



**CUNA**

Credit Union National Association

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September 21, 2009

Ms. Mary Rupp  
Secretary of the Board

1775 Duke Street  
Alexandria, Virginia 22314-3428

RE: CUNA Comments on Flood Insurance, Interagency  
Questions and Answers

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed changes to the questions and answers (Q&As) regarding flood insurance that were recently issued by the National Credit Union Administration (NCUA) and the other federal financial institution regulators. The Q&As are intended to serve as guidance on flood insurance requirements for financial institutions, agency personnel, and the public. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 8,000 state and federal credit unions, which serve 92 million members.

#### **Summary of CUNA's Comments**

- CUNA has no objections to the proposed Q&As that address replacement cost valuations for property that will not be restored to its original purpose and the proposed Q&As that address force-placed insurance.
- CUNA does have concerns with the recently finalized Q&As with regard to loan participations as we believe these will represent an inappropriate shifting of risk and responsibility from the original lender to those acquiring the participations, since the participants are being asked to take on the responsibilities of the originating lender.

## **Discussion**

The Q&As have recently been updated in response to issues that have been brought to the attention of the agencies since they were originally published in 1997. The changes include new questions and answers in a number of areas, including second lien mortgages, civil money penalties, loan participations, construction loans, and condominiums. In addition to addressing new areas, these changes are also intended to provide clearer guidance, including clarifying areas of potential misunderstanding.

At the time the updated Q&As were released, NCUA and the other federal financial institution regulators requested comment on additional Q&As with regard to replacement cost valuations and force-placed insurance. With regard to the replacement cost valuations, the new Q&As outline two alternatives for nonresidential buildings in which the borrower would not replace if damaged or destroyed or would replace differently to better reflect the purpose of the structure. One alternative would be to use a replacement cost valuation that could reflect less costly materials to be used if the replacement structure is going to be different than the original. The other alternative would be to use a valuation that reflects the cost to demolish and remove the original structure if it will not be replaced.

With regard to the force placement of flood insurance, which the lender may obtain 45 days after notifying the borrower that the previous insurance has lapsed, the new Q&As will clarify that the 45-day period cannot begin until the lender has sent the notice, regardless of when the insurance lapsed. Although the lender may delay implementing the force-placed insurance if the borrower fails to act within the 45-day period, the Q&As indicate that any delay should be brief. Lenders must provide a reasonable explanation to the borrower for the delay and may not charge the borrower for the cost of insurance coverage during this 45-day period. CUNA does not object to these additional Q&As. However, we have concerns regarding the recently issued Q&As on loan participations. These Q&As are intended to clarify that with respect to loan syndications and participations, individual participating lenders are responsible for complying with the flood insurance requirements if they acquire an interest in the loan at the time it is originated. Although this does not mean the individual lenders have to undertake the necessary actions, they must perform due diligence to ensure that the lead lender and agent are taking the necessary actions to ensure compliance.

The requirement for lenders buying a participation interest in a loan on a property in a flood zone to be responsible for ensuring flood insurance requirements are met is unreasonable and would be impractical to implement. Participating lenders can establish that as a condition to their approval of funding and closing the participation loan the lead lender comply with flood insurance requirements, but they cannot practically determine whether the condition is met until they have

purchased the participation and received copies of the loan file documentation. By that time it is too late to take corrective action because flood insurance is typically not obtained far enough in advance of the loan closing to provide an opportunity for purchasers of a participation interest to review the flood insurance documentation to ensure that adequate insurance is obtained.

Also, many lenders buy participations because it is a way to participate in residential real estate lending or commercial real estate lending without having the requisite in-house staff, training, and software. In these situations, lenders use third-party underwriters to perform their due diligence before acquiring participations. Certain third-party underwriters have indicated that it is not practical for them to make the determination if adequate flood insurance is in force for various reasons, including the fact that flood insurance has typically not been obtained at the time they receive the files for underwriting. For these reasons, we believe the Q&As on loan participations represent an inappropriate shifting of risk and responsibility, since the participants are being asked to take on the responsibilities of the originating lender. We urge that the question and answer indicating loan participants must assume these additional responsibilities regarding flood insurance be revised to indicate that is not the case for the reasons we have indicated above.

Thank you for the opportunity to comment on these interagency Q&As regarding flood insurance. If Board members or agency staff have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", written over a light blue rectangular background.

Jeffrey Bloch  
Senior Assistant General Counsel