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Sent: Wednesday, May 14, 2008 12:31 PM

To: Comments, Regs

Subject: ID OTD-2008-001

May 12, 2008

E-mail: regs.comments@ots.treas.gov Subject: ID OTS-2008-0001

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: ID OTS-2008-001
Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers
Regarding Flood Insurance

Dear Chief Counsel:

We appreciate the opportunity to comment on the proposed Interagency Questions and Answers Regarding Flood Insurance.

Following are our comments on the proposed Frequently Asked Questions (FAQs) in which further clarification by the regulatory agencies would be appreciated.

Question/Answer #3 & #40

Purchased 100% vs Less than 100% Purchased:

The answer to question #3 states a purchased loan (100% purchased) is not an event that triggers the flood insurance requirements. The answer to question #40 states, "*each participating lender remains individually responsible for ensuring compliance with the Act and Regulation.*" It also indicates the Regulatory Agencies expect that all lenders of a participation loan (less than 100% purchased) have controls in place to ensure compliance with the flood insurance requirements.

Is there an intended difference between a partial loan purchase and a 100% loan purchase?

Question/Answer #7, #10, #12, etc.

Insurable Value and Overall Value:

The term “insurable value” is a key term referenced throughout the proposed questions and answers. Question seven attempts to define “insurable value.” However, the definition provided, (“*the overall value of the property securing the designated loan minus the value of the land on which the property is located,*”) only leads to more questions because the term “overall value” is used in the definition but it is not defined. Please define the terms “overall value” and “insurable value”.

100% Replacement Cost Value & Difficulty of Determining RCV:

We would also like to see clarification of another area of confusion pertaining to the amount of flood insurance. The Mandatory Purchase of Flood Insurance Guidelines (MPFIG) indicates the term “insurable value” means “100% replacement cost value”. We have heard that Federal regulatory field examiners expect RCV to be used when calculating the correct amount of flood insurance.

We have found it very difficult to determine what is the replacement cost value. Is it the current area average per square foot cost of construction for the applicable structure? Is it what one insurance agent indicates is the replacement cost value? If a policyholder does not purchase a hazard policy with replacement cost coverage, it becomes even more difficult to ask an insurance agent to provide us with the replacement cost. To our knowledge there is not a standard, published guide to use in determining replacement cost value. If so, please state possible sources of this information in the Q & A.

In addition if there are only two types of structures that will ever receive a flood settlement using RCV at the time of a loss: principal residences that are fully insured and residential condominiums. All other structures will be settled using actual cash value at the time of a loss. To force lenders to require borrowers to purchase flood insurance up to the RCV will result in many instances in which the insurance pay out will never be realized at the time of a loss. This practice does not seem prudent, will be difficult for lenders to require, will cause lenders to suffer reputation risk and may be seen as an unfair and/or deceptive act or practice. Our compliance consultant indicated that the MPFIG even states that using replacement cost value (RCV) “*meets or exceeds the minimal compliance standards*” (page 27 of the FEMA Guidelines).

We ask there be a clarification made that lenders are NOT required to use RCV when calculating insurance coverage. But in the event RCV is required, then clearly lay out how RCV is to be determined.

Question/Answer #21 & #22

Agricultural Lending and Other Types of Lending

These questions specifically address agricultural lending yet question #21 states the “*Act does not differentiate agricultural lending from other types of lending*”. Would like to have the answer to include a comment that this answer would also apply to other types of commercial or residential lending—not just limited to Agricultural Lending.

Question/Answer #31, #33, & #61

Flood Determination Timing

The answer to this question states “requires a flood determination when application is made for the loan”. A different word needs to be used to refer back to the origination timing of the loan as “application” may lead to confusion as to allowable time limits. Since loans may be withdrawn or denied before a flood determination would be necessary, we feel it would be best to avoid the word “application” as this may lead to an incorrect interpretation over time by regulators and users.

Subordinate Lien and Types

The subordinate lien mentioned in Q#33 answer appears to be limited to home equity loans. This requirement applies to any subordinate lien secured by the improved real estate not just home equity loans. Please clarify that this answer applies to all subordinate lien loans.

“Making” of a Loan:

Clarify that “making of a loan” means a new loan secured by real estate property on which the same financial institution does not have an existing lien?

Question/Answer #35

Content Insurance:

This question and answer merely states that content insurance is required in certain instances. Please clarify exactly how much content insurance will be required to meet regulatory guidelines in combination with building levels. Examples of calculating the proper content insurance would also be very beneficial.

Question/Answer #61 (see comments in question 31 also)

Extending a Loan - Skip a Payment:

If bank has a seasonal “skip a payment” program or agrees to “skip a payment”, are either considered to be classified as an extension of the loan?

Section XI Force Placement

Clarify the required timeline for obtaining flood insurance. Is insurance required (a) 45 days from the date the bank received the cancellation notice, (b) 45 days from the cancellation date stated in the cancellation notice, or (c) 45 days from the date the borrower receives the notification from the bank?

Forced Place or Pay Borrower’s Own Premium

If cancellation cause is nonpayment of premium, a financial institution may elect to pay the borrower’s current policy premium and would not be purchasing a “forced place” policy. Clarify that bank could obtain flood coverage on the property by multiple methods.

Question # 72

Notification of Flood Zone for Subsequent Loans when Prior Determination is used:
Since neither the Regulation nor the preamble address waiving the notice to the borrower, is it not possible for the Interagency Group to provide a group interpretation that would waive the subsequent notice to borrower requirement for those times when the regulation's provisions provide that a new determination is not required? Waiving notice would be applicable for situations in which adequate flood insurance is already in place with the same lender.

Thank you again for the opportunity to submit comments on this helpful Q & A format for flood guidance.

Sincerely,

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