September 21, 2009

Mr. Robert E. Feldman, Executive Secretary via email comments@FDIC.gov
Attention: Comments to Flood Insurance Questions and Answers
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN 3064-ZA00

Dear Mr. Feldman:

The National Lenders' Insurance Council (NLIC) appreciates the opportunity to be able to respond to the Agencies' proposed Questions and Answers on flood insurance and to restate some concerns previously stated because they are of such vital importance. NLIC is a not for profit trade organization composed of experienced lenders, servicers and insurance professionals 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, and 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 several of our membership.

We are gratified to see that many of our past suggested improvements to the Q&As have been incorporated in this 2009 version. The examples supplied in questions 32/36 for calculating the amount of flood coverage required are particularly helpful. However, the NLIC is concerned that the Agencies have used the Question and Answer vehicle in some instances to make substantive changes to the flood regulations going beyond regulatory authority.

Determining RCV (Q9) using hazard policy
The guidelines indicate lenders can use the replacement cost value used in a hazard insurance policy "(recognizing the replacement cost for flood insurance will include the foundation)". NLIC suggests that lenders be allowed to use the hazard insurance policy to determine the insurable value and that the Agencies delete the references in the answer to the cost of the foundation. Lenders do not have a way to determine or find the value of a foundation.

Flood Zone Discrepancies (Q71/72) Proposed solution is burdensome to Lenders
Neither the regulations nor legislation make lenders responsible to resolve flood zone discrepancies. That new requirement is significantly burdensome to lending operations nationally.

One legitimate explanation for a zone discrepancy is due to the grandfathering rule. A grandfathered structure in a B, C or X zone could be reflected as an A zone structure in a lender's flood zone determination records. While we understand insurance carriers will be adding a grandfather code to the declarations page for policies issued on new loans after October 1, 2009, the burden on lenders to now research and document all other discrepancies on a SFHDF between an A or V flood zone and a policy indicating a rating in zone B, C, or X is unprecedented, resulting in the need to increase staff just to handle this task.

We offer two different solutions for your consideration.

Correct rating at the time of loss
If a structure in a SFHA is required to be covered for flood insurance, and it is in fact covered, why couldn't any zone discrepancy be handled by the agent as a routine part of a flood event? As we have stated previously, the current NFIP dwelling policy provides that the NFIP will pay a claim up to the amount of the coverage shown on the declarations page, even when the borrower has underpaid premiums due to a rating error in coverage.

Make lending and insurance industries collaborators.
When the insurance company disagrees with the determination of whether the property is located within a SFHA, the disagreement should be resolved as soon as it becomes apparent. So that the loan can close, a policy could be written with a provisional rate while the issue is sorted out. The process could run along these lines:

1. (Lender)You're in a SFHA, bring me a policy.
2. (Agent/company) You're not in a SFHA, but this has to be resolved and to get the loan to close, here is a policy. Here's what we'll do. I'll contact your lender and let them know we disagree.
3. (Lender/agent/company) Let's get our respective zone providers' together to resolve this.
    - Providers agree - policy is canceled or rated correctly
    - Providers disagree - information is sent to FEMA, which makes the decision and

The NLIC has been an active leader at annual flood insurance conferences for over fifteen years in an effort to educate lenders. We have observed misinformation being provided on panels at these conferences by regulators. Feedback from several lenders across the country indicates they are being audited and penalized for what appears to be less-than-clear guidelines relative to their flood insurance practices and procedures. By requiring that lenders be the responsible parties on zone discrepancies makes lenders responsible to implement something about which regulators and the insurance industry aren't even clear.

<u>Force Place 45 day notice (Q60-62) overlooks reality and creates potential for borrower fraud</u>
The Q&As do not adequately address the issue of the 45-day notification to the borrower and charging the premium retroactively to the expiration date.

Proposed A62 is contrary to the law
The purpose of the Act is to compel borrowers to maintain continuous coverage for the term of the loan. This Q&A guidance is contrary to that purpose. The Act does not expressly prohibit charging the borrower for retroactive coverage; it simply specifies the required notice period.

Borrowers are obligated by the loan documents, not the Act, to maintain continuous flood insurance coverage for the term of the loan at the borrower's expense.

The Act specifically charges lenders with maintaining coverage for term of the loan. "[A] **regulated lending institution may not make**, increase, extend, or renew any **loan** secured by improved real estate or a mobile home located . . . in a [special flood hazard] area . . . **unless** the building or mobile home . . . is **covered for the term of the loan** by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less." (e*mphasis added*) 42 U.S.C. § 4012a(b)(1).

42 USC 4012a(c) provides that if the borrower does not purchase coverage within 45 days of notification the lender shall purchase coverage on behalf of the borrower and charge the borrower for the cost incurred.

The Q&As defeat the purpose of the Act by allowing coverage gaps during the life of the loan.

Most lenders would agree they cannot charge the borrower for force-placed insurance until the 45 days has expired. But this Q & A language says the lender may never charge the borrower retroactively for coverage during the 45 day period.

Following A62 means the mortgagee has 13 months of coverage for the 12 month premium.

FEMA commented on this question and said they do not believe the lender should be able to charge the borrower. “Gaps in coverage and costly administration of the notice requirements would be eliminated if lenders adopt the practice of escrowing flood insurance premiums even when not required by law.” This is a short sighted view in part because escrow accounts are not commonly used on commercial or agricultural loans.

Your position encourages borrower fraud
An unintended consequence of Q&A62 is that the regulators have created the potential for borrower fraud at time of policy renewal. If a lender is (a) already escrowing for flood insurance, or (b) aware of an upcoming expiration date of an existing flood policy, it is in the interest of the lender to send a pre-expiration letter. In the case of an escrowed account, the pre-expiration letter is sent to the servicer, with a courtesy copy to the borrower. Typically the servicer pays the agent for the renewal prior to the expiration date. In the case of a non-escrowed account, the pre-expiration letter is sent to the borrower as the first warning. After 45 days of such notice lender places flood insurance. In these cases, the lender should have every right to charge the force-placed premiums to the borrower retroactive to the expiration date of the policy. A lender should also have the right to send its 45-day notice as a pre-expiration notice.

Borrower fraud could occur if the policyholders learn that no charge can be assessed to them on a renewing policy for the first 45 days following expiration. The defaulting non escrowed borrower will not be motivated to pay the annual premium on each subsequent renewal date if they are not financially accountable for the first 45 days of coverage in the new term. One purpose of having mandatory flood escrows or impound accounts is to encourage regular and timely renewals by lenders. It appears as though the Agencies are now suggesting that lenders finance this period from their internal funds. In addition the practice encouraged by the regulators will result in more properties with coverage gaps, and more uninsured losses.

Your position conflicts with the housing GSEs
Because the housing GSE's require continuous coverage, this new Q&A puts lenders in the awkward position of having to defy the Agencies, be out of compliance with their investors (who require continuous coverage at the borrower’s expense) or pay for a policy to cover the gap.

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

Sincerely,

Michael J. Moye, President
National Lenders’ Insurance Council