December 10, 2013

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-AE18

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), the largest state trade association for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million member-consumers. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on the joint Agencies' proposed rulemaking regarding loans in areas having special flood hazards.

The Agencies have jointly proposed amendments to their regulations in order to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the Act). The Act made sweeping changes to the National Flood Insurance Program (NFIP) and makes considerable changes to lenders' compliance requirements regarding flood insurance. These regulatory requirements may have unintended consequences to both lenders and consumers; therefore, their implementation requires careful consideration. The Leagues respectfully submit the following comments and recommendations on the proposed rules.

Private Flood Insurance Requirements (Part 760.3(c))

The Leagues support the proposed requirement for lenders to accept private flood insurance. However, while we recognize the proposed definition of "private flood insurance" is consistent with section 100239 of the Act, the definition presents compliance challenges. Credit unions and other lenders will find it difficult to evaluate whether a private policy meets the required standards.

Safe Harbor (760.3(c)(2))

The Agencies have proposed a safe harbor provision stating a flood insurance policy will be deemed to meet the definition of private flood insurance when a state insurance regulator makes a determination in writing that the policy meets the required standards. The Leagues are concerned that no process exists today for states to make this determination and provide written certification. For states to implement these processes, it will take time, resources and money. These costs will likely be passed on to the insurers and ultimately the consumers. In addition, processes will likely vary from state to state.

The Leagues recommend the Agencies provide an additional safe harbor that allows insurers to certify, in writing, that the policy meets the minimum requirements for private flood insurance under the Biggert-Waters Flood Insurance Reform Act of 2012. A certification by an insurer shall be legally binding on the part of the insurer, thus giving lenders the assurance they need to accept the policy. In both safe harbor scenarios (the proposed state certification safe harbor and the recommended insurers' safe harbor), the Agencies should provide model language for the state and the insurers to issue written certifications.

Discretionary Flood Insurance Policies

The Agencies note that while the Act requires a regulated lending institution to accept private flood insurance that meets the statutory definition, the statute is silent about whether a regulated lending institution may accept

a flood insurance policy issued by a private insurer that does *not* meet the statutory definition. The Agencies believe that the Congressional intent of the statute was to stimulate the private flood insurance market. Therefore, the Agencies request comment on whether policies issued by private insurers that do not meet the statutory definition of ''private flood insurance'' should be permitted to satisfy the mandatory purchase requirement.

The Leagues believe that lenders should have the flexibility and discretion to accept private flood insurance policies that do not meet the statutory definition, but which meet the requirements under the Flood Disaster Protection Act. Such policies would not be provided a safe harbor. The Leagues agree with the suggested minimum criteria for these discretionary policies and recommend the criteria also include: (1) a requirement for the insurer to provide 45 days written notice to the policyholder and the lender if a policy is cancelled or not renewed, and (2) a requirement that the policy be clearly identified as not conforming to the statutory definition of private flood insurance. Further, the Agencies should clarify that while lenders have the discretion to accept private flood insurance policies that do not meet the statutory definition, they are not required to accept any policy that does not meet any safe harbor provisions.

Escrow Requirements (Part 760.5)

Small Lender Exception(760.5(c)(1))

The proposed rule's exception to the escrow requirements for small lenders is substantially similar to the Act, with some clarifications. The proposal exempts from the escrow requirements credit unions (except as may be required under State law) 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 a 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 loans secured by residential improved real estate or a mobile home.

Because the Act does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the exception, the Agencies are proposing that a regulated lending institution may qualify for the exception if it has total assets of less than $1 billion as of December 31 of either of the two prior calendar years. Thus, a credit union would only be subject to the escrow requirement if it has assets of $1 billion or more as of December 31 for at least two consecutive years. The Leagues agree with this proposed determination method.

Subordinate Liens (760.5 (a)(1)(ii))

The Leagues agree with the exception to escrow requirements on a subordinate lienholder when a borrower has obtained flood insurance coverage and is currently paying premiums and fees through an escrow account established by the senior lienholder. This is consistent with current interagency guidance regarding coordination between the first and subordinate lienholders. However, the Leagues are concerned that this statement may be interpreted to require ongoing monitoring. The Leagues recommend the Agencies clarify this determination is required only at the triggering point – when a loan is originated, increased, extended, or renewed.

Timing (760.5 (a)(2)(i))

The Act established the effective date of the mandatory escrow provision for any mortgage *outstanding or entered into* on or after July 6, 2014. The Leagues are concerned with the impact to credit union members with existing loans. For existing loans, the proposed rule requires credit unions to begin escrowing premiums and fees for flood insurance "with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014." This requirement and implementation process does not address contractual or member service issues.

Credit unions typically allow members who have sufficient equity in their homes to waive the escrow of taxes and

fees, including flood insurance premiums. In addition, some borrowers may have agreed to pay a slightly higher interest rate to obtain the escrow waiver. Imposing an escrow requirement to an existing loan changes their contractual terms and monthly payment amount. The Leagues are uncertain that a new federal requirement would supersede existing contracts. Further, we anticipate members will demand a refund of extra interest paid over the life of the loan.

The proposed rule does not address that some members with existing loans will resist escrow. What are credit unions to do when they have evidence that a member has existing, current flood insurance that they pay outside of escrow and they are unwilling to begin escrowing for their flood insurance premiums? Are credit unions required under this new rule to force place a policy and establish an escrow account for that policy?

Credit unions strive to make our members lives better yet, as proposed, we anticipate this rule will cause significant compliance burdens, member dissatisfaction, and potential legal issues. The Leagues strongly oppose the requirement to begin escrowing for flood insurance on existing loans. Instead, we recommend that the requirement to escrow for flood insurance premiums on existing loans be tied to a triggering event -- when a loan is increased, extended, or renewed. This provides the credit union with the opportunity to explain the change in law and how it will affect the member's monthly payment and to obtain a new contract.

Change in Ownership (760.5(d))

The proposed rule states that if a credit union that is required to comply with the escrow requirements acquires a designated loan covered by flood insurance and that loan becomes subject to escrow requirements as a result of the credit union's acquisition of the loan, the credit union must begin escrowing premiums and fees for flood insurance "with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan."

For the reasons discussed above under timing for existing loans, the Leagues oppose the requirement to begin escrowing for flood insurance on acquired loans. The member's contract, and the escrow requirement or waiver, should be honored for the life of the loan or until the member requests an increase, extension, or renewal.

Force Placement of Flood Insurance (Part 760.7)

The Agencies are proposing to amend their rules for the force placement of flood insurance. The proposal implements section 100244 of the Act by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate a borrower has flood insurance coverage.

The Leagues generally support these proposed amendments and recommend one clarification. Under 760.7(b)(1) for termination of force-placed insurance, the proposal requires action by the credit union within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage. Under 760.7(b)(2), for purposes of confirming a borrower's existing flood insurance coverage, a credit union or its servicer shall accept from the borrower "an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent."

The Leagues recommend this section should be amended to require documentation consistent with final requirements under 760.3 for determining whether private flood insurance policies meet the definition of private flood insurance, or the alternative discretionary private flood insurance policy requirements.

Effective Date

The Leagues urge the Agencies to provide a 12 to 18-month implementation period. The Act assigned an effective date for the escrow provisions of two years from the date of enactment, July 6, 2014, and Congress

charged the Agencies with developing implementing regulations. Congress could not have known that the Agencies would take 15 months to issue a proposed rule, leaving only a few months for lenders, insurers, and state insurance regulators to comply with a final rule. Credit unions will need time to make substantial changes to their existing systems as well as develop a plan to communicate with and minimize the impact to members with existing loans.

Conclusion

In conclusion, the Leagues generally support the proposed requirements. In regard to acceptance of private flood insurance policies, we recommend a second safe harbor that allows insurers to certify, in writing, that a policy meets the requirements for private flood insurance and the insurer be legally bound to that statement. The Leagues also support providing credit unions with the flexibility and discretion to accept other private flood insurance policies that meet proposed and recommended criteria.

In regard to escrow requirements, the Leagues thank Congress for the small lender exception and we agree with the Agencies proposed method for determining whether an institution qualifies for the exception. The Leagues strongly recommend that escrowing for existing loans, acquired loans, and new subordinate loans only be required at a triggering event – when a loan is originated, increased, extended or renewed.

Thank for the opportunity to comment on the proposed rule and considering our views.

Sincerely,

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

cc: CCUL