WISCONSIN BANKERS ASSOCIATION

May 20, 2008

VIA EMAIL

Office of the Comptroller of the Currency
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Washington, DC 20219
Regs.comments@occ.treas.gov
Docket ID OCC-2008-0002

Mr. Robert E. Feldman,
Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
550 17th Street, NW.,
Washington, DC 20429
Comments@FDIC.gov
RIN 3064-ZA00

Mr. Gary K. VanMeter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
regcomm@fca.gov
RIN 3052-AC46

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave. NW.,
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. OP-1311

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
Washington, DC 20552
regs.comments@ots.treas.gov
OTS-2008-0001

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
regcomments@ncua.gov
RIN 3133-AD41

RE: Proposed Revision to Interagency Questions and Answers Regarding Flood Insurance: Docket ID OCC-2008-0002; Docket No OP-1311; RIN 3064-2A00; OTS-2008-0001; RIN 3052-AC46; and RIN 3133-AD41.

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance (Q&A).

To assist financial institutions in meeting their responsibilities under federal flood insurance legislation and to increase public understanding of their flood insurance regulations, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation

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(FDIC), Office of Thrift Supervision (OTS), Farm Credit Administration (FCA), and National Credit Union Administration (NCUA) (collectively, the Agencies) have proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. The Agencies have also proposed the reorganization of certain existing questions and answers to clarify areas of potential misunderstanding and to provide clearer guidance to users. Once finalized these Q&As will supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies and the Federal Emergency Management Agency (FEMA).

WBA appreciates the Agencies' efforts to revise and reorganize its guidance regarding flood insurance regulations in an effort to further clarify applicable requirements for financial institutions; however, we are concerned that throughout the proposal the Agencies have developed a pattern of significant deviations from their existing guidance. WBA believes this would: (1) unfairly place additional burdens upon financial institutions; (2) impose retroactive compliance with flood insurance requirements in certain loan transactions; and (3) subject institutions to potential flood insurance violations due to flood zone discrepancies despite their own due diligence in complying with existing flood insurance regulatory requirements.

Overall, WBA is concerned the proposed Q&A broadens the responsibilities of financial institutions beyond existing flood insurance regulations. WBA is similarly concerned that the use of undefined terms or inconsistent terminology by the Agencies will create new compliance requirements well beyond existing Agency guidance and flood insurance regulations. To assist the Agencies, WBA strongly encourages the Agencies to consider the following before finalizing the Q&A.

Overview

Significant Deviations from Existing Guidance.

Under current flood insurance regulations, financial institutions must not make, increase, extend, or renew any "designated loan" unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. If applicable, financial institutions must ensure the proper amount of the flood insurance is obtained and then maintained by the borrower, must send notices regarding flood insurance, and must monitor the status of any changes to flood zone maps and flood insurance coverage. Failure to meet these mandatory requirements subjects financial institutions to civil money penalties.

One of the deviations from the existing guidance is the proposal's discussion of safety and soundness in connection with several flood insurance issues. As an example, proposed Question 3 asks "Does a lender's purchase of a loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, from another lender trigger any requirements under the Regulation?" While the Agencies correctly state that the purchase of a loan is not a triggering event, they go on to state "Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance." WBA believes that this additional statement would create an expectation of due diligence and create a "best practice" standard, which goes beyond that which the National

Flood Insurance Reform Act (Act) and existing regulations require. Such statements suddenly add to the events which trigger flood insurance requirements, which could in turn lead to the purchase of flood insurance when none is required by the Act or regulation. Similar statements are made elsewhere in the proposal. We do not believe that the Agencies have the authority to broaden the scope of loans covered by the Act and believe that the expression of safety and soundness considerations throughout the proposal will have this effect. Therefore, WBA urges the Agencies to remove references to safety and soundness considerations made throughout the proposal.

Proposed Question 40 also poses concerns regarding the broadening of existing guidance. The question addresses how the Agencies would enforce the mandatory purchase requirements under the Act when a lender participates in a loan syndication or participation. The Agencies' answer acknowledges that although syndication/participation agreements permit lenders to assign compliance duties to the lead lender or agent, and may include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act. The Agencies have proposed that each party to a syndication/participation agreement be individually responsible for ensuring compliance with the Act *and* that each participating lender would face examination to determine whether it has adequately: (1) met that responsibility via upfront due diligence to ensure the lead lender or agent has undertaken the necessary activities to ensure appropriate flood insurance has been obtained; (2) ensured that the lead lender or agent has adequate controls to monitor on-going compliance; and (3) monitored activities of the lead lender or agent to ensure proper compliance with flood insurance requirements over the term of the loan.

WBA argues the most practical and efficient approach to handling compliance matters under a loan syndication/participation is to permit those financial institutions involved to contractually impose responsibilities for flood compliance on the lead lender. WBA believes that the Q&A, as proposed, would impose a new regulatory burden on participating lenders which would most likely lead to duplicative efforts by financial institutions. WBA presses the Agencies to revise the proposed answers to remove the burdensome requirements imposed on participants in loan syndications/participations and permit financial institutions the opportunity to contract for compliance review, rather than subjecting all lenders within a loan syndication/participation to examination regarding flood insurance determinations and monitoring.

Define and Clarify Key Terms and Use Consistent Terminology.

The proposal has numerous instances where terms used are either undefined or inconsistent with other terms. For example, proposed Question 7 addresses the amount of flood insurance required under the Act. It states that the amount "must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act." The answer to the question specifically addresses "What is meant by the maximum limit of coverage available for the particular type of property under the Act" and outlines the insurance amount cap available for various property types located in a participating community. In addition to these caps, the answer also provides that

flood insurance coverage under the Act is limited to the "overall value" of the property securing the designated loan minus the value of the land on which the property is located. This is commonly referred to as the "insurable value" of a structure. The answer to Question 7, as well as other proposed answers, uses the term "insurable value", however the term is not defined in the Act or its implementing regulations. As this term is critical in determining proper amount of flood insurance coverage, WBA recommends the Agencies clearly define how to determine and document the "insurable value" of a property.

Other examples of terms which need clarification include "overall value" and "repair or replacement costs." WBA asserts the Agencies need to revise the entire Q&A to define key terms and use consistent terminology.

Additionally, WBA strongly believes that if the Agencies now intend to require replacement cost coverage for flood insurance, that is a change, given its substantive nature, more appropriately addressed via regulatory amendments rather than through answers found within Agency guidance.

Furthermore, Proposed Question 35 attempts to address whether flood insurance is required for a building and its contents when both secure the loan and are located in a participating standard flooding hazard area (SHFA). Unfortunately, there is no definition or formula in regulations or guidance which addresses how to properly calculate the required flood insurance. Because no formula exists, financial institutions have generally calculated required insurance for the building and the contents separately and added the two figures together. Unfortunately such a practice may result in a situation where the law would require a borrower to have in place more insurance than the loan amount. To clarify how to properly calculate insurance coverage for contents, WBA requests the Agencies provide a formula which clearly sets forth the proper calculation of contents' insurance.

Imposition of Retroactive Compliance in Certain Loan Transactions.

Certain proposed Q&As would subject financial institutions to retroactively enforce new minimum insurance thresholds for certain loan transactions closed prior to finalization of the Q&A. These concerns have arisen based upon proposed answers to Questions 23 through 29, which relate to requirements for residential condominiums.

Under proposed Question 24, the Agencies seek to require 100% replacement coverage to comply with the Act and regulatory requirements. Yet, existing flood insurance regulations do not explicitly address the appropriate level of Residential Condominium Building Association Policy (RCBAP) coverage that is required. In previous guidance from FEMA, it was suggested that 80% replacement cost coverage was adequate, and lenders have relied on that guidance.

As proposed, if the financial institution becomes aware that a RCBAP policy is less than 100% of the full replacement cost, it will have to require that borrower to obtain a dwelling policy and may have to force place a policy. This situation could occur upon receipt of an insurance policy renewal or pursuant to a financial institution's flood compliance review of its loan portfolio.

In addition, the answer to proposed Question 27 would likewise subject financial institutions to retroactively enforce the new guidance on RCBAP minimums in previously closed residential condominium transactions. WBA believes that a condominium loan made prior to the effective date of the proposed new guidance should not be subject to the new RCBAP minimums and recommends the Agencies specifically address this matter.

Flood Zone Discrepancies.

Proposed Question 65 addresses the fact that a financial institution may be found in violation of federal flood insurance regulations when there is a discrepancy between the flood hazard designation on the notice and the flood insurance policy issued. This would be true despite the financial institution's diligence in making a flood hazard determination, properly notifying the borrower of the risk of flood insurance and the necessity of flood insurance, and requiring the purchase of flood insurance. Under the proposal, if more than an occasional or isolated instance of an unresolved discrepancy is found within an institution's portfolio, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

WBA is vehemently opposed to this proposed action. Financial institutions do not have the ability, expertise, or authority to resolve flood zone discrepancies. WBA argues that it is the duty and responsibility of the National Flood Insurance Program agent to the borrower purchasing the required flood insurance to issue an accurate policy reflecting the correct flood zone. Furthermore, WBA argues such imposition is beyond any requirement under the Act or flood regulations and believes the Agencies have reached beyond the scope of their authority under the Act in proposing such an action. WBA urges the Agencies to remove the proposed requirement.

Conclusion

WBA generally supports the Agencies' efforts to revise and reorganize the Q&A in an effort to provide further clarification to financial institutions regarding matters of flood insurance compliance; however, WBA is concerned that many of the Q&As impose substantial changes in existing guidance, create additional regulatory burdens, in several situations, which are beyond that authorized by the Act or beyond the financial institution's control, and cause the unnecessary purchase of flood insurance in loan transactions Congress did not intend to cover. WBA strongly encourages the Agencies refrain from these far reaching actions and suggests revisions as mentioned above.

Once again, WBA appreciates the opportunity to comment on the proposed revisions to the Agencies Q&A regarding flood insurance.

Sincerely,

Rose Oswald Poels
Senior Vice President