
National Credit Union Administration

TO: Shagufta Ahmed, Desk Officer
Office of Management and Budget

FROM: Lara Rodriguez, Deputy General Counsel /s/
Office of General Counsel

SUBJ: Request for Emergency Clearance for NCUA Collection – Loans in Areas Having
Special Flood Hazards

DATE: September 26, 2013

The purpose of this memorandum is to request emergency processing by the Office of Management and Budget (OMB) of the National Credit Union Administration's (NCUA's) request for approval of the information collection requirements under NCUA's flood insurance regulation, 12 C.F.R. Part 760, Loans in Areas Having Special Flood Hazards (Part 760). NCUA is seeking reinstatement of a previously approved collection of information for Part 760 (OMB Control No. 3133-0143). This request is submitted in accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (PRA), 12 U.S.C. §3507(j), and OMB's implementing regulation, 12 C.F.R. §1320.13.

NCUA has already begun the process of reinstating the expired information collection by publishing a 60-day Notice in the Federal Register on August 12, 2013 (78 Federal Register 48912). The Notice requested public comments by October 11, 2013. Under the PRA's normal processing procedures, after the end of the comment period (October 11, 2013) and after the NCUA has considered any comments received, the next step would be for NCUA to publish a 30-day notice in the Federal Register, submit a clearance request package to OMB, and obtain OMB approval sometime thereafter.

NCUA has determined that OMB approval for this collection of information is needed as soon as practicable and is essential to the mission of the agency. The agency cannot reasonably comply with the normal clearance procedures under the PRA for the reasons discussed below.

Concurrent Interagency Rulemaking

The Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141 (Biggert-Waters Act), signed into law by the President on July 6, 2012, significantly revised Federal flood insurance statutes. Section 100209 of the Biggert-Waters Act, relating to the escrow of flood

insurance payments, and section 100239 of the Biggert-Waters Act, relating to the acceptance of private flood insurance coverage, amended provisions of the Flood Disaster Protection Act of 1973, as amended (FDPA), that require the Federal financial regulators (Agencies)¹ to jointly issue implementing regulations. Section 100244 of the Biggert-Waters Act, relating to force-placed insurance, also necessitates conforming revisions to the Agencies' current flood insurance regulations.

Currently, the Agencies are preparing an interagency proposed rule that staff anticipates will be issued by the Agencies and published in the Federal Register by mid-October 2013. It proposes to amend the Agencies' flood insurance regulations² in accordance with the requirements of the Biggert-Waters Act. The proposed rule would have a 60-day comment period. The Agencies have determined that the proposed rule would impose a new collection of information requirement in addition to the current information collection requirements in the Agencies' respective regulations. The proposed rule would add a notice requirement mandating that financial institutions or loan servicers that are required to escrow premiums for required flood insurance must issue a written notice thereof to borrowers.

In order to publish the interagency rule on a timely basis and to allow concurrent implementation with the other Agencies, NCUA must have a current, approved OMB control number for Part 760 at the time it is anticipated that the Agencies will publish the proposed rule in the Federal Register. The normal reinstatement process does not ensure NCUA will have a current OMB control number by that times. It also would cause undue confusion by having two PRA processes ongoing simultaneously.

Justification for Emergency Clearance

To ensure consistent implementation of the proposed rule among the Agencies, it is imperative that NCUA have a current OMB control number for the information collections in Part 760. In accordance with the Federal Financial Institutions Examination Council (FFIEC) Act of 1978, the Agencies must prescribe uniform principles and standards for the Federal examination of financial institutions and make recommendations to promote uniformity in the supervision of financial institutions.³ As the FFIEC, the Agencies' actions are designed to promote consistency

¹ The Federal financial regulators for the Federal flood insurance statutes consist of the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA).

² In general, the Agencies' flood insurance regulations require lenders to notify a borrower and servicer when loans secured by improved real estate are determined to be located in a special flood hazard area and notify them whether flood insurance is available; notify the Federal Emergency Management Agency of the identify of, and any change of, the servicer of a loan secured by improved real estate in a special flood hazard area; and retain a completed copy of the Standard Flood Hazard Determination Form used to determine whether property securing a loan is in a special flood hazard area.

³ The FFIEC consists of the OCC, Board, FDIC, NCUA, and Consumer Financial Protection Bureau.

in examination and ensure progressive and vigilant supervision.⁴ In addition, the Agencies have issued joint, substantially similar regulations regarding flood insurance since the enactment of mandatory Federal flood insurance.⁵

The Biggert-Waters Act significantly amends the Federal flood insurance requirements. The Agencies previously published guidance regarding the effective dates of the Biggert-Waters Act amendments.⁶ Most importantly, the Biggert-Waters Act requires lenders and servicers to establish escrow accounts for flood insurance premiums for any residential loan secured by improved real estate or a mobile home located in a special flood hazard area that is outstanding or entered into after July 6, 2014. The Agencies will need to publish final escrow regulations in sufficient time for the industry to implement them prior to the mandatory July 2014 implementation date. This timetable is driving the Agencies' current actions.

Approving this request for emergency clearance will not result in undue harm to credit unions, as they have been complying with the information collection requirements in Part 760 for many years. NCUA will continue to participate in the interagency rulemaking, and an approval of this emergency request will ensure the Agencies' information collections remain consistent.

You may contact me at 703-518-6540 or via email at fkressman@ncua.gov if you have any questions regarding this request.

⁴ 12 U.S.C. 3301. FCA is not part of the FFIEC.

⁵ The FDPA required the mandatory purchase of flood insurance and directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS) to issue regulations governing the lending institutions that they supervised. FCA was added to the list of lending institutions under the National Flood Insurance Reform Act of 1994.

⁶ "Interagency Statement on the Impact of Biggert-Waters Act," March 29, 2013 (Board: CA 13-2); OCC: Bulletin 2013-10; FDIC: FIL 14-2013, FCA: Information Memorandum, March 29, 2013; NCUA: 13-RA-03).