LouisianaBankers
ASSOCIATION

December 10, 2013

By electronic delivery to:

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Re: Loans in Areas Having Special Flood Hazards; RIN 1557-AD67; RIN 7100AE-00; RIN 3064-AE03; RIN 3052-AC93; RIN 3133-AE18

Ladies and Gentlemen:

The Louisiana Bankers Association (LBA) appreciates the opportunity to comment on this proposal issued by the Federal Reserve, FDIC, FCA, OCC, and NCUA (hereafter collectively referred to as the "Agencies") to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 regarding loans in areas having special flood hazards.

LBA is the only banking association in Louisiana and represents 150 member banks and thrifts operating in the state. Louisiana is greatly impacted by the changes brought about by the passage of Biggert-Waters. Many Louisiana residents and business owners are being affected (or will be affected unless Congress acts) by greatly increased flood insurance premiums. There are numerous examples of flood insurance premium increases being so drastic that properties

are becoming severely devalued or, in the worst cases, virtually unmarketable. The result is serious harm to property owners, lenders, realtors, builders and communities as a whole.

Lenders also face numerous bank specific compliance challenges presented by Biggert-Waters. These compliance challenges are often time consuming and costly for banks. Some of these compliance challenges can also negatively impact bank customers without providing corresponding benefits.

LBA provides comments below on a number of aspects of the proposal. However, in addition to our comments below, LBA agrees with and supports the comments on this proposal submitted on December 6 by the American Bankers Association (ABA), the American Bankers Insurance Association (ABIA), and the Consumer Bankers Association (CBA). That comment letter clearly and thoroughly lays out the many challenges and concerns that are presented by the rule. LBA strongly encourages the Agencies to give the utmost consideration to their feedback, and to incorporate their suggested changes into the final rulemaking.

LBA Comments:

Private Flood Insurance Provisions:

One of the goals of the Act was to encourage greater private sector participation by requiring lenders to accept private flood insurance. However, it is our understanding that the definition of "private flood insurance" included in the Act will make meeting this goal difficult and present significant compliance challenges for lenders. The Act requires that lenders accept private policies that meet certain specific standards, including coverage at least as broad as coverage provided by a standard flood insurance policy (SFIP) under the National Flood Insurance Program (NFIP). We believe few lenders have the capacity to determine whether policies meet the required standards, and that the private policies currently issued may not meet one or more of these rigid criteria. The Agencies have proposed one potential solution to this problem, a safe harbor provision. The Agencies also have invited comment on an alternative solution, which would give lenders discretion to accept private policies that do not meet the required standards. LBA supports both solutions with the recommended modifications contained in the comment letter submitted by the ABA, ABIA, and CBA.

Mandatory Escrow Provisions:

Section 100209 of the Act requires depository institutions or their servicers to escrow all flood insurance premiums and fees required for residential improved real estate or a mobile home securing any mortgage loan. Escrow will be required for any loan that is "outstanding or entered into" on or after July 6, 2014 unless the lender qualifies for the statutory exception for small institutions. The statutory exception applies to institutions with less than $1 billion in assets if: (a) at the time of enactment of the Act, the institution was not otherwise required by state or federal law to escrow taxes, insurance premiums or fees; and (b) it did not have a policy of requiring the escrow of taxes, insurance premiums or fees.

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(1) LBA strongly supports the Agencies proposal to exclude from the escrow requirement any loan that is an extension of credit primarily for business, commercial, or agricultural purposes, even if it is secured by residential property located in a flood zone.

(2) LBA also strongly recommends that loans that are subordinate liens at origination be excluded from the escrow requirement for the life of the loan. Currently, because there can only be one NFIP flood insurance policy insuring a building, it is the responsibility of the senior lienholder to escrow for and pay the flood insurance as it would not be practical for both lenders to be involved in escrowing, receiving invoices, and paying premiums. However, the current rule provides that if the first lienholder does not escrow flood insurance premiums and fees for adequate insurance coverage, the regulated lending institution in the second lienholder position is required to escrow the flood insurance premiums and fees, unless such regulated lending institution qualifies for an exception from the escrowing provisions.

LBA believes this requirement will impose excessive and continuous monitoring obligations on a subordinate lienholder. Specifically, the subordinate lienholder will be required to monitor whether: the first lienholder is collecting escrow payments from the borrower; the first lien has been paid off; or the first lienholder is exempt from the escrow requirement. Such an obligation would increase origination and servicing costs significantly – costs that will ultimately be borne by consumers.

If unchanged, the rule would require lenders to add escrow capabilities into the origination and servicing systems for all their home equity loans and lines of credit. This would require extensive expenditures of time and resources, which again will ultimately be borne by consumers in the form of increased credit costs. Therefore, LBA strongly urges the Agencies to promulgate a rule that unequivocally excludes all subordinate lien loans from the escrow requirement.

(3) LBA strongly recommends that the proposed rules should not require a lender to begin collecting escrow payments for existing first lien mortgage loans unless a statutory trigger occurs such as the making, increasing, renewing, or extending of a loan. Without such a provision, lenders will be forced to abrogate an existing customer's contractual right not to escrow and to force place a policy for those who refuse. Under the statutory trigger approach, when the borrower contacts the bank to request a loan modification, the lender will have an opportunity to explain the change in the law and how it will affect the borrower's monthly mortgage payment. The bank will also be able to make any necessary contract amendments at the closing.

(4) LBA also recommends that the Agencies address each of the following categories of loans in the escrow rule so that lenders and examiners have a clear understanding of supervisory expectations: (a) non-performing mortgage loans; (b) loans with maturities of less than one year; (c) lines of credit and reverse mortgage loans; (d) manufactured (mobile) home loans with chattel mortgages; and (e) loans with force-placed insurance.

(5) With respect to force-placed insurance policies, LBA supports giving lenders discretion as to whether to escrow for such policies. As a general rule, escrow is intended to assist consumers with cash flow planning by forcing them to save over the course of a year to pay taxes and insurance. In the case of force-placed insurance, the lender is paying the flood insurance premium, and the forced saving is unnecessary.

(6) Finally, LBA urges the Agencies to provide 12 to 18 months after the final rule has been published to permit lenders to comply. Again, we support the reasoning given by the ABA, ABIA, and CBA in their comment letter.

Additionally, many LBA member banks are frustrated and concerned because they only began escrowing for taxes and insurance a few years ago due to federal requirements for "higher-priced" loans. Now because of compliance with that mandate, they will be required to escrow for flood insurance beginning in July, including for outstanding loans. Accordingly, much work lays ahead for bank compliance staff to review loan portfolios and to take the steps necessary to effectively comply with this new requirement. Therefore, we again urge that the Agencies provide a reasonable time period of 12-18 months after the rule becomes final for lenders to comply.

Force Placed Insurance Provisions:

In section 100244 of the Act, Congress sought to clarify its expectations for the force placement of flood insurance, specifically to establish rules governing when a borrower may be charged and rules for the termination of a force placed policy. Section 100244 was effective upon enactment. However, the Agencies have proposed amendments to their regulations to clarify: when a lender may begin to charge the borrower for force placed insurance; the circumstances under which a lender must terminate force placed insurance and refund borrower payments; and what documents are sufficient to demonstrate that a borrower has flood insurance.

The LBA supports the following positions as originally put forth and explained by Section V (beginning on page 18) of the comment letter submitted by ABA, ABIA, and CBA:

(1) LBA supports the proposed amendment clarifying when a borrower may be charged for a force-placed policy and requests further clarification.

(2) LBA urges the Agencies to clarify what constitutes a "sufficient demonstration" for purposes of confirming a borrower's existing flood insurance coverage.

(3) LBA urges the Agencies to provide additional guidance on supervisory expectations for force placement.

Related to the force placement issue, LBA seeks clear guidance from the Agencies as to whether lenders are allowed to pay insurance premiums for borrowers to prevent their flood insurance policies from lapsing. Such a practice would prevent lenders from having to force place a separate policy, which generally would be considerably more expensive for the borrower.

Allowing lenders to pay the premium on behalf of the customer could also prevent subsidized flood insurance rates from being lost due to lapse of the borrower's policy.

LBA has received differing feedback as to whether the practice of paying the borrower's premium to prevent a lapse of the policy is allowed. We continue to get questions from bankers on this issue and believe clear guidance to bankers and examiners is necessary.

Additional Feedback:
As a final matter, LBA agrees with the request of the ABA, ABIA and CBA for the Agencies to work with FEMA to provide clear and comprehensive guidance to the industry, including an update of the *Mandatory Purchase of Flood Insurance Guidelines*.

Thanks for your consideration of our comments.

Respectfully submitted,

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