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National Association of Federally-Insured Credit Unions

November 2, 2020

Melane A. Conyers-Ausbrooks
Interim Secretary of the Board
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

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you regarding the Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers) proposed by the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Farm Credit Administration (collectively, the Agencies). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 million consumers with personal and small business financial service products. NAFCU and its member credit unions greatly appreciate the Agencies updating this guidance to reflect the significant changes arising from the *Biggert-Waters Flood Insurance Reform Act of 2012* (the Biggert-Waters Act) and the 2014 *Homeowner Flood Insurance Affordability Act* (HFIAA). The Interagency Questions and Answers guidance is frequently consulted and will provide helpful clarity for credit unions seeking to understand their obligations under these laws and their implementing regulations. By and large, credit unions are supportive of the certainty and regulatory flexibility afforded by many of the new and updated Interagency Questions and Answers. However, there are a few areas that lack clarity or could have potential negative effects on credit unions and consumers which the Agencies should address prior to finalizing the Interagency Questions and Answers.

Applicability

Credit unions generally support the Agencies' proposed questions and answers on applicability. For example, Applicability 5, 6, and 8 provide reliable guidance on the significance of the triggering events of making, increasing, renewing or extending a loan. In particular, the clarification provided by Applicability 6 may be very helpful in light of the COVID-19 pandemic as more consumers may need to modify their mortgages. Applicability 12 also provides helpful and appreciated clarity on how credit unions should proceed in the event of a lapse in authorization or appropriations.

Exemptions

Credit unions often struggle with determining the applicability of the detached structure exemption. Especially now, when credit unions may be relying on limited appraisals in connection with the COVID-19 pandemic, the details about outbuildings and their potential use may not be clear in some valuations. This may especially be true of small secondary residences in detached garages, large sheds, or barns. In Exemption 1, NAFCU suggests that the Agencies consider more strongly emphasizing that credit unions must make “good faith determinations” of the use of a structure, and perhaps provide an example of such a good faith determination to assist credit unions in confidently documenting determinations in their files.

Because of the difficulty of applying the detached structure exemption, credit unions are supportive of the clarifications in Exemptions 4, 5, and 7. In particular, Exemptions 7 provides important clarification regarding the meaning of “structural connections” in determining whether a structure is detached by explicitly making reference to the *National Flood Insurance Program (NFIP) Standard Flood Insurance Policy*. This provides meaningful, consistent, and actionable guidance for credit unions in applying the detached structure exemption.

Exemption 2 provides important guidance but is difficult to read and understand. The question and answer is clarifying two issues at once: first, that the exemption is not applicable to commercial, agricultural, or other business use; and second, that taking a security interest in the primary residential structure is not necessary to qualify for the exemption. NAFCU encourages the Agencies to separate these issues into two question and answers which would render them more useful for those seeking guidance.

Coverage

Coverage 1 provides factors that a credit union can consider in determining whether a private flood insurance policy provides “sufficient protection of the designated loan.” The question and answer does not provide any context or indication that these factors are used in determining whether a credit union is permitted to accept the private insurance policy at its own discretion under section 760.3(c)(3)(iv). It would be important and more helpful to provide this context so that credit unions do not erroneously believe they must review these factors on all private flood insurance policies.

Zone

All three Zone questions and answers provide consistent clarification that the Standard Flood Hazard Determination Form (SFHDF) is the dominant form when discrepancies arise. Zone 1 could be improved by clarifying that the reference to the “appropriate amount of insurance coverage” refers to the dollar limit of flood insurance required. The final sentence of Zone 1 refers to private policies resolving discrepancies differently. Credit unions would welcome additional clarification on how to handle zone discrepancies arising from private flood insurance policies as these are will become more common in light of the mandatory acceptance provisions.

While the clarification in Zone 3 is helpful, the requirement that “sufficient coverage must be in place... until FEMA has determined that the building is not in an SFHA,” may result in significant closing delays. Exercising a FEMA review option can involve the collection of many documents by the borrower and can take significant time for FEMA to process. The Agencies should carefully consider this potential delay and evaluate potential opportunities to mitigate these negative effects.

Amount

Especially in light of the pandemic, it may be important to consider how credit unions should determine coverage amounts without the use of a full appraisal that provides the value of the land separate and apart from the value of the building. NAFCU asks that both Amount 1 and Amount 2 state that if the receipt of appraisal after closing changes the insurable value a credit union determined in good faith prior to closing, it is not in violation of the rule. Further, the questions and answers should state that if an appraisal is received after closing and the property is underinsured, the receipt of the full appraisal triggers the force placement notice in section 760.7.

Regarding Amount 6, the Agencies should clarify whether the amount of insurance allocated among three buildings could validly cover a building in excess of its insurable value. In the example provided, could \$110,000 be allocated to a building for which the insurable value is only \$100,000?

Construction

Construction 3 raises several issues as written. First, the question should be edited to clarify that it is describing when construction is covered against loss by an NFIP policy which is in place. The question uses the word “eligible,” but it is confusing whether this refers to the obligation to obtain insurance under the rule or coverage being effective under the policy.

Further, the *NFIP Flood Insurance Manual* states that coverage applies on construction “if such work is halted, only for a period of up to 90 continuous days thereafter.” As written, the question states that coverage does not apply when construction is halted for more than 90 days. It is important to clarify that coverage ceases on day 91 of halted construction, not on the day construction is halted for a period exceeding 90 days.

Other Security Interests

NAFCU supports many of the clarifications in Other Security Interests 1 and 2. Regarding Other Security Interests 3, NAFCU recommends that the Agencies clarify that the active review applies only to the amount of coverage and does not trigger a new determination.

There are continuing concerns regarding the burdens the flood rules and the Interagency Questions and Answers place on junior lienholders to obtain information and concessions from senior lienholders regarding flood insurance. NAFCU appreciates the ability to make presumptions regarding the amount of insurance coverage relating to the senior lien, however, without an

obligation to share information by the senior lienholder, junior lienholders may risk underinsuring collateral or delaying closings significantly.

Escrow

Regarding Escrow 4, the question and answer is confusing as stated. As drafted, the question includes references to assumptions by another borrower or the loan being remapped into an SFHA, but does not specify these are merely examples of non-triggering events. In the answer, neither assumptions nor remapping are addressed. Instead, the answer is constructed around the existence of a triggering event, which does not make it clear what certain exceptions might apply to situations involving assumptions of remapping.

Loan Exceptions

The clarifications provided by Loans Exceptions 1, 2, 3, and 4 are helpful and appropriate. In particular, Loan Exceptions 3 provided important clarification regarding escrow obligations and loan documentation regarding the payoff of a senior lien.

Force Placement

The clarifications regarding the content and timing of the force-placement notice in Force Placement 1, 6, and 14 were appreciated. Force Placement 16 brings clarity to a common source of confusion. Regarding Force Placement 10, NAFCU urges the Agencies to clarify that a credit union can charge a borrower for force-placed flood insurance by drawing on a line of credit if permitted by the agreement.

Further, these questions generally address situations where a lender has determined that the collateral is uninsured or underinsured. However, credit unions have encountered situations where insurance exists, but the policy is somehow insufficient. For example, a private insurance policy may not meet the requirements for mandatory acceptance or may not meet contractual obligations in the mortgage. In these instances, credit unions struggle on whether to force placement of duplicative coverage and would appreciate guidance from the Agencies.

Federal Housing Agency Loans and the Mandatory Acceptance of Private Flood Insurance

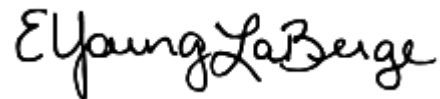
NAFCU understands that the Agencies plan to issue proposed guidance addressing the private flood insurance rule when it finalizes these Interagency Questions and Answers. In anticipation of that proposal, NAFCU would like to highlight a need for guidance regarding Federal Housing Agency (FHA) loans. Under the mandatory acceptance provision of section 760.3, a credit union must accept private flood insurance that meets the regulatory requirements of the section. This provision applies to all federally-related mortgage loans secured by a building or mobile home in a special flood hazard area in which flood insurance is available under the NFIP.

This mandatory acceptance provision directly conflicts with FHA guidelines. The FHA Single Family Housing Policy Handbook specifies that only NFIP policies are permitted on FHA loans.¹ Because of this limitation established by regulation, private flood insurance is not acceptable under the FHA program guidelines. This puts credit unions in a difficult position of requiring applicants to obtain more expensive insurance against their wishes and limits the mission of the FHA to facilitate American homeownership. Any clarification or guidance the Agencies could provide to resolve this conflict would be greatly appreciated.

Conclusion

NAFCU appreciates the opportunity to provide feedback in response to this proposed Interagency guidance, which is welcome and appreciated. If you have any question or concerns, please do not hesitate to contact me at elaberge@nafcu.org or (703) 842-2272.

Sincerely,



Elizabeth M. Young LaBerge
Senior Regulatory Counsel

¹ See, e.g., 24 CFR §§ 203.16a(b), 206.45(c)(2).