



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

January 21, 2021

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410

RE: Acceptance of Private Flood Insurance and FHA-Insured Mortgages (Docket No. FR-6084-P-01)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the U.S. Department of Housing and Urban Development's (HUD) notice of proposed rulemaking regarding the acceptance of private flood insurance on Federal Housing Administration (FHA)-insured mortgages. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 123 million consumers with personal and small business financial service products. NAFCU supports HUD's proposal to amend the FHA's regulations to allow borrowers of single-family properties and other insured properties the option to purchase private flood insurance on FHA-insured mortgages for properties located in Special Flood Hazard Areas (SFHAs) to satisfy the mandatory purchase requirements of the *Flood Disaster Protection Act of 1973*. NAFCU encourages HUD to adopt the compliance aid language stated in the Federal financial regulators Interagency Rule (Interagency Rule)¹, or alternatively, to provide clarifying language regarding the scope of coverage. In addition, NAFCU urges HUD to provide a discretionary acceptance provision to ease operations and minimize delays in the homebuying process, and enhance consumer choice

Currently, FHA's regulations only allow National Flood Insurance Program (NFIP) policies for FHA-insured mortgages and do not allow borrowers the option to purchase private flood insurance in satisfaction of the mandatory purchase requirement. Historically, this has restricted flood insurance options for FHA borrowers and placed credit unions in a difficult position of requiring applicants to obtain more expensive insurance to facilitate obtaining an FHA mortgage.

NAFCU has previously advocated for the need for guidance or a rulemaking regarding acceptance of private insurance for FHA-insured mortgages, particularly in light of the *Biggert-Waters Insurance Reform Act of 2012* and the implementing Interagency Rule requiring federally supervised lenders, including federal credit unions supervised by the National Credit Union

¹ See 84 Fed. Reg. 4953 (Feb. 20, 2019).

Administration, to accept private flood insurance policies that meet the conditions defined in 42 U.S.C. 4012a(b)(7).

HUD's proposal to allow private flood insurance on FHA-insured mortgages, will more closely align FHA regulations "with industry standards and reduce the regulatory restrictions on flood insurance for FHA-insured loans," as referenced in the proposal. The proposal will also provide greater consumer choice and will enhance homeownership opportunities for credit union members.

HUD Should Adopt the Same Compliance Aid as the Interagency Rule

Inclusion of the proposed compliance aid assists credit unions with the review of a private flood insurance policy to ensure it is compliant with the FHA's regulations. Compliance aids are particularly helpful to smaller credit unions who may lack the resources or technical experience to adequately review flood insurance policies. While the compliance aid provides certainty to credit unions that a policy meets the definition of "private flood insurance" without further review of the policy, the proposed compliance aid differs from the compliance aid set forth in the Interagency Rule. Understandably, the governing authority of the proposed compliance aid differs from that of the Interagency Rule; however, the goal of both is to provide a conclusion that the policy meets the statutory definition of "private flood insurance." Both the Interagency Rule and proposed FHA compliance aid incorporate the same statutory definition of "private flood insurance," but the language of the compliance aid statements differs. HUD can enhance the utility of the compliance aid by conforming the language to the existing language in the Interagency Rule.

NAFCU is concerned that this divergence in compliance aid statements may lead to confusion about reliance and credit unions may inadvertently rely solely on the proposed compliance aid. Without a single, uniform compliance aid, credit unions will have to ensure the policy has the language of the compliance aid under both the Interagency Rule and the FHA's rule. Moreover, some insurers may choose not to include both compliance aid statements. As the preamble in the proposal states, credit unions should not interpret compliance with the Interagency Rule to suggest compliance with FHA's requirements.

Therefore, to reduce ambiguity, NAFCU recommends that HUD provide a compliance aid that aligns with the Interagency Rule. Adoption of a single, unified compliance aid will assist credit unions, insurers, and borrowers. Alternatively, HUD should include explicit language in the compliance aid statement regarding the limited utility in that the compliance aid only ensures compliance with the FHA's regulations and not with the Interagency Rule. Placing this additional language into the compliance aid will provide clarity and put credit unions on notice that notwithstanding inclusion of the FHA compliance aid, if a separate compliance aid that conforms to the Interagency Rule is not present, they will have to review the private flood insurance policy to determine its compliance with the Interagency Rule.

HUD Should Include a Discretionary Acceptance Provision

NAFCU appreciates the proposal's goal of enhancing consumer choice between private flood insurance and an NFIP policy; however, without a discretionary acceptance provision included,

the proposal may not actually afford consumers the options it seeks to provide. The proposed change to the FHA's regulations expressly excludes the exercise of discretionary authority in accepting private flood insurance in connection with FHA-insured mortgages. Essentially, the proposal is only providing credit unions with the ability to accept private flood insurance in lieu of an NFIP policy if all of the factors defining "private flood insurance" are present. NAFCU urges HUD to adopt a discretionary acceptance provision allowing credit unions to accept private flood insurance based on those discretionary factors included in the Interagency Rule. HUD should allow credit unions to accept private flood insurance policies in lieu of NFIP policies on FHA-insured mortgages, if the compliance aid is present, if the policy meets the mandatory acceptance criteria under the definition of "private flood insurance," or if the policy meets the discretionary acceptance criteria outlined in the Interagency Rule.

Under the Interagency Rule, credit unions may exercise their discretion and accept private flood insurance that does not meet the mandatory acceptance provisions but meets the discretionary criteria and is otherwise appropriate from a safety and soundness perspective. Understandably, the FHA seeks to protect the Mutual Mortgage Insurance Fund (MMIF); however, a discretionary provision can be drafted in a manner that provides consumer choice while maintaining the protection of the MMIF, just as the Interagency Rule protects associated federal insurance programs. The Interagency Rule provides a discretionary provision that ensures private flood insurance policies allow for sufficient coverage to meet the statutory purchase requirements.

Additionally, not including a discretionary acceptance provision may lead credit unions to face obstacles similar to those encountered in the past. For example, a credit union will not have the ability to accept private flood insurance policies if they do not have the stated factors under the definition of "private flood insurance," despite the credit union having a policy in place that allows the institution to accept private flood insurance pursuant to the Interagency Rule discretionary provisions. This decreases a consumer's choice and may translate to increased costs. A discretionary acceptance provision affords the most flexibility for credit union members. Additionally, credit unions may send private flood insurance policies to a specialist for review, if there is no expert on staff, to ensure the credit union may accept the policy. This may, in turn, lead to longer closing times and borrower frustration with the homebuying process. Inclusion of a discretionary acceptance provision would expedite the process and assist credit union operations. NAFCU urges HUD to maintain consistency with the Interagency Rule and include a discretionary acceptance provision to enhance consumer choice and lessen operational burdens on credit unions.

Conclusion

NAFCU appreciates the opportunity to provide comments on HUD's proposal regarding the acceptance of private flood insurance for FHA-insured mortgages. NAFCU encourages HUD to adopt the compliance aid in the Interagency Rule, or alternatively, provide clarifying language to reduce ambiguities about reliance on the private insurance policy without further review. In addition, NAFCU urges HUD to provide a discretionary acceptance provision similar to the Interagency Rule to carry out the intent of the rule and provide meaningful consumer choice. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcuh.org.

U.S. Department of Housing and Urban Development

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Sincerely,

A handwritten signature in black ink, appearing to read "Kaley Schafer". The signature is fluid and cursive, with the first name "Kaley" being more prominent than the last name "Schafer".

Kaley Schafer

Senior Regulatory Affairs Counsel