



December 19, 2014

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

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

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to National Credit Union Administration (NCUA) with regard to the proposed rule to amend regulations regarding loans in areas having special flood hazards. To provide a brief background, the Credit Union Association of the Dakotas represents sixty-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$5.7 billion and who have more than 440,000 members.

The NCUA and four other Federal agencies, which include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Farm Credit Administration issued a proposed rule in October 2013 with regard to loans in areas having special flood hazards. The October 2013 proposed rule was to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, which significantly revised Federal flood insurance statutes. In March 2014, the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) was signed into Law. HFIAA amended some of the changes made by the Biggert-Waters Flood Insurance Reform Act of 2012 to the Flood Disaster Protection Act, which included amendments relating to the escrow requirement. This proposed rule was issued to implement the escrow provisions.

Under the proposed rule, a credit union, or a servicer acting on its behalf, would be required to escrow all premiums and fees for any flood insurance required under section 760.3(a) 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, unless an exceptions applies. *79 FR 64537, October 30, 2014.* The proposed rule includes exceptions from this escrow requirement if 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 90 or more days past due; or the loan has a term of no longer than 12 months. CUAD supports these proposed exceptions from the escrow requirement.

The proposed rule would also add an exception from the escrow requirement 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 of § 760.3(a). This revision to this proposed exception is a marked improvement over the proposed exception in the October 2013 proposed rule, however, it remains the position of CUAD that all loans in subordinate position should be excluded from the escrow requirement.

The proposed rule would also provide an exemption for small lenders. Under the proposal, a credit union is not required to escrow for flood insurance premiums and fees if the credit union 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 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. *79 FR 64537, October 30, 2014*. CUAD recommends that the asset threshold of \$1 billion either be increased to \$2 billion to be consistent with other regulatory thresholds for small creditors under Regulation Z as adopted by the Consumer Financial Protection Bureau or alternatively to be adjusted annually for inflation.

Provisions of the proposed rule would also require that a credit union, or a servicer acting on its behalf, to offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 760.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, unless an exception applies. *79 FR 64537, October 30, 2014*. Credit unions, or a servicer acting on its behalf, would also have to offer the escrow option to borrowers on existing residential improved real estate or a mobile home if the credit union loses its small lender exception. It is the position of CUAD that any loan outstanding on January 1, 2016, and outstanding loans if a credit union loses its small lender exception should be grandfathered in. To add an escrow account to an outstanding loan would be unduly burdensome and unnecessary. There are software requirements and/or restrictions that come into play. Operationally, some systems require loans to be entered in accordingly to whether or not it will have an escrow account at the beginning of the loan. To change the loan midway through would cause system issues. For example, one credit union reported that if it needed to add an escrow account to an outstanding loan its system would require the credit union create a separate savings account and manually monitor the account each year, whereas loans that start with escrow accounts are entered into the system and system monitors the accounts.



Establishing an escrow account after consummation of the loan as an accommodation to distressed members to help in avoiding default or foreclosure is a valuable service to the member. Credit unions aim to help members be successful in their loans. However, adding an optional escrow account for an otherwise well performing loan is unnecessary and will only increase costs and regulatory risk for credit unions.

Thank you for this opportunity to share our thoughts and concerns.

Respectfully,

A handwritten signature in cursive script that reads 'Robbie Thompson'.

Robbie Thompson
CEO/President

A handwritten signature in cursive script that reads 'Amy Kleinschmit'.

Amy Kleinschmit
VP of Compliance