



January 6, 2017

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

RE: RIN 3133-AE64; Loans in Areas Having Special Flood Hazards—Private Flood Insurance

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide feedback to the National Credit Union Administration (NCUA) regarding the proposed rule changes concerning loans in areas having special flood hazards – private flood insurance. To provide a brief background, the Credit Union Association of the Dakotas represents sixty-seven state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$6 billion and who have more than 450,000 members.

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the NCUA (Agencies) issued a proposal to amend their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Biggert-Waters Act amended the National Flood Insurance Program to require the Agencies to issue a rule to direct regulated lending institutions to accept “private flood insurance,” as defined by the Biggert-Waters Act, and to notify borrowers of the availability of private flood insurance.

The proposed rule includes the definition for “private flood insurance” which comes from section 100239 of the Biggert-Waters Act, which added a new section 102(b)(7) to the FDPA. The proposed rule would define “private flood insurance” consistent with the statutory definition. One of the provisions under the proposed definition of “private flood insurance” requires that the private flood insurance “(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy: (i) Defines the term “flood” to include the events defined as a “flood” in an SFIP; (ii) Covers both the mortgage(s) and the



mortgagee(s) as loss payees; (iii) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance; (iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender; (v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and (vi) May not contain conditions that narrow the coverage provided in an SFIP.”

CUAD is concerned that this proposed rule will place enormous burden on credit unions to either develop internal expertise to determine whether or not a private flood insurance policy meets these requirements or expend funds to have this determination made externally. Private flood insurance policies can be very complex and may vary from a standard flood insurance policy. The burden should be placed on the insurance company to determine if the policy meets the definition of “private flood insurance” as proposed. Insurance companies already possess the knowledge and expertise to review their own policies for sufficiency of coverage.

Proposed section 760.3(c) provides that a credit union must accept private flood insurance in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under the regulation. The proposed rule includes a “compliance aid for mandatory acceptance” to assist credit unions in determining whether and how a flood insurance policy meets the definition of “private flood insurance.” Under the proposed rule, a flood insurance policy is deemed to meet the definition of private flood insurance if: “(i) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in § 760.2 by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition; (ii) The credit union verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(2)(i) of this section and that these provisions satisfy the criteria included in the definition; AND (iii) The policy includes the following provision within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

The burden of proving whether a private flood insurance policy meets the statutory and regulatory definition and requirement should fall on the insurer who prepared the flood insurance policy. The insurer should also provide indemnification to the lender if the policy is later determined to be insufficient.



CUAD urges the NCUA and other agencies to develop a method whereby insurance companies obtain approval directly with the National Flood Insurance Program (NFIP) that their private flood insurance policy meets the requirements and specifications required under this rule. The insurance company would then provide documentation from the NFIP to credit unions, and the credit union would have a safe harbor, when accepting the private flood insurance. It follows, if the insurance company cannot provide documentation of NFIP approval then the credit union would not be required to accept the private flood insurance and/or could accept a flood insurance policy at their discretion.

In the 2013 notice of proposed rulemaking on this issue, CUAD had supported the proposed safe harbor. Specifically in 2013, CUAD wrote in our December 10, 2013, comment letter, “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.” CUAD urges the NCUA and agencies to adopt this safe harbor as previously proposed.

Thank you for this opportunity to share our comments.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Olson".

Jeffrey Olson
CEO/President

A handwritten signature in black ink that reads "Amy Kleinschmit".

Amy Kleinschmit
VP of Compliance