December 6, 2013

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

Re: Comment on Proposed Rule-Loans in Areas Having Special Flood Hazards
Docket No. R-1462; RIN 7100 AE-00

Dear Mr. Frierson:

I submit this letter in response to the Agencies'[1] request for comment on the proposed rule-Loans in Areas Having Special Flood Hazards published in the Federal Register on October 30, 2012.[2] Clarification and, if necessary, amendment is requested regarding section 208.25(e)(3).

The proposal would require regulated lending institutions to escrow payments and fees for flood insurance for any new or outstanding loans secured by residential improvement real estate or a mobile home. The proposal also implements the statutory exception to the escrow requirement with some clarifications. The exception states:

> Except as provided by State law, regulated lending institutions that have total assets of less than $1 billion are exempt from this escrow requirement if, on or before July 6, 2012, the institution: (i) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees or any other charges in an escrow account for the entire term of the loan; and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.[3]

The focus of this comment is on the second condition.[4] While I support proposed section 208.25(e)(3)(i)(A) because it appears to be a carve-out of the flood insurance escrow requirement for smaller banks, which may have fewer resources available to establish and maintain escrow accounts, I question the logic behind proposed section 208.25(e)(3)(i)(B)(2). Section 208.25(e)(3)(i)(B)(2) appears to subject a bank to the proposed rule based only on the bank's practice or policy that was in effect on July 6, 2012, rather than based on the bank's current practice or policy. In other words, it appears to be based on decisions made by the bank prior to the Act's effective date, leaving the bank unaware that its practice or policy on or prior to July 6,

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[1] The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively the Agencies) have jointly authorized the issuance of proposed rulemaking entitled "Loans in Areas Having Special Flood Hazards."

[2] See 78 FR 65107.

[3] See section 208.25(e)(3)(i)(A) and section 208.25(e)(3)(i)(B)(2).

[4] For purposes of this comment, it is assumed that the condition found at 208.25(e)(3)(i)(B)(1) is satisfied.

2012 would impact the bank in perpetuity, regardless of whether or not the policy is changed. Therefore, clarification and, if necessary, amendment is requested for section 208.25(e)(3)(i)(B)(2) of the proposed rule to address the following question: Will a bank be subject to the proposed rule based on a practice or policy it had or did not have in place on July 6, 2012, with no consideration given to its current policy?

To illustrate, I will present two scenarios that give rise to confusion and where clarification is requested. In both scenarios, it is assumed that the bank has less than $1 billion in total assets and that the bank meets the condition found at proposed section 208.25(e)(3)(i)(B)(1).

Scenario #1 – the bank did not have a practice or policy requiring an escrow account to pay taxes, insurance premiums, and other fees as of July 6, 2012.

Under the first scenario it appears that the bank will not be required to establish an escrow account to pay flood insurance premiums. According to section 208.25(e)(3)(i)(B)(2), the exemption applies if, on or before July 6, 2012, the institution "did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home." In this scenario, the bank did not have this practice or policy in place as of July 6, 2012. Therefore, it is presumed: (1) that the bank is not required to establish as escrow account to pay flood insurance premiums and (2) if the bank is currently collecting flood insurance premiums into an escrow account, it may choose to cease this practice. Overall, the bank's current practice or policy appears to be irrelevant in determining whether or not the bank is required to establish an escrow account.

Although the first scenario results in a complete reversal of existing Regulation H, section 208.25(e), it does not appear to have a significant impact. The first scenario does not seem to create any undue burden on the bank nor does it appear to result in consumer harm. Furthermore, many banks may choose to continue to require the payment of flood insurance premiums into the escrow account even if not required by the regulation, leaving the circumstances of both the bank and the consumer unchanged.

Scenario # 2 – the bank had a practice or policy of requiring an escrow account to pay taxes, insurance premiums, and other fees on July 6, 2012, but has since changed or eliminated the practice or policy.

In the second scenario, it appears that the bank is required to establish an escrow account to pay flood insurance premiums under the proposed rule. In this scenario, the bank had a practice or policy of requiring an escrow account to pay taxes, insurance premiums, and other fees on the Act's effective date. Therefore, it is presumed that the bank is required to establish an escrow account to pay flood insurance premiums even though the bank has since changed or eliminated its practice or policy.

Unlike the first scenario, this situation may create an undue burden on the bank and may result in consumer harm. The impact of the second scenario becomes most noticeable if, after July 6, 2012, the bank decided to stop offering escrow accounts altogether, and therefore no longer has

the infrastructure in place to establish and maintain such accounts. In this situation, the proposed rule becomes somewhat of a new regulation, requiring the bank to re-establish an escrow account without consideration of the bank's current practices or policies or the bank's capacity to do so. A bank that previously had the capacity to establish and maintain escrow accounts for its borrowers may not currently have the same capability. Moreover, requiring a smaller bank to establish as escrow account under such circumstances may impose unnecessary costs or require resources that are limited or unavailable to the bank.

Consumers may also be adversely affected under this second scenario. With the projected rise in flood insurance premiums, consumers may experience a significant increase in their mortgage payments as a result of the escrow requirement. While some consumers may be able to pay the flood insurance premium on an annual basis without difficulty, when this premium is added to their monthly mortgage payments it could make the consumers' monthly debt burden greater or perhaps unaffordable. To expand on this, it is also important to recognize that there are consumers who do not want to establish an escrow account and would prefer to pay insurance and taxes on their own. In fact, one reason that a bank might eliminate its practice or policy of requiring escrow accounts after July 6, 2012, would be to accommodate its customer base. Again, the proposed rule takes the control out of the bank's hands because it is based on what the bank did prior to or on July 6, 2012, and not what it is doing today.

If the intent of the proposed rule is to simply require banks to establish escrow accounts for flood insurance premiums, it is difficult to understand the rule's basis for determining applicability. It appears that the proposed rule uses a bank's practice or policy as of July 6, 2012 to determine its regulatory requirements at the present and going forward, regardless of the bank's current practice or policy. While this significantly impacts banks with assets under $1 billion that happened to have a particular practice or policy in place prior to the Act taking effect, it does not account for banks that have established a particular practice or policy after the Act's effective date. As a result, this arrangement seems to create a two tier system where banks that are required to establish an escrow account to pay flood insurance premiums are put at a disadvantage compared to banks that are not subject to the requirement. In other words, if a bank with assets under $1 billion was fortunate enough not to have a policy or practice in place on July 6, 2012, the mandatory escrow rules do not apply. Consequently, I suggest that the proposed rule apply to banks based on its current practices and policies, rather than its practices and policies as of July 6, 2012.

In conclusion, clarification is requested for section 208.25(e)(3)(i)(B)(2). Upon clarification, if my interpretation above is accurate, it is recommended that the requirements of existing 208.25(e) relating to the escrow requirements for banks that currently have a practice or policy to require escrow accounts for taxes, insurance premiums, and other fees, remain in effect and be amended to include the $1 billion asset size exception. This will exempt small banks with total assets under $1 billion that currently do not require the establishment of escrow accounts to pay taxes, insurance premiums, or other fees and would be consistent with existing section 208.25(e). This arrangement will also help ensure that an unnecessary burden is not placed on banks that required escrow accounts as of July 6, 2012 but have since eliminated that requirement and, in particular, on banks that did not retain the capability to establish and maintain these accounts. It will also ensure that banks that currently have a practice or policy to require escrow accounts to

pay taxes, insurance premiums, and other fees, but did not have such a practice or policy on July 6, 2012, are required to establish escrow accounts to pay flood insurance premiums. Finally, it will protect consumers who, as a result of the proposed rule, would see their monthly mortgage payments increase to a level that may be unsustainable.

I hope these comments prove helpful as the Agencies finalize the proposed rule-Loans in Areas Having Special Flood Hazards. Thank you for the opportunity to share my views on this important issue.