November 30, 2011

By Electronic Delivery Only

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RE: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; OCC Docket ID OCC–2011–0024; FDIC RIN 3064–ZA00; FRB Docket No. OP–1431; FCA RIN 3052–AC46; NCUA RIN No. 3133-AD41

Ladies and Gentlemen:

Thank you for the opportunity to present our comments regarding the revised Interagency Questions and Answers referenced above. WNC Insurance Services, Inc. is a leading provider of lender-placed and voluntary flood insurance products and services in the United States. Its client base includes more than seven hundred financial institutions nationwide, providing services through multiple offices in three time zones. WNC is one of the Top Five US Coverholders at the world's largest insurance market, Lloyd's of London, and maintains long-term relationships with several "A" rated domestic and international insurance carriers.

Our comments below address Question 60 (timing of the force-placement notice) and Question 62 (charging for insurance during the 45 day notice period), in reverse order. Our comments also address your inquiries on FR page 64182 (overlapping coverage). The terms not defined herein have the same meaning as those in the revised Interagency Questions and Answers.

COMMENTS AND ANALYSIS

I. COMMENTS – Question 62

The Agencies propose the following Question and Answer Number 62. Our comments follow.

> *62. When may a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?*
>
> *Answer:* A lender or its servicer may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect, if the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made. Any policy that is obtained by a lender or its servicer, the premium of which is charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of both the borrower and the lender.
>
> The Agencies encourage institutions to explain their force-placement policies to borrowers (including their policy on charging for force-placement coverage for the 45-day period and the timing of that charge) and encourage lenders and servicers to escrow flood insurance premiums. Following these recommendations could result in less force placement of flood insurance. Further, Regulation Z requires lenders to establish an escrow account for the payment of property taxes and mortgage-related insurance required by the lender, including flood insurance, for all ''higher priced'' first-lien mortgage loans. See 12 CFR 226.35(b)(3).

We recognize the progress made in the Agencies' reformation of proposed Question and Answer number 62 and thank the Agencies for their diligence and foresight. However, we find three problems with the new proposal.

First, the phrase "express authority" in the proposed answer to Question 62 overstates the contractual authority needed to purchase and maintain mandatory flood insurance. At loan origination, the lender relied upon its contractual and legal authority to require the borrower to purchase and maintain flood insurance for the term of loan. Force placement merely continues that original authority.

Second, the phrase "equivalent in coverage and exclusions to an NFIP policy" in the proposed answer to Question 62 overstates the legal requirement to purchase and maintain sufficient flood insurance. There is no specific requirement that the coverage be "equivalent" to an NFIP policy. The general requirement is that the coverage be sufficient. FEMA notes that private coverage is sufficient if it is "at least as broad" as NFIP coverage.

Third, the phrase "cover the interests of both the borrower and the lender" in the proposed answer to Question 62 overstates the legal requirement to purchase and maintain flood insurance to protect the lender's interest in the loan collateral. The minimum amount of coverage necessary to comply with federal law is lowest of either the outstanding loan balance or the maximum limit available under the Act. There is no requirement to insure more than the outstanding loan balance, which is always the measure of the lender's interest in the loan collateral.

II. DETAILED ANALYSIS – Question 62

A. The phrase "express authority" in the proposed answer to Question 62 overstates the contractual authority needed to purchase and maintain mandatory flood insurance.

Before a designated loan is closed, borrowers are fully informed of their duty to buy flood insurance, and in fact, they must show that they have actually purchased the coverage before the loan may be closed. Both the Act and the Regulation prohibit a regulated lender from making such a loan unless it notifies the affected borrower of the

duty to purchase and maintain flood insurance. (12 CFR 339.3; 42 USCS § 4012a(b).) For example, the FDIC regulation states, in pertinent part:

> A bank shall not make, increase, extend, or renew any designated loan **unless** the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. . . . . (12 CFR 339.3, bolded added.)

Under the Act, the Regulation, and in universal practice, a regulated lender simply cannot and will not make such a loan unless a borrower (1) knows of the flood insurance requirement, and (2) voluntarily complies with that requirement, *before* the loan closes. Thus, beginning at loan origination, a borrower is fully aware of, and has initially complied with, the contractual and legal duty to purchase and maintain flood insurance for the term of the loan. Whether the lender's contractual authority is "express" or "implied", "general" or "specific", the lender has exercised its authority and the borrower has complied when the loan was made. Force-placement does not create this authority; it already existed at loan origination.

Moreover, as FEMA has well noted, one purpose of the Act and Regulation is to *empower* a regulated lender to compel a borrower to maintain continuous flood coverage.

> The 1994 Reform Act also grants statutory **authority** to a lender or servicer to purchase flood insurance for the building and charge a premium to the borrower if the building is in an SFHA.
>
> By enacting this portion of the law, Congress intended lenders to have clear **authority** to force place; under certain circumstances, they are obligated to force place.
> (FEMA Guidelines, p. 40, bold added)

The phrase "express authority" in the proposed answer to Question 62 overstates the contractual authority needed to purchase and maintain mandatory flood insurance. It would be an inapposite result for a lender to rely on the general authority of its mortgage agreement and federal law at loan origination only to be told mid-term that such authority is insufficient to justify force placement. By definition, the lender's contractual and legal authority is sufficient, as evidenced by the borrower's compliance at loan origination.

B. The phrase "equivalent in coverage and exclusions to an NFIP policy" in the proposed Answer to Question 62 overstates the legal requirement to purchase and maintain sufficient flood insurance.

Neither the Act nor the Regulation requires the lender's flood insurance to be equivalent in coverage or exclusions to an NFIP policy. Such a requirement would prevent innovation and mandate mediocrity, perpetuating the weaknesses (and strengths) of FEMA's Standard Flood Insurance Policy ("SFIP"). Thus, even FEMA in its Mandatory Purchase of Flood Insurance Guidelines (FEMA, September 2007) ("FEMA Guidelines") recognizes that its standard flood insurance policies provide guidance, but its wording is not mandated, verbatim.

> When private flood coverage is being considered in lieu of an NFIP policy, a lender should understand and comply with FEMA's criteria (described below) for selection of the private insurer and the form of coverage. A private flood insurance policy that meets all six of the FEMA criteria described in a. through f. below conforms to the mandatory flood insurance purchase requirements of the 1994 Reform Act. To the extent that the private policy differs from the NFIP Standard Flood Insurance Policy (SFIP), available on the FEMA website at http://www.fema.gov/business/nfip/sfip.shtm, the differences should be **carefully examined** before the policy is accepted as **sufficient protection** under the law. (FEMA Guidelines, p. 58, bold added)

The legal requirement is that a lender should protect itself when the borrower fails to do so. Such protection need NOT be "equivalent in coverage and exclusions to an NFIP policy" but merely "sufficient protection" under the law. Thus, without mandating the precise policy form, FEMA asserts that such coverage must simply be "as broad as the coverage under the SFIP."

> **d. Breadth of Policy Coverage**
> The policy must guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least **as broad as** the coverage under the SFIP. (FEMA Guidelines, p. 58, bold added.)

Private flood insurance must provide the breath of coverage that FEMA provides. Such a concept is well known in the insurance industry. For example, many states mandate a Standard Form Fire policy modeled after New York's form, which has existed since 1887. There is no requirement, even in New York that a homeowners insurance policy provide exactly the same coverage, or equivalent coverage. The form provides the minimum required coverage. The FEMA requirement is no different. In fact, the only requirement is that the private flood policy must "guarantee" that the coverage is "at least as broad" as the FEMA form. A policy can easily provide such a guarantee by including language such as the following:

> **U. Conformity with Laws**
> The terms of this policy which are in conflict with the statutes of the state wherein this policy is issued or with federal flood insurance laws or regulations are hereby amended to conform to such statutes, laws or regulations as may be applicable.

By including such language in its policy form, or by endorsement, a private flood insurance policy satisfies the FEMA guideline and federal requirement of providing adequate protection that is as broad as the coverage under the SFIP. The phrase "equivalent in coverage and exclusions to an NFIP policy" in the proposed answer to Question 62 overstates the legal requirement to purchase and maintain sufficient flood insurance.

C. The phrase "cover the interests of both the borrower and the lender" in the proposed answer to Question 62 overstates the legal requirement to purchase and maintain flood insurance to protect the lender's interest in the loan collateral.

1. The lender's insurable interest in the loan collateral is the unpaid loan balance.

It is well established across the country that an insurance contract is void if the named insured lacks an insurable interest in the property covered under the contract. (1-1 Insuring Real Property § 1.03, Matthew Bender, 2003). A lender's insurable interest in the loan collateral is the outstanding loan balance.

> A mortgagee has a separate insurable interest in property that is security for the payment of a debt. A mortgagee seeks insurance against the threat of damage to the security, which would adversely affect its recovery against the property as a repayment for the mortgagor's debt. The mortgagee is insured not for the real estate itself, or for the total value of the real estate, but rather for the mortgagee's interest in the real estate, or lien upon the real estate. (2-16 Insuring Real Property § 16.01, Matthew Bender, 2003.)

Under basic insurance law principles, a lender's insurable interest in the mortgaged property is the outstanding loan balance on the mortgage. This is the measure of the risk to the lender. A standard mortgage agreement between lender and borrower imposes a duty upon a borrower to purchase insurance that will protect the lender's insurable interest in the loan collateral. The agreement imposes no duty upon either the borrower or the lender to protect the borrower's insurable interest. Absent a mortgage agreement compelling insurance in favor of a lender, many property owners would choose to retain the risk, and why force-placed coverage is necessary.

2. The Act and the Regulation protect the interest of the lender, not the borrower.

The minimum mandatory coverage required under the Act and the Regulation is enough coverage to protect the lender's interest in the loan collateral, and nothing more. (12 CFR 339.3; 42 USCS § 4012a(b).) For example, the FDIC regulation states, in pertinent part:

> . . . . The amount of insurance must be **at least equal to the lesser of** the outstanding **principal balance** of the designated loan or the **maximum limit** of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. (12 CFR 339.3, bold added.)

The minimum amount of coverage necessary to comply with federal law is the lowest of either the outstanding loan balance or the maximum limit available under the Act. No requirement exists to insure more than the loan balance, which is always the measure of the lender's interest in the collateral. Moreover, the FEMA Guidelines point out that the law prescribes a mandatory minimum, *but not a maximum*. In fact, the legal limit was repealed:

> The 1994 Reform Act *repealed* Title 42 U.S.C. §4013(b)(6), which contained a statutory limit for coverage required to be purchased. The Act requires coverage that is "in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available." Therefore, to meet minimum compliance requirements, lenders must see to it that flood insurance coverage on a building is at least the lowest of the following:
>
> - The maximum amount of NFIP flood insurance coverage available; or
> - The outstanding principal balance of the loan(s); or
> - The insurable value (RCV) of the building.
>
> Lenders should consider whether minimum required coverage amounts will be adequate to protect their interests and those of their borrowers. (FEMA Guidelines, p. 32, italics added)

As FEMA notes, at one time the Act actually prohibited covering more than the lender's interest in the property. Now the lender is permitted, and even encouraged, to cover more than its interest, *but there is no legal requirement to do so*.

3. The Act and the Regulation do not protect the interest of the borrower.

Someone might assert that the purpose of the Act and the Regulation is to protect the borrower. They would argue that the lender is required to purchase the insurance "on the borrower's behalf." They would contend that "on the borrower's behalf" means "for the benefit of the borrower."

In light of the regulations and the FEMA Guidelines quoted above, this makes no sense. Section 339.3 sets out the *minimum* required amount of insurance – an amount necessary to protect the lender's insurable interest in the property, not the borrower's interest. Several courts have repeatedly noted:

> "The specific statutes in question were not enacted for the special benefit of the borrowers. Section 4012a(b) requires flood insurance for the amount of the outstanding loan balance and not for the equity of the borrower. **If Congress had passed the statute primarily for the benefit of the borrowers, it would have required that they insure their equity in the home. This statute seems primarily concerned with protecting lenders, not borrowers.**" Custer v. Homeside

> Lending, Inc., 858 So. 2d 233, 245 (Ala. 2003) *quoting*, Hofbauer v. Northwestern National Bank of Rochester, 700 F.2d 1197, 1200 (8th Cir. 1983) [bold added]; *see also*, Norris v. Union Planters Bank, 739 So. 2d 869, 874 (La. Ct. App. 1999); Mid-America National Bank of Chicago v. First Savings & Loan Ass'n of South Holland, 737 F.2d 638, 642-43 (7th Cir. 1984).

It is interesting to note that the *Norris* court concluded that the statute sets the *maximum* amount of insurance that may be force placed, in other words, that a lender must protect *only* its interest in the collateral and no more. Other courts have disagreed, finding that the statute sets only the *minimum* amount of insurance that may be force placed. In fact, it has been held that a lender may force place more flood insurance than necessary to protect its own interest, but only if the mortgage agreement clearly permits it. Hayes v. Wells Fargo Home Mortgage, 2006 U.S. Dist. LEXIS 79769, at 14-15 (E.D. La. Oct. 25, 2006).

In any event, none of these courts have opined that the Act or the Regulation *requires* a lender to protect the borrower's interest. Rather, courts have consistently held that the borrower is not the focus of protection at all.

> Every single federal court to consider whether a federal private right of action arises under section 4012a has concluded that the federal treasury, not individual mortgagors like Wentwood, is the class the statute intends to protect. Wentwood Woodside I LP v GMAC Commer. Mortg. Corp., 419 F3d 310, 323 (5th Cir. 2005).
>
> It would be disingenuous to suggest that when Congress passed the Program it did not intend to help those borrowers who had been damaged by flooding. On the other hand, borrowers of federal funds were not the only concern of Congress. Clearly, the principal purpose in enacting the Program was to reduce, by implementation of adequate land use controls and flood insurance, the massive burden on the federal fisc of the ever-increasing federal flood disaster assistance. Indeed, in requiring flood insurance the concern for the protection of lenders was just as great, if not more so, than the concern for borrowers. **Lenders are only directed to require flood insurance for the amount and term of the outstanding loan balance. 42 U.S.C. § 4012a(b). There is no requirement that the flood insurance cover the equity of the borrower.** Plainly, Congress was interested in protecting the lending institutions whose deposits the federal regulatory agencies insured. As for the notice requirement, the legislative history indicates that it too was enacted in part to help stem the development of flood hazard areas and further diminish the burden of federal disaster assistance. Till v. Unifirst Fed. Sav. & Loan Ass'n, 653 F.2d 152, 159 (5th Cir. 1981) (bold added).

Based upon the foregoing, the phrase "on the borrower's behalf" is better understood to mean "in the borrower's stead" or "in lieu of the borrower". The borrower has a duty to purchase flood insurance to protect the lender's insurable interest in the loan collateral. If the borrower fails to buy the insurance, then the borrower has breached the loan agreement. At that point, both the Act and the Regulation require the lender to purchase the insurance in the borrower's stead or in lieu of the borrower. Neither the Act nor the Regulation requires a lender to purchase flood insurance to protect the borrower. The borrower has the duty to protect the lender, and *not* vice versa.

In summary, the phrase "cover the interests of both the borrower and the lender" in the proposed answer to Question 62 overstates the legal requirement to purchase and maintain flood insurance to protect the lender's interest in the loan collateral. The lender is required to protect is its own interest, not the borrower's interest.

D. Suggested Question and Answer 62.

In light of the above, we suggest a straight forward approach to Question and Answer 62. Here is our suggested question and answer. Please note that we changed both the question and the answer:

62. May a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?

Answer: Yes. A lender or its servicer may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance is in effect. Any coverage obtained by a lender or its servicer should be at least as broad as the coverage available under the NFIP and should protect the interest of the lender, as required under the Act. Although not required, Lenders should consider purchasing enough coverage to protect the interests of their borrowers as well.

While we appreciate the improvement in the 2011 revised Question and Answer 62 over the 2009 proposal, we think that a short answer best captures the language and intent of the Act and the Regulation. We think a short and simple answer will provide strong guidance to lenders, servicers and borrowers, and will avoid several unintended consequences inherent in a longer answer.

III. COMMENTS – Question 60

The Agencies propose the following Question and Answer Number 60. Our comments follow.

60. When should a lender send the force placement notice to the borrower?

Answer: To ensure that adequate flood insurance coverage is maintained throughout the term of the loan, a lender or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property. The lender must send this notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. Notice is also required when a lender learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program). To avoid the expiration of insurance, the Agencies recommend that the lender also advise the borrower when flood insurance on the collateral is about to expire.

We generally agree with the revised Question and Answer 60, but do find two slight problems: (1) the first sentence wrongly implies a duty to monitor the loan for insurance problems and should be modified; and (2) the last sentence advises lenders to bear the burden and expense of notifying borrowers when their flood insurance will expire without providing any real benefit to the lender or the borrower; this should be deleted. We provide a suggested answer to Question 60 with these edits at the end of our detailed analysis below.

IV. DETAILED ANALYSIS – Question 60

A. The first sentence wrongly implies a duty to monitor the loan for insurance problems.

The first sentence in the proposed answer to Question 60 fails to note clearly that the sole triggering event required by federal law is the lender's determination that an insurance deficiency exists. (12 CFR 339.7; 42 USCS § 4012a(e).) For example, the FDIC regulation states, in pertinent part:

> If a bank, or a servicer acting on behalf of the bank, **determines**, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under Sec. 339.3, **then** the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an

> amount at least equal to the amount required under Sec. 339.3, for the remaining term of the loan. . . . . (12 CFR 339.7, bold added.)

Neither the Act nor the Regulation imposes a duty to monitor the loan for coverage, but merely to react to insurance information when received. When a lender determines there is a problem, *then* the lender must notify the borrower. The first sentence wrongly implies a duty to monitor the loan for insurance problems.

B. The last sentence advises lenders to bear the burden and expense of notifying borrowers when their flood insurance will expire without providing any real benefit to the lender or the borrower.

The last sentence in the proposed answer to Question 60 recommends that lenders notify borrowers when their flood insurance is about to expire. While this seems like a reasonable suggestion, it actually makes no sense. The lender is in no better position to know when the borrower's coverage will expire than the borrower. The lender usually receives such notices from the insurance company at the same time as the borrower. More often than not, if a notice problem arises, it is because notice was given to the borrower only, and not to the lender, or because neither received notice. This is because the borrower may change carriers or the lender may change servicers.

In any event, every loan requiring flood insurance will likely be covered by a policy that will eventually expire, usually in one year increments. If a lender follows the advice in the proposed answer to Question 60, the lender will incur a notice cost for every covered loan, with no real benefit to the lender or borrower.

For example, those borrowers who plan to renew their flood insurance timely will usually do so once they receive the required notice, sent by the insurer 45 days before expiration. (*See* 42 USCS § 4104a(c).) If a lender also gives such notice, they will have unnecessarily incurred the notice cost for every such loan, without benefit, because the borrower will renew the flood coverage anyway.

Likewise, if the borrower fails to renew the coverage, then the lender is still legally required to send its force-placement notice letters so there is no economy gained by the pre-expiration letter. The last sentence in the answer to Question 60 advises lenders to bear the burden and expense of notifying borrowers when their flood insurance will expire without providing any real benefit to the lender or the borrower.

C. Suggested edited answer to Question 60.

In light of the above analysis, we would suggest that the answer to Question 60 be edited. Here is proposed Question 60 and our suggested edited answer:

> *60. When should a lender send the force placement notice to the borrower?*
>
> *Answer:* To ensure that adequate flood insurance coverage is maintained throughout the term of the loan, a lender or its servicer must notify a borrower whenever the lender determines that flood insurance on the collateral has expired or is less than the amount required for the property. The lender must send this notice upon learning that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. Notice is also required when a lender learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program).

By editing the first two sentences and deleting the last sentence, the propose answer to Question 60 clearly states the requirement without providing unnecessary advice.

V. COMMENTS – Issues on FR page 64182 (overlapping coverage)

The Agencies propose the following issue on FR page 64182. Our comments follow.

> The Agencies note that an NFIP flood insurance policy provides coverage for the mortgagee for 30 days after lapse. Proposed question and answer 62 does not directly address whether a lender may charge the borrower for coverage during the 30 days after lapse of the borrower-purchased NFIP policy, during which time the policy is still in effect, other than stating that the lender may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect. The Agencies also seek comment on whether any final question and answer on this issue should provide that lenders may not charge for additional overlapping lender-placed coverage during that 30-day period.

The issues raised above rest on the popular notion that "an NFIP flood insurance policy provides coverage for the mortgagee for 30 days after lapse." However, as detailed below, this is a popular myth. The Mortgage Clause of an NFIP policy requires a lender to receive 30 days notice, not 30 days coverage. There is no "overlapping" coverage following a timely cancel or nonrenewal notice. Additionally, where coverage is denied due to non-payment of the premium, the only way a lender will receive coverage under the Mortgage Clause for an otherwise valid claim is to pay the premium. If the lender does not pay the premium on the borrower's policy, there is no coverage. There is no "overlapping" coverage unless the lender pays both policy premiums.

VI. DETAILED ANALYSIS – Issues on FR page 64182 (overlapping coverage)

A. There is no "overlapping" coverage following a timely cancel or nonrenewal notice.

Under the NFIP Mortgage Clause, a lender is given an additional 30 days of coverage after a cancellation or non-renewal *notice*. Please note the Mortgage Clause is *not* addressing expiration:

> If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days **after we notify** the mortgagee of the cancellation or nonrenewal. (NFIP, Dwelling Form, p. 14, bold added)

The purpose of this clause is to guarantee that a lender receives 30 days *notice*, not 30 days coverage. The key issue is *when* the notice is sent. The 30 days follows the date the notice is given, not the effective date of the cancellation or nonrenewal. This is confirmed by the NFIP Flood Insurance Manual (May 2011) ("Flood Manual"), which states that nonrenewal notices must comply with the Mortgage Clause of the policy.

> Renewal Notices will not be generated and policies will not be renewed for the following situations:
> - Building under construction;
> - Tentatively rated policy;
> - Suspended community;
> - Provisional rating;
> - Group Flood Insurance Policy;
> - PRP ineligibility;
> - Section 1316 property.
>
> However, in each of the situations above, any mortgagee named on the policy must be notified of the nonrenewal or cancellation, **as required by the Mortgage Clause** of the SFIP (see the Policy section, General Conditions, Q. Mortgage Clause in all policy forms).
> (Flood Manual, REN 1, II.C, bold added.)

When a cancellation or non-renewal notice is given, the lender has 30 days coverage following the date of the notice, *not* the effective date of the cancellation or non-renewal, which is usually 45 days to 60 days later. The only way a lender will receive "additional" coverage is if the lender receives *less than* thirty days notice of a cancellation or non-renewal effective date. Otherwise, the lender's coverage ends on the same day as the borrower's coverage ends. There is no "overlapping" coverage following a timely cancel or nonrenewal notice.

B. There is no "overlapping" coverage unless the lender pays both policy premiums.

The policy gives a borrower 30 days following the natural expiration of the policy in which to pay the renewal premium without a lapse in coverage. (NFIP, Dwelling Form, p. 12) However, the borrower must pay that premium *before* a loss occurs, otherwise there is no coverage and the claim will be denied. (See, Brazil v. Giuffrida, 763 F.2d 1072, 1076 (9th Cir. 1985) ["Payment of a premium after an insurance policy has expired due to nonpayment does not serve to effect coverage for a loss sustained during default and prior to payment."])

Nevertheless, under the Mortgage Clause, if the borrower's claim is denied due to non-payment of premium, any *valid claim* of the lender is still protected, *if the lender pays the premium.*

> Q. Mortgage Clause
>
> If we deny your claim, that denial will not apply to a **valid claim** of the mortgagee, if the mortgagee:
>
> 1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
>
> 2. **Pays any premium due** under this policy on demand if you have neglected to pay the premium; and
>
> 3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
>
> All of the terms of this policy apply to the mortgagee.
> (NFIP, Dwelling Form, p. 14, bold added)

A valid claim by the lender under the Mortgage Clause still requires the lender to pay the annual premium. Thus, this is *not* overlapping coverage unless the lender pays the premium for both its policy and the borrower's policy. There is no "overlapping" coverage unless the lender pays both policy premiums.

VII. CONCLUSION

WNC Insurance Services, Inc. appreciates the opportunity to present comments regarding the revised Interagency Questions and Answers referenced above. If you have any questions about these comments, please feel free to contact the undersigned as follows, Call: (626) 463-6472, Fax: (626) 463-2121, E-Mail: JGray@WNCFirst.com.

Sincerely,

Jordan N. Gray
SVP, Compliance and Legal Affairs
WNC Insurance Services, Inc.