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December 29, 2014

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

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

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

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

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

Re: ***Loans in Areas Having Special Flood Hazards; Proposed Rule***

FRB: Docket No.R-1498/RIN 7100 AE-22 (Regulation H, 12 C.F.R. Part 208); FDIC RIN 3064-AE03 (12 C.F.R. Parts 339); OCC Docket ID OCC-2014-0016, RIN 1557-AD84

To Whom It May Concern:

On behalf of the over 1 million members of the National Association of REALTORS® (NAR), I appreciate the opportunity to submit these comments on a proposed rule related to mortgages in flood zones. Many of our members sell properties in special flood hazard areas and have an interest in ensuring that homeowners are able to purchase flood insurance that is as affordable and administratively simple as possible.

The Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) enacted several modifications to current flood insurance laws. In response to Sec. 13 of HFIAA, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the other federal financial institution regulatory agencies (cumulatively, the Agencies), are jointly proposing to revise their respective regulations governing loans in special flood hazard areas. This proposed rulemaking includes: 1) adding an exemption to the flood insurance requirement for non-residential structures on a property but detached from the primary residence; 2) requiring lending institutions to escrow premiums and fees for flood insurance for certain secured residential loans made, increased, extended, or renewed on or after January 1, 2016; 3) implementing a small lender escrow exception and providing transition rules for institutions no longer qualifying for the exception; and 4) implementing other exceptions from escrow requirements as well as new and revised sample notice forms and clauses. NAR will only be commenting on the first two amendments in this proposed rule.



1. Exempting general mandatory flood insurance requirement for detached non-residential structures

HFIAA Sec. 13(c) states that structures meeting the following criteria are exempt from purchasing mandatory flood insurance: “Any structure that is part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence.”

A. “Residence”

NAR supports activities that make flood insurance more affordable for property owners. One approach, taken by HFIAA, is to reduce the number of structures on a property that are required to be covered. Certainty of the costs required to own the property is also highly valued by property owners because it is linked to resale value. Our members strongly support any amendment that would give lenders the discretion to exempt low-value non-residential structures from the mandatory purchase obligation.

However, the notice of proposed rulemaking notes that there may be ambiguity as to when a detached structure serves as a residence as well as the fact that uses may change during the life of a loan. These ambiguities allow too much discretion and invite too much confusion for a lending institution to determine what should or should not be covered by flood insurance. A garage apartment unoccupied at the time the mortgage loan is made provides a good example of the ambiguities reflected in this section. Other examples include a guest cottage or house, or a detached structure that is unfinished at the time of the loan but later becomes a residential structure. These ambiguities also decrease certainty for how much it costs to own the property, and could impact resale value.

To increase certainty, decrease ambiguity and reduce the costs of flood insurance, NAR recommends that a more effective approach to implement HFIAA Sec. 13 would be to develop “bright line”, objective criteria, rather than trying to define what might or might not be used as a residence over the period a mortgage is in place. Tying the exemption to objective criteria such as total square footage or assessed value reduces subjectivity during the loan underwriting process and can be used by regulators checking compliance.

B. “Detached”

The term “detached” as used in the proposed rule is ambiguous and could also be misconstrued. NAR believes the term “detached” must be defined more precisely before this regulation moves forward.

Many non-residential structures have covered walkways, breezeways, etc. that connect to a residential structure. Considering that the purpose of NFIP and the implementing regulations is to protect residential property during a flooding event, NAR believes that a nonresidential structure that is only joined to a residence by a covered walkway, breezeway, etc. should be treated in the same manner as a stand-alone nonresidential structure that is not subject to mandatory insurance coverage since it stands apart from the residence. Once again, providing a bright line test of this kind will make loan underwriting and compliance inspections easier and ensure that only residential structures are required to purchase flood insurance.

2. Requirements to Escrow Flood Insurance Premiums

The proposal would require regulated lending institutions, or servicers acting on their behalf to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate that is made, renewed, extended or increased on or after January 16, 2016, unless the lending institution qualifies for a statutory exemption. In accordance to HFIAA Section 25, this proposal also requires lenders to offer and make available to customers the option to escrow flood insurance payments and fees for loans that are outstanding on January 1, 2016.

While generally supportive of this provision, NAR would caution the Agencies that flood insurance must remain affordable for borrowers to be able to obtain this insurance product in a timely manner. To that end, we encourage the Agencies to review their rules and monitoring to ensure that lending institutions do not charge any additional fees to property owners for the establishment and maintenance of flood insurance premium escrow accounts, and thereby making this process unduly burdensome to consumers.

NAR also supports the provision that provides borrowers the option to escrow these funds for personal budgeting reasons and administrative ease. This will provide borrowers additional flexibility on how they pay their flood insurance premiums and fees. However, as with the escrow requirement, it is critical that additional fees and costs are not passed through to the consumer, in order to keep the cost of flood insurance as affordable as possible.

NAR is pleased that lending institutions will be required to notify borrowers of this new requirement. Adequate notification to property owners related to flood insurance issues in general (for example, the purchase requirement) by lenders has been inconsistent at best and negligent at worst. While there is no specific enforcement mechanism included in the proposed rule, NAR would encourage the Agencies to develop an administrative mechanism that would provide an incentive to encourage lenders to notify borrowers of this escrow requirement in a timely manner.

Finally, NAR would encourage the Agencies to work closely with the Consumer Financial Protection Bureau (CFPB) to make sure these proposed regulations are consistent with current statutes and regulations that address the establishment and operation of other escrow accounts, including the Real Estate Settlement Procedures Act (RESPA) and the Truth In Lending Act (TILA).

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Polychron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Polychron
2015 President, National Association of REALTORS®