

May 20, 2008

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW.  
Washington, DC 20551  
Attention: Docket No. OP-1311

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW.  
Washington, DC 20552  
Attention: OTS-2007-0001

RE: Loans in Areas Having Special Flood Hazard; Interagency Questions and Answers Regarding Flood Insurance (the "Interagency Questions and Answers" or "Interagency QNAs")

Dear Sir or Madame:

Thank you for the opportunity to be heard in connection with the Interagency Questions and Answers. Wilmington Trust Corporation is a financial holding company under the Bank Holding Company Act. It owns three depository institutions – two state-chartered banks, both of which are members of the Federal Reserve System, and a federally-chartered savings bank. At this time, our comments below are limited to question 57, gap insurance policies. The terms not defined herein have the same meaning as those contained in the Interagency Questions and Answers.

Section XII. Gap Insurance Policies – Question 57

We believe a lender may satisfy its obligations under the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, and the federal banking agency flood insurance regulations (the "Flood Insurance Rules"), if adequate coverage is lacking, by obtaining ahead of time, a blanket "gap" insurance policy that protects the lender and borrower against any deficiencies in coverage.

We believe that an examination of the statutory and regulatory language provisions governing "force placed" insurance makes it clear that as long as the insurer and the "gap" blanket insurance policy meet all applicable requirements of the Federal Emergency Management Agency ("FEMA"), and as long as the lender provides the requisite notice to the borrower that is required when there is a deficiency in coverage, "gap" blanket insurance is permitted.

If at any time during the term of a designated loan, the lender determines that flood insurance coverage is non-existent or inadequate, then, in effect, under the Flood Insurance Rules<sup>1</sup>, the lender must notify the borrower that the borrower should obtain, at his or her expense, the requisite amount of flood insurance. The only notice required is a notice that the borrower should obtain coverage at the borrower's expense; there is no express statutory or regulatory language requirement for the lender to notify the borrower that such insurance will be "force placed" if the borrower fails to do so within 45 days after notification.

Similarly, under the Flood Insurance Rules<sup>2</sup>, the lender is required to purchase the insurance on behalf of the borrower if the borrower fails to do so within 45 days after the requisite notification; again, there is no statutory requirement for the lender to notify the borrower of that fact and there is nothing that prohibits the lender from arranging for such insurance ahead of time, at its own expense, with such coverage taking effect if the borrower fails to obtain the requisite insurance.

Moreover, we see nothing that would prohibit coverage during any gap period from the date of the deficiency through the 45-day period following notification, as well as thereafter, particularly as FEMA has specifically emphasized the benefits of private sector "gap" insurance coverage to address similar contingencies, emphasizing the benefits of "gap" coverage in the event a policy is not renewed. *See* 65 Fed. Reg. 60758, 60759 (Oct. 12, 2000)

We believe it is significant that there is no statutory or regulatory requirement for the lender to charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Instead, the lender is authorized, but not required, to charge the borrower for the cost of the insurance<sup>3</sup>. Given the lender may absorb these costs, we see no public policy reason why the lender should not be permitted to arrange for the most economical insurance available, provided that the insurer and the blanket "gap" insurance policy meet all applicable requirements of FEMA.

Moreover, we see nothing about this practice that would be inconsistent with the policies of the National Flood Insurance Program, since, as FEMA has noted in its Mandatory Purchase of Flood Insurance Guidelines, the lender is not required to obtain a standard flood insurance policy through either a "Write Your Own" insurer or an NFIP servicing agent, or, for that matter, to obtain an NFIP policy through a "Write Your Own" insurer that participates in the Mortgage Portfolio Protection Program. Instead, the lender has the same "free-choice purchase option" as the borrower, and can obtain flood coverage from any private industry insurer. *See* Mandatory Purchase of Flood Insurance Guidelines (Sept. 2007 at p. 42.)

---

<sup>1</sup> Section 102(e)(1) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act, 42 U.S.C. 4012a(e)(1). 12 C.F.R. 208.25(g) (FRB) and 12 C.F.R. 614.4945 (OTS).

<sup>2</sup> Section 102(e)(2) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act, 42 U.S.C. 4012a(e)(2). 12 C.F.R. 208.25(g) (FRB) and 12 C.F.R. 614.4945 (OTS).

<sup>3</sup> *Id.*

We address below specific arguments contained in the Interagency Questions and Answers.

Interagency QNAs: Gap or blanket insurance is not an adequate substitute for NFIP insurance.  
Response: We disagree for the reasons stated above.

Interagency QNAs: Gap or blanket policy protects only the lender, not the borrower's interest.  
Response: The borrower's interest is equal to that of the lender's interest. Indeed, the Flood Insurance Rules require flood insurance in an amount equal to the lesser of the lender's outstanding loan balance, the replacement cost of the building or mobile home or the statutory maximum amount. If the Flood Insurance Rules required lenders to protect borrowers' interest beyond its own, the Flood Insurance Rules would have mandated flood insurance coverage equal to the replacement cost of the building or mobile home for all loans secured by a building or mobile home, regardless of the amount of the outstanding loan balance.

Interagency QNAs: Gap or blanket policy may not be transferred when a loan is sold.  
Response: This is a specious argument as the potential sale of a designated loan is a subsequent event – adequate flood insurance would be verified for those designated loans that are marked for sale with servicing released during the normal due diligence process.

Interagency QNAs: Disincentive to perform due diligence to ensure there is adequate coverage.  
Response: By its terms, gap or blanket policy guarantees insurance coverage up to the maximum amount permitted under the Flood Insurance Rules for all designated loans.

Interagency QNAs: Lender substitutes a gap or blanket policy for an individual flood insurance policy would be unable to sell the loan in the secondary market, since Fannie Mae and Freddie Mac will not accept loans that are covered solely by a gap or blanket policy.  
Response: Response: This is a specious argument as the potential sale of a designated loan is a subsequent event – adequate flood insurance would be verified for those designated loans that are marked for sale with servicing released during the normal due diligence process.

Should you wish to discuss this further, you can contact me directly at (302) 651-8583 or by email at [cjaber@wilmingtontrust.com](mailto:cjaber@wilmingtontrust.com).

Respectfully submitted,



Calvin R. Jaber, CRCM, CAMS  
Vice President and Chief Compliance Officer