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**Office of Thrift Supervision**
Department of the Treasury

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This rescission applies to the transmitting document only and not the attached interagency guidance. Refer to (OCC 2009-26) for the status of the attached interagency guidance.

July 21, 2009

**MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS**

**FROM:** Montrice Godard Yakimov Montrice Godard Yakimov
Managing Director
Compliance and Consumer Protection

**SUBJECT:** Loans in Areas Having Special Flood Hazards- Interagency Questions and Answers

The Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), Farm Credit Administration (FCA) and the National Credit Union Administration (NCUA) (collectively, "the Agencies") are issuing final revisions to the Interagency Questions and Answers Regarding Flood Insurance (Q&As) to help financial institutions meet their responsibilities under federal flood insurance legislation and to increase public understanding of the flood insurance regulation. The revised Q&As contain guidance for agency personnel, financial institutions and the public. The Agencies also seek comment on five new proposed questions and answers. Comments on the proposed questions and answers are due 60 days after this notice is published.

To develop the current proposal, the Agencies proposed revisions to the existing Interagency Q&As in March 2008.[1] Among the changes the Agencies proposed were the introduction of new questions and answers in a number of areas including second lien mortgages, the imposition of civil money penalties, and loan syndications/participations. The Agencies also proposed substantive modifications to previous Q&As pertaining to construction loans and condominiums. Prior to the March 2008 proposal, the Q&As had not been revised since they were first issued in 1997. The revised Q&As supersede the existing Q&As and supplement other guidance and interpretations issued by the Agencies.

The final guidance includes 77 questions and answers, revised based on comments received. The Agencies are also proposing five new questions and answers for public comments. These Interagency Questions and Answers supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies. The revised guidance will apply to any loan that is made, increased, renewed or extended on or after the effective date of the guidance document, which will be 60 days after publication in the Federal Register.

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[1] See 73 FR 15259 (March 21, 2008).

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Highlights of the final Q&As include the following:

1. **Flood insurance requirements for residential condominiums.** The Agencies had previously provided supervisory guidance that stated that a Residential Condominium Building Association Policy (RCBAP) with coverage at 80 percent of replacement cost value was sufficient. The revised guidance will require lenders to obtain flood loss coverage at 100 percent of replacement cost. However, absent a loan refinance, increase, extension or renewal, lenders will not be required to ensure that RCBAP coverage is increased to 100 percent replacement cost on previously compliant loans made prior to the effective date of the new guidance.

2. **Amount of flood insurance for junior liens**. The final guidance clarifies steps junior lienholders should take in determining the appropriate amount of flood insurance when making, increasing, extending or renewing a second lien.

   a. A junior lienholder should work with the borrower, senior lienholder, or both of these parties to determine how much flood insurance is needed to adequately cover the improved real estate collateral to the lesser of the total outstanding principal balance on the junior lien and any senior loans; the maximum coverage available under the Act; or the insurable value of the structure.

   b. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to an existing flood insurance policy.

   c. The junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

   d. During the life of the loan, when the lender increases, extends or renews the loan, the lender could also review the borrower's credit report to establish the outstanding balances of senior liens to aid in determining `how much flood insurance is necessary upon renewal of the junior lien.

   e. Where the lender is unable to obtain information about the amount of flood insurance in place on the outstanding balance of a senior lien, the lender may presume that the amount of insurance coverage in place at the time the senior lien loan was made continues to be sufficient.

3. **Standard Flood Hazard Determination Form.** The final guidance states that while not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy.

The final Q&As also include the following new proposed questions and answers:

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1. **Determining Insurable Value**. The Agencies are proposing two new questions and answers to explain the term "insurable value." While the insurable value usually equals the replacement cost value of the building, the Agencies are proposing two alternatives to determine replacement cost value for non-residential buildings used for ranching, farming, or industrial purposes. The first alternative is the "functional building cost value" which is the cost to replace a building with less costly materials that are functionally equivalent to materials used in the original building. The second alternative is the "demolition/removal cost value" which is the cost to demolish the remaining structure and remove the debris after a flood.

2. **Force Placement.** The Agencies are proposing three new questions and answers on force placement. Pursuant to the flood insurance regulations, insurance must be force placed when the lender determines that flood insurance is inadequate or does not exist and after required notice, the borrower fails to purchase the appropriate amount of insurance. The proposed Q&As are intended to clarify that:

   a. The 45-day regulatory notice period cannot be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage.

   b. The lender or its servicer must purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay, the Agencies will expect the lender to provide a reasonable explanation for the delay.

   c. There is no legal authority for charging a borrower for a force-placed insurance policy until the 45-day notice period has expired.

A copy of the Federal Register notice which explains the final and proposed questions and answers is attached.

For additional information, please contact Ekita Mitchell at 202-906-6451.

Link: Interagency Questions and Answers Regarding Flood Insurance