May 19, 2008

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
FDIC
550 17th Street, N.W.
Washington, DC 20429

RE: Interagency Questions and Answers Regarding Flood Insurance
RIN 3064-ZA00

Dear Mr. Feldman:

Thank you for the opportunity to comment on the proposed revisions to the flood insurance questions and answers guidance. After reviewing the proposal, I would like to seek further clarification on the following Q&As:

Q&As #3 and #40
In question 7, a lender is not required to comply with the regulation if a loan is purchased and the property is in a SFHA. However, question 40 states that each participating lender in a loan syndication/participation is individually responsible for ensuring compliance with the Act and regulation (even if the lead lender has been assigned this compliance duty). A common sense approach would be just the opposite. Why would every participating bank have to perform the exact same flood determination, determine that adequate flood insurance is in place, etc. for the same participation loan? This appears to be burdensome and costly to all participating lenders.

Q&A 7
The question states that "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, which is commonly referred to as the insurable value of a structure." The lender is required to calculate the correct insurance value of the property. The Q&A does not explain how this should be done other than ensuring land value is not included in the calculation.

If lenders are required to calculate the proper amount of flood insurance, better guidance and explanation of terms should be given. FEMA's September 2007 Mandatory Purchase of Flood Insurance Guidelines states on page 27 that "limited to, the lowest of … full insurable value of the building and/or its contents, which is the same as 100 percent replacement cost value (RCV). (Unlike the practice in other lines of property insurance, building RCVs under the NFIP do not include market values or the value of the land.)" In addition, Q&A #24 on condominium flood insurance states, in part "amount of flood insurance covering the condominium unit is the lesser of …. The "insurance value" allocated to the residential condominium unit, which is the replacement

cost value of the condominium building divided by the number of units." Based on the FEMA handbook and Q&A #24, does "insurable value" really mean "100% replacement cost value?" If this is the case, why can't that same terminology be shown in the Q&As for consistency purposes? If "replacement cost value" is then considered the "insurable value," an explanation should be included as to how the RCV is determined. For example, can the RCV be a figure obtained from the hazard insurer?

Market value and insurable value appear to be two different things. Previously lenders would obtain an appraised value from an appraisal report and deduct the land value to come up with the "insurable value" figure; however, this does not appear to be the case any longer (plus it is more difficult to do with fewer appraisals being done and with land values generally not being shown any longer by appraisers). It also is not prudent since an appraisal shows the market value of a property and not the actual replacement cost if a building were destroyed by a fire or flood.

Again a better explanation of "insurable value" is required so that lenders and regulators are on the same page. Several other Q&As have very good examples. It is strongly recommended that at least two examples be provided for Question 7 since this question significantly affects how proper flood insurance is calculated for most types of loans requiring flood insurance. Once "insurable value" is better defined, this terminology also is present in other Q&As such as #10, #11 and #12 (that often refers to Question 7).

Q&A #26

If an RCBAP has insufficient coverage and a borrower is requested to purchase additional insurance, the Q&A states that "Lenders are encouraged to apprise borrowers of this risk." In most cases, bankers are not insurance experts and are only requiring that a proper amount of insurance be obtained. Understanding how flood insurance pertains to condominiums is so complicated that it would be very difficult to explain to a borrower, much less trying to explain the exposure of additional risk of loss. It is recommended that this terminology be removed.

Q&A #33

This question refers to flood determinations for home equity loans secured by a junior lien. I believe a new determination may not only be required for junior liens of home equity loans but also possibly of other loan types (commercial loans, multifamily loans) if a different lender was involved. It is recommended that this be clarified.

Q&A #35

It would be beneficial if at least one example was provided on how to calculate the proper amount of flood insurance where both the building and contents were required to have adequate flood insurance in place.

Q&A #54

The Q&A states that "A lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification" in order to force place insurance. There is no guidance as to when the "45 day period" of notification begins. Is

this the day after the flood insurance has expired? Is it when the lender does a monthly review and notices that the flood insurance has expired and no renewal was received? Both of these practices have been used at other banks I have worked at. I've been employed at three different banks that had three different regulators, and each seems to have their own rules as to when the "45 day period" begins. One regulator, in particular, would cite the bank if a letter was not sent the date after the flood insurance expiration date whereas another regulator seemed to be fine with a lender only looking at a report once a month and sending out forced placed letters monthly. Since this is an interagency guidance, it is highly recommended that more explicit guidance be indicated as to when the "45 day period" commences for consistency purposes among lenders and regulators.

Q&As #64 and #65

The Q&A states that "If the lender is unable to reconcile a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy and there is no legitimate reason for the discrepancy, the lender and borrower may jointly request that FEMA review the determination." This must be completed within 45 days of the lender's notification to the borrower of the requirement to obtain flood insurance.

I do not agree that a discrepancy that is unresolved should have to be submitted to FEMA, and it is recommended that this Q&A be revised. In most cases, the lender will most likely be the party having to pay for the FEMA review and only adds to the onerous requirement of complying with the flood insurance regulations. In dealing with flood determination companies and insurance companies, in most cases insurance companies do not have a good grasp of the requirements of flood insurance. Based on this, a lender cannot put a lot of confidence in the flood insurance policy designation done by insurance companies, which often may be inaccurate or could be covered by the Grandfather Rule (although they may be ignorant of this as well). Conversely, a customary lending practice is to require that third-party flood determination companies guarantee their designations, and lenders rely heavily on the accuracy of those determinations. It is my opinion that if there is a discrepancy that the flood determination performed by a third-party be used if no reasonable explanation of the discrepancy is found.

Thank you for your consideration of the aforementioned comments and clarification to the guidance where needed.

Sincerely,

Cheryl Nakashige
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