

7National 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 the final rule published February 20, 2019, at 84 FR 4953. 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 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

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.

institutions they supervise.⁷ The Biggert-Waters Act amended the NFIP requirements that the Agencies have authority to implement and enforce.

The final rule requires regulated lending institutions to accept “private flood insurance” defined in accordance with the Biggert-Waters Act. The final rule also includes a streamlined compliance aid provision that allows regulated lending institutions to determine whether a flood insurance policy meets the definition of “private flood insurance” based on an attestation in the policy or as an endorsement to the policy that the “policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

In addition to mandating that regulated lending institutions accept policies that meet the definition of “private flood insurance,” the final rule permits regulated lending institutions to exercise their discretion to accept certain flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of private flood insurance, provided the policy meets certain conditions including a requirement that the policy must provide sufficient protection of a designated loan, consistent with general safety and soundness principles, and the regulated lending institution documents its conclusion regarding this condition in writing. This provision includes an exception that allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by “mutual aid societies.”

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;

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

- 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 final rule:

Under § 760.3(c)(3), institutions have the discretion to accept a flood insurance policy issued by a private insurer that does not meet the definition of "private flood insurance" if, among other things, the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Under § 760.3(c)(4), institutions may accept a private policy issued by a mutual aid society if, among other things, the coverage provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the

institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

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).

There are no special circumstances. This information collection is conducted in accordance with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency.

A notice of proposed rulemaking was published in the Federal Register on November 7, 2016 (81 FR 78063), which included a request or comments on the Paperwork Reduction Act implications of the proposed rule.

The Agencies received approximately 60 comments on the proposed rule from a wide range of commenters, such as: financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, and home building and realtor trade associations); the insurance industry (including insurance companies, trade

associations, and brokers); individuals; nonprofit organizations; a flood risk management association; a State non-profit corporation; a State-regulatory organization; a Federal agency; and a State agency.⁸ The commenters addressed specific issues, such as: the regulatory definition of “private flood insurance;” the use of a compliance aid or regulatory safe harbor to facilitate compliance by regulated lending institutions; whether private flood insurance that does not conform to the statutory definition of “private flood insurance” can be accepted by regulated lending institutions; whether and what type of alternative criteria for such non-conforming private flood insurance should be required by the Agencies; and whether regulated lending institutions should be permitted to accept certain non-traditional, non-conforming flood insurance coverage, such as mutual aid society plans. Comments related to the Paperwork Reduction Act are addressed below.

Compliance Aid for Mandatory Acceptance.

The Agencies were concerned that many regulated lending institutions, especially small institutions with a lack of technical expertise regarding flood insurance policies, would have difficulty evaluating whether a flood insurance policy meets the definition of “private flood insurance.” For this reason, the proposed rule included a compliance aid that provided a policy would be deemed to meet the definition of “private flood insurance” if the following three criteria were met: (1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance by 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; (2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and (3) the policy includes the following statement within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

The Agencies received numerous comments on the proposed compliance aid. Although there was broad support for the inclusion of a compliance aid to facilitate regulated lending institutions’ determinations, commenters largely reacted negatively to the specific proposed criteria and contended that the proposed compliance aid would not be helpful. Moreover, commenters stated that the proposed compliance aid would not cause insurance providers to alter their policies to include all of the requirements in the compliance aid simply to demonstrate that their policies meet the definition of “private flood insurance.” A number of commenters suggested that a safe harbor shielding regulated lending institutions would be more useful.

With respect to the first criterion, commenters stated that permitting a policy to be deemed to meet the definition of “private flood insurance,” only if it includes or is accompanied by a written summary that among other requirements demonstrates how the policy meets the definition of private flood insurance, would be unworkable and unnecessarily burdensome for insurance companies, which would prevent the compliance

⁸ In addition to receiving written comments, the Agencies conferred with National Association of Insurance Commissioners (NAIC) staff to obtain further information on State regulation of insurance companies.

aid from becoming widely adopted. These commenters further indicated that insurers would be reluctant to take on the additional liability potentially associated with a summary, especially because regulated lending institutions would be required to accept a policy that meets the definition of “private flood insurance” even if the policy were not accompanied by a summary. Some commenters stated that a summary would provide assurance and recourse for regulated lending institutions, but others stated that the summary may lead to increased confusion about the breadth of coverage.

In response to the second criterion, commenters contended that requiring a regulated lending institution to provide written verification that the policy includes the provisions identified by the insurer in its summary would be unnecessarily burdensome for regulated lending institutions, especially those that do not immediately receive all of the documentation associated with the insurance policy in a timely manner or that do not have relevant insurance expertise. Some commenters noted that this criterion would require regulated lending institutions to duplicate the insurance company’s work under the first and third criteria and still not relieve institutions of liability for their determinations. Others noted that this criterion would cause delays for borrowers. One commenter proposed only requiring regulated lending institutions to verify effective dates, coverage amounts, and names of insurers for the purpose of the compliance aid.

With respect to the third criterion, some commenters suggested that insurers would be unwilling to provide the proposed statement because it could lead to unwanted liability for the insurance company. Other commenters stated that the statement would be unnecessarily burdensome for the insurance industry because insurers would need to compare their policies to the SFIP and possibly consult with State regulators for review or approval. Another commenter stated that many private flood insurance policies already contain assurance clauses. Several commenters stated that the proposed statement would provide regulated lending institutions and policyholders with adequate recourse in cases where the coverage does not actually meet the definition of “private flood insurance.” Other commenters requested that the Agencies modify the mandatory acceptance requirement to permit or require regulated lending institutions to reject policies that are not accompanied by the statement.

Many commenters suggested alternative approaches to make it easier for regulated lending institutions to apply the mandatory criteria and to relieve regulated lending institutions of liability for their determinations. One commenter suggested a safe harbor based on State regulatory approval. Two other commenters requested that the Agencies provide a template or model language for a compliance aid that could be used in insurance policies. Several commenters supported a safe harbor that would permit regulated lending institutions to rely on insurer certifications. Some commenters contended that this type of safe harbor would remove burden and delays, reduce risk and uncertainty, improve consistency across the market, and promote the acceptance of private flood insurance. One commenter stated that permitting regulated lending institutions to rely on insurer certifications would align flood insurance with the larger hazard insurance market. Another commenter stated that regulated lending institutions should be permitted to rely on any type of assurance that is legally enforceable against

the insurer, rather than only allowing the statement as a provision of, or endorsement to, a private flood insurance policy.

In response to commenter concerns, the Agencies have modified the compliance aid in the final rule to provide that a private flood insurance policy is deemed to meet the definition of “private flood insurance” if the following statement is included within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.”

The Agencies do not generally regulate insurers and cannot require an insurance policy to include such a statement. However, if insurers choose to include this statement in their policies, it will facilitate the ability of regulated lending institutions, as well as consumers, to recognize policies that an institution must accept and promote the consistent acceptance of policies that meet the definition of “private flood insurance” across the market. In this way, the compliance aid is intended to leverage the expertise of insurers to assist regulated lending institutions. Additionally, a policy that includes this statement may provide policyholders and regulated lending institutions with recourse against insurance companies that fail to abide by the terms included in the definition of “private flood insurance.” The Agencies note, however, that this provision does not relieve a regulated lending institution of the requirement to accept a policy that both meets the definition of “private flood insurance” and fulfills the flood insurance purchase requirement, even if the policy does not include the statement, nor does it permit regulated lending institutions to reject policies solely because they are not accompanied by the statement.

Discretionary Acceptance

Although section 102(b)(1)(B) of the Flood Disaster Protection Act⁹ (FDPA) (as added by section 100239(a)(1) of the Biggert-Waters Act) requires a regulated lending institution to accept “private flood insurance,” as that term is defined by statute, in satisfaction of the flood insurance purchase requirement, the Biggert-Waters Act is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of “private flood insurance.” Furthermore, the Agencies observe that the Biggert-Waters Act did not disturb the “flood insurance” purchase requirement in section 102(b) of the FDPA and that the term “flood insurance” in the FDPA remains undefined after the passage of the Biggert-Waters Act. Accordingly, consistent with the Congressional intent of the Biggert-Waters Act to stimulate the private flood insurance market,¹⁰ the Agencies are construing the term “flood insurance” in the flood insurance purchase requirement in section 102(b) of the FDPA to continue to permit regulated lending institutions to exercise their discretion to accept certain policies issued by private insurers that may not contain all of the criteria in the statutory definition of “private flood insurance” in satisfaction of the mandatory purchase requirement.

⁹ 42 U.S.C. 4012a(b)(1)(B).

¹⁰ The Biggert-Waters Act’s reforms were designed to improve the NFIP’s financial integrity and stability as well as to “increase the role of private markets in the management of flood insurance risk.” H. Rep. No. 112-102, at 1 (2011); see also 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

To this end, the proposed rule provided that regulated lending institutions could accept, on a discretionary basis, a flood insurance policy issued by a private insurer if the policy meets the amount and term requirements specified in the flood insurance purchase requirement, and certain enumerated conditions are met including whether the coverage afforded by a private flood insurance policy “is similar” to that provided under the Standard Flood Insurance Policy (SFIP).

The proposed rule stated that to determine whether the coverage “is similar” to coverage provided under an SFIP, a regulated lending institution would have to: (1) compare the private policy with an SFIP to determine the differences between the private policy and an SFIP; (2) reasonably determine that the private policy provides sufficient protection of the loan secured by the property located in an SFHA; and (3) document its findings.

Some commenters opposed the requirement that regulated lending institutions document their findings relating to the comparison of the policy to an SFIP and the determination that the policy provides sufficient protection of the loan. One commenter stated that regulated lending institutions will avoid accepting private policies because they will be unwilling to undergo the work necessary to document decisions. Another commenter supported allowing regulated lending institutions to use existing practices and a basic checklist instead of the more burdensome process required by the proposal. Several commenters requested a compliance aid, as provided for the proposed mandatory acceptance provision, to assist regulated lending institutions in performing the discretionary acceptance analysis. One commenter suggested that a compliance aid could take the form of a model disclosure form.

After reviewing the comment letters, the Agencies have concluded that the final rule should include a discretionary acceptance provision, but that the provision should be less burdensome and restrictive than that included in the proposed rule, and more closely reflect the current policy of the Agencies with respect to both private flood insurance and hazard insurance. As a result of these modifications, the final rule permits regulated lending institutions to accept flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of “private flood insurance” if four criteria are met.¹¹

1. The policy must provide coverage in the amount required by the flood insurance purchase requirement;
2. The policy must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;¹²

¹¹ As indicated by a comment described above, the Agencies’ note that regulated lending institutions intending to sell mortgages into the secondary market also should review the requirements of such secondary market investors for guidance on acceptable private flood insurance.

¹² As indicated in the proposed rule, this criterion is included in the definition of “private flood insurance” in the Biggert-Waters Act, and the Agencies find that it is appropriate to include it as a criterion for discretionary acceptance in the final rule as well. As noted above in the

3. The policy must cover both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and
4. The policy must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion in writing.

9. Payment or gifts to respondents.

Not applicable; no payment or gift provided.

10. Assurance of confidentiality.

All required records will be kept private to extent permitted by law.

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.

12 CFR	Information Collection	Type of Burden	#Respondents	Frequency	Total Responses	Hrs. per Response	Total Annual Burden	Previous	Adjustment	Program Change
760.6(b)	Retention of FEMA Form	Recordkeeping	4,164	328	1,365,792	0.042	57,363	55,118	2,245	0
760.9	Notice of Special Flood Hazard to Borrowers and Services	Disclosure	4,164	66	274,824	0.083	22,810	22,182	628	0
760.1	Notice to FEMA of Servicer	Disclosure	4,164	66	274,824	0.083	22,810	22,182	628	0
	Notice to FEMA of Change of Servicer	Disclosure	4,164	33	137,412	0.083	11,405	11,091	314	0
760.7	Notice to Borrowers of Lapsed Mandated Flood Insurance	Disclosure	4,164	13	54,132	0.083	4,493	4,369	124	0
	Notice of Purchase of Force-Placed Flood Insurance	Disclosure	4,164	3	12,492	0.25	3,123	3,025	98	0
	Notice to Borrowers and Servicer of Newly Located Property	Disclosure	4,164	7	29,148	0.083	2,419	2,353	66	0
	Notice of Purchase of Force-Placed Flood Insurance for Borrowers from Remapping	Disclosure	4,164	3	12,492	0.25	3,123	3,025	98	0
760.5	One-time Escrow Notice	Disclosure	4,164	0.33	1,374	40	54,960	53,760	1,205	0
760.3	Recordkeeping: Documenting conclusions about private flood insurance policies for properties in SFHAs	Recordkeeping	4,164	2.6	10,826	0.25	2,707	0	0	2,707
			4,164	519.33	2,162,490	0.084	182,512	177,105	5,407	2706.6

The method used to obtain new burden associated with information collection requirements of this final rule relied on (a) data from the Federal Emergency Management Agency (FEMA) as of October 2018; (b) NCUA call report data as of Q3 2018; and Federal Reserve Board mortgage data of a Q3 2018. Burden was derived by determining the number of estimated number of flood loans held by the financial agencies (FDIC, FRB, OCC, and NCUA) and the number of flood loans in SFHAs covered by private flood insurance.

discussion of mandatory acceptance, the Agencies believe that surplus lines insurers for noncommercial properties are covered as insurance companies that are “otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located.”

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 5,407 burden hours is due to (1) an increase of the number of respondents to report the current number of credit unions (2) correction to remove duplicate reporting. An increase of 2,707 burden hours is due to program changes associated with the increased recordkeeping requirements to document conclusions about private flood insurance policies for properties in SFHAs, as prescribed by § 760.3.

16. Information collection planned for statistical purposes.

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 website at www.reginfo.gov.

18. Exceptions to the certification for Paperwork Reduction Act submission.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.