December 10, 2013

Via Electronic Mail

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street SW., Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Federal Deposit Insurance Corporation
Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
550 17th Street NW.
Washington, DC 20429

Federal Reserve System
Robert deV. Frierson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551

Farm Credit Administration
Barry F. Mardock
Deputy Director
Office of Regulatory Policy
1501 Farm Credit Drive
Mclean, Virginia 22102-5090

National Credit Union Administration
Gerard Poliquin
Secretary of the Board
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: Proposed Rule: "Loans in Areas Having Special Flood Hazards" (OCC: Docket ID OCC-2013-0015; Federal Reserve: Docket No. R-1462 RIN 7100 AE-00; FDIC: RIN No. 3064-AE03; FCA: RIN 3052-AC93; NCUA: RIN 3133-AE18)

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC") 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 (collectively, the "Agencies") to adopt regulations

to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, Public Law 112-141, 126 Stat. 916 (the "BWA").[1]

The BWA significantly amended the requirements of the National Flood Insurance Act ("NFIA") by, *inter alia*, requiring regulated financial institutions that do not qualify for a small lender exemption to direct that the borrowers of loans secured by improved residential property and mobile homes located in a special flood hazard zone pay flood insurance premiums and fees with the same frequency as payments are required to be made under the loan into an escrow account established pursuant to the Real Estate Settlement Procedures Act; directing regulated financial institutions to notify their borrowers of the availability of private flood insurance and to accept such insurance; and changing the NFIA's force placement provisions by clarifying when a financial institution can charge a borrower for the cost of force placed insurance and to establish procedures for the cancellation of force placed insurance. The Proposed Regulations implement BWA's amendments by revising each Agency's flood regulations.

PNC's comments below primarily are intended to ensure that: the beneficial purposes behind the escrow requirements are not outweighed, and consumers are not unduly burdened by, the extent and timing of the flood insurance escrow requirements as applied to home equity loans and lines of credit; private insurance requirements will be defined appropriately and with flexibility; and the regulation's force placement provisions are further clarified.

We support the purposes of BWA and believe that, if appropriately implemented, it can assist more borrowers with traditional purchase money and refinanced first mortgages to manage the payment of flood insurance premiums and fees, provide needed guidelines for the acceptance of private flood insurance policies and encourage the development of the private insurance market for consumer mortgages, and clarify issues that have arisen with respect to force placement. PNC also supports the Agencies' proposal that excludes loans for business, commercial and agricultural purposes from the escrow requirements, as this would unnecessarily divert business capital into escrow accounts. Further, PNC agrees that loans where flood insurance is purchased by a common interest community should not be subject to the escrow provisions. Regarding private insurance, PNC supports the Agencies' proposed safe harbor for policies certified by State insurance regulators as meeting BWA's statutory definition. We also agree with the Agencies' view that additional clarification is needed with respect to force placement.

PNC is a diversified financial services company with more than $308 billion in assets, as of September 30, 2013. PNC businesses engage in retail banking, corporate and institutional banking, asset management, and residential mortgage banking. PNC provides many of its products and services nationally and others in PNC's primary geographic markets, including 19 states in the Northeast, Midwest and Southern United States.

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[1] Loans in Areas Having Special Flood Hazards, 78 *Federal Register* 65108-01 (October 30, 2013) (the "Proposed Regulations").

The proposed escrow requirements will apply to traditional first mortgages for the purpose of purchasing or refinancing consumer-purpose improved residential property and mobile homes and home equity loans and lines of credit secured by improved residential property and manufactured homes located in a special flood hazard zone ("SFHA") in which flood insurance is available under the NFIA. The Agencies' proposed private insurance and force placement regulations will apply to these consumer-purpose loans as well as to commercial, business and agricultural loans secured by improved residential property located or to be located in an SFHA in a participating community. PNC plays varied and important roles in the origination and servicing of a diverse array of such assets. PNC originated more than $15 billion in residential purchase money and refinanced first mortgages in 2012 and held more than $35 billion in home equity loans and lines of credit in 2012. PNC serves our consumer mortgage customers throughout the continental United States. PNC serviced $124 billion of traditional first mortgages and home equity loans and lines of credit for itself and for other federally regulated investors in 2012.

1.) The Escrow Requirements Should Not Apply to an Existing Loan Unless an NFIA Trigger Event Has Occurred

For the reasons discussed below, PNC recommends that the final regulations provide that a flood insurance premium escrow for a loan that is outstanding on July 6, 2014 must be established only if the loan is increased, extended or renewed on or after July 6, 2014. This approach will increase the probability of borrowers paying into newly-established escrows and reduce both borrower hardship and litigation risk. Moreover, we believe that this approach is fully consistent with the NFIA, as amended by BWA.

The BWA did not change Section 522(b) of the NFIA, 42 U.S.C. §4012a(b), which provides that a regulated financial institution may not make, increase, extend or renew a loan secured by improved residential property or a mobile home located or to be located in an SFHA in a participating community unless it is covered by flood insurance. The Proposed Regulation will require regulated lending institutions or their servicers to direct the borrowers whose loans are outstanding on July 6, 2014 to pay flood insurance premiums and fees into an escrow account on or after the first renewal date of the borrower's flood insurance policy that occurs on or after July 6, 2014. This is, in effect, a new trigger date which will be unique to each existing loan. PNC appreciates that the Agencies have proposed to phase-in the escrow requirement for existing loans which does not appear to be mandated by BWA.

The proposed phased-in implementation requirement will unnecessarily increase borrower costs and can result not only in borrower complaints but also potential litigation. Borrowers who paid premiums for an escrow waiver at origination will lose that benefit and all borrowers will experience the increased cost of making their first escrow payment immediately after they have paid a substantial sum to renew their flood insurance policy. The borrower will be required to provide information about the flood insurance renewal premium that is necessary to establish an escrow account many years after the loan was originated, and the borrower may have had little or no direct contact with the servicer during that period. The borrower may not be attentive to the

need to respond to the lender or servicer's notices and requests for flood insurance premium information.

By contrast, when an NFIA trigger event occurs, the borrower is in direct correspondence with the regulated lender in order to increase, extend or renew a loan and has the incentive to cooperate with the lender in establishing an escrow in order to complete the transaction. Under the proposal, there is no incentive for existing borrowers in the course of normal servicing to begin paying into escrow. If the borrower ignores the regulated lender or servicer's requests for flood premium information or fails to make an escrow payment, the Agencies have not provided clear guidance as to the actions that lenders and servicers should take to get the borrower to begin paying into escrow. Force placement would not be appropriate since a flood insurance policy would be in effect.

It is unlikely that the documentation for most outstanding home equity loans and lines of credit contain escrow provisions. Consequently, there is a potential for borrower complaints and litigation asserting that the escrow requirement constitutes an unconstitutional impairment of contract, violates disclosure or substantive provisions of the Truth in Lending Act, or breaches the loan agreements and mortgages. The regulated lender would also have challenges in declaring a default if the borrower refuses to provide flood policy premium information or make an escrow payment if the loan documents do not contemplate these actions.

For the same reasons as discussed above, a regulated lender or its servicer should not required to impose escrow requirements when a lender that is not subject to the escrow requirement transfers the loan to a regulated lender that is required to escrow.

2.) Escrow Provisions and Lien Monitoring Should Not Apply to Subordinate Lien Loans

PNC does not believe there is sufficient evidence that subordinate lien home equity loans and lines of credit secured by improved residential property or mobile homes located in an SFHA are not adequately protected by flood insurance. Thus, PNC recommends that the final rules do not subject the escrow requirements to subordinate lien home equity loans.

As noted above, BWA did not change the NFIA's basic provision that ties the flood insurance requirement to loan origination, increase, extension or renewal. The Proposed Regulation introduces a new mandate that a regulated lender that is originating or has an outstanding subordinate lien determine whether the borrower is paying flood insurance premiums and fees to the first lienholder or servicer. If the first lien loan is not required to or does not maintain an escrow account, the subordinate lienholder must escrow flood insurance premiums and fees, unless it qualifies for the small lender exception. As discussed in more detail below, home equity servicing systems typically cannot administer an escrow account. The Proposed Regulation would require either that home equity lenders and servicers add escrow capability to their servicing systems or convert all home equity loans and lines of credit to a servicing system that can handle escrows, even if only a few subordinate lien loans will actually require escrow

accounts. This will significantly increase the servicing costs that will ultimately be passed to consumers in the form of higher home equity interest rates.

Additionally, under existing law subordinate lienholders are required to determine that the subordinate lien loan has adequate flood insurance at origination and at any subsequent trigger event. In performing these regulatory obligations, they are not required to interact with the first lien lender or servicer, but can obtain the required evidence of insurance from the borrower. The Proposed Regulation will require regulated financial institutions to have personnel and procedures to obtain the contact information for, and regularly interact with, the first lien lender or servicer. They will have to obtain and maintain information to determine which servicers qualify for an exception. The subordinate lienholder will not only be required to ascertain whether the borrower continues to pay flood insurance premiums into the first lien's escrow account, but will also have to determine whether the first lien loan is still outstanding. Both first and second lien lenders and servicers will be required to maintain staff to make and respond to escrow inquiries. This increased monitoring is not only outside the scope of the NFIA's trigger events, but will substantially increase servicing costs without any commensurate benefit to borrowers, who will ultimately bear these costs. Moreover, if a first lienholder or its servicer does not provide the escrow information in a timely manner or at all, the subordinate lienholder or its servicer would face an increased risk that its escrow account could be challenged as unfair, excessive and/or that it violates statutory or contractual limits.[2] This would potentially lead to borrower complaints and litigation.

3.) Implementation of the Escrow Requirement Should Not be Required Until 12 to 18 Months After the Publication of the Final Rule

Many, if not most, regulated financial institutions that originate home equity loans and lines of credit, including PNC, service those loans on servicing platforms that do not currently have escrow capabilities. The United States Treasury Department recognized the state of the home equity servicing industry when it established guidelines for first-lien home equity loans that were eligible for the Home Affordable Mortgage Program ("HAMP"). Home equity lenders that do not escrow are not required to collect escrow payments during the trial period. It is also significant that, when the NFIA's flood insurance purchase requirements were established, regulated lenders were given a year to achieve compliance, and the mandatory flood insurance purchase requirement did not apply to loans originated prior to the 1995 effective date of the Agencies' implementing regulations.

Even if the Agencies' final escrow regulations only apply to home equity loans and lines of credit that are in first lien position at origination, building escrow capability on existing systems

[2] For example, if a regulated lender makes a home equity loan of $40,000 that is subordinate to a $200,000 first mortgage, but does not know that the borrower has a first mortgage escrow account to pay the premium for replacement cost flood insurance coverage of $300,000, the regulated home equity lender or its servicer might believe it has to establish a minimum flood escrow of at least $240,000 in coverage (the loan amount balances of the first and subordinate lien loans) that is in addition to the existing flood coverage, resulting in more flood coverage than is needed.

or purchasing a system that can administer escrows will require a significant expenditure of money and time. Assuming that the Agencies issue a final regulation before the end of the year, that will leave only six months to develop and test software requirements, write complex procedures for escrow funding, analysis and accounting, hire and train staff to administer the escrow accounts and respond to borrower inquiries and complaints, create loan documents, disclosures and forms, and develop audit procedures. As with any new process that will impact consumer's pocketbooks, sufficient time must be allotted to ensure that the escrow accounting system is operating as intended and that borrowers have sufficient advance information and available resources to respond to their questions.

As the Agencies are aware, regulated lenders and their servicers are currently working diligently to implement substantial new origination and servicing requirements that are effective in January, 2014. In addition, extensive new regulations for simplified disclosures have been published with an effective date of August 1, 2015. PNC respectfully requests an implementation date that is 12 months after the issuance of the Agencies' final rule for new first lien mortgages. If the Agencies include first liens outstanding on July 6, 2014, and subordinate lien mortgages in the final regulation, PNC requests that implementation of those aspects of the regulation be delayed until 18 months after publication of the final rule.

4.) Certain Loans Should be Exempted from the Escrow Requirement

The Proposed Regulation's escrow requirements would apply to non-performing loans. The Agencies have also asked for comment regarding whether a lender should be required to escrow flood insurance premiums and fees after it establishes a force placed policy. In both of these cases, the cost and administrative burden of establishing an escrow account for loans where the borrower has stopped making loan payments or has failed to purchase flood insurance may outweigh any benefit provided by requiring an escrow account. Additionally, PNC recommends that loan with maturities of less than one year should be exempted from the escrow requirement. Furthermore, loans secured by manufactured (mobile) homes typically are serviced on systems that do not have escrow capabilities as loan documents typically do not require escrow for hazard insurance, flood insurance, or real estate taxes. Therefore, PNC requests that these loans be exempted from the escrow requirements and that the Agencies leave it to the discretion of the lender whether to escrow in these circumstances.

5.) Home Equity Lines of Credit Should be Exempted from the Escrow Requirement

The BWA and the Proposed Regulation direct lenders to require that borrowers make payments of flood insurance premiums and fees with the same frequency as payments are made on the underlying loan. Under Regulation Z, borrowers whose home equity lines of credit have no unpaid balance do not receive billing statements and do not make monthly payments. Home equity lines of credit with zero balances also may not have credit privileges, due to significant decline in collateral value or the occurrence of other events governed by Regulation Z. To establish an escrow account under these circumstances is simply unnecessary and will result in expenses to borrowers as well as additional administrative burden and expense to lenders and their servicers that do not serve any legitimate purpose. Indeed, consumers have alleged that

establishing escrow for zero balance HELOCs has caused consumer harm, resulting in litigation.[3] Flood insurance is only required on home equity lines of credit for the amount of the outstanding balance. The Proposed Regulation does not discuss home equity lines of credit, and the Agencies alone cannot address the interaction of the escrow provisions with Regulation Z. Home equity lines of credit do not require an escrow for any insurance or taxes and the loan servicing systems for these products often do not support establishing or maintaining escrow accounts. Consequently, we believe that this product should be exempted from the escrow requirement.

6.) Additional Clarification and Detail are Required for Borrower Notification

The Proposed Regulation addresses the timing of the escrow requirement, but neither it nor the model notices provide detail regarding the establishment of the escrow account as it relates to the escrow payment itself or how the borrower will receive advance notification of the amount of the required escrow payment. The Agencies have requested comment regarding whether ninety days is sufficient advance notice of the escrow requirement for those borrowers whose loans are outstanding on July 6, 2014. The Agencies should consider and address how the notice requirement and timing will enable the funding of the escrow in time for the next flood insurance premium renewal date. In addition, the Agencies should provide clarification on how the two month cushion that is permitted under RESPA should apply to the escrow requirements. The cushion ensures that sufficient funds are available to pay premiums in advance of any penalty assessment dates or avoid insurance cancellation.

7.) Lenders Should not be Required to Establish an Escrow for the Escrow of Borrower Flood Insurance Premiums if a Common Interest Community Fails to Maintain Adequate Flood Insurance

PNC supports the Agencies' proposal that an escrow should not be required if flood insurance coverage is purchased by a common interest community, such as a condominium association. However, PNC recommends that the Agencies make it clear that there should be no duty to monitor the continued sufficiency of the condominium's master flood policy, unless the underlying loan is increased, extended or renewed. To require more would pose undue burdens which would not be outweighed by benefits to consumers as in our experience common interest communities rarely let their insurance lapse.

8.) The Agencies Should Adopt a "Safe Harbor" for NFIP-Compliant Private Insurance Policies

The Agencies solicited comments regarding a proposed "safe harbor," whereby a private flood insurance policy is deemed to meet the regulatory definition if a State insurance regulator makes a written determination to that effect. PNC supports this safe harbor proposal, and believes it could be very beneficial, especially in the consumer market. Without some sort of official determination, PNC's employees would need to examine each private policy's terms to identify

[3] See, Hofstetter v. Chase Home Finance, LLC, 751 F. Supp.2d 1116 (N.D. Cal. 2010).

deviations from the standard NFIP policy, and would need to be trained to assess whether these deviations are acceptable. The added review time could lengthen the loan closing process.

If State insurance regulators are amenable to making these determinations, PNC recommends that a central web-based reference source be established, either by the Agencies, the State regulators or the insurance companies, where records of these determinations could be housed. It would be more efficient if lenders could consult a single reference source for approved policies, rather than having to research each policy at the relevant State insurance regulator website or the insurance company's website.

Finally, as an alternative or in addition to a central reference repository, PNC recommends that the Agencies consider allowing insurance companies, agents and brokers to provide standard certification language in their policies, binders and other evidence of private flood insurance. The producing insurer, agent or broker is in a better position than the lender to determine whether the products they are marketing have been certified by the relevant State insurance regulator. The lender would already be reviewing the proof of insurance documentation for the private policy, and ought to be able to rely conclusively on a standard safe harbor statement of compliance with the terms of an NFIP policy.

9.) Lenders Should Have Additional Flexibility to Accept Private Flood Insurance Policies, Including "Blanket" Policies

Prior to BWA's enactment, lenders relied on FEMA's "Mandatory Purchase of Flood Insurance Guidelines," which authorized a reasoned approach to "carefully examine" the differences between the terms of a private policy and an NFIP policy. But, in light of BWA's significant changes, FEMA withdrew the Mandatory Purchase Guideline document in its entirety last February. PNC appreciates the Agencies' invitation to comment on how lenders might accept private flood insurance policies on a discretionary basis, above and beyond the safe harbor for policies certified by State insurance regulators. The final regulations should reaffirm the lender's continuing ability to accept private policies in much the same way as was done previously under the now-rescinded Mandatory Purchase Guidelines.

PNC's commercial businesses have long been accustomed to accepting private flood insurance policies on a discretionary basis after carefully reviewing their terms relative to the NFIP policy's terms. For example, the developer of a chain of oceanfront hotels or an industrial borrower with numerous seaport shipping terminals will frequently present a "blanket policy" from a private insurer, covering all flood risks to any of the properties, along with other property damage risks. The coverage of a blanket policy cannot be divided into flood-specific coverage per property equal to the maximum amount for a non-residential property ($500,000) and the policy's deductible might be significantly higher than the NFIP policy. PNC has become comfortable in accepting blanket policies in the millions of dollars, but with high deductibles consistent with the borrower's creditworthiness. This practice recognizes our customers' efforts to prudently manage flood insurance in a cost-effective manner as part of their overall insurance risk management program.

Both BWA and the Proposed Regulations are silent on the issue of blanket policies. Because of the importance of blanket policies to commercial and industrial borrowers, the final regulations should authorize the acceptance of blanket policies after careful examination by the lender. The regulations should not only validate the guidance previously provided by the FEMA Mandatory Purchase Guidelines, but also expand this guidance to squarely address blanket policies for the first time.

10.) The Agencies Should Further Clarify Force Placement Issues

PNC supports the Agencies' proposal that the "date of the lapse" is the expiration date provided in the borrower's flood insurance policy. However, we believe it is important for the Agencies to address the date when the borrower can be charged for force placed coverage because the lender or its servicer has discovered that the borrower's flood insurance did not provide a sufficient coverage amount. Is the appropriate date the date when the lender or servicer discovers the insufficient coverage or the expiration of the 45-day notice period?

With respect to the cancellation of force placed coverage, the Agencies propose that a lender or its servicer must accept the declarations page that includes the existing policy number and identity/contact information for the insurance company or agent when confirming the existing policy. However, the declarations page may not provide sufficient information or may cause the lender or servicer to question the adequacy of coverage. To avoid premature cancellation of the present force placed policy only to be replaced by another force placed policy, the Agencies should clarify that the lender or servicer is not required to cancel the force placed policy until it has completed any necessary inquiries.

Similarly, the Agencies should allow lenders and their servicers the discretion to accept other documents that may also demonstrate that adequate flood insurance coverage exists, including an insurance certificate, an insurance binder, an ACORD form or, in the case of a subordinate lien, a lender-placed insurance policy obtained by the senior lender that meets the NFIA's minimum coverage amount.[4] Additionally, the Agencies should clarify that a lender-placed policy will satisfy flood insurance requirements when refinancing or modifying a loan for a borrower in default or in imminent default. This may be necessary, for example, under the U.S. Treasury's Making Home Affordable Program.

The Agencies have recognized that lenders and their servicers must avoid excessive or duplicative flood insurance coverage. PNC strongly believes that these clarifications are needed and will reduce the potential for borrower complaints and litigation.

PNC generally supports the comments of the American Bankers Association, the Mortgage Bankers Association and the Consumer Bankers Association on the Proposed Regulations. We underscore the concerns we have with applying the escrow requirements to loans outstanding on July 6, 2014, to any subordinate-lien loans and the July 6, 2014 implementation date for any

[4] This is similar to the scenario discussed at page 5, supra, where a subordinate lien lender or servicer's duplicative escrow account can create a heightened risk of a consumer challenge.

home equity loans or lines of credit. All of these issues are addressed in more detail in the letters submitted by those associations.

* * *

Thank you for your consideration of these comments. If you would like to discuss any aspect of this letter, please do not hesitate to contact me.

Sincerely,

Neil F. Hall
Executive Vice President, Head of Retail Bank