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NBA Nebraska Bankers Association

*Extraordinary Service for Extraordinary Members*

December 10, 2013

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Delivered via e-mail: regs.comments@federalreserve.gov

Barry F. Mardock
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5091
Reg-comm@fca.gov

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
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Alexandria, VA 22314-3428
recomments@ncua.gov

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Mail Stop 9W-11
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regs.comments@occ.treas.gov

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Delivered via e-mail: comments@fdic.gov

RE: Loans in Areas Having Special Flood Hazards; RIN 1557-AD67; RIN 7100AE-00; RIN 3064-AE03; RIN 3052-AC93; RIN 3133-AE18; Docket ID OCC-2013-0015

Ladies and Gentlemen:

The Nebraska Bankers Association appreciates the opportunity to comment on the proposal by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the National Credit Union Administration (the Agencies) to amend their respective regulations regarding loans in areas having special flood hazards to implement provisions of the Biggert-Waters Flood Insurance Reform Act.

The enactment of the Biggert-Waters Flood Insurance Reform Act of has resulted in unprecedented change to the National Flood Insurance Program (NFIP).

While the objective to restore the financial insolvency and stability of the federal flood insurance program is well intentioned, the law has made significant changes to lender's flood insurance compliance requirements and many of our members' customers will face increased flood premiums and be required to obtain other flood related documents that will increase their burdens as well.

While we appreciate the Agencies action in expressly excluding commercial purpose loans and most subordinate lien loans from the escrow requirements, there are additional problems presented by the proposal that are in need of correction. These include making additional exclusions to the escrow requirements; providing further clarity regarding forced placement; and creating an additional path to "safe harbor" to promote the acceptance of private insurance policies. Finally, the rule must provide the industry with a realistic period of time in which to implement the required changes.

The proposed escrow requirements will have a negative impact on our members (who are not otherwise exempted from the requirements) and on their customers. The Act requires (non-exempt) lenders 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. To implement the escrow requirement for *existing* borrowers, the proposal suggests that banks will have to establish escrow on the first renewal date of flood insurance policy that occurs on or after July 6, 2014.

We would suggest that the proposed rule should not require a lender to begin collecting escrow payments for existing mortgage loans unless a statutory trigger occurs. The proposed staggered implementation timeline fails to address significant contractual, enforcement, and customer relation issues presented by the requirement to extend escrow to existing loans. Requiring a borrower, who has just paid a full year's renewal premium to additionally pay one-twelfth of the next year's premium and additional amounts to satisfy the "reserve" or "cushion" permitted by RESPA and state law will cause a hardship for many customers.

We would additionally suggest that a significant number of borrowers may resist a lender's enforcement of the proposed escrow requirements. If so, will lenders be expected to force place a policy and establish an escrow for that force placed policy or to advance the necessary funds into an escrow account and charge the customer? While acknowledging that the Act states that escrow shall apply to any mortgage "outstanding" or "entered into" two years after the date after enactment, we would encourage the Agencies to exercise discretion to promulgate a rule that extends escrow to existing loans in a manner that minimizes the potential for borrower harm and does not result in negative relationships between lenders and borrowers.

As an alternative to the proposed rule, we would recommend adoption of a rule that ties the obligation to establish an escrow account for an existing loan to the existing statutory trip wire--making, increasing, renewing, or extending a loan. Such an approach would carry out Congressional intent to require escrow for existing mortgage loans, but would minimize contractual, enforcement, and customer relation problems.

We support the Agencies proposal not to require escrows for commercial loans even when they include liens on residential property. However, we would encourage the Agencies to exclude *all* second lien loans from an escrow requirement and not impose costly monitoring of lien status as a mandatory compliance requirement.

The Act amends the mandatory purchase requirement to require lenders to accept private flood insurance policies as satisfaction of the mandatory purchase requirement if the coverage provided by the private flood insurance meets specific standards – six factors that define a compliant "private flood insurance policy." This requirement was intended to encourage the development of a market for private flood insurance. As enacted, however, the statute will require bankers to make determinations of whether the private policy tendered by a borrower meets each of the six factors, a compliance exercise which few bankers have the expertise to do with confidence. This, in turn, puts bankers in an untenable position: the failure to accept a compliant private policy would be a compliance violation with civil money penalties imposed and accepting a private policy later judged by an examiner not to be compliant would also be a compensable violation. As a result, we would suggest that a "safe harbor" be adopted allowing bankers to rely on a private insurance carrier's representation about the compliance of the coverage provided so that a private insurance policy becomes no more difficult for bankers to accept than an NFIP policy.

In closing, given the complexity of issues relating to flood insurance compliance, we would encourage the Agencies to work with FEMA to provide clear and comprehensive guidance to the industry about how NFIP program changes impact a lender's flood insurance compliance obligations. In this regard, we support the request of the American Bankers Association in its comment letter for the Agencies to work with FEMA to update and maintain the *Mandatory Purchase of Flood Insurance Guidelines*.

Thank you for your consideration of our comments on this important regulatory and compliance issue.

Sincerely,

George Beattie

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/jsh