Memorandum

Date: May 20, 2008

To: Office of the Comptroller of the Currency (regs.comments@occ.treas.gov)
Board of Governors of the Federal Reserve System (regs.comments@federalreserve.gov)
Federal Deposit Insurance Corporation ((Comments@FDIC.gov)
Office of Thrift Supervision (regs.comments@ots.treas.gov)
Farm Credit Administration (regcomm@fca.gov)
National Credit Union Administration (regcomments@ncua.gov)

From: ZC Sterling Corporation
Wade Hardcastle (wade.hardcastle@zcsterling.com)
Director of Hazard Insurance Services and Compliance

RE: **Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance**
OCC Docket ID OCC-2008-0002
Board Docket No. OP-1311
FDIC RIN Number 3064-ZA00
OTS ID OTS-2008-0001
Farm Credit Administration
National Credit Union Administration

The following comments are submitted by ZC Sterling on our behalf and behalf our lender clients. ZC Sterling provides automated tracking of flood insurance for mortgage lenders including originators, servicers on behalf of other investors, servicers on behalf of the GSEs, and servicers on behalf of government loans (FHA and VA). ZC Sterling also provides lender placed flood insurance through private insurance programs. ZC Sterling has provided loan tracking services and lender placed insurance for over 30 years and has provided lender placed flood insurance under the NFIP MPPP and private insurers for almost 14 years. The opinions expressed are those of ZC Sterling and do not necessarily represent the opinions of our clients, although these issues have been discussed with several clients which have requested that we provide comments on the proposed revisions to the 1997 Interagency Questions and Answers.

This document uses the term "lender(s)" related to companies which originate and service mortgage loans on their own behalf, servicers on behalf of private investors, the GSEs, and government insured loans. "Lender placed flood insurance" refers to flood insurance obtained by lenders through the private insurance market when borrowers fail to provide required insurance. "MPPP" will be used to reference the NFIP forced order flood insurance program.

We appreciate the opportunity to provide these comments. We request consideration as you work toward finalization of the Interagency Q&A.

Section VI. Flood insurance requirements for residential condominiums.

We agree with the Interagency Q&A that the appropriate amount of RCBAP coverage is 100% of the insurable value or the number of units multiplied by $250,000, whichever is less. We disagree that the lender and borrower should be forced to obtain a unit owner dwelling policy if the RCBAP coverage is less than these requirements. The lender is not a party to the RCBAP and the lender and borrower have limited influence over coverage limits chosen by the homeowner's association. We believe the objective of Interagency Q&A #24 can best be achieved by requiring insurers to issue RCBAP policies for lesser of

100% of the insured value or the number of units multiplied by $250,000. If insurers were required to provide coverage for these limits the issue of inadequate condominium coverage would be eliminated.

Lenders and borrowers required to obtain a dwelling policy because the RCBAP policy coverage is less than 100% may not receive full benefit for the coverage purchased. The dwelling policy will not extend RCBAP limits, will not cover the association's policy deductible, will not address the loss assessment coverage (unless the RCBAP provides at least 80% of the building value), and will not fill in gaps created by the RCBAP policy. The proposed Interagency Q&A indicates that lenders should "understand these limitations" although it requires the lender to force borrowers to pay for coverage that may provide no benefit. The Q&A places the burden on borrowers to require their homeowners association to increase the RCBAP coverage amount, although the borrower often lacks the ability to enforce this requirement.

We believe FEMA must work with its appointed insurers to enforce the higher RCBAP coverage limits. Based on information from the Condominium Flood Workgroup, FEMA determined that of 78,743 RCBAP policies inforce, 93.1% were insured for at least 80% of the insured value. FEMA should work with insurers writing the remaining 7% RCBAP that are not insured to at least 80%.

XI. Forced Placement of Flood Insurance

We suggest this section include an additional Q&A related to the force placement of flood insurance through private insurers. The Mandatory Purchase of Flood Insurance Guidelines requires the lender to provide 45-day notice before they obtain MPPP coverage. This 45-day period is dictated more by the structure of the NFIP than the protection of the lender or borrower against flood loss. The NFIP provides 30-day extended coverage to the lender, but leaves the borrower uninsured and results in an additional 15-day period where the lender and borrower are not protected against flood loss.

Lender placed flood insurance issued through private insurers addresses this need by making lender placed coverage available immediately upon termination of the NFIP. The NFIP permits flood insurance written through private insurance. Basic standards for private insurance are outlined in the Mandatory Purchase of Flood Insurance Guidelines, but these guidelines do not restrict private insurers from providing additional coverage including increased limits, expanded coverage, automatic coverage, and waiver of waiting periods and notice periods. Interagency Q&A #13 states that a "lender is permitted to require more flood insurance coverage than required by Regulation" and indicates that the lender or borrower "may have to seek such coverage outside the NFIP". We understand the specific reference to coverage amount, but the response further states that "each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral".

Even though MPPP requires 45-days between termination and effectuation of coverage, most private insurers provide immediate coverage upon the termination of the NFIP policy. The availability of immediate coverage fully protects the lender and borrower and complies with the requirement that flood coverage be maintained throughout the term of the loan. Lender placed flood insurance provides a distinct compliment to the lender's flood program by making immediate coverage available for properties which are located within a participating community and in a SFHA when the loan was made, increased, extended or renewed.

If the property has been determined to meet the mandatory purchase requirements subsequent to the lender making, increasing, extending or renewing the loan, we agree that coverage should not be issued until the end of the 45-day notice period in order to provide the borrower an opportunity to obtain voluntary coverage.

If the lender receives evidence of voluntary coverage, the lender placed policy is cancelled as of the effective date of the voluntary coverage. The borrower is only charged for any lapse in insurance coverage. The provision of immediate coverage for borrowers located in a participating community within an SFHA when the loan was made, increased, extended or renewed is an appropriate method for maintaining the safety and soundness of the lender's flood insurance program, as well as preventing any period of uninsured loss.

We request consideration of an additional Q&A to address lender questions regarding the 45-day notice period and lender placed private flood insurance.

XII. Gap Insurance Policies

We request reconsideration of the Interagency Q&A response to this issue. We believe there are instances when lender placed flood insurance provided by gap or blanket policies issued through private insurers is the most appropriate method, and in some cases the only method, to fully protect the lender's and borrower's interest in the property and fully comply with federal flood regulations.

The Interagency Q&A uses these terms synonymously, although in most cases the terms refer to two distinct types of coverage. We understand there may be a variety of products which reference these terms and believe the Interagency Q&A should clearly define these terms.

"Gap" flood insurance, more commonly known as "deficiency coverage", generally protects the interest of the lender and borrower against uninsured loss when the borrower has failed to secure flood insurance which meets the minimum coverage requirements of the lender. Lender placed coverage deficiency policies have taken a more prominent role in private flood insurance over the past five years based on requirements by the GSE that lenders obtain supplemental coverage when the borrower's NFIP coverage limits did not meet the requirements of the GSE. Although these requirements were revised in 2006 and 2007 by Freddie Mac and Fannie Mae, deficiency or gap policies are still used by many lenders to provide supplemental coverage when the borrower's NFIP does not meet the lender's coverage requirements. Despite revisions to the GSE minimum requirements, many lenders continue to require flood coverage for amounts similar to those required for hazard insurance as encouraged by the Mandatory Purchase Guidelines. Deficiency policies generally provide coverage for both the borrower and lender, as their interest may appear, if the amount of the underlying NFIP coverage is inadequate.

Blanket policies, although sometimes used synonymously with Gap or Deficiency, generally provide an alternative to the lender for different circumstances. Blanket insurance is obtained by the lender to protect its interest (and possibly the interest of the borrower) when despite best efforts of the lender to obtain evidence of flood insurance, the lender experiences an uninsured loss. Lenders who service portfolios containing condominium or secondary loans may find blanket policies necessary for the safety and soundness of their portfolio. When servicing these loans, despite best efforts, uninsured situations may exist which become apparent only at the time of loss. This concern is amplified because the lender is not a party to the RCBAP policy. Lenders which confirm coverage whenever they "make, increase, extend or renew" a loan, may find it more difficult to confirm coverage as the loan matures. Similar situations exist on secondary loans where coverage was confirmed at loan origination but due to changes with the primary loan servicer or insurance carrier ongoing insurance verification becomes extremely difficult. Blanket coverage is not obtained by lenders to reduce the need for insurance verification, but to act as a backup when an uninsured loss occurs.

We understand the concerns of the Interagency Q&A, but suggest that there are ways to make these coverages more acceptable to the flood program. Deficiency policies issued for the difference between the borrower's coverage and the lender's requirements written through private insurance on a dual interest (both lender and borrower) basis comply with the general intention of the NFIP. Blanket coverage used as a backup for the safety and soundness of the lender's portfolio can meet the guidelines of the interagency. Lenders will still be responsible to confirm coverage when they "make, increase, extend or renew" a loan, with periodic audits of coverage, and the blanket will provide an additional layer of security.

In the absence of these coverages, lenders would be forced to reject policies which provide inadequate flood coverage and lender place for the full amount of coverage required by the NFIP or investors. When the lender purchases a deficiency policy they acknowledge the borrower's existing coverage (which may include contents or other available optional coverages) and avoid duplicating coverage or premium charges to the borrower. Lender placed deficiency policies may or may not be currently transferrable upon sale of the servicing rights, but we believe that the private insurance industry would be willing to allow transfer of these policies to the new servicer for a limited period of time in order to meet the requirements of the Interagency guidelines.

We encourage revision of the Interagency Q&A to permit gap (deficiency) and blanket policies as additional tools for the lenders to protect their portfolios.

XV. Flood Zone Discrepancies

This section of the Interagency Q&A would provide two new responses related to discrepancies between the flood zone on the Flood Hazard Zone Determination and the flood zone used to rate the NFIP by the insurance agent or carrier. This new requirement places the lender in the position of enforcing the insurers responsibility to correctly issue NFIP policies, increases the lender's burden to verify the appropriate rating of flood policies even when insurer documentation does not provide all necessary information (such as administrative grandfathering), may delay future loan closings for indeterminate periods while lenders work with the insurer to resolve differences, and ignores the existing remedy for discrepancies within the NFIP policy form.

The NFIP policy provides a remedy without placing additional burdens on the lender or borrower. If a coverage error occurs, the borrower or lender may reconcile this through payment of the premium differential (the amount of premium that would have been charged if the policy was correctly) or by reducing the amount of claim payment. Our experience is that in these situations the lender and borrower are seldom penalized without recourse through one of these methods.

Although we have seen no evidence that this issue presents a significant challenge to the NFIP, FEMA and their insurers are in the best position to address issues related to incorrect flood zone determination. Additionally, FEMA has more leverage to enforce correct policy issuance than does the lender. We request that the Interagency Q&A be revised to remove this requirement.

ZC Sterling thanks you for the opportunity to provide comments related to the proposed Interagency Q&A revisions. Please feel free to contact us at 1-800-5478-7200, extension 6470, if you have any questions or need further information.