Bank of America

September 21, 2009

*Via E-Mail and United States Mail*

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1311
Email: regs.comments@federalreserve.gov

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Attn: Docket Number OCC-2009-0014
Email: regs.comments@occ.treas.gov

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: FDIC—RIN 3064-ZA00
Email: comments@FDIC.gov

**Re:** Docket No. R-1311; Docket Number OCC-2009-0014; FDIC—RIN 3064-ZA00

Ladies and Gentlemen:

Bank of America appreciates the opportunity to submit this letter in response to the request for comment on the final revisions to the Interagency Questions and Answers Regarding Flood Insurance. Bank of America is one of the world's largest financial institutions, serving individual consumers, small and middle market businesses, and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. Bank of America provides unmatched convenience in the United States, serving more than 59 million consumer and small business relationships with more than 6,100 retail banking offices, nearly 18,700 ATMs and award-winning online banking with nearly 29 million active users.

Our comments are focused on the new questions and answers that were proposed in July of 2009. We previously provided comments to the March 2008 Proposed Interagency Questions and Answers. Attached is a link to those comments:
http://www.federalreserve.gov/SECRS/2008/May/20080527/OP-1311/OP-1311_13_1.pdf

## *I. New Q&A #9*

We agree with the proposed answer to this **Q&A #9**. The replacement cost value used in a hazard insurance policy should be one of the methods a lender may rely upon to determine the

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replacement cost value of a building. The amount of hazard insurance maintained on the property is generally the most up-to-date information available regarding the "insurable value" of the property, and represents an amount that was agreed upon by the borrower, and the borrower's agent and insurer.

In the notes from the preamble, however, the Agencies state the following: "It is important for lenders to recognize that insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP." To avoid any potential conflict with the guidance provided by the Agencies in **Q&A #16**, we suggest that this note be revised to state the following: "It is important for lenders to recognize that, when calculating the minimum amount of insurance that is required to be purchased, insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP."

As indicated in **Q&A #16**, the Regulation sets forth a *minimum* amount of insurance that is required to be purchased, and a lender may require more flood insurance coverage than required by the Regulation (e.g., requiring last known hazard insurance if it exceeds the outstanding principal balance of the loan). As a result, insurable value may be relevant to a lender even if it exceeds the outstanding principal balance of the loan.

We request additional guidance regarding the other two alternatives a lender may use in determining the replacement cost of a building. Under **Q&A #10**, the Agencies provided guidance regarding the "functional building cost value" and "demolition/removal cost value" approaches for buildings used for ranching, farming, and industrial purposes, but did not provide guidance regarding the "cost-value approach before depreciation" and the "construction cost calculation" approach for residential buildings, as referenced in **Q&A #9**.

### *II. New Q&As #60 and #62*

We propose a modification to the proposed answer to **Q&A #60**. We agree that the borrower should not be ***billed*** for forced-placed coverage until after the 45-day notice period has expired, as the borrower should be given the full 45 days to procure their own flood insurance coverage. However, we do not agree with the position taken by the Agencies that a lender may not charge a borrower for the cost of insurance coverage purchased for an uninsured periods. We find no authority in the Act or the Regulation prohibiting a lender from charging the borrower for coverage back to the date of lapse in the applicable coverage. In fact, under the authority provided under 42 U.S.C. 4012(a)(e)(2), if a borrower has failed to purchase such flood insurance within 45 days after notification, the lender may purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

Private insurers provide force-placed insurance coverage effective as of the date of the lapse[1]. Charging back to the date of the lapse ensures that the property is continuously covered by flood

[1] Under the NFIP's Dwelling Form and the Residential Condominium Building Association Policy, the policy will continue in effect for the benefit of the mortgagee for 30 days after the mortgagee is notified of cancellation/nonrenewal by the insurer.

insurance, and avoids any period of uninsured loss. This approach is consistent with several decades of industry practice and applicable state law.[2] For example, the NAIC's Creditor-Placed Insurance Model Act[3] states that creditor-placed insurance shall become effective on the latest of the following dates:

(1) The date of the credit transaction;

(2) The date prior coverage, including prior creditor-placed insurance coverage, lapsed;

(3) One year before the date on which the related insurance charge is made to the debtor's account; or

(4) A later date provided for in the agreement between the creditor and insurer.

Without the ability to charge the borrower for such coverage back to the lapse date, lenders would have to purchase their own flood insurance, and bear the cost of such insurance, for that period in which no flood insurance was in place. This undue burden would be contrary to one of the stated purposes of the Act, which is to "provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public." 42 U.S.C. 4001(d)(2).

We request that the Agencies permit a lender to: (1) bill the borrower for forced-placed coverage after the 45-day notice period has expired; and (2) charge the borrower back to the date of the lapse in applicable coverage. To ensure that borrowers are provided the full 45 days to procure their own insurance, the Agencies should mandate that lenders may not impose the cost of forced-placed flood insurance for any part of any uninsured period if the borrower provides evidence of sufficient flood insurance at any time during such period, unless a loss occurs and coverage is provided under the force-placed policy.

In the alternative, if the Agencies will not permit a lender to charge back to the date of lapse in applicable coverage, then we request reconsideration of the Agencies' answer to **Q&A 60**. To ensure that the property is continuously covered by flood insurance, and to avoid any period of uninsured loss, a lender should be permitted to send the notice 15 days prior to the expiration of the flood policy. Force-placed insurance would then take effect (and be charged to the borrower) after the 30-day mortgagee coverage expires[4].

The primary purpose of the 45-day notice period is to provide the borrower with sufficient notice of their obligation to maintain sufficient flood insurance coverage. Further, the notice is provided in order to inform the borrower that: (1) they are obligated to maintain flood insurance on their property; (2) if they don't procure sufficient insurance within the 45-day period, the lender is required to purchase force-placed flood insurance; and, (3) the lender may charge the borrower for the cost of that insurance. Providing such notice to the borrower prior to the actual

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[2] See, e.g., New Mexico Administrative Code § 13.18.3.9(A).

[3] *National Association of Insurance Commissioners, Creditor-Placed Insurance Model Act, 375-1, § 4(A)(3).*

[4] It should be noted that the 30-day coverage provided under the NFIP's Dwelling and RCBAP's policies for mortgagees will continue in effect only for the benefit of the mortgagee. In the event of a loss, the mortgagee will be entitled to the proceeds of the policy, but only to the extent of the outstanding principal balance at the time of the loss. This could result in the borrower's interest in the collateral being unprotected by such coverage.

expiration date of the policy will still achieve these purposes. Moreover, if at any time during the 45-day period the borrower provides evidence that they have procured sufficient flood insurance coverage, there will be no forced-placement of flood insurance.

## *III. Conclusion*

We appreciate the opportunity to comment on the new questions and answers in the Interagency Questions and Answers Regarding Flood Insurance. If you have questions regarding the comments contained herein, we would be happy to address them.

Sincerely,

Art Lee
Assistant General Counsel
Bank of America