

# REGULATORY ALERT

## NATIONAL CREDIT UNION ADMINISTRATION

1775 Duke Street, Alexandria, VA 22314

**DATE:** May 2019

**NO:** 19-RA-01

**TO:** Federally Insured Credit Unions

**SUBJ:** Flood Insurance Alternatives

Dear Board of Directors and Chief Executive Officer:

Effective July 1, 2019, credit unions *must* accept private flood insurance policies for applicable loans. The policies must meet the definition of private flood insurance as included under the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) and incorporated into [Part 760 of the NCUA's regulations](#). In addition, credit unions *may* accept private flood insurance policies that do not meet the definition of private flood insurance as explained in this letter, as well as NCUA-approved private flood insurance plans provided by mutual aid societies.

The Biggert-Waters Act was intended to ease the financial strain on the National Flood Insurance Program (NFIP) by expanding the acceptance of private flood insurance. On February 20, 2019, the [NCUA published an interagency rule](#) regarding loans in areas having special flood hazards in order to implement the private flood insurance provisions of the Biggert-Waters Act. As a result, Part 760 of the NCUA regulations has been updated to account for this rule.

This letter explains the alternatives to NFIP policies and the conditions for their acceptance.

### **Private Flood Insurance That Meets The Definition**

#### **Mandatory Acceptance**

A credit union must accept private flood insurance policies that meet the below definition. The policy coverage amount must be at least 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, as amended (NFIA).

Private flood insurance means an insurance policy that:

- 1) Is issued by an insurance company that is:
  - A. 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

- B. Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the state or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;
- 2) Provides flood insurance coverage that is at least as broad as the coverage provided under a Standard Flood Insurance Policy (SFIP), as defined under Section 760.2, for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:
- A. Define the term “flood” to include the events defined as a “flood” in an SFIP;
  - B. Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;
  - C. Contain deductibles no higher than the specified maximum, and include 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;
  - D. Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other 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 or have the effect of providing broader coverage to the policyholder; and
  - E. Not contain conditions that narrow the coverage provided in an SFIP;
- 3) Includes all of the following:
- A. A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:
    - (i) The insured; and
    - (ii) The credit union that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;
  - B. Information about the availability of flood insurance coverage under the NFIP;
  - C. A mortgage interest clause similar to the clause contained in an SFIP; and
  - D. A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

- 4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

### **Compliance Aid for Mandatory Acceptance**

In practice, it may be difficult to determine if a private flood insurance policy meets the definition of private flood insurance based on the preceding criteria. Therefore, the Rule includes a compliance aid for a credit union to use in determining if a policy meets the definition of private flood insurance without further review of the policy. Specifically, if the following statement is included within the policy or as an endorsement to the policy, that policy complies with the rule:

“This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

### **Private Flood Insurance Accepted on a Discretionary Basis**

A credit union may accept a private flood insurance policy that does not meet the definition of [private flood insurance under Section 760.2](#), subject to the following conditions:

- 1) The amount of insurance must be at least 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 NFIA;
- 2) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the sState 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 issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the state or jurisdiction where the property to be insured is located;
- 3) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;
- 4) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing; and
- 5) For item (4) in particular, credit unions must have documentation that the policy provides sufficient protection of the designated loan. These factors may include whether:

- A. A policy's deductibles are reasonable based on the borrower's financial condition;
- B. The insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary;
- C. The terms and conditions of the policy (with respect to payment per occurrence or per loss) and aggregate limits are adequate to protect the credit union's interest in the collateral;
- D. The flood insurance policy complies with applicable state insurance laws; and
- E. The private insurance company has the financial solvency, strength, and ability to satisfy claims.

### **Mutual Aid Society Plans**

A mutual aid society means an organization:

- 1) Whose members share a common religious, charitable, educational, or fraternal bond;
- 2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and
- 3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

At its discretion, and subject to the following conditions, a credit union may accept a flood plan issued by a mutual aid society as defined above if:

- 1) The NCUA has determined that such plans qualify as flood insurance for purposes of the NFIA;
- 2) The amount of insurance must be at least 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 NFIA;
- 3) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
- 4) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the credit union documents its conclusion regarding sufficiency of the protection of the loan in writing.

The NCUA must approve mutual aid society flood plans. If a credit union desires NCUA approval for a mutual aid society flood plan, it should submit a request to the NCUA through its Regional Office. The NCUA will evaluate requests and, if approved, such plans will be listed on the NCUA's website for future reference. The evaluation will assess the plan based on the criteria for mutual aid societies detailed above.

As with private flood insurance policies accepted on a discretionary basis, the credit union must address the factors listed in the section Private Flood Insurance Accepted on a Discretionary Basis in documenting that the mutual aid flood plan provides sufficient protection of the loan.

Credit unions should be aware of this significant policy change in flood insurance regulations and update policies and procedures to address these alternative options to NFIP policies.

The federal financial regulatory agencies will host a public webinar about the interagency rule in the near future. We encourage you to participate in this webinar. Details on the webinar will be provided via [NCUA Express Message](#) before the webinar date.

If you have any questions regarding this rule, please discuss them with your examiner, Regional Office, or in the case of state-chartered credit unions, your state supervisory authority.

Sincerely,

/s/

Rodney E. Hood  
Chairman