



December 10, 2013

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

RE: Interagency Proposal - Loans in Areas Having Special Flood Hazards; RIN 3133-AE18

VIA ELECTRONIC MAIL: www.regulations.gov

The Michigan Credit Union League (MCUL), the statewide trade association representing 98% of the credit unions located in Michigan and their 4.5 million members, appreciates the opportunity to comment on the Interagency Proposal regarding loans in areas having special flood hazards. The Agencies are requesting comment on three specific items as amended in the Biggert-Waters Act of 2012 (“Act”), specifically (i) requiring regulated lending institutions to escrow premiums and fees for flood insurance on residential improved real estate, unless the institution meets the statutory small institution exception; (ii) directing regulated institutions, including credit unions, to accept private flood insurance and notify borrowers of the availability of private flood insurance; and (iii) amending the force-placement requirement clarifying that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date in which the flood insurance coverage lapsed or did not provide sufficient coverage and prescribe the procedures for terminating the force-placed insurance.

The MCUL is generally supportive of the proposal but requests clarification on some elements, specifically regarding acceptance of private flood insurance and the forced-placed insurance notice requirements.

Private Flood Insurance

With regard to the acceptance of private flood insurance the Agencies have requested comment on whether policies issued by private insurers that do not meet the Act’s definition of “private flood insurance” should be permitted to satisfy the mandatory purchase requirement and what the effect of such a provision would be on the availability of privately issued flood insurance. According to the State of Michigan, the cost of flood insurance varies depending on how much is being insured, when the house was built, if the house has a basement, and the elevation of the lowest floor of the house.

For example, if a home was built before the date of the existing flood insurance rate map, it qualifies for a subsidized rate. For \$100,000 worth of structural coverage for a house with a basement in the 100-year floodplain, built before the date of the map, the coverage would cost about \$700/year. If that same house did not have a basement, and if the lowest floor elevation were 1 foot above the 100-year flood elevation, the insurance rate for \$100,000 worth of structural coverage would fall to about \$320/year. If the house is located outside of the 100-year floodplain, the insurance rate would be about \$241/year, for \$100,000 worth of structural coverage, and would include \$25,000 worth of contents coverage. According to statistics, the national average for an annual flood insurance premium is \$600, however with the passage of the recent laws, the premiums will significantly increase for some in higher-risk flood zones.

If regulated lending institutions are granted authority to accept a flood insurance policy issued by a private insurer, this may open the market for consumers to shop various flood insurance policies while still maintaining the appropriate levels of required coverage on their home.

Alternative Private Flood Insurance

The MCUL supports the proposed rule allowing for the acceptance of private flood insurance policies that meet the appropriate criteria. 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. By allowing lenders to accept such policies it may provide for policies tailored to better fit the needs of a geographic area instead of the current governmental requirements under the existing regulation. More focused private flood insurance policies could reduce costs to borrowers and other property owners.

There is some concern relating to the state's determination of acceptance. We are unsure of the state insurance regulators' ability to review and authorize the use of alternative private insurance, and question how credit unions could communicate with the state regulators when requesting review of possible documents (and vice versa). We ask the Agencies to provide clarification on this process if adopted in the final rule.

Escrow Requirement for Flood Insurance

The MCUL is supportive of the requirement to escrow all premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home unless a statutory exception applies, however requests additional clarification for home equity lines of credit (HELOCs) and subordinate liens.

Credit unions often lack the resources or are not provided the appropriate information to allow them to determine the insurance status of loans. To facilitate escrow requirements, the MCUL is supportive of a requirement for lien holders, insurance companies and homeowners to indicate escrow status and requests additional guidance in addressing how to track the escrow status and how insurance companies could notify credit unions, as lienholders, when there is a change in the escrow status. With this type of information credit unions could track flood insurance more efficiently thus making compliance with the provisions in the proposal less complicated.

The MCUL also requests clarification from the NCUA on how credit unions are to address HELOCs with zero balances.

Exceptions from Escrow Requirements

The Biggert-Waters Act has an exception from the escrow requirements for lenders with assets less than \$1 billion. The MCUL urges the Agencies to review the escrow requirements contained in Regulation Z, under section 1026.35 to ensure that there is as much consistency as possible between the escrow requirements under this section and those that the NCUA is contemplating as required by the Biggert-Waters Act. The exception complicates the requirements within 1026.35 by creating multiple escrow scenarios in which credit unions will be required to escrow for flood insurance but not for taxes, insurance and other related items. The CFPB escrow rules for High Priced Mortgage Loans requires the establishment of an escrow account for the first five years of the loan. Loans that are not considered a high priced mortgage loan would be exempt from the escrow requirements but, if greater than \$1 billion in assets, would still be required to maintain an escrow account for flood insurance in the event the property fell within the special flood hazard area ("SFHA"). Additionally, the CFPB has provided exemptions to the escrow rules for small creditors who operate predominantly in a rural or underserved area. The creditor must meet a two part test, the second part of states the lender must have less than \$2 billion in assets. The differing thresholds add additional confusion to credit unions regarding the escrow requirements.

Force-Placed Insurance

The MCUL is requesting clarification regarding the force-placed insurance provision and the interpretation of the term “lapsed” when charging for force-placed insurance. The CFPB’s servicing rules, while separate from the Biggert-Waters Act rules, have significantly different notice requirements when force placing insurance. The term “lapsed” is not addressed in the servicing rules and may cause confusion among lenders when force-placed insurance is necessary. The servicing rules require two notices be sent to the consumer if no response providing evidence that the consumer has hazard insurance in place before charging for force-placed insurance. The first notice must be sent at least 45 days before charging the consumer. If evidence that the consumer has maintained insurance is not received, a second notice must be mailed at least 30 days after the first notice is sent.

The CFPB’s servicing rules also indicate that the insurance must be cancelled and the premiums for force-placed insurance and any fees associated be refunded within 15 days of receipt of coverage. The Agencies have indicated in their proposal that within 30 days of receipt of confirmation of flood insurance the fees and any premiums paid for force-placed insurance must be refunded to the borrower. For consistency among regulations the MCUL encourages the Agencies to consider corresponding timelines with the CFPB servicing rules when lenders place force-placed flood insurance.

Timing

The MCUL encourages the Agencies to consider extending the proposed timeframe for compliance with the provisions as the proposed rule covers loans that are outstanding or entered into on or after July 6, 2014. The process for determining loans requiring escrow could be time consuming and burdensome to credit unions, who as previously discussed, may not have the resources to monitor for flood insurance. This short time frame for compliance, coupled with the significant impact of the CFPB’s mortgage rules could be excessively burdensome for credit unions.

Conclusion

While the MCUL is generally supportive of the requirements addressed in the proposal, we ask the Agencies to be cognizant of the current regulatory burdens credit unions are facing and be mindful of placing additional regulatory requirements on credit unions. We ask the Agencies to consider extending the effective date of compliance or provide for a waiver in the event a compliance date cannot be met.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Ross', with a stylized flourish at the end.

Ken Ross
Executive Vice President & Chief Operating Officer