



May 20, 2008

VIA FACSIMILE (202) 906-6518

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2008-0001

Re: Proposed Revisions to Interagency Questions and Answers Regarding Flood Insurance; Docket ID OTS-2008-0001

On March 21, 2008, the Office of Thrift Supervision, in conjunction with the other federal financial regulatory agencies, proposed revisions to the *Interagency Questions and Answers Regarding Flood Insurance* ("Proposed Q & A"), to help financial institutions meet their responsibilities under the federal flood insurance regulations. Downey Savings and Loan Association, F.A. appreciates the opportunity to provide comments to the Proposed Q & A, and we respectfully submit the following:

Proposed Section II, Q & A 7 – Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

Proposed Q & A 7 acknowledges that lenders often follow the same practice used to establish other hazard insurance coverage amounts when calculating the replacement cost value of a structure for determining the appropriate amount of coverage for flood insurance. A hazard insurance replacement cost value is available on all secured properties and thus provides a reasonable choice for lenders to use to determine replacement cost value for flood insurance purposes. However, in some instances, there may be a difference in the calculation of the insured premises (e.g., the foundation of the building) under the hazard policy versus the flood insurance policy. Lenders typically do not have sufficient information available from the appraisal to determine a more exact replacement cost value than that used for the hazard insurance policy. If the agencies require that lenders take into consideration additional information or other resources that may be available, we encourage the regulatory agencies to clarify this requirement and include references to acceptable resources as part of a final Q & A. Alternatively, we recommend that the Proposed Q & A be clarified to include a safe harbor for lenders who rely on hazard insurance replacement cost values in determining coverage amounts for flood insurance.



Proposed Section XII, Q & A 57 - Gap Insurance Policies

The Proposed Q & A describes the limited circumstances in which a gap or blanket insurance policy may satisfy a lender's flood insurance obligation. However, the Proposed Q & A uses these terms interchangeably and without defining or otherwise describing the differences between the two types of policies, both of which are currently available only from private insurance companies. A blanket insurance policy can insure multiple properties without identifying a specific property or borrower, while a gap insurance policy typically insures a specific property and protects either the lender's, or the lender's and the borrower's, interests, depending on the availability and type of gap coverage the lender is able to obtain. The Proposed Q & A should be clarified to confirm whether lenders may utilize this type of gap policy as a force-placed flood insurance policy after expiration of the 45-day force placement notice period.

The Proposed Q & A also explains that gap or blanket coverage may be appropriate when a designated loan does not have sufficient coverage, but the underinsured borrower refuses to increase his/her NFIP coverage to satisfy flood insurance requirements, and the lender is unable to force-place private insurance. The *Mandatory Purchase of Flood Insurance Guidelines* ("the Guidelines") published by FEMA in September 2007 recommend that lenders and servicers force place coverage with either a Mortgage Portfolio Protection Program (MPPP) policy through a WYO insurer, an SFIP through either a WYO insurer or the NFIP Servicing Agent, or obtain non-NFIP flood coverage from a private industry insurer. While MPPP policies and SFIP policies are generally available to lenders where the borrower is uninsured, many lenders have experienced problems obtaining the additional coverage required to satisfy the flood insurance regulations when the borrower is *underinsured*. For example, MPPP policies are available only where there is no evidence of flood insurance on a designated property, but not on underinsured properties. Lenders also typically cannot use a NFIP policy to force place the additional amount of required insurance because the second NFIP policy will be cancelled, per the Guidelines and the Flood Insurance Manual. And thus, the only option available to lenders in an underinsurance situation is non-NFIP flood coverage, and the Proposed Q & A should clarify that such coverage is appropriate in such instances.

Proposed Section XV, Q & A 64 and 65 - Flood Zone Discrepancies

The Proposed answers to questions 64 and 65 require lenders to have a process in place to identify and resolve discrepancies between the flood hazard zone designation on the flood determination form and the flood insurance policy, including whether an application of the "Grandfather Rule" is appropriate.

The grandfathering rules are of particular importance to lenders originating loans secured by properties located in the State of California as FEMA plans to issue new FIRMs for California this year. We agree that the Grandfather Rule is beneficial to borrowers in that it permits continued use of a prior, more beneficial, rating on an insured property if certain conditions are met. However, we believe that placing the duty on the lender to investigate and resolve such a discrepancy is a regulatory and administrative burden because the documentation required for conducting the necessary investigation is not readily available to lenders. Such a burden is more properly placed on the borrowers seeking to benefit from a prior, more favorable, flood insurance policy rating, as they have access to the necessary documentation through their insurance agents.

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Additionally, while FEMA's Letter of Determination Review (LODR) process may be an appropriate avenue for resolving some flood hazard zone discrepancies, it may place an undue burden on borrowers, lenders, and sellers in purchase transactions, if closings must be delayed pending FEMA's issuance of a determination resolving a flood zone discrepancy. As such, we encourage the regulatory agencies to revise the Proposed Q & A to clarify that closing is not required to be delayed under such circumstances.

Moreover, the LODR process is not available if a borrower is unwilling to join the lender in initiating a FEMA review. Although lenders may rely on their own flood zone determination, there is currently no mechanism for lenders to require borrowers to modify an otherwise acceptable flood insurance policy, or for the lender to force-place the additional insurance, and thus higher premium, associated with the higher risk flood zone. Also, and as noted in the comment letter submitted by the National Flood Determination Association, appropriate remedies already exist to address improperly rated policies in the event of a loss, including contractual provisions in NFIP policies permitting a temporary reduction in the amount of available coverage and notification to the policyholder that an additional premium is required to reform the policy coverage back to the original amount. As such, we recommend that lenders be permitted to give a notice to the borrower stating that we are accepting the borrower's flood insurance coverage, but there is a flood zone discrepancy that cannot be resolved, and in the event of a loss the borrower may be required to pay additional premiums. Giving such a notice should constitute a safe harbor under the flood insurance regulations.

Thank you for considering our comments, and please feel free to contact me at (949) 725-4794 with questions.

Sincerely,



Sharon B. Madsen
Senior Vice President
Director of Compliance