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December 24, 2014

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Re: OCC - Docket ID OCC-2014-0016; Loans in Areas Having Special Flood Hazards; RIN 1557-AD84; RIN 7100-AE-00; RIN 3064-AE27; RIN 3052-AC93; RIN 3133-AE40

Ladies and Gentlemen:

JPMorgan Chase Bank, N.A. ("JPMC") is pleased to have the opportunity to comment on proposed amendments to the flood insurance regulations (the "Proposal") to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 ("BWA"), as amended by the Homeowner Flood Insurance Affordability Act of 2014 ("HFIAA"), and as issued for public comment by the Office of the Comptroller of the Currency, the Farm Credit Administration, the Board of Governors of the Federal Reserve System, the National Credit Union Administration and the Federal Deposit Insurance Corporation (collectively, the "Agencies"). JPMC appreciates the thoughtful and thorough job the Agencies did in developing the proposed rules to implement HFIAA. We would be more than happy to meet with you at your convenience to discuss these comments further.

Mandatory Escrow of Flood Insurance Premiums and Fees

- **General Requirements**

The Proposal seeks to establish requirements with respect to the escrow of flood insurance payments consistent with the changes set forth in HFIAA which we strongly support. We would, however, like to recommend some changes to the proposed regulatory text along the lines of the following:

> "___ Escrow requirement.
>
> (a) In general. (1) Applicability. Except as provided in paragraphs (a)(2) or (c) of this section, …for any ***designated*** loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed ***as the result of an application received*** on or after January 1, 2016, payable with the same frequency as payments on the ***designated*** loan are ***required to be*** made for the duration of the loan."

We suggest that the Agencies use their interpretive authority to tie the implementation of the new mandatory escrow rule to *applications received* on or after January 1, 2016 that result in a designated loan secured by residential improved real estate being made, increased, extended, or renewed (subject to the specified exceptions). With the "Applicability" section as proposed, the industry will face considerable challenges with applications received in the months prior to January 1, 2016 that remain in the "pipeline" come December 2015. Many of those applications will have (or will by December 31, 2015) been approved, documented, and priced as "non-escrow" loans. As proposed, banks would have to re-document and change rates on the loans that do not close before January 1, 2016. This type of implementation would result in a poor customer experience for some part of our 2015 applicants, especially in cases where a closing is delayed through no fault of the customer.

In addition, we prefer to use the term "designated loan" since it is defined in the regulation and would clarify that the escrow requirements only apply to loans secured by residential improved real estate that is located or to be located in a special flood hazard area in which flood insurance is available under the National Flood Insurance Program ("NFIP"). Also, it is technically more accurate to refer to when payments are scheduled to be paid rather than when they are actually made.

- **Exceptions to Mandatory Escrow Requirements**

With respect to incorporating HFIAA's exceptions to the mandatory escrowing of flood insurance premiums and fees, we believe—

  - the Agencies' proposed text will avoid confusion by clarifying HFIAA's exception for business loans to reference the loan's primary purpose and to include commercial and agricultural loans and is consistent with other bank regulatory agency guidance;
  - the proposed regulatory exception for subordinate lien loans adds clarity by describing compliant insurance provided by the borrower; However, we think that the Agencies should clarify that lenders/servicers have no duty to monitor the lien position to continue to qualify for this exception. Subordinate lien loans would become subject to the mandatory escrow requirements if they were later refinanced, increased, renewed or extended as a first lien loan, unless they were subject at that time to another exception under sub-section (a)(2); that with respect to the proposed exception for residential project development policies, the Agencies are correct that an individual policy that is required due to a shortfall in the project's coverage amount should be subject to the mandatory escrow requirement <u>unless</u> (i) the individual policy falls under another exception, <u>e.g.</u>, the subordinate lien or home equity line of credit exception or (ii) as in the case of individual units in a cooperative building, NFIP insurance is not available; and
  - the exclusion for loans that are 90 or more days past due is workable and appropriate. We request the Agencies to clarify in their commentary that the receipt of payments on loans qualifying for this exemption does not negate the exemption. Seriously delinquent loans are often moved from a fully functional servicing system to a recovery management system given the low likelihood of further payments. These recovery systems do not have escrow capabilities and it would be burdensome to be moving loans back and forth between systems in the unlikely event that sufficient payments are received. We do, however, believe that loans that have qualified for the exception that are subsequently refinanced, increased, renewed or extended would require an escrow account unless subject to another exception under sub-section (a)(2).

- **Escrow Required by Lender/Servicer**

For clarity's sake, we suggest that the Agencies address the fact (perhaps as part of the "Supplementary Information" to the final regulations) that lenders and servicers may require the establishment of an escrow account for flood insurance fees and premiums in cases where federal law and regulations do not require it, if authorized to do so under the relevant mortgage or deed of trust. This would be especially helpful if the Agencies conclude not to accept our suggestion above to tie the implementation of mandatory escrows to *applications received* on or after January 1, 2016.

- **Proposed Model Mandatory Escrow Language for the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

JPMC believes that the proposed model language is clear and direct, but is concerned that some customers may misunderstand the scope of mandatory escrowing. Consistent with HFIAA, the Agencies are proposing a number of exceptions to the escrow requirement and the proposed disclosure would not apply to those exceptions. Given that all customers whose property is located in a high-risk flood zone receive a Notice of Special Flood Hazards ("Notice") and in order to facilitate the industry's need for a clear, meaningful and generic disclosure applicable to all customers, we request that the Agencies modify the proposed model language substantially as follows:

> [Escrow Requirement for Residential Loans
>
> Federal law *may* requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. *If an escrow is required for your loan, your lender will notify you. In that event,* ~~These~~ the premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for ~~the duration of your loan~~ *as long as your residential building or mobile home remains in a special flood hazard area*, and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

In addition to creating a generic disclosure, the above changes will allow banks to begin using their updated Notices prior to January 1, 2016, which many will banks will want to do given the common practice of scheduling document releases at specified intervals.

- **Option to Escrow**

JPMC appreciates the thoughtful consideration the Agencies gave to implementing the HFIAA rules on optional escrowing.

  - Timing of Optional Escrow Notices

The proposed timeline for providing optional escrow notices in connection with loans outstanding as of January 1, 2016 is reasonable and appropriate. Requiring servicers to mail or deliver these notices by March 31, 2016 allows JPMC and the industry time to identify the in-scope population and to make changes necessary to implement optional flood insurance escrows. As we read the Proposal, servicers would have to allow customers to escrow flood insurance premiums and fees only (and not other traditional escrow items) if the customer elected this option. This is not an option that most servicers provide today, and it will result in changes to escrow volumes and procedures for which servicers need advance time in which to prepare.

- Option to Escrow is Subject to HFIAA Exceptions

JPMC appreciates and agrees with the Agencies' scope clarification in proposed sub-section (d) (1) of the regulations -- that an option to escrow does not apply to loans that are excluded from the scope of the mandatory escrow requirements, pursuant to 42 U.S.C.4012a(d)(1)(B)(ii). We request that the Agencies clarify (perhaps as part of the "Supplementary Information" to the final regulations) that the status of the loan as of January 1, 2016 is dispositive for purposes of determining whether a servicer is required to send the notice, as long as the list is created and the notices mailed after January 1, 2016 and by no later than March 31, 2016.

We believe that using the loan's status as of January 1, 2016 as the date on which to determine whether the loan is subject to the optional escrow notice requirement is important in avoiding burdensome monitoring requirements on servicers. For example, if a customer's account is 90 or more days past due as of January 1, it should be clear that the servicer is not subsequently required to mail or deliver a notice if the customer's account later becomes less than 90 days past due. Similarly, banks should not have to monitor whether a junior lien becomes a senior lien some time after January 1 and then be required to send an optional escrow notice. We do, however, believe that existing customers with required flood insurance on January 1, 2016 would qualify for an optional escrow account at a later date upon submitting a request therefor, whether they received an optional escrow notice or not, if their loan type, insurance policy type, and loan status qualifies them under sub-section (d)(1).

- Optional Escrow Timing

JPMC agrees with the Agencies that requiring servicers to begin optional escrow accounts "...as soon as reasonably practicable after the...servicer receives the borrower's request to escrow" is the appropriate standard. With the exceptions granted under HFIAA, we believe the industry is well-capable of promptly establishing optional escrow accounts. In addition, it would be difficult to identify a specific timeframe that should be required in all cases. If a given servicer were to take too long to implement optional escrow accounts, we assume that the Agencies would address this deficiency in an exam context or otherwise.

- Proposed Model Escrow Option Clause

The proposed model clause, for existing customers as of January 1, 2016, communicates the escrow option and the workings of an escrow account in a straightforward and comprehensible manner. JPMC envisions mailing these notices only to those customers whose loan type, insurance policy type, and loan status qualifies for an optional escrow account (and does not qualify for an exception), as of January 1, 2016. Assuming the final regulations permit such a procedure, we approve of the model escrow option clause as proposed by the Agencies.

Exclusion for Non-Residential Detached Structures

Section 13 of HFIAA provides an exclusion from the mandatory purchase requirements (the "Exclusion") for buildings that meet the following requirements ("Non-Residential Detached Structures"): (i) are located on residential property; (ii) are detached from the primary residential structure of such property; and (iii) do not serve as a residence. We strongly agree with the Agencies' suggestion in the Proposal that the Exclusion requires clarification on a number of issues.

- **Residential Property**

The term "residential property" is not defined in HFIAA and, as a result, the scope of the Exclusion is unclear without further implementation guidance from the Agencies. There is no indication in the statute itself that the use of the Exclusion is limited other than by the use of the property, that is, the mortgaged property must be used for residential purposes. The Agencies have solicited comment on whether the term "residential" should depend not only on the type of property securing the loan, but also based upon the purpose of the loan. We respectfully disagree with this approach. The use of loan proceeds is a completely different consideration than the use of the property and is not a stated limitation in HFIAA regarding the scope of the Exclusion. HFIAA Section 13(b) amends Section 5(b) of the Real Estate Settlement Procedures Act ("RESPA"), which itself is limited to consumer purpose loans. We draw no inference from Section 13(b) that the Exclusion is similarly limited. We believe that Section 13(b) merely highlights Congress' concern that consumers may mistakenly think that because the lender did not require insurance based on the Exclusion, that insurance is not recommended or that the building is not subject to uninsured flood risk.

We, therefore, propose that the Agencies adopt a definition of "residential property" based solely on the use of the property. This could easily be accomplished by using the existing definition of "residential improved real estate" in the FDPA and the regulation. The FDPA defines "residential improved real estate" as "improved real estate for which the improvement is a residential building." 42 U.S.C. § 4012a (d)(4). The regulation defines "residential improved real estate" as "real estate upon which a home or other residential building is located or to be located." The term is currently only used in the provisions of the regulation concerning escrow requirements. The Agencies propose to retain the defined term "residential improved real estate" in the new__.5 and we propose that they incorporate the same definition into the new exclusion for Non-Residential Detached Structures in __.4(c).

We further suggest that the Agencies interpret the term "residential property" as broadly as the term "residential improved real estate" in the Interagency Questions and Answers Regarding Flood Insurance ("Q&As"). Q&A 51 indicates that the definition of "residential improved real estate" does not distinguish between single or multi-family or owner or renter occupied buildings and includes single family dwellings, two to four family dwellings, multi-family dwellings containing five or more residential units and mixed use buildings so long as the primary purpose of the building is for residential purposes. This interpretation is consistent with the current distinction that the Agencies have established between residential and non-residential buildings. Q&A 11 gives examples of residential buildings that include one to four family dwellings, apartment or other residential buildings containing more than four dwelling units, condominiums and cooperatives in which at least 75 percent of the square footage is residential and hotels or motels where the normal occupancy is six months or more.

- **"Serves as a Residence"**

We agree with the Agencies that there is ambiguity as to when a detached structure "serves as a residence" for purposes of employing the Exclusion. As State and local definitions of what constitutes a "residence" may vary, we encourage the Agencies to establish a clear definition under HFIAA and one that is consistent with the ordinary meaning of the word. Our suggestion is that in order to serve as a residence a building must have sleeping, bathroom and kitchen facilities, which are the elements typically included within permanent living quarters. Therefore, a building lacking one or more of these facilities would qualify as a Non-Residential Detached Structure. We note that the NFIP's Dwelling Form policy defines a "dwelling" as a "...building designed for use as a residence", which similarly focuses on the amenities within the structure. [1]

We ask the Agencies to indicate that "serves as a residence" does not require a lender's determination that the structure is, in fact, being used as a residence. Consistent with the NFIP policy's definition of a "dwelling", the guidance should indicate that "serves as a residence" depends on whether the structure is *designed for use* as a residence (i.e., it has sleeping, bathroom and kitchen facilities), not on how the structure is being used (either at the time of a MIRE event or later). We would be concerned with any suggestion that banks have a duty to monitor residential collateral to determine when a detached structure that was not initially a residence becomes a residence. In most cases, we have little, if any, post closing communications with borrowers on loans secured by residential buildings and do not inspect them except in limited circumstances, such as damage to the collateral caused by a fire or natural disaster. Therefore, it is unlikely that we would discover if the borrower has installed facilities that would change the classification of the building from non-residential to residential. Of course, if a lender does learn that a Non-Residential Detached Structure for which the lender did not require flood insurance under the Exclusion has become a residential structure, the lender would be obligated under existing guidance to obtain the required flood insurance.

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[1] http://www.fema.gov/media-library-data/1398950546439-c78022cefaa410c9f902076846a0a5a5/F-122_NFIP_DwellingForm_June2014.pdf

- **Discretion to Require Insurance.**

The Agencies confirm in the Proposal that banks may always require insurance on Non-Residential Detached Structures, particularly where the structures are of a great value. We agree that requiring insurance in those instances benefits both the borrower and bank. However, we urge the Agencies to leave to the banks' discretion what value levels, if any, should be employed to determine whether a bank will require insurance on Non-Residential Detached Structures. Banks will assess this flood risk and incorporate their insurance criteria into their collateral risk management policies. Additionally, banks must be permitted to require insurance on Non-Residential Detached Structures when required by guaranty agencies, private mortgage investors, or government sponsored entities like Fannie Mae and Freddie Mac.

- **Flood Hazard Determination Form.**

The Proposal states that buildings that qualify for the Exclusion do not require a flood hazard determination form and the Agencies note that this will prevent the borrower from being charged unnecessary determination fees. While well meaning, it is unlikely that the Exclusion will have this effect. First, the detached structure must be on a property that also contains the primary residential structure, so it is likely that the determination will be run on the address and include both buildings. Second, many times a lender is not aware of a detached structure until the determination lists the number of buildings or until the structure is identified in an appraisal or survey, which often occurs after a determination form has been ordered. Further, if the detached building has considerable value, the lender will want to know whether the building is in an SFHA in order to require flood insurance and obtain life of loan monitoring. For these reasons, we suggest that the proposed language be permissive so as to allow for variations in how, and when, lenders identify detached buildings and determine whether or not they are located in a high-risk flood zone. For example, the proposed text could be changed to read something like: "Except for properties or structures that *a bank has previously determined to be* exempt..." We also request the Agencies' assurance that a bank may obtain and charge a borrower for, a determination on a location that has a detached structure qualifying for the Exclusion.

- **Absence of a Requirement to take Primary Structure as Collateral.**

We further encourage the Agencies to confirm that the Exclusion is available for Non-Residential Detached Structures even if the lender does not take the primary residence as collateral. For example, assume a transaction involving the financing of a mobile home park with a Detached Non-Residential Structure containing laundry facilities. The lender chooses not to take the mobile homes as collateral, only the detached structure. We assume that the Exclusion would still be available for the structure having laundry facilities, since the structure meets the Exclusion under HFIAA.

JPMC appreciates this opportunity to provide comments on the Proposal. If you have any questions, please contact Craig Prentiss at 212-270- 2762 or the undersigned at 612-486-5390.

Sincerely yours,

Daniel L Wilkening