November 3, 2020

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

Re: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; RIN 3133–AF14

Dear Mr. Poliquin:

On behalf of America’s credit unions, I am writing to the National Credit Union Administration (NCUA) in response to the request for comment (RFC) on the Interagency Questions and Answers Regarding Flood Insurance (Q&As). The Credit Union National Association (CUNA) represents America’s credit unions and their 120 million members.

Proposed Rulemaking on Interagency Questions & Answers

The NCUA and other federal financial regulators (the Agencies) are proposing revisions to and new interagency Q&As in light of changes to flood insurance requirements pursuant to the Biggert-Waters Act of 2012 and Homeowner Flood Insurance Affordability Act of 2014, as well as regulations issued to implement these laws. In addition, over the years, the lending industry has requested that the Agencies provide additional guidance on flood insurance compliance issues. Further, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act, certain Agencies are directed to conduct a joint review of their regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or unduly burdensome.¹

This proposal includes the introduction of new Q&As on the escrow of flood insurance premiums, force placement of flood insurance, and the detached structures exemption. The Agencies are also proposing to revise and reorganize the existing Q&As into new categories by subject to enhance clarity and understanding for users, and improve efficiencies by making it easier to find information related to technical flood insurance topics.

We appreciate the Agencies’ review of the Q&As. While we are generally supportive of the new and revised Q&As, we offer suggestions on several specific questions and answers.

Reorganization of Questions & Answers

For ease of reference and in light of the increased number of subjects covered that address complex issues, the Agencies propose to reorganize the Q&As to provide a more logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders.

Moreover, the Agencies also propose a new system of designation for the Q&As. Rather than numbering the Q&As successively through all the categories, each Q&A will be designated by the category to which it belongs and then designated in numerical order for that particular category.

We appreciate the changes to restructure and re-designate the Q&As. We agree that doing so will promote ease of reference. Further, we support these changes since this numbering system will enable the Agencies to add or delete Q&As in the future without significantly renumbering or reorganizing them, which will aid lenders as they refer to the Q&As as a compliance resource.

Input on Specific Questions & Answers

I. Determining the Applicability of Flood Insurance Requirements for Certain Loans

- Applicability 9 –
  - Question: Do the mandatory purchase requirements under the Act\(^2\) and Regulation\(^3\) apply when a lender participates in a loan syndication or participation?
  - Answer: The acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of the Act or the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.

  Nonetheless, as with purchased loans, depending upon the circumstances, the lender may undertake due diligence for safety and soundness purposes to protect itself against the risk of flood or other types of loss.


\(^3\) “Regulation” refers to each agency’s current final rule. The NCUA’s flood insurance rule is included in section 760 of the agency’s regulations.
Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would be making a loan that triggers the requirements of the Act and Regulation. Federal flood insurance requirements also would apply when a group of lenders refines, extends, renews, or increases a loan. Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to determine whether the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent for compliance with flood insurance requirements over the term of the loan.

*CUNA’s Comments:*

The answer to *Applicability 9* notes that a group of participating lenders may assign the compliance duties to a lead lender or agent. However, the answer indicates that each participating lender remains individually responsible for ensuring compliance with the Act and Regulation by the lead lender.

We ask the NCUA to provide additional context to this answer. The answer is somewhat confusing since it appears to state that compliance requirements can be assigned to the lead lender but subsequently states that each individual lender remains responsible for compliance.

It would be helpful if, in instances where a lead lender is in charge of ensuring flood insurance requirements are met, there is safe harbor documentation upon which the other participating lenders can rely in order to limit their individual exposure.

**VI. Flood Zone Discrepancies**

- **Zone 1 –**

  - **Question:** What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?
Answer:
If a lender receives a policy declarations page that has a flood zone designation that is different from the flood zone shown on the Standard Flood Hazard Determination Form (SFHDF), it should consider documenting the discrepancy in the loan file. If the SFHDF indicates that the building securing the loan is in an Special Flood Hazard Area (SFHA), the lender must require the appropriate amount of insurance coverage in accordance with the Act and Regulation, but the lender is not otherwise required to resolve a discrepancy between the flood zone designation on the SFHDF and the designation on the flood insurance policy declarations page provided by the borrower. This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed. In addition, the guidance applies to any building that has been rated in accordance with NFIP procedures.

For a policy issued under the NFIP, if a misrating is discovered at the time of loss resulting from an incorrect flood zone, and a policyholder has underpaid the flood insurance premium, a policyholder may keep the contracted coverage limits if an additional premium is paid. Once paid, a revised declarations page will be issued showing the corrected flood zone. The lender will receive a copy of the declarations page and may receive a copy of the underpayment notice.

If the borrower does not pay the additional premium, resulting in inadequate coverage, lenders must proceed with force-placement procedures. On the other hand, if a policyholder has overpaid the flood insurance premium as a result of a misrating, FEMA may allow a refund of insurance premiums under certain circumstances. See NFIP Flood Insurance Manual for specific instructions. Private policies may resolve flood zone discrepancies differently.

CUNA’s Comments:
The answer to Zone 1 addresses instances where there is a discrepancy between the flood hazard zone designation on the SFHDF and the flood insurance policy. The answer provides guidance to the lender on how it can correct the discrepancy.

The answer appears to indicate that the lender may approach the borrower to address the discrepancy at the time of loss that resulted from an incorrect flood zone. It is unclear why the guidance does not speak to the lender addressing the discrepancy at the time it is noticed rather than at the time of a potential loss. There could be benefit to both the lender and borrower in instances where the lender addresses such a discrepancy at the beginning upon learning such information. We ask the NCUA to consider whether it would be appropriate to address this in the answer to Zone 1.
VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

- Notice 2 –
  - Question:
    Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the requirement to provide the Notice of Special Flood Hazards applied in these situations?
  - Answer:
    As required by the Regulation, a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction. If a lender determines that a mobile home securing a designated loan will be located in an SFHA just prior to closing, the lender may need to delay the closing until the Notice of Special Flood Hazards has been provided in accordance with the Regulation.

In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such “home only” transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and a force-placement notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

- CUNA’s Comments:
  The answer to Notice 2 notes that the Regulation requires a lender to provide the Notice of Special Flood Hazards to the borrower within a “reasonable time” before the completion of the transaction.4

While this comment refers more to the regulation in general than the answer to Notice 2, we would like the NCUA to provide clarification on what a “reasonable time” is in the context of providing the Notice of Special Flood Hazards. We believe credit unions would benefit from additional clarity on what constitutes “reasonable time” for purposes of section 760.9.

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4 12 C.F.R. § 760.9(c).
XIII. Requirement to Escrow Flood Insurance Premiums and Fees—Small Lender Exception

While the Q&As provide new specific questions and answers related to the small lender exception, we believe additional guidance related to the small lender exception to the escrow requirement would be helpful.

For example, Small Lender Exception 4 addresses whether a lender is eligible for the small lender exception if it offers escrow accounts upon a borrower’s request. The answer to Small Lender Exception 4 provides that if the lender only offers escrow accounts upon the request of borrowers, then that practice does not constitute a consistent or uniform policy of requiring escrow, which is a component to the small lender exception.5

We ask the NCUA to provide greater clarity regarding whether a policy “consistently and uniformly require[es] the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account,” as included in the exception.6 While Small Lender Exception 4 is helpful, we ask for additional information to aid lenders in better understanding the intent of this language. Perhaps this could be achieved by providing examples of both policies that do and do not satisfy prong (ii)(B) of the small lender exception.

Conclusion

On behalf of America’s credit unions and their 120 million members, thank you for considering our comments in response to the RFC on the Interagency Questions and Answers Regarding Flood Insurance. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

Luke Martone
Senior Director of Advocacy & Counsel

5 12 C.F.R. § 760.5(c).
6 One of the prongs of the small lender exception provides that the credit union: “Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.” 12 C.F.R. § 760.5(c)(1)(ii)(B).