

National Credit Union Administration
SUPPORTING STATEMENT

Loans in Areas Having Special Flood Hazards
12 CFR part 760
OMB Control No. 3133-0190

Summary of Action:

This information collection request (ICR) is being submitted in connection with a proposed rule published November 7, 2016, at 81 FR 78063. The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and the National Credit Union Administration (the Agencies) amended their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).¹ The proposed rule would require regulated lending institutions to accept policies that meet the statutory definition of private flood insurance in the Biggert-Waters Act and permit regulated lending institutions to accept flood insurance, provided by private insurers, that does not meet the statutory definition of “private flood insurance” on a discretionary basis, subject to certain restrictions.

A. JUSTIFICATION

1. Circumstances that make the collection necessary

This collection of information is set forth in NCUA regulations at 12 CFR Part 760 and is required by the National Flood Insurance Act of 1968 (1968 Act)² and the Flood Disaster Protection Act of 1973 (FDPA),³ as amended, (the Federal flood insurance statutes) which govern the National Flood Insurance Program (NFIP).⁴ These laws make Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in participating communities and require the purchase of flood insurance in connection with a loan made by a regulated lending institution⁵ when the loan is secured by improved real estate or a mobile home located in special flood hazard areas (SFHA) in which flood insurance is available under the NFIP.⁶ The Agencies each have issued regulations implementing these statutory requirements for the lending institutions they supervise.⁷ The Biggert-Waters Act amended the NFIP requirements that the Agencies have authority to implement and enforce.

1 Pub. L. 112-141, 126 Stat. 916 (2012).

2 Pub. L. 90-448, 82 Stat. 572 (1968).

3 Pub. L. 93-234, 87 Stat. 975 (1973).

4 These statutes are codified at 42 U.S.C. 4001-4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

5⁵ The FDPA defines “regulated lending institution” to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).

6 An SFHA is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. 44 CFR 59.1. SFHAs are delineated on maps issued by the FEMA for individual communities. 44 CFR part 65. A community establishes its eligibility to participate in the NFIP by adopting and enforcing flood plain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage. 44 CFR part 60.

7 See 12 CFR part 22 (OCC), part 208 (Board), part 339 (FDIC), part 614 (FCA), and part 760 (NCUA).

2. Purpose and Use of the information collection

The information collection requirements under the current Part 760 are recordkeeping and disclosure requirements imposed on federally insured credit unions. The information collection is required to evidence compliance with the requirements of Part 760 and the Federal flood insurance statutes with respect to lenders and servicers. The information collection requirements are triggered by specific events in the lending process. The records are maintained by credit unions and are not provided to the NCUA. In general, the Federal flood insurance statutes and Part 760 provide that a lender (credit union):

- Retain a completed copy of the Standard Flood Hazard Determination (SFHD) form developed by FEMA. The SFHD form is used by lenders to document their determination of whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area that offers flood insurance;
- Notify a borrower and servicer when a building or mobile home offered as collateral security for a loan is determined to be in a special flood hazard area and notify them whether flood insurance is available;
- Notify the borrower and servicer if the secured property becomes newly located in a special flood hazard area due to remapping of flood hazard areas by FEMA, which would obligate the borrower to obtain flood insurance;
- Notify a borrower whose mandated flood insurance policy has expired or if the policy covers an amount less than the required amount, of the borrower's obligation to obtain a flood insurance policy for the required amount. If the borrower fails to obtain a flood insurance policy for the required amount following this notification, the credit union or its servicer must purchase flood insurance on the borrower's behalf and charge the borrower for the cost of the premiums and fees (force placement). The credit union or its servicer must force-place flood insurance on the borrower's behalf if the borrower, after notification, fails to obtain mandated flood insurance due to remapping; and
- Notify FEMA of the identity of, and any change in, the servicer of a loan secured by a building or mobile home located or to be located in a special flood hazard area.

The notice to the borrower is used to assist the borrower in decision-making about purchasing flood insurance for the collateral used to secure the loan.

The borrower notice is provided to the loan servicer to inform the servicer of its responsibility to perform certain tasks for the lender, such as collecting flood insurance premiums. Part 760 requires the credit union to retain a record of the receipt of the borrower notice by the borrower and the servicer.

The credit union uses the force placement notice to inform the borrower of his or her obligation to purchase and maintain flood insurance for the term of the loan.

FEMA uses the servicer notice(s) to maintain current information on where to direct inquiries or send notices of flood insurance renewals.

The NCUA uses the completed copy of the SFHD form and receipts from the borrower and servicer to verify compliance.

The Biggert-Waters Act required escrow for all new and outstanding loans in a SFHA, unless certain exceptions applied. HFIAA added several new exceptions, and most notably, ties the escrow requirement to a tripwire event (the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016). While a regulated lending institution is not required to escrow until a tripwire event occurs, such institution is still required to offer and make available the option to escrow for all outstanding designated loans.

New information collection activities associated with proposed rule:

- Under § 760.3(c)(2), a policy is deemed to meet the definition of private flood insurance if, among other things, (i) it includes a written summary demonstrating how the policy meets the definition of private flood insurance, identifying the provisions of the policy that meet each criterion in the definition and confirms that the insurer is regulated in accordance with that definition and confirms that the insurer is regulated in accordance with that definition and (ii) the credit union verifies in writing that the policy includes the provisions identified by the insurer in the summary provided and that these provisions satisfy the criteria included in the definition.
- Under § 760.3(c)(3)(iv)(B)(3), a credit union has the discretion to accept a flood insurance policy issued by a private insurer that is not issued under the NFIP, does not meet the definition of private flood insurance, and does not satisfy § 760.3(c)(iv)(A) if, among other things, the credit union has documented in writing that it has compared the private policy with an SFIP to determine the differences between the private policy and an SFIP and reasonably determines that the private policy provides sufficient protection of the loan.
- Under § 760.3(c)(4)(iv), the credit union may accept a private policy issued by a mutual aid society if, among other things, it has determined that the policy provides sufficient protection of the loan secured by the property located in the SFHA and documented its conclusions.

3. Use of Information Technology

Credit unions may use any information technology available to provide any requirements of the regulation.

4. Duplication of Information

This information collection is unique to the credit union and to the loan. It is not duplicated anywhere.

5. Efforts to Reduce Burden on Small Entities

The collection of information does not have a significant impact on a substantial number of small credit unions. Under Part 760, credit unions may use the SFHD form provided by FEMA to notify borrowers and provides model notices that satisfy the borrower notice requirements.

6. Consequences of Not Conducting the Collection

This information collection is conducted only for loans secured by buildings or mobile homes located in special flood hazard areas. Less frequent collection would substantially impair the effectiveness of the program. If the collection occurred less frequently, the NCUA would be unable to verify compliance.

The collection is only required when a loan is made, increased, extended, or renewed. It is at these times that the information regarding the status and obligations related to property located in a special flood area is most useful to both borrower and lender.

7. Inconsistent with Guidelines in 5 CFR part 1320.5(d)(2)

A completed copy of the Standard Flood Hazard Determination Form must be retained by the credit union for the life of the loan.

All other provisions of the collection comply with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to Consult with Persons outside the Agency

This information collection was published for comment in connection with a notice of proposed rulemaking on November 7, 2016, at 81 FR 78063.

9. Payment or Gifts to Respondents

Not applicable; no payment or gift provided.

10. Assurance of Confidentiality

Not applicable. Because the NCUA does not collect any information, no issue of confidentiality would normally arise. However, if the records required by the Part 760 requirements come into possession of the NCUA during an examination of a credit union, those records would be protected from disclosure by exemption 8 of the Freedom of Information Act (FOIA). 5 U.S.C. § 552(b)(8).

11. Questions of a Sensitive Nature

No questions of a sensitive nature are involved. No personally identifiable information is collected.

12. Burden of Information Collection

Current Burden:

12 CFR	Information Collection	# Respondents	Frequency	Total Annual Responses	Hours (time) per Response	Total Estimated Burden
Recordkeeping						
760.6(b)	Retention of Standard FEMA Form. (Recordkeeping)	4,058	328	1,331,024	0.042	55,903
Disclosure						
760.9	Notice of Special Flood Hazards to Borrowers and Servicers	4,058	66	267,828	0.083	22,230
760.10	Notice to FEMA of Servicer	4,058	66	267,828	0.083	22,230
760.10	Notice to FEMA of Change of Servicer	4,058	33	133,914	0.083	11,115
760.7	Notice to Borrowers of Lapsed Mandated Flood Insurance	4,058	13	52,754	0.083	4,379
760.7	Notice of Purchase of Force-Placed Flood Insurance	4,058	3	12,174	0.25	3,044
760.7	Notice to Borrowers and Servicer of Newly Located Property	4,058	7	28,406	0.083	2,358
760.7	Notice of Purchase of Force-Placed Flood Insurance for Borrowers from Remapping	4,058	3	12,174	0.250	3,044
760.5	One-time Escrow Notice	4,058	0.33	1,339	40	53,566
TOTAL		4,058		2,107,441		177,866

Proposed New Burden:

12 CFR	Information Collection	# Respondents	Frequency	Total Annual Responses	Hours (time) per Response	Total Estimated Burden
Recordkeeping						
	One-time implementation of policies and procedures	4,058	1	4,058	20	81,160
Disclosure						
760.3 (c)(2)(i)	<i>Compliance Aid Provision:</i> If the policy includes/is accompanied by, written summary demonstrating that the policy contains each criterion included in the definition of private flood insurance, with the specific provisions in the policy identified, and that the insurer is regulated in accordance with the definition.	25	1	25	40	1,000
760.3 (c)(2)(ii)	<i>Compliance Aid Provision:</i> The credit union verifies in writing that the policy includes the provisions identified by the insurer in the written summary (above) and that these provisions satisfy the criteria included in the definition.	4,058	2.4	9,739	1	9,739
760.3 (c)(3) (iv)(B) (3)	<i>Discretionary Acceptance Criteria:</i> Credit union documents its finding that required criteria have been met.	4,058	0.45	1,826	2	3,652
760.3 (c)(4) (iv)(C)	<i>Exception for mutual aid societies:</i> Credit Union documents its conclusions that the required criteria have been met.	4,058	0.15	609	2	1,217
Totals		4,058		16,257		96,769

Current Burden (Adjusted)	177,866
Proposed New Burden	96,769
TOTAL BURDEN	274,635

Burden Estimate Methodology of Proposed New Burden

Estimate of Respondent Count for All Agencies

Financial Accounts of the U.S.

September 16, 2016

<http://www.federalreserve.gov/releases/z1/current/z1.pdf>

Table L.217 Total Mortgages (page 126)

		Billions of Dollars
Line 19	U.S.-Chartered Depository Institutions.....	4432.6
Line 20	Foreign Banking Offices in U.S.....	60.5
Line 21	Banks in U.S.-Affiliated Areas.....	+ 26.2
		4519.3
Line 22	Credit Unions.....	+ 416.7
		4396.0

Assumptions:

FDIC, FRB, and OCC hold all mortgages in lines 19-21 proportioned as follows based on Call Report Data:

- FDIC = 28%
- FRB = 14%
- OCC = 58%

FDIC, FRB, OCC, and NCUA hold all mortgages in Lines 19-22.....4936.0

Proportions of the total are as follows:

OCC =	(.58 x 4519.3)/4936.....	53%
FRB =	(.14 x 4519.3)/4936.....	13%
FDIC =	(.28 x 4519.3)/4936.....	26%
NCUA =	416.7/4936.....	8%
		100%

§ 760.3(c)(2)(i):

FEMA lists 100 companies as providing private flood insurance. Assuming these companies will want to continue to participate in this market, we assume that each company will require 40 hours per year assuring and documenting that its policies meet the requirements necessary to participate in this market.

This total burden (4,000 hours) is divided evenly between the four agencies.

§§ 760.3(c)(2)(ii), 760.3(c)(3)(iv)(B)(3), 760.3(c)(4)(iv)(C):

Number of Flood Insurance Policies in high-risk areas (FEMA 2016).....	3,537,059
Assumed that 4.5% will be private.....	<u>x 0.045</u>
	159,168
NCUA's Share (8%).....	12,733
Divided by Number Credit Unions.....	<u>4,058</u>
Number of Loans per credit union per year.....	3.13
3 allotted three ways (80%, 15%, and 5%):	
§ 760.3(c)(2)(ii) = approximately 80% =	2.4
§ 760.3(c)(3)(iv)(B)(3) = approximately 15% =	0.45
§ 760.3(c)(4)(iv)(C) = approximately 5% =	0.15

13. Capital Start-up or On-going Operation and Maintenance Costs

There are no capital start-up or maintenance costs.

14. Annualized Costs to the Federal Government

Not applicable. This is a third party disclosure requirement; the estimate cost to the NCUA is negligible.

15. Changes in Burden

An adjustment of 761 burden hours due to an adjustment in the number of respondents. An increase of 96,769 burden hours due to statutory and regulatory changes.

16. Information Planned to be Published for Statistical Use

This information is not planned for statistical purposes.

17. Request Non-display the Expiration Date of the OMB Control Number

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov.

18. Exceptions to certification statement

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.