December 6, 2013

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

RIN 3133–AE18

Dear Mr. Poliquin:

On behalf of the Credit Union Association of New York, I would like to take this opportunity to comment on the proposed joint regulations, Loans in Areas Having Special Flood Hazards, required by the Biggert-Waters Flood Insurance Reform Act of 2013.

The regulation should further clarify the leadership role of state regulators.
The Act states that lenders "must accept" flood insurance policies provided by private insurers that meet certain criteria. When responding to our request for feedback on this proposal, our member credit unions pointed out that state regulators, not lenders, are best positioned to determine whether or not private flood insurance policies comply with the requirements outlined in the Act. Consequently, the regulation should be further strengthened to ensure that state insurance regulators ultimately make the determination as to whether a flood insurance policy complies with the Act's requirements.

The safe harbor provision should be strengthened and expanded.
Under the proposal, credit unions would have a "safe harbor" of compliance when they accept a policy that has been approved by the state regulator. While the safe harbor provision addresses many of the concerns of credit unions, it should go further. Specifically, it should specify that nothing in the regulations shall be interpreted as "requiring" lenders to accept policies that have not been approved by the appropriate state regulator. Inclusion of this language would place the onus on state regulators to ensure that policies are approved, while also ensuring that credit unions are not placed in the position of assessing the legality of a given policy. Many credit unions do not have this expertise; nor is it reasonable to expect them to obtain it.

In the proposal's preamble, the agencies state that the statute is silent as to whether a lending institution is authorized to accept a private insurance policy that does not meet the statute's definition of that term. The preamble requests comment on whether lenders should be allowed to accept private policies that don't qualify as private insurance.

Although the statute does not explicitly prohibit agencies from granting such authority, the Act is most reasonably read as simply mandating that lenders accept qualified insurance,

not as authorizing ad hoc determinations to accept policies that don't meet basic criteria. First, before Biggert-Waters was passed, only federal policies satisfied flood insurance requirements. By amending 42 USCA 4012a to mandate that lenders "shall accept private flood insurance as satisfaction of the flood insurance coverage requirement… if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage," Congress is creating a specific mandate rather than bestowing authority for lenders to exercise discretion in the flood insurance marketplace. The Act is predicated on the assumption that the private insurance marketplace can increase the number of acceptable flood insurance policies and drive down the cost of such policies for consumers. There is nothing in the statute itself that suggests Congress believes this goal is inconsistent with historic state regulation of insurance.

Therefore, if the agencies decide to authorize lenders to accept private insurance that doesn't comply with federal requirements, the safe harbor language should be expanded to include protection for lenders who accept policies believing they provide adequate flood insurance protections.

Language regarding premium/fee accrual dates should be amended.
Another aspect of the preamble asked whether the regulators' proposed definition of a "lapsed" policy is consistent with the insurance industry's use of the term, and whether clarification should be provided. The Credit Union Association of New York strongly supports proposed amendments to the regulations to provide that premiums and fees for coverage on forced-placed insurance may begin to accrue beginning on the date that the flood insurance lapsed. This interpretation is consistent with the credit union lenders in New York, and it would help clarify an area of potential dispute.

Unfortunately, New York, like other states, has had firsthand experience with the important role that flood insurance plays in the mortgage industry. As long as the regulations mandated by the Act do not impose obligations on credit unions to make independent assessments as to the adequacy of flood insurance policies, we are supportive of efforts to make flood insurance as affordable as possible for consumers.

Sincerely,

William Mellin
President/CEO
Credit Union Association of New York