BB&T

BB&T Corporation (BB&T) is a southeast regional financial holding company with approximately $132 billion in assets. Branch Banking and Trust Company is the lead bank with approximately 1,500 financial center locations throughout the Southeast. This comment letter is submitted on behalf of the lead bank as well as its applicable affiliates.

BB&T appreciates this opportunity to comment on the proposed Interagency Questions and Answers Regarding Flood Insurance. We support the Agencies' intent to provide comprehensive guidance to the industry regarding flood insurance. However, we are concerned that some of the answers lack clarity, are contradictory, and may increase the costs associated with lending in special flood hazards. We submit the comments below for your consideration.

General Comments

Before commenting on specific areas of the proposed updates, we offer the following general observations:

1. ***The proposed updates place duties upon lenders and servicers that properly belong to qualified insurance agents.*** For lenders to "override" agents' decisions as to insurable values and applicable flood zones may be inappropriate (or even illegal) and creates additional liability risks for lenders.

2. ***The guidance places additional burdens on lenders and servicers which could require additional staff or vendors, which will increase the cost of originating and servicing loans. These costs will ultimately be passed on to consumers.*** There are a number of state and federal regulatory initiatives which all have the potential for substantial cost increases to the industry. All of these costs will be passed on to consumers at a time when the nation's economy is already severely stressed. The effect will be to further reduce the availability of credit while increasing its cost.

3. ***Overall, the proposal is likely to make mortgage activity in flood zones generally financially impractical for both lenders and consumers.***

Flood Zone Differences: Lender Determination vs. Flood Insurance Policy

Perhaps the most problematic issue arising from the proposal (as well as from recent FEMA and FDIC guidance) is the requirement for lenders to resolve any differences in the flood zone shown on the lender's determination vs. the zone shown on the insurance policy. We believe the lender's intervention in the insurance process is inappropriate and unnecessary. At a minimum, proposed question #65 (stating that lenders' failure to resolve discrepancies may be a violation of the mandatory-purchase requirements) should be removed.

Proposed question #64 states that lenders must have a process to "identify and resolve" any discrepancies in the flood zone shown on the lender's determination vs. the flood policy. If the lender finds a legitimate reason (such as "grandfathering") the lender must document its findings. It is not clear how lenders or servicers can perform this research as most have no in-house flood research capabilities. Outside vendors would need to provide these services, at additional cost.

Except when the policy reflects grandfathering, the proposed Q&A has no examples of how the lender may "resolve" zone differences. Question #64 states: "If the lender is unable to reconcile a discrepancy … the lender and borrower may jointly request that FEMA review the determination. This request must be submitted within 45 days of the lender's notification to the borrower of the requirement to obtain flood insurance."

Major issues raised by proposed question #64 include:

- The borrower may not be cooperative in requesting a FEMA determination, and there is no authority for a lender to force the borrower to cooperate. The lender cannot solely request a FEMA determination. Experience indicates that when a lender and insurance agent are giving the borrower different zone information, the borrower accepts the agent's determination rather than the lender's.

- The lender cannot force any action upon the insurance agent and the agent is not bound by the lender's determination. Lender/servicer employees are not typically licensed insurance agents and challenges could arise from a perceived intrusion into the agent's duties. Also, the borrower generally has the right to freely choose his agent under state law and may protest the lender's intrusion into the relationship.

- Reconciliation will not be a "one-time" activity, as servicers may be notified by their portfolio-monitoring services of zone changes on existing loans. Disputes could occur periodically throughout the life of the loan. Each renewed policy would have to be checked against the servicer's latest flood zone information for the loan and "resolved" if necessary. This will require ***substantial*** additional staffing for post-closing and servicing areas, with the cost passed on to consumers.

- The proposed guidance will also complicate and discourage loan brokering and secondary-market or portfolio loan sales, as the parties must determine who will reconcile zone differences. Loans in flood zones may become more difficult to market, further restricting the flow of funds in the secondary market and the availability of credit to all consumers.

- The 45-day window to request FEMA's assistance begins from the date the lender notifies the borrower of the requirement to purchase flood insurance. In some cases (such as purchase of new construction) the loan may not close for 45 days or more after such notice, so months may go by before the policy is available for the lender's review. We request that FEMA consider a longer window to request assistance in resolving differences.

Procedures already exist, as outlined in the terms of NFIP policies (Section VII, General Conditions, paragraph G), to retroactively cure any flood zone errors, even if a claim has already been filed under the policy. In BB&T's lengthy history of servicing hundreds of thousands of loans, we are not aware of any instance in which either BB&T or a borrower suffered a loss due to a zone discrepancy between our vendor's flood determination and the policy. Therefore we believe it is unnecessary to create new duties which are extremely burdensome and costly to the industry and to consumers while creating no apparent benefit.

However, if the agencies or FEMA reasonably show that a benefit is created that justifies the burden, then we recommend that ***FEMA should use its resources and expertise to provide a free or subsidized service to handle all "zone discrepancy resolutions" submitted by lenders/servicers, including negotiations with the insurance agent to amend the policy if necessary. FEMA has the expertise, authority and resources for this function; lenders (and even their vendors) <u>do not</u>.*** While vendors might be able to assist with research, neither lenders nor vendors have any authority over WYO/NFIP or private insurance agents.

The issuance of a regulatory violation for the failure to oversee and resolve disputes between flood zone providers and insurance agents is a significant change in regulatory policy. While lenders were expected to attempt to resolve discrepancies, the NFIP traditionally resolved such discrepancies at the time of a claim. Proposed questions/answers #64 and 65 represent a complete departure from this practice and an attempt to hold lenders responsible for the failure to resolve technical disputes between two experts in flood insurance, the flood service vendors and the insurers.

<u>Determining the Appropriate Amount of Flood Insurance</u>

Proposed questions #7 and #10 address the amount of flood insurance a lender must require. We agree that it is important for properties to be insured for an appropriate amount. However, lenders generally are not qualified to determine insurable values, other than to exercise reasonable prudence. It is not clear why lenders/servicers are being proposed as the ultimate determiner of insurable value for purposes of protecting the borrower, when this is the primary responsibility of the insurance agent retained by the borrower. It does not appear appropriate for the lender rather than the qualified insurance agent providing the policy to set the final value.

Lenders and servicers have no practical and accurate means to determine “insurable value” with the degree of accuracy the proposal appears to require (both for the initial closing and annually over the life of the loan). Full appraisals are not required for all loans, and in any case an “appraised value minus land value” formula is ***not*** reliable. The remaining value – even as further broken down in the “cost approach” section of an appraisal – may lump together insurable improvements with items not insurable against floods, such as swimming pools, decks and patios, seawalls, carports and potentially portable outbuildings. We believe the insurance agent is the party best qualified to establish the insurable value. If we may not rely on the insurance agent, then lenders/servicers will have to request that the appraiser – the next best qualified party after the insurance agent – make this determination. Appraisers may not be willing to do so, as (like the lender) they are not qualified as insurance assessors. At a minimum, the appraiser will charge a fee which will be passed on to the consumer.

Proposed question / answer #10 reinforces that ***every*** insurable structure in the flood zone must be insured. That is, the lender must make a determination regarding every structure on the lot as to whether the structure is in the flood zone, whether it is insurable for flood hazards, and the insurable value. Presumably servicers would be required to adjust coverage accordingly if the borrower later added more structures in the flood zone, although it is unclear how the servicer would know a structure had been added unless the hazard policy renewal cited the structure.

We agree that lenders are currently required to ensure that coverage is obtained for structures taken as security. However, many homes have outbuildings such as detached garages, barns, or sheds that due to size, age or condition are essentially disregarded by the lender and borrower. Lenders, as a matter of practicality, generally do not specifically exclude these buildings from the security interest. As the value and type of structure of these buildings are insignificant to the loan and the value of the property, there is little effort in determining what if any flood coverage should be required, even though the building may technically be eligible for coverage.

To ensure that all eligible buildings have the required insurance a lender would need to perform additional steps to document the location and value of these buildings. The additional steps could cause delays in funding and increases in costs. Insurance costs will also increase even though the borrower may have little interest in or gain any benefit from insuring an outlying structure of low utility or value. Additional problems could arise if the insurance agent is unwilling to write hazard insurance for a structure for which the lender is requiring flood insurance. It is not clear how differences are to be resolved if the lender’s and insurance agent’s assessments differ.

Many lenders do not require a survey as long as the title policy does not take exception to matters of survey. However, under the proposed question and answer, lenders and their vendors are likely to control risk by requiring all applicants to obtain surveys. A survey will disclose all structures, and will help the flood determination vendor to ascertain if any of these structures touch the flood zone. ***The cost of a survey that would otherwise not have been required will add $500 to $2,500 to most purchase and refinance transactions, perhaps acting as the "straw" that pushes the cost of the credit beyond the consumer's reach.***

The flood zone status of different buildings on a lot may change over the life of the loan as FEMA revises maps. For example, the main dwelling and a detached garage could be in different flood zones. However, major servicing systems do not have the ability to track the flood zone status of multiple structures on a single loan, and historically no effort has been made to track structures of nominal value or utility. The obvious solution for lenders/servicers under the proposal is to require borrowers to maintain flood insurance on ***all*** eligible structures without regard to whether all are in the flood zone. (Most security instruments allow the lender to require insurance as a matter of prudence regardless of zone, at the lender's option.) This will again increase borrowers' costs and add no real benefit to the consumer.

Determining the Appropriate Deductible

Proposed question / answer #14 states that "it is not a sound business practice … to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender."

Major servicers, investors and the NFIP generally allow borrowers to carry a $5,000 deductible. The proposed guidance raises questions regarding non-prime, affordable, non-traditional or high-LTV products. A borrower who suffers a flood loss could litigate on the argument that it was not "reasonable" for the lender/servicer to allow a significant deductible. It appears the deductible amount would need to be part of the underwriting decision, ***or*** be product-based (i.e. link certain products to a maximum $1,000 or $500 deductible). A product-based approach would ensure consistent treatment of borrowers and prevent servicers from having to make ongoing determinations as to reasonableness with every renewal. Applying lower deductibles, while intended to help protect vulnerable borrowers, will require lower-income borrowers to come up with more cash for closing and to incur significantly higher premiums over the life of the loan.

Condominium Coverage

While we support the requirement for HOAs to maintain coverage sufficient to protect the borrower's and lender's interests, ***FEMA must focus on educating Homeowners Associations (HOAs) about the requirements.*** Unit sales and loan closings are often delayed while lenders and consumers struggle to get cooperation and appropriate documentation from HOAs. The lender and the individual consumer have no leverage to require the HOA to modify coverage. A unit owner trying to sell or refinance a unit may have to sue the HOA to obtain action.

After a loan has closed, the servicer will face similar issues with uncooperative HOAs on an annual basis. This may make loans on condominiums riskier for investors and less attractive on the secondary market. ***Lenders may simply cease to offer financing on condominiums in flood zones.*** Condos are already a riskier type of collateral, especially second-home condos, which account for many of the condos in flood zones. Given the added risks and burdens under the proposal, lenders may find that the risks outweigh the benefits of financing such properties.

Additionally, ***changes are needed to the design of the RCBAP*** itself. The Master Policy should have a Certificate of Coverage for each unit listing the individual coverage amount allotted to that unit, as opposed to the complex scheme in the proposal for lenders to try to determine, from the HOA's total policy value, whether a particular subject unit is sufficiently insured. As unit values may vary dramatically within a project, the opportunity for error and debate under the proposed lender calculations is high.

Loan Participations

The proposed question/answer #3 states that a whole loan purchase does not trigger the flood requirements. The proposed question/answer #40 indicates that a purchase of a participation is a triggering event. While it is reasonable to place the responsibility for flood compliance on the lead lender, the proposed answer states that each party in a participation is individually responsible and will be examined to determine whether it has "adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan." This appears to be a new regulatory requirement that will lead to unnecessary duplication of effort and confusion for borrowers.

Insurable Value

The proposed question/answer #7 introduces the term 'insurable value.' This term is not defined in the regulations, which refer to 'overall value of the property minus the value of the land on which the property is located.' Lenders typically rely on the appraised value (minus the value of the land) or the hazard insurance policy to determine the 'overall value.' The appraisal and the hazard policy usually state a depreciated value rather than replacement cost. References in the 2007 Mandatory Purchase of Flood Insurance Guidelines and additional references throughout the Q&A document indicate that FEMA and the Agencies may be changing the standard.

The Agencies should clearly define how to determine and document the insurable value of the property. If replacement cost coverage is the new requirement, this is a substantive

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change that should be addressed by a regulatory amendment rather than a change in the Guidelines or the Frequently Asked Questions.

Contents Insurance

The question and answer document clearly states the need to require contents insurance when both a building and its contents secure the loan. However, there is no clear direction as to how that coverage should be calculated. When coverage for both the building and its contents are calculated separately, the amount of coverage could exceed the loan amount.

For example, in a $100,000 loan secured by a building valued at $150,000 and contents valued at $75,000, the required insurance could be $175,000 ($100,000 for the building and $75,000 for the contents.)

We request clarity as to the proper method for calculating contents insurance.

BB&T appreciates this opportunity to comment and hopes our comments will be considered in the constructive spirit in which they are offered. It is BB&T's ongoing goal to protect the safety of both the Bank and our borrowers in setting flood insurance requirements. We believe our procedures have been sound and reasonable to control risk for all parties. In the absence of hard data showing that implementation of the proposed guidance would have significantly mitigated the aftermath of Katrina or other major flood disasters, we do not wish to see an additional level of burdens and costs placed upon the industry or consumers. This is especially true in the current market, as the federal government's and private sector's shared goal is to maintain the flow of reasonably-priced credit and prevent a major recession.

Sincerely,

Sherryl McDonald

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