First American
Flood Data Services

May 20, 2008

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
Via email at regcomments@ncua.gov

Re: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

Changes to the "Interagency Questions and Answers Regarding Flood Insurance" present the opportunity for lenders to receive clarification and additional guidance on issues that arise in the course of their efforts to comply with federal flood insurance regulations. As the leading provider and servicer of Standard Flood Hazard Determinations, First American Flood Data Services has a unique perspective on federal flood insurance regulations and how they impact the Nation's regulated lenders. We are pleased for this opportunity to share our comments on the proposed changes as well as to introduce other issues for which lenders frequently seek additional information or clarification. Regarding the proposed changes, First American makes the following suggestions and observations to the Agencies:

Section I:

- **Question 1** –
  - We suggest that the answer mention that private insurance may be available and that a lender may choose to require privately-obtained flood insurance per its loan agreement with the borrower.
  - We suggest the following change: "Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available ***under the NFIP***, if doing so would be an unacceptable risk." (***Bold and italicized*** font is used solely to identify areas of change).
  - We suggest that the answer mention that Government Sponsored Enterprises (GSEs) such as Freddie Mac and Fannie Mae may not purchase loans made on properties in SFHAs in communities which do not participate in the NFIP.
- **Question 3** –
  - We believe there should be a mention of the seller's responsibility to notify the Director of FEMA of change of servicer in the answer to this question.
  - We suggest that the answer make reference to "portfolio reviews" in this situation. Along with the "safety and soundness" reference in the answer, some lenders may determine that reviewing a loan or portfolio for compliance is advisable.

Section II:

- **Question 7** – We would suggest adding in the word "currently" when referencing the maximum caps related to the amount of flood insurance available, as shown in the answer to Question 32, as these amounts are subject to change.
- **Question 11** –
  - We would suggest the following change to more clearly state the apparent intent of this answer: "the maximum amount of insurance available under the NFIP, which ***in this situation*** is the lesser of:
    - the ***total*** maximum limit available (for ***each*** type of structure) ***for all structures securing the loan and located in a SFHA,*** or
    - the ***total*** ''insurable value'' of ***all*** structures (*see* Question 7) ***securing the loan and located in a SFHA***."
  - Given the complexity of the issue, we suggest including one or more additional examples, such as one involving a property with a residence, a detached garage, a barn, and one or more commercial buildings, some in the SFHA and some not, and with higher value amounts and loan amounts.
- **Question 13** – We would suggest the answer be expanded to provide an explanation of when requiring insurance beyond the minimum requirements might be considered, possible GSEs considerations, when

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seeking insurance outside the NFIP may be applicable, and what "over-insured" means in this context. Consider the following:

- Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. ***Some lenders may require at least 80% of the replacement value of primary residences to ensure that the NFIP policy will provide coverage for replacement cost of the building. In fact, GSEs, such as Freddie Mac and Fannie Mae, may require at least 80% of replacement value on loans they purchase. In situations in which the lender seeks to require flood insurance in an amount higher than the maximum cap for the property under the NFIP, the*** borrower or lender may have to seek such coverage outside the NFIP. 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. Lenders should avoid creating situations where a building is being "over-insured", ***such as requiring flood insurance up to the loan amount when the loan includes the value of unimproved property and exceeds the insurable value of the improved property***.

- **Question 14** – We believe mention should be given to the fact that GSE's may have maximum allowable deductibles.

Section IV:

- **Question 18** – We suggest that the references and citations to FEMA's *Flood Insurance Manual* be updated to reflect the revised *Flood Insurance Manual* released on May 1, 2008.
- **Question 19 –** We suggest that the answer to this question should state that if a lender opts to require a flood insurance policy at origination of a construction loan that such coverage will not take effect until construction begins.

Section V:

- **Question 22** –
  - We would suggest the following change: "Answer: A lender is required to make a determination as to whether the ***improved*** property securing the loan is in an SFHA. If secured property is located in an SFHA, but not in a participating community…"
  - The answer makes mention of the possibility of a lender requiring flood insurance on loans secured by property located in communities that do not participate in the NFIP even though the Regulations do not apply; should it also make mention of a lender's discretion to require flood insurance even if the improved property is not within the SFHA?
  - The "designated loans" would not be located in the SFHA, but rather the improved property securing the loans. Also, the definition of "designated loans" includes that the improved property securing the loan is in a SFHA *and* is in a community which participates in the NFIP where flood insurance under the NFIP is available. Thus, consider the following change: "A lender must provide appropriate notice and require the purchase of flood insurance for ***loans secured by improved property*** located in an SFHA in a participating community."

Section VI:

- **Question 25** – Consider the following change: "The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of ***at least*** $175,000, since there is no RCBAP …"
- **Question 26** –
  - By introducing the coinsurance penalty in proposed Question 26 and the coinsurance penalty calculation in proposed Question 28, there seems to be the inference that the coinsurance penalty has an effect on a lender's regulatory compliance with the Act. Please confirm that this tutorial is for informational purposes only.
  - The lender certainly has obligations under the Regulations to ensure that flood insurance is in place and that its collateral is protected as per the Regulations, but advising borrowers of actual or possible risks outside of the Regulations is the responsibility of insurance professionals, such as the borrower's insurance agent. We would suggest the following changes:
    - Strike "Lenders are encouraged to apprise borrowers of this risk."
    - "It is incumbent on the lender to understand these limitations ***for risk management purposes***."

- **Question 28** – Should there be an expanded explanation and example of the coinsurance penalty and how it is applicable?

Section VII:

- **Question 31** – Whether or not the building is in the SFHA or in a community in which flood insurance is available, a flood determination would be required. Also, given that lenders may complete or obtain a Standard Flood Hazard Determination Form at different times during the process, and that the Regulations, do not prescribe that a flood determination is to be obtained at the time of "application", then we suggest the following change: "No. While a line of credit secured by a building or mobile home ***is subject to the Regulation*** and, therefore requires a flood determination, draws against an approved line do not require further determinations."
- **Question 32** –
    - We suggest the answer provide some suggestions for a lender in the second lien position on the steps they can or should take to ensure coverage is correct on the first lien.
    - We would suggest that the answer to this question specifically remind lenders of secondary loans to ensure that they are added to any existing flood insurance policy's mortgagee clause.
    - We would suggest the following changes to the answer:
        - "*Example 1:* …. If Lender B were to require ***additional*** flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000 ***more for a total of $125,000 in coverage***), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on the ***first*** $100,000 of ***any*** loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000…"

Section XI:

- **Question 54** – In consideration of properties which are in Coastal Barrier Resources Areas, Otherwise Protected Areas, or designated as Section 1316 under the Act, we would suggest changing the second criteria from "The community in which the property is located participates in the NFIP" to "***Flood Insurance under the Act is available for the improved property securing the loan."***

Section XII:

- **Question 57** – The amount of flood insurance which lenders must require to be compliant under the Regulations is tied to the lender's interest, therefore, to avoid confusion, we would suggest the following changes: "Answer: …. Among other things, a gap or blanket policy typically protects ***the improved property*** only ***inasmuch as*** the lender ***holds the loan,*** and therefore, may not be transferred when a loan is sold…"

Section XIII:

- **Question 58** –
    - Lenders are required to provide the borrower notification form when making, increasing, renewing or extending a loan secured by improved property located within a SFHA, which is not related to the "purchasing" of a property. Further, the intent of the notice is to inform borrowers about the flood insurance requirements on the loan and the availability of federal disaster assistance and is not to advise them on whether a property they may be "purchasing" is within an SFHA. Therefore, to clarify, we would suggest the following changes: "Answer: No. The notification form is used to notify the borrower(s) ***pursuant to the Act*** that ***the improved property securing the loan is*** located in an SFHA ***and therefore subject to certain flood insurance requirements and further to inform the borrower about the possible availability of federal disaster assistance***."
    - In the September 2007 *Mandatory Purchase of Flood Insurance Guidelines,* FEMA included (in Appendix 4) a revised Sample Form of the Notice without a change in the actual Regulations (Appendix A to the Federal Agency's flood regulations). Should lenders be directed to utilize the revised version made available in the 2007 publication, or is the original Sample Form also acceptable to Regulators?

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- Because the Regulations require that the lender determine if the building or mobile home securing the loan is located in a SFHA, we suggest the following change: "…The SFHDF is used by the lender to determine whether the ***improved*** property securing the loan is located in an SFHA…"

Section XV:

- **Questions 64 and 65** – We believe the proposed answers to these questions create new duties for lenders to comply with federal flood regulations and that these new duties constitute undue burdens for them not considered in the legislative intent of the Act. These new duties include:
  - Identifying discrepancies between the lender's Standard Flood Hazard Determination and the NFIP flood insurance policy.
  - Working to determine if discrepancies are "legitimate" according to the Regulators, and documenting those cases
  - Resolving the discrepancies that are not legitimate
  - Involving borrowers in the Letter of Determination Review process through FEMA when discrepancies are not resolved
  - Incorporating processes to ensure that there is no more than "occasional" instances of unresolved discrepancies or be subject to violations and fines.

  Ultimately, if the Agencies were to agree to incorporate proposed Questions 64 and 65 into the final version of the "Interagency Questions and Answers Regarding Flood Insurance", it would amount to charging lenders with the duties of rating an insurance policy, which are the responsibility of insurance professionals. The Act only requires the minimum *amount* of coverage a lender must require and does not speak to particular rating factors of the policy. Therefore, while we support guidance for the lenders on the possible consequences of a mis-rating and we agree that cooperation should be encouraged between the lender and the insurance agent in such situations, we do not support the changes in the Regulations that these proposed questions and answers would effectuate.

Section XVI:

- **Question 67** – This does not necessarily apply only to "loans on mobile homes". We would suggest guidance (either here or in Section IV) for the lenders on how flood determinations and the notice requirements are to be handled on a loan when the location of the building has not been determined.

General Comments and Changes:

- We suggest terms and phrases already defined by the Act and the NFIP are used as such throughout this document. In some cases, new terms are introduced in this proposed Q&A which may cause confusion for lenders.
  - For example: While the term "insurable value" is defined (Question 7), the term "replacement value" is undefined but is used interchangeably with "insurable value" throughout. This may be confusing to lenders. We suggest that use of such terms be modeled after insurance definitions in the *Flood Insurance Manual* and used in a more consistent manner.
- The following phrase is used frequently: "A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or mobile home located in an SFHA." See Question 30 for an example. For purposes of clarity, we suggest the following changes: "A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or mobile home ***that is both*** located in an SFHA ***and for which flood insurance is available under the Act***."

In addition to these comments to the proposed changes to the "Interagency Questions and Answers Regarding Flood Insurance", First American Flood Data Services would like to propose that the Agencies provide answers to the following questions that, in our experience, arise frequently for regulated lenders:

- What are the lender's obligations under the Regulations with respect to the annexation of a property by one community from another with respect to flood determinations and the requirement of flood insurance?
- If it is determined during the course of a loan that improved property securing a loan is in a SFHA where flood insurance is available, how long does a regulated lender have to send a notice?
- If a regulated lender changes their name, are they required to notify FEMA's designee of the change of identity?

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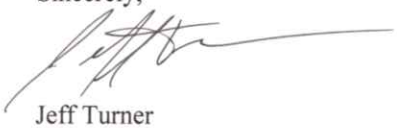
- If a lender's flood determination provider is tracking a loan for map revisions for the life of the loan, does this have an impact on whether a lender can rely upon a flood determination when increasing, renewing, extending or purchasing a loan?
- Is a separate Standard Flood Hazard Determination Form required for buildings on different properties even if the buildings are securing the same loan? This question has arisen because of a change to the Mandatory Purchase of Flood Insurance Guidelines. In the previous version on page 33 under "Instruction for Using the SFHDF" it said "A separate SFHDF is required on loans on adjacent properties." In the current version, it now says on page 38, "A separate SFHDF is required for buildings on adjacent properties."

Once again, First American Flood Data Services appreciates the opportunity to comment on the proposed "Interagency Questions and Answers Regarding Flood Insurance."

Sincerely,



Jeff Turner
Director of Compliance
First American Flood Data Services