



Filed via regcomments@ncua.gov

January 06, 2017

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

***Re: Joint Notice of Proposed Rulemaking on Loans in Areas Having Special Flood Hazards—
Private Flood Insurance; RIN 3133-AE64***

Dear Mr. Poliquin:

The Illinois Credit Union League is the primary association for nearly 300 state and federally chartered credit unions throughout the State of Illinois, who in turn serve 3 million consumers. We thank you for the opportunity to comment on NCUA's joint Notice of Proposed Rulemaking ("NPRM") regarding the requirement for lenders to accept private flood insurance pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012 ("Biggert-Waters Act" or "Act"). The current NPRM would require lenders to determine if a private flood insurance policy meets the Biggert-Waters Act's substantive requirements for flood insurance policies.

For the reasons stated below, we believe that it is wrong to impose the burden on lenders to determine if a private flood insurance policy complies with the Act's requirements, when that determination should be made by the insurers. The determination of a private flood insurance policy's compliance with the Act is not a simple one. The NPRM adopts the Biggert-Waters Act definition of "private flood insurance" as an insurance policy that:

- 1) Is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the state or jurisdiction in which the property to be insured is located; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the state insurance regulator of the state or jurisdiction where the property to be insured is located;
- 2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP), including when considering deductibles, exclusions, and conditions offered by the insurer;
- 3) Includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the lending institution, or a servicer acting on the institution's behalf;



- 4) Includes information about the availability of flood insurance coverage under the National Flood Insurance Program (NFIP);
- 5) Includes a mortgage interest clause similar to the clause contained in an SFIP;
- 6) Includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and
- 7) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

The NPRM requires lenders to determine if a private flood insurance policy meets the statutory definition of “private flood insurance,” above, and the mandatory purchase requirement in the Act, which generally requires the purchase of flood insurance equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act of 1968. The NPRM includes a “compliance aid” to help lenders determine if a policy is compliant with the Act. The “compliance aid” provides that a policy is deemed to meet the statutory definition of “private flood insurance” if the following criteria are met:

- 1) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance 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;
- 2) The lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and
- 3) 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 NPRM acknowledges that the lender’s compliance determination would require a substantive review of the policy’s provisions, not merely a procedural check that certain provisions are included in the policy. The NPRM states that under the second clause of the compliance aid, the lender is required to “perform its own due diligence before accepting the policy instead of solely relying on the insurance company’s claim that the policy meets the statutory and regulatory definition of ‘private flood insurance.’” (81 Fed. Reg. 78068). The NPRM further concedes that the proposed rule does not relieve a regulated lender of the requirement to accept a policy that substantively meets the definition of private flood insurance and the mandatory purchase requirement, even if the policy is not accompanied by a written summary and does not include an assurance clause as required by the compliance aid. (*Id.*)

Instead of the framework laid out in the current NPRM, an alternative framework should be adopted where insurers are responsible for ensuring that a private flood insurance policy complies with the substantive provisions of the Act, and lenders are responsible for ensuring that a flood insurance policy



is in place for covered loans. The current NPRM notes that such a framework has been proposed previously in comments submitted for a similar NPRM in 2013. Those comments stated that the proposed framework placed lenders in an “untenable position” where a failure to accept a compliant private flood insurance policy would be a violation of the Act, and the acceptance of a private policy that is later found to be non-compliant would also be a violation of the Act. (81 Fed. Reg. 78066). The NPRM also restates previous comments that proposed an alternative framework where the insurer certifies that the private flood insurance policy is compliant with the Act, and further requires insurers to indemnify lenders for losses based on a policy that is subsequently determined to be non-compliant with the Act. (81 Fed. Reg. 78067). The joint agencies acknowledge but do not directly address these comments and the alternative framework in the current NPRM. We ask the agencies to take this opportunity to address these concerns in the form of a framework that fairly imposes an insurance policy’s compliance determination on insurers.

We urge NCUA and the joint agencies to reconsider this rule’s imposition of yet another compliance burden on lenders. Simply put, the compliance burden for determining if an *insurance* policy complies with the Act’s *insurance* requirements should be borne by *insurers*, not lenders.

We thank you for your time and consideration.

Sincerely,

ILLINOIS CREDIT UNION LEAGUE

Katherine Romano Schnack

By: Katherine Romano Schnack
Compliance and Corporate Counsel