve nearly 99 million members.

The proposed notice of joint rulemaking issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and the National Credit Union Administration (NCUA) (collectively, the Agencies) would implement provisions in the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) that require a lending institution to accept private flood insurance. The proposal also addresses escrow requirements regarding flood insurance premiums and other provisions in the Agencies' various flood insurance rules. While we generally agree with most of the requirements in the proposal, we ask the Agencies to be mindful of placing additional regulatory requirements on credit unions and request that the Agencies extend compliance dates or provide waivers when an institution is unable to meet a compliance date due to circumstances beyond its control.

### **Private Flood Insurance**

We support the Agencies' proposal to allow private flood insurance to satisfy the Flood Disaster Prevention Act's (FDPA) mandatory flood insurance requirements. Although the Biggert-Waters Act requires that lending institutions accept private flood insurance, such insurance must meet definitional requirements in section 760.2(i) and other provisions of the regulation in order for a financial institution to meet its obligation that flood insurance is in place



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when required.

The proposal creates a safe harbor for credit unions in a particular state if a state insurance regulator makes a determination that private flood insurance meets the requirements in the regulation. To qualify for the safe harbor, private insurers must meet the statutory definition of “private flood insurance” in the proposed rule and obtain a determination in writing from a state regulator. This approach requires private insurers to be familiar with the state laws in which they are doing business, and requires them to be licensed in that state.

The proposal’s requirement of written approval by a state regulator will alleviate the burden on lenders of having to determine the suitability of private flood insurance policies. This may also help position private insurance as an attractive option for borrowers because they know that the insurance will be accepted by credit unions and other regulated lending institutions, and has been approved by a state insurance regulator. For these reasons, CUNA supports the private flood insurance provision in the proposal.

### **Private Flood Insurance Not Meeting Definition of Flood Insurance**

The Agencies indicated that they are considering including a provision in the final rule that expressly permits regulated lending institutions to accept, in satisfaction of the FDPA’s mandatory purchase requirement, a flood insurance policy issued by a private insurer that does not meet the Biggert-Waters Act definition of private flood insurance.

Allowing state insurance regulators to determine if private flood insurance policies meet the appropriate criteria potentially fosters more competition in the private flood insurance marketplace. This might also allow for flood insurance policies tailored to fit the needs of a geographic area better than a one-size-fits-all approach of the current regulatory scheme. More focused private flood insurance policies could potentially reduce costs to borrowers.

We support this alternative private flood insurance as long as it falls within the general safe harbor for private flood insurance in proposed section 760.3(c)(2). Furthermore, it should be at a lender’s discretion whether to accept this insurance and the state insurance regulator should be required to provide documentation similar to what is required for statutory private insurance.

### **Escrow Requirement**

The proposed rule requires lenders, or servicers acting on their behalf, to establish an escrow account for all premiums and fees for flood insurance required for any loan secured by residential improved real estate or a mobile home, unless a statutory exception applies. CUNA supports this requirement but requests additional clarification for home equity lines of credit and other second liens, which we do not believe should be covered.

Credit unions often do not possess information that allows them to determine the insurance status of loans. To facilitate escrow requirements, lien holders, insurance companies, and homeowners should be required to indicate the escrow status, which would help credit unions track the escrow status on these loans. We recommend several additional provisions to help financial institutions meet escrow requirements:

- Insurance declarations should detail the escrow status;
- Changes in escrow status by lienholders should be reported to insurance companies; and
- Insurance companies should be required to notify all lienholders and homeowners when informed of changes in escrow status.

These requirements would help lienholders track flood insurance status, which will make compliance with the provisions in this proposal less complicated for lenders.

The final rule should also clarify whether credit unions are required to monitor the current flood zone status of a property throughout the life of an open-ended loan, or only at the time of origination using the standard FEMA form as prescribed in section 760.6(a).

### **Exceptions from Escrow Requirements**

The Biggert-Waters Act has an exception from the escrow requirements for lenders with assets less than \$1 billion. We urge the Agencies to review the escrow requirements contained in Regulation Z, under section 1026.35, to ensure that there is consistency between the escrow requirements under this section and those that NCUA is proposing under the Biggert-Waters Act. We are concerned that the proposal complicates the new statutory escrow exception by creating multiple escrow schemes under which credit unions will be required to establish escrow accounts for flood insurance but possibly not for taxes and other related items.

### **Timing**

Because of all of the rules that credit unions, particularly mortgage lenders, are facing, we ask the Agencies to provide more time to comply with the provisions in the proposed regulation. As proposed, the rule would cover loans that are outstanding or entered into on or after July 6, 2014, and credit unions will be required to start escrowing premiums with the first loan payment after the first renewal date of the borrower's flood insurance policy that occurs on or after that date. Our members have expressed concern that second mortgages will be especially problematic. These loans must be reviewed to determine lien position and whether the primary lender is subject to escrow requirements.

Given that the process for determining which loans will require escrow accounts will be time consuming and the fact that internal processes and computer

programming will need to be modified, we believe extending compliance until January 2015 is reasonable and will facilitate compliance. We urge the Agencies to provide this additional time for lenders to comply properly with the escrow provisions in the rule.

### **Conclusion**

CUNA supports the private flood insurance provisions in the proposal but we urge the Agencies to address the concerns we have raised, particularly regarding the escrow account requirement exceptions and the need for more time to comply as addressed in this letter in order to minimize compliance burdens on lenders, while meeting the requirements of the Biggert-Waters Act. If you have any questions about our letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Mary Mitchell Dunn".

Mary Mitchell Dunn  
Deputy General Counsel and Senior Vice President