

January 6, 2017

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

**Re: Loans in Areas Having Special Flood Hazards—Private Flood Insurance;
RIN 3133–AE64**

Dear Mr. Poliquin:

On behalf of the 2.3 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA's) interagency proposal to amend the 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.

As mandated by the Biggert-Waters Act, the proposed rule would require lending institutions, including credit unions, to accept policies that meet the statutory definition of "private flood insurance" and permit them to accept flood insurance provided by private insurers that does not meet the statutory definition but does meet certain established criteria.

HCUA supports the proposed definition of "Private flood insurance," which is statutorily required. In conjunction with the definition of "Private flood insurance," the proposed rule would define a SFIP as a standard flood insurance policy issued under the National Flood Insurance Program (NFIP) in effect as of the date the private policy is provided to a credit union. We believe this to be an appropriate time-frame for determining the version of the SFIP the credit union should use to evaluate the private policy.

We also support the proposal that would require all lending institutions to accept "private flood insurance," as defined in the statute, if certain conditions are met. Specifically, the proposed rule includes a new provision that would require a credit union to accept a private flood insurance policy that meets both: (1) the statutory definition of "private flood insurance," and (2) the mandatory purchase requirement.

The October 2013 proposal included a "safe harbor" that would have permitted a financial institution that accepts private flood insurance to rely on the relevant state insurance regulator's determination that the private insurance meets the statutory definition of "Private flood insurance." Under the "safe harbor," the insurance companies would have been responsible for obtaining written approval from the state insurance regulator. We believe that this "safe harbor" would have eliminated any burden on lenders of having to determine the suitability of private flood insurance policies, and would have appropriately placed the burden on insurance companies, which are most familiar with the details of their private insurance policies.

The Agencies replaced the proposed "safe harbor" with a "compliance aid provision" in the current proposed rule. We strongly urge NCUA and the other agencies to revisit a possible "safe harbor," as set forth in the October 2013 proposal. We believe a "safe harbor" that effectively eliminates or reduces the lending institution of liability in verifying whether a private insurance policy meets the statutory requirements is more appropriate than a tool that simply assists the lender in complying with the regulation.

If the “safe harbor” is not reconsidered, we generally support the proposed “compliance aid provision.” As proposed, the “compliance aid provision” provides that a policy is deemed to meet the 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” (assurance clause). Additionally, the Agencies state that the proposed “compliance aid provision” would not relieve a lending institution of the requirement to accept a policy that 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.

Of the proposed “compliance aid provision’s” three criteria, we have concern with only the second criterion. We support credit unions verifying “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” as a best practice. However, we do not believe such verification should be explicitly mandated in the regulation. Clearly, a credit union, or other lending institution, should apply criterion three, endorsing the policy as in compliance with the statutory requirements, only after the institution has in fact verified that the policy is in compliance. We believe proposed criterion two is unnecessary and, thus, should be excluded from the “compliance aid provision.”

HCUA supports the proposed provision to permit a credit union to accept private flood insurance that falls outside of the regulatory definition but that meets certain criteria. We believe the proposed discretionary acceptance provision will provide credit unions with greater flexibility to accept flood insurance policies that do not contain all of the requirements included in the definition of “private flood insurance.” Further, we agree that these proposed criteria should provide safeguards so a lending institution does not accept policies that do not sufficiently protect the collateral securing the loan. While we support the proposed discretionary acceptance provision, we believe that it is important that acceptance of alternative private flood insurance remains within the sole discretion of the credit union.

As always, we appreciate the opportunity to comment on this interagency proposal. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive style with a large initial 'B'.

Brad Douglas
President/CEO