



May 20, 2008

Jennifer J. Johnson, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551.

Subject:
“Loans in Areas Having Special Flood Hazards;
Interagency Questions and Answers Regarding Flood Insurance”
Agency Federal Reserve Bank
Docket No. OP-1311

Dear Sirs:

On March 21, 2008, the Federal Regulators jointly issued a Notice in the Federal Register requesting public comment on the proposed revisions to the 1997 FFIEC “Interagency Questions and Answers Regarding Flood Insurance” (“Q&A”). As specified within the attached document, Comerica Bank urges your consideration of our concerns with regard to particular guidance provided in the proposed Q&A.

The following comments are provided on behalf of Comerica Incorporated, a \$67 billion bank holding company located in various states including Arizona, California, Florida, Michigan and Texas. We appreciate the opportunity to provide our comments.

Sincerely,

Julie Frank
National Operations Manager
Vice President
Consumer Compliance Unit

Question 6

Is a lender required to perform a review of its, or its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?

Response

The answer to this question states the lender is not responsible for reviewing its portfolio for compliance with the flood insurance requirements under the Act and Regulation. In FEMA's Mandatory Purchase of Flood Insurance Guidelines (the Guidelines) there are two sections that contradict each other.

The Guidelines, at page 19, 1st column, 2nd bullet state that FEMA will publish in the Federal Register, every 6 months, a compendium of all changes to FIRM panels, all new FIRM panels, all LOMA's, LOMR-F's, and LOMR's published during the preceding 6 months. The last sentence in that section states, a lender should review its loans located within the geographic areas impacted by the FIRM panel changes noted in the compendium. If a lender becomes aware that any buildings on which it has loans are brought within an SFHA, the mandatory purchase requirements must be met.

The Guidelines Page 55 indicates apart from the requirements mandated on an origination of a loan, a regulated lender need only review and take action on any part of its existing portfolio, i.e., "look forward," for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. However, scheduled periodic reviews that track the need for flood insurance on loan portfolios are encouraged. The 1994 Reform Act does require lenders to check the status of security property for loans when triggered by the statutory tripwires. However, the Reform Act did not add remappings to the list of statutory tripwires. Neither the Reform Act nor the agencies' regulations require lenders to monitor for map changes.

Further clarification is needed to address the following issue:

Is it the lender's responsibility (outside of triggering events) to monitor for map changes on a regular basis?

Question 7

The regulation states that the amount of flood insurance required "must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act." What is meant by the "maximum limit of coverage available for the particular type of property under the Act?"

Response

Further clarification is needed to address the following issues:

- For this Q & A, is the “maximum limit of coverage available for the particular type of property under the Act” defined as maximum amount available under the Act (currently \$250,000 for a residential building and \$500,000 for a nonresidential building), or the insurable value of the building or mobile home?
- What are the definition of insurable value and replacement cost value (RCV)?
- Are insurable value and RCV interchangeable?
- When the declaration page does not list the insurable value or RCV, what value should be used?
- What is the lender’s responsibility in validating insurable value or RCV?
- If the insurable value or RCV amount is substantially different than the appraised value what is the lender’s responsibility to address this?

Question 19

When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in a SFHA in which flood insurance is available?

Response

One of the options in the Q & A is for the lender to require flood insurance prior to loan origination. On ground up construction loans, lenders have encountered problems obtaining flood insurance prior to loan origination. Insurance agents can not obtain fee quotes from FEMA or provide a policy/coverage until the foundation slab has been poured and/or an elevation certificate has been issued.

The second option is to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued, provided that the lender requires the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush or the purchase and/or delivery of building materials). In situations where the borrower uses their own funds for the initial construction of the building and later in the construction phase comes to the lender for an advance, when is the lender responsible for monitoring and obtaining flood insurance prior to the release of the first draw? If the borrower is using the first draw for architectural fees, blue prints, and like fees does flood insurance need to be obtained at this point in time?

Question 24

What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?

Response

Effective October 1, 2007, the Declarations Page of each RCBAP issued or renewed must show the building’s replacement cost value and the number of units within that building. Insurance companies have been inconsistent in providing replacement cost, number of units, percentage of replacement cost value on the RCBAP declaration page. Lenders spend a significant amount of time investigating these issues to ensure they are in compliance.

Examples of issues lenders have encountered are as follows:

- Lenders are having difficulty obtaining what FEMA deems acceptable proof of insurance.
- Some insurance companies are only providing certificates of insurance or evidence of insurance instead of a Declarations Page.
- Some insurance companies are unwilling to provide 100% of the replacement cost value of the building under RCBAP.
- Condominium associations are under the impression that they have a choice of obtaining 80% to 100% of the replacement cost value of the building under RCBAP.
- Flood zone designation inconsistencies with Standard Flood Hazard Determination vendors (specific location of building versus geocoding based on street address). For example, a portion of the property is located in flood zone A, the street in front of the property is located in flood zone C and the building is located in flood zone A.

Our recommendation to ensure compliance and reduce the risk of inadequate flood insurance on Condos would be to;

- Standardize the way flood coverage is reported within a condo policy and ;
- Make it mandatory for insurance companies to submit RCBAP declaration pages for the flood policy which include number of units, replacement cost value and percentage of replacement cost value.
- Require insurance companies to provide evidence how replacement cost was validated.
- Standardize the interpretation of the maps between Standard Flood Hazard Determination vendors and insurance companies.

If the goal is to cover the building in a flood then these issues should be addressed at the insurance company level verses lender level. It would be both economical and more effective to administer and ensure compliance.

Question 26

What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?

Response

If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request the individual unit owner/borrower to ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements. If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance. The 45 day requirement does not allow enough time for the lender to advise the borrower, and for the borrower to work with the condominium association. There should be an extension of the 45 day requirement to allow adequate time to obtain sufficient insurance when the RCBAP insurance requirement is not met.

Question 27

What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?

Response

If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. Since a unit owner's mortgage lender has no direct interest in an RCBAP and is not to be listed as an additional named insured on the policy declaration page, how will the lender be notified when the RCBAP lapses. The agencies need to provide more clarification to the lender of the steps that need to be taken to determine if there is a lapse in existing RCBAP coverage. If the RCBAP policy expires during an interim period lenders will only know there has been a lapse in coverage at the point when they do not receive a RCBAP renewal policy.

Question 32

When a lender makes a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

Response

A lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently \$250,000 for a residential building and \$500,000 for a nonresidential building), or the insurable value of the building or mobile home.

Since lenders are not always cooperative sharing outstanding balance information with other lenders, the following questions need to be answered in the Q & A:

- What is the lender's duty in determining the value of another lender's first lien or other subordinate liens? At time of closing? At time of renewal?

Question 35

Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?

Response

This question and answer merely states that content insurance is required in certain instances. Lenders struggle with determining how much content insurance is required. For instance, consider the following scenario on a commercial building that many lenders might face:

Loan Amount \$200,000
Building Value \$150,000
Content Value \$100,000
Maximum Insurance \$500,000 each (contents & building)

Must the lenders obtain flood insurance for \$150,000 on the building and \$100,000 on the contents? If so, the total insurance in place on the loan would be \$250,000. Is this required when the amount of the loan is only for \$200,000? Can we apply the “multiple building” logic (see Q & A Question 11) and only insure the building and contents for a total of \$200,000 as long as some insurance is allocated to each (for example, \$150,000 to the building and \$50,000 to the contents)? The agencies should clarify exactly how much building and content insurance will be required to meet regulatory guidelines. Examples of calculating the proper building and content insurance would be beneficial.

Question 40

How do the agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication/participation?

Response

The Agencies expect the participating lender to have 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 should only apply to syndication loans versus a participation loan arrangement.

In a participation loan arrangement, the lender does not have a triggering event of making, increasing, renewing or extending a loan. Lenders in the bank group have purchased a share of an existing loan made by the lead lender. Since the direct promise to pay is to the lead lender, why does the participating lender have to monitor the lead lender’s activities? While participating lenders may monitor the lead lender's compliance with flood insurance requirements as a matter of prudent banking practice, we do not believe it is required under the Act.

For syndications, the opposite is true. In a syndication, the borrower promises to repay each of the lenders their pro-rata share of the loan. In this instance each lender has made a loan directly to the borrower and their portion of the transaction is being serviced on their behalf by the lead bank.

Participating lenders need guidance what they should do if the lead lender fails to perform its obligations. The responsibility of monitoring the lead lender could potentially place participating lenders in the business of acting as mediator between the lead lender, borrower, and insurance agencies. And, what "adequate steps" must we take to assure the lead lender will continue to comply with flood insurance requirements?

Question 54

What is the requirement for the forced placement of flood insurance under the Act and Regulation?

Response

A lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower the cost of premiums and fees to obtain the coverage. If adequate insurance is not obtained within the 45-day period, then the

insurance must be force placed. Need clarification on the date force placement should occur. In a situation where the borrower does not obtain adequate flood insurance within the 45 day notification period does force placement occur on the 45th or 46th day?

Question 64 and Question 65

64 - What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

65 - Can a lender be found in violation of the requirements of federal flood insurance regulations if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

Response

Lender have concerns about the proposed questions and answers for 64 and 65 which require that lenders have processes in place to identify and resolve flood zone discrepancies between the lender institution institution's Standard Flood Hazard Determination form ("SFHD") and the NFIP flood insurance policy.

By executing sanctions against lenders for not successfully identifying and resolving flood zone discrepancies, the proposed Q & A appears to create a duty for lenders which presently does not exist under the federal regulations, that is, a duty to ensure that a flood insurance policy is rated properly.

Currently in order to be compliant, lenders must ensure that:

- Flood insurance is in place on designated loans and;
- Is in an amount sufficient according to the requirements.

There is no reference in the legislative history of the Act, that equates the flood hazard zone designation used by an insurance company to rate a policy to a lender's compliance requirements.

Lenders do not have influence over NFIP or Write Your Own Companies, thus a duty would be created without providing lenders with the authority to effectively fulfill that duty.

In order for lenders to remain in compliance with the proposed changes, lenders would not be able to close or renew loans until the discrepancies were resolved. This could impact borrower's availability of credit and potentially could increase default rates if the inadequate insurance acceleration clause was used.

Our recommendation would be the for the lender to be responsible for notifying the borrower and FEMA if there is a discrepancy between the lender's SFHD and the NFIP flood insurance policy. The lender's responsibility should be to validate if the borrower has adequate insurance not to be a mediator between the SFHD vendor, the insurance agents and borrower.

Additional clarification is requested for the following:

Issue 1 - FEMA General Property Policy Form and Dwelling Policy Form

Part VII General Conditions Section Q. Mortgage Clause

The word "mortgagee" includes trustee. Any loss payable under Coverage A - Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

Link to FEMA policy forms. <http://www.fema.gov/business/nfip/sfip.shtm>

Questions

Do we need to be named as mortgagee and/or loss payee on the declaration page?

(Outside of RCBAP requirements)

Can mortgagee and loss payee be used interchangeably for building and personal property coverage?

Issue 2 – Grandfather Rules

Per FEMA Insurance Outreach Tool Kit FEMA Grandfathering Flow Chart defines the Grandfathering Rule as follows:

Pre-FIRM (construction prior to the date of the community's initial FIRM)

- If a policy was obtained prior to the effective date of a map change, the policyholder is eligible to maintain the prior zone and base flood elevation as long as continuous coverage is maintained. The policy can be assigned to a new owner at the option of the policyholder.
- If a building is Pre-FIRM and a policy was not obtained prior to the effective date of a map change, the applicant is eligible to receive the Pre-FIRM (subsidized) rates based on the new zone rather than the actuarial (elevation based) rates.

Post-FIRM (construction on or after the date of the community's initial FIRM)

- If a policy was obtained prior to the effective date of a map change, the policyholder is eligible to maintain the prior zone and base flood elevation as long as continuous coverage is maintained. The policy can be assigned to a new owner at the option of the policyholder.
- If a building was constructed in compliance with a specific FIRM, the owner is always eligible to obtain a policy using the zone and base flood elevation from that FIRM, provided that proof (refer to the Flood Insurance Manual, Rating section for acceptable documentation) is submitted to the insurance company. Continuous coverage is not required.

Per NFIP Mandatory Purchase of Flood Insurance Guidelines, September 2007 the Grandfathering Rule (Page 13)

The Grandfathering Rule is defined as follows:

When a new policy is applied for, the rates can be based on the FIRM zone and the BFE on the old map in effect on the date the building was constructed provided that:

- The building was built in compliance with the map in effect at the time of construction;
and

- The building has not been altered in any way that has resulted in a lowest floor, for rating purposes, situated lower than the BFE on that FIRM (e.g., enclosing the area below an elevated building); and
- The building has not been substantially improved.

The property owner or insurance producer must provide proper documentation to the Write Your Own (WYO) Company or NFIP Servicing Agent. The documentation must include: the date of construction; the date of the FIRM; the zone on that FIRM in which the property is located; the BFE, if any, for that zone; a copy of the map panel showing the location of the building; and the rating element that is to be grandfathered (e.g., zone, BFE, elevation difference). A letter from a community official verifying this information also is acceptable.

Questions

A building is Pre-Firm construction, and continuous coverage is maintained. Is the policyholder eligible to maintain the prior zone and base flood elevation? What is the lender's responsibility in obtaining adequate documentation to support the Grandfathering Rule?

A building is Post-Firm, the policy was obtained prior to the effective date of a map change, and continuous coverage is maintained. Is the policyholder eligible to maintain the prior zone and base flood elevation? What is the lender's responsibility in obtaining adequate documentation to support the Grandfathering Rule?

A building is Post-Firm, the policy was obtained after the effective date of a map change, and continuous coverage is not maintained. Is the policyholder eligible to maintain the prior zone and base flood elevation? What is the lender's responsibility in obtaining adequate documentation to support the Grandfathering Rule? If adequate documentation can not be obtained, and the borrower fails to purchase flood insurance within the 45 day notification period, should the lender begin force placement?