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December 20, 2016

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

Re: RIN: 3133-AE64

Dear Mr. Poliquin:

Eastman Credit Union (ECU) is a federally insured Tennessee state chartered credit union. ECU is the largest credit union in Tennessee and serves over 179,000 members with branches in Tennessee, Texas, and Virginia. ECU is commenting on the interagency proposal to implement the Biggert-Waters amendments to the National Flood Insurance Program (NFIP).

I. Private Flood Insurance Defined

In addition to other conditions, the proposed definition of "private flood insurance" requires the coverage to be "at least as broad as" the coverage provided under a standard flood insurance policy issued under the National Flood Insurance Program in effect as of the date the privacy policy is provided to a regulated lending institution. The lending institution must calculate the deductibles, exclusions, and conditions offered by the insurer when determining sufficiency of coverage. The proposal places the burden on the lending institution to determine whether the policy is "as broad as" a policy issued under the NFIP.

Private flood insurance policies can be very complex and may substantially vary from a standard flood insurance policy. Lending institutions do not have the requisite expertise to determine whether a private policy is "at least as broad as" a standard flood insurance policy. Lenders are not, nor do they want to be, an insurance company. In addition to being unreasonable, to place this burden on the lending institution is unnecessary. Insurance companies already possess the knowledge and expertise required to review their own policies for sufficiency of coverage. To comply with this condition, lenders will be forced to develop this expertise internally or rely on a third party willing to review policies. Either way, this will result in a negative impact on the consumer as the cost will be passed along to the consumer and the additional procedure will delay the loan process.

II. Requirement to Accept a Private Flood Insurance Policy

If a policy meets this definition, the proposal requires that the lending institution accept it. A compliance aid was included in the proposal to assist lending institutions in determining whether the policy meets the definition of private flood insurance. The policy meets the definition if the following three criteria are met:

1. It includes a written summary that demonstrates how the policy meets the definition, and confirms that the insurer is regulated in accordance with that definition



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2. The lending institution performs its own due diligence and verifies in writing that the policy includes the provisions identified by the insurer in its summary and these provisions satisfy the definition's criteria
3. The policy includes the following assurance clause: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

As stated above, the burden of proving whether a private policy meets the definition should fall solely on the insurer who prepares the policy. The insurer should also provide indemnification to the lender if the policy is later determined to be insufficient. Any discrepancies in a policy should fall between the insurer and the National Flood Insurance Program, as it is not the lender's responsibility to advise an insurer of what changes need to be made to an individual policy.

ECU urges the agencies to consider adopting a rule that requires the insurance companies to develop a policy approval process directly with the National Flood Insurance Program. For example, insurers could submit private policies to the NFIP for consideration and approval. Lending institutions could then search the NFIP's website for preapproved insurers and policies. If neither appear on the preapproved list, the lending institution would have no obligation to accept the policy. A streamlined method such as this would benefit all parties involved in the lending process.

III. Safe Harbor

The 2013 interagency proposal included a safe harbor provision that the current proposal lacks. The 2013 proposal stated "A flood insurance policy shall be deemed to meet the definition of private flood insurance... if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance..." The safe harbor would have allowed the lender to rely on the written assurance of a State insurance regulator that the policy was sufficient thereby protecting the lender from liability. This proposal offers no such protection. ECU urges the agencies to include the safe harbor from the 2013 proposal in the final rule.

ECU also asks the agencies to expand on the safe harbor provision and offer protection to a lending institution that relies upon its own analysis of a private insurance policy and incorrectly judges the policy as insufficient. The lender may be subject to liability for failure to accept a private flood insurance policy. If the agencies place the burden to prove a policy meets the definition of private insurance policy on the insurance companies, as this letter requests, lenders may simply rely on the assurances of the insurance companies. If the agencies finalize the rule as proposed, then ECU urges the agencies to incorporate a safe harbor for lending institutions that exercise reasonable diligence but, despite good faith efforts, fails to accept a compliant policy.

IV. Discretionary Acceptance

The proposal allows for lending institutions to accept other private flood insurance policies, even if the policy does not meet the specified requirements. ECU disagrees with the inclusion of a provision that allows for lenders to accept policies that do not satisfy the requirements of a private flood insurance policy. Discretion leaves room for errors and increased risk of liability. ECU urges the agencies to adopt a final rule that requires lenders to accept only compliant private flood insurance policies.

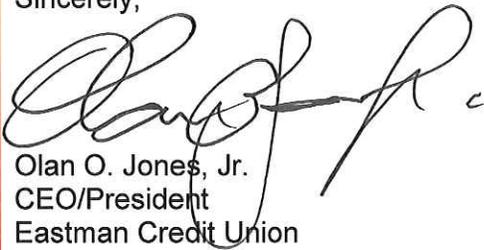


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Conclusion

ECU respectfully requests that the agencies reconsider placing the burden of proving whether a private flood insurance policy is compliant on the lending institution. As stated above, such a requirement is unreasonable and inefficient. Insurance companies already possess the requisite expertise to make such a determination. It is not a lending institution's objective to write flood insurance policies on behalf of insurers or determine their compliance with state or federal law. That is best left to the insurance company and the State insurance regulator.

Sincerely,

A handwritten signature in black ink, appearing to read "Olan O. Jones, Jr.", written over a printed name and title.

Olan O. Jones, Jr.
CEO/President
Eastman Credit Union