May 20, 2008

Mr. Robert E. Feldman, Executive Secretary via email comments@FDIC.gov
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: RIN 3064-ZA00

Dear Mr. Feldman:

National Lenders Insurance Council (NLIC) is grateful to be able to respond to the regulators' proposed Questions and Answers. NLIC is a not for profit trade organization composed of experienced lenders and servicers doing business all over the United States in residential and commercial markets. Our mission is to reduce insurable losses to assets for property owners through government/industry partnerships, education, and dialogue. Our vision is for regulators, investors, lenders, servicers, insurers and other responsible industry members to come together to foster an environment in which economic hardship for property owners across the nation can be eliminated. Our comments reflect the input we have had from many of our membership.

Question 7 The question asked is "What is meant by the maximum limit of coverage available for the particular type of property under the Act?" The first paragraph of the answer is okay, but the second paragraph mistakenly assumes that the lender will determine the insurable value of the improvements. The NLIC suggests deleting the second paragraph completely or the response should be simplified to read that the maximum amount of coverage available is the **lesser** of:

1. The loan amount
2. The maximum coverage available by the NFIP
    a. $250,000 for single family and two-to-four family dwellings
    b. $500,000 for nonresidential structures
    c. 100% of the insurable value of the structure *as determined by the insurance carrier*

Every reference to insurable value in the proposed Q&A's should be amended to add "as determined by the insurance carrier". Lenders do not have sufficient information or training to determine insurable value.

Question 10 and 12 Under the maximum amount of insurance available add "as determined by the insurance carrier" to the insurable value of the structure. The maximum coverage available is 100% of the insurable value of the structure as determined by the insurance carrier.

Question 13 Needs to include a warning that the lender may never require flood insurance coverage that exceeds 100% of the insurable value of the property as determined by the insurance carrier.

Question 19 The trigger for issuance of the flood policy should be when the slab is poured. An elevation certificate is used by the insurance company to calculate the rate and is issued after the slab is poured to confirm compliance with the community floodplain management ordinance. The NLIC suggests that the wording be changed to read "until a foundation slab has been poured, provided that the lender requires…"

Questions 24 and 26 The co-insurance penalty is not triggered unless the RCBAP policy is written for less than 80% of the insurable value of the property. Strike the language in 26 that begins with "Assuming that the principal balance of the loan is greater than the maximum amount of coverage available…" down to and thorough the second bullet that begins with "Obtain a dwelling policy if there is no RCBAP, as explained in Question 25". This lead in confuses and misleads the reader. The language that follows explains the requirements and the interplay between the RCBAP and Dwelling forms adequately and without confusion. Further, the NLIC recommends that FEMA remove limitations in the dwelling policy which would allow unit owners to purchase individual policies that will provide coverage in the event of an association assessment due to a coinsurance penalty.

Question 32 This is possible when originating a junior lien, but is not practical when tracking the subsequent flood renewals. Due to the financial privacy act servicers can no longer give information to someone who calls and claims to be another lien holder, and the burden of verifying the superior lien balance at every policy renewal would be very expensive for servicers.

Additionally, questions 32 and 56 do not address the amount of coverage a junior lien holder should purchase when lender placing a flood policy due to the borrowers failure to maintain flood insurance coverage after closing. Due to limitations in the MPPP program, the majority of lenders use a private lender placed flood policy. These policies provide dual coverage to protect both the junior lien holder and the borrower's interest in the property. The junior lien holder should only be required to insure for the amount of indebtedness of the junior lien.

Question 40 This requirement is unrealistic if the lead lender is not subject to the Act. The participating lender does not have the contractual right to require a lead lender, seller or syndicate to obtain a SFHDF and provide borrower notice under the Act when the lead lender is not subject to the Act. The final Q&A's should clarify that loan participations, loan purchases, sales and syndications are all governed by the same rules, i.e. that the purchase of a loan or loan interest does not trigger the flood determination requirement for the purchaser, unless the purchasing/participant lender is a housing GSE.

Questions 54-56 This area needs further clarification. First, the term "forced placed" should be changed to read "lender placed". "Force placed" is an anachronistic term that has always conveyed an incorrect impression that the borrower is being forced to accept coverage purchased by the lender when it is the lender that is being forced to act.

Additional information needs to be added to clarify at what point the lender can charge the borrower for a lender placed premium. Are lenders prohibited from charging a premium until the 46th day after the policy expiration, leaving the property uninsured for the first 45 days? Or can the lender charge for the lapse in coverage from the expiration date of the previous policy to the end of the 45 day period if the lender has purchased coverage during the 45 day notice period and the property owner ultimately fails to provide a policy with no lapse in coverage? Lenders are being told different dates from each of the regulatory agencies.

Question 57 The NLIC believes there may be some confusion in terminology between "gap" and "blanket" insurance. Gap insurance is purchased by lenders when borrowers have flood insurance but fail to purchase the proper amount of coverage for the lender to comply with the Mandatory Purchase Act. A gap policy covers the deficiency, eliminating the need for the lender to purchase a lender placed flood policy for the entire amount of required coverage, and duplicating coverage. Gap policies are written by private lender placed insurance carriers, provide dual coverage to the lender and borrower and are written as an excess policy to the NFIP policy. The NLIC urges the agencies to exclude gap flood insurance from this prohibition. Failure to do so would negatively impact the borrower and would increase the borrowers cost when the property is underinsured. The second portion of the answer discussing the 15 day gap is too confusing and we suggest that it be removed. Moreover, there is confusion about the 30 day 'grace' period. Some suggest that the mortgagee is protected during this period free of charge. Such is not the case. While the mortgagee may be entitled to reinstate coverage with no gap during this period, it must still pay the premium according to the NFIP itself. NLIC confirmed this requirement with one of the lead NFIP underwriters.

Question 59 Should state that the Flood Act does not require that the lender provide the borrower with a copy of the SFHDF. Lenders should consult with the flood determination vendor that prepared the SFHDF to see if they will allow the form to be released to others.

Many determination companies have statements on the face of the SFHDF form that state the form cannot be relied upon by anyone but the entity purchasing the determination.

Questions 64-65 The NLIC has serious concerns about this portion of the proposed questions and answers and believes that the entire section should be deleted. It is the responsibility of the insurance agent and company issuing the flood policy to properly rate the insurance policy and ensure that the correct premium is collected. Lenders are not insurance agents and should not be responsible for auditing an NFIP authorized company or its insurance agent. FEMA and NFIP should be responsible for ensuring that companies issue policies with the correct rating.

FEMA acknowledges it is unable to produce any statistics that indicate that there are significant number errors on rating flood insurance policies. Additionally, the current NFIP dwelling policy provides that the NFIP will pay a claim up to the amount of coverage shown on the declarations page, even when the borrower underpays premiums due to a rating error.

Requiring lenders to document every flood zone discrepancy will place a tremendous cost and paperwork burden on lenders and will require extensive changes to loan servicing systems. All increases in the cost to service loans will ultimately be passed to property owners by increased rates and fees. Additionally, the majority of flood policies and renewal billings are sent to servicers on Acord forms, evidence of insurance forms, electronic billings or mass listings which do not always show a flood zone.

The NLIC is also concerned that insurance agents will begin to rely solely on the lender's determination and that the determination completed by the lender could be construed to be risk management advice for borrowers and impose subsequent civil liability for inaccurate determinations on lenders rather than rightfully imposing such obligations and liability with the insurance agent.

If the lender in unable to reconcile a flood zone discrepancy, the proposed Q&A suggest that the lender and borrower jointly request that FEMA review the determination. In a situation involving a dispute over a lender's SFHA versus an insurance rating determination there may be no dispute from the borrower's perspective and no incentive to request the Letter of Determination Review (LODR), especially considering that the fee for the LODR is $80. Since the LODR process requires that the joint submission occurs within 45 days of the lenders notification to the borrower that flood insurance is required, the LODR process will be impractical or inappropriate in portfolio review situations or in relation to a loan closing.

NLIC thanks the FDIC for the effort you have made to improve the important process of providing flood insurance to American property owners and the value of your collaboration. We thank you for the opportunity to respond to the questions and answers.

Sincerely,

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