CREDIT UNION ASSOCIATION OF THE DAKOTAS

December 10, 2013

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

RE: Loans in areas having special flood hazards; RIN 3133-AE18

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) with regard to the joint notice of proposed rulemaking for Part 760 relating to loans in areas having special flood hazards. This joint notice of proposed rulemaking was issued by the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; and National Credit Union Administration (Agencies). To provide a brief background, the Credit Union Association of the Dakotas represents seventy state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total $5.1 billion and who have more than 450,000 members.

This proposed rule implements provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, which significantly revised Federal flood insurance statutes. In general, CUAD supports the NCUA and Agencies in their efforts to implement these statutorily required changes by offering clarification as needed.

With regard to the proposed definition of "private flood insurance" and the related safe harbor under §760.3(c)(2), CUAD supports the proposed safe harbor that a flood insurance policy shall be deemed to meet the definition of private flood insurance in § 760.2(i) if a State insurance regulator makes a determination in writing that the policy meets this definition. Proposed §760.3(c) requires that a credit union must accept private flood insurance, as that term is defined in the regulation, as satisfaction of the flood insurance coverage requirement. Credit unions would greatly benefit from being allowed to rely on the written determination of a State insurance regulator in concluding whether or not a policy of private flood insurance would satisfy these requirements to obtain flood insurance.

In addition to the proposed safe harbor that would be granted if a written determination were provided by a State Insurance Regulator, we recommend that an additional safe harbor be granted when the credit union obtains a written certification or endorsement issued by the insurer that issued the private flood insurance. This will provide greater flexibility to credit unions, especially, if a particular State Insurance Regulatory does not have a efficient system in place upon the effective date of the final rule to issue written determinations.

The NCUA and Agencies should provide flexibility in satisfying the mandatory purchase of flood insurance requirement by allowing, not requiring, credit unions and other lenders to accept private flood insurance that does not meet the statutory definition of "private flood insurance." With regard to flood insurance not meeting the statutory definition of private flood insurance and therefore outside the safe harbor, it seems appropriate to require that the flood insurance must meet certain standards. Specifically, we recommend that the flood insurance be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located by the insurance regulator of the State; provide flood insurance coverage in an amount that is compliant with the statutory requirement; be clearly identified as policies that include coverage for the peril of flood; cover improved real property that is collateral for designated loans in all flood zones; and require the insurer to notify the policyholder and the lender if the policy is cancelled using industry standard mortgage clause language.

With regard to the notice requirements under §760.5 *Escrow requirement*, credit unions should be allowed to deliver these notices electronically. It is not clear that notices regarding escrow accounts can be delivered electronically, only that the credit union must mail or deliver a written notice. To remain consistent with other regulatory requirements for notices and disclosures that are required to be provided for loans, electronic delivery for escrow notices should be allowed.

CUAD strongly supports NCUA and the Agencies limiting the scope of escrow requirements to that of residential improved real estate or a mobile home. CUAD further supports the exclusion from escrow account requirements for loans that are primarily for business, commercial or agricultural purposes.

It is proposed that borrowers that have obtained flood insurance coverage that meets regulatory requirements for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender would be excluded from escrow requirements. The NCUA should exclude all subordinate liens at origination from the escrow requirement for the life of the loan. To base the exemption for subordinate liens on whether or not the member is "currently paying premiums and fees through an escrow account established by another lender" would impose a significant ongoing

monitoring obligation on the subordinate lien holder to determine if the first lien holder is collecting escrow payments from the borrower or if the first lien has been paid off. Furthermore, the first lien holder may be exempt from escrow requirements under §760.5(c). §760.5(c)(1) provides that the escrow requirements under §760.5(a)(1) and (2) do not apply to a credit union that has 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. The costs associated with an on-going monitoring requirement will only increase the cost of credit, which is ultimately passed to the member.

CUAD supports the exception from escrow requirements for flood insurance coverage for the residential improved real estate or mobile home that is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of §760.3(a).

We recommend that the NCUA and Agencies take steps to further exempt additional types of loans from the escrow account requirement. Specifically, non-performing mortgage loans, loans with maturities of less than one year, lines of credit and reverse mortgage loans, manufactured (mobile) home loans, and loans with force placed insurance should not be required to have escrow accounts as to do so would be overly burdensome and in some cases unnecessary.

"Non-performing residential mortgage," would include mortgage loans that have been charged-off, are in bankruptcy, or are in foreclosure. To require escrow accounts for these types of loans, when payment is unlikely would be a waste of resources. With regard to the loans with maturities of less than one year, it is unlikely that monies paid into escrow would be disbursed to renew a flood insurance policy as the loan would mature before that date. Therefore, the funds in escrow would be returned to the member and the escrow account would have been unnecessary.

Lines of credit and reverse mortgages should also be exempt from the escrow account requirement. For both of these loan products, the outstanding balance can be zero as members make payments on the outstanding balance. Since the amount of flood insurance required and therefore the flood insurance premium can vary from year to year, calculating for the escrow account would be difficult. With regard to the force placed flood insurance, since it is the lender that is more than likely paying the flood insurance premium, requiring an escrow account would be irrelevant.

With regard to the proposed changes to §760.7 *Force-placement of flood insurance*, CUAD supports the clarification that the credit union may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. CUAD suggests that NCUA further clarify that credit unions may purchase force placed insurance immediately after the borrower's original policy lapses and that credit unions do not have to wait 45 days to force-place flood insurance. Under the current and proposed rule, §760.7 provides that "If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf." In the discussion of the final rule it is noted that, "additionally, the Agencies interpret the Act to permit a regulated lending institution to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure that it is continuous. Such a practice will ensure that institutions complete the force-placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution."

Section 760.7(b) provides the process under which a credit union must terminate force-placed flood insurance. §760.7(b)(1) directs that "within 30 days of receipt by a credit union, or a servicer acting on the credit union's behalf, of a confirmation of a borrower's existing flood insurance coverage, the credit union, or its servicer shall: (i) Notify the insurance provider to terminate any insurance purchased by the credit union or its servicer under paragraph (a) of this section; and (ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period."

The NCUA and Agencies should narrow the scope of these requirements and clarify that the force-placed flood insurance can only be terminated when there was flood insurance in place that conforms to the requirements of §760.3(a) or (b) and conforms to the requirements under the loan agreement. If credit unions were required to terminate force-placed insurance upon accepting *any* insurance policy declaration page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent, instead of accepting proof of *conforming* flood insurance policies, both lenders and borrowers may be unprotected should the existing flood insurance not meet the statutory and regulatory requirements for flood insurance.

We also urge the NCUA and agencies to adopt a limit on how far back a credit union may have to refund overlapping flood insurance to encourage borrowers to be diligent in reviewing notices

from their credit union and also to be prompt in notifying the credit union when the member has obtained or continued to have conforming flood insurance.

Finally, we implore the NCUA and Agencies to provide ample time to implement these regulatory changes. We acknowledge that some of the regulatory changes have an effective date controlled by statute, however, for those changes that do not have a statutorily mandated effective date we stress the importance of providing credit unions and other regulated lenders with sufficient time to properly and thoroughly implement these changes. As the NCUA and Agencies are well aware, there have been significant regulatory changes, especially changes related to mortgages. Changes under this final rule when issued will require system changes, form changes and training of personnel, therefore, it crucial that credit unions be allowed the time to make these changes properly and effectively.

Thank you for this opportunity to share our comments.

Respectfully,

Robbie Thompson
CEO/President

Amy Kleinschmit
Director of Compliance