NFDA
NATIONAL FLOOD DETERMINATION ASSOCIATION

December 29, 2014

Office of the Comptroller of the Currency
400 7th Street SW, Ste 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC-2013-0015

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1462; RIN 7100 AE-00

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102–5090

Gerard Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428
RIN 3133-AE18

Re: Joint Notice of Proposed Rulemaking on Loans in Areas Having Special Flood Hazards

Dear Sir or Madam:

On behalf of the member companies of the National Flood Determination Association (NFDA), we thank you for the opportunity to provide feedback on the Agencies' joint notice of proposed rulemaking on "Loans in Areas Having Special Flood Hazards" published on October 30, 2014. We appreciate the Agencies' effort to consider the level of burden imposed on the federally regulated lending institutions when drafting the regulations. While generally supportive of the proposal, as described herein, the NFDA has concerns about the Agencies' proposed clarification related to use of the Standard Flood Hazard Determination form for detached nonresidential structures on residential property.

The NFDA is a professional association of companies that works with federally regulated lenders to primarily facilitate compliance with the mandatory purchase requirements under the National Flood Insurance Program to ensure that properties located in the Special Flood Hazard Area are protected by flood insurance. Each year, homeowners and business owners across the country face the hardship of rebuilding their homes, businesses and their lives following flood damage. In fact, floods are the most common and costly natural disaster. Property owners with a 30-year mortgage living in a Special Flood Hazard Area face a 25% chance of experiencing a flood loss during the life of the mortgage.

Background

Section 13 of the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA) amends the Flood Disaster Protection Act to add a third exception to the mandatory flood insurance purchase requirement:

> "DETACHED STRUCTURES.—Notwithstanding any other provision of this section, flood insurance shall not be required, in the case of any residential property, for any structure that is a part of such property but is detached from the primary residential structure of such property and does not serve as a residence.'' 42 U.S.C. 4012a(c)

Further, Section 13 amends the Real Estate Settlement Procedures Act (RESPA) to require lenders to disclose the following information to loan applicants about the risk of uninsured property:

> "Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure." 12 U.S.C. 2604(b)

In this proposed rule the Agencies seek to amend the federal flood regulations to include nonresidential detached structures on residential properties in the listed exemptions to the mandatory purchase of flood insurance requirement[1]. In the regulatory analysis the Agencies affirm that lenders may require flood insurance on such detached structures exempt from the mandatory purchase requirement as a matter of safety and soundness and make reference to the amendment to RESPA cited above which informs borrowers of this option[2].

In addition, the Agencies propose to remove the requirement for regulated lending institutions to perform a flood determination through use of the Standard Flood Hazard Determination form for properties or structures that are exempt from the mandatory flood insurance purchase requirement. In the analysis the Agencies reason that since these properties or structures are exempt from the flood insurance requirement a flood determination is "unnecessary" and as a result borrowers will avoid paying "unnecessary" flood determination fees[3].

Recommendations

The NFDA recognizes the frustration that may be experienced by lenders and their borrowers when flood insurance is required as a condition of a mortgage loan on a low-value structure, such as a shed. Small sheds can also present challenges from a flood determination perspective in terms of location and identification; therefore, we support the relief afforded to NFDA member companies and our lender customers by exempting such structures from the mandatory purchase requirement. **Importantly, however, as described below we have concerns about certain positions taken by the Agencies as described within the proposed rule's analysis and ask the Agencies to be thoughtful about these points when issuing the final rule.**

We caution the Agencies against introducing restrictive conditions in the final rule which may minimize the intended benefit of this statutory change—a change with scant legislative history which leaves the promulgating Agencies with the plain language of the law. For example, we do not agree that the Agencies should narrow the exemption by stating that the "exemption is only available if the detached structure does not secure a loan that is an extension of credit for a primarily business, commercial, or agricultural purpose"[4] as proposed in the Agencies' analysis. Lenders should be given broad discretion within the law to make decisions with respect to insurance requirements based on collateral for the loan.

We disagree with the Agencies' description of a flood determination as being "unnecessary" for these exempted detached structures or for any structures which serve as collateral for a lien and strongly urge the Agencies to avoid this broad characterization in the final rule. By amending the regulations associated with the use of the Standard Flood Hazard Determination form, we understand that the Agencies are attempting to provide lending institutions with relief from the related regulatory requirements (e.g. use and retention of form). NFDA member companies complete millions of flood determinations for federally regulated lending institutions each year[5] and as a result many homeowners and business owners have flood insurance in place when a flood disaster occurs. In some situations, a family's primary residence is not affected by a flood while a detached structure with significant value is destroyed such as a structure used for the family business or for agricultural purposes. The financial benefit of flood insurance that protects against this risk is the reason Congress amended RESPA to include the additional disclosure language. Recognizing this, the Agencies advise lenders of the option to require flood insurance on these detached structures for safety and soundness purposes as a potential benefit to lenders and to borrowers. To determine the flood risk zone and the possibility of flood insurance for the detached structures, a lender needs to complete a flood determination. Therefore, in the commentary within the final rule we encourage the Agencies to avoid characterizing a flood determination as "unnecessary" and instead encourage lenders to consider whether or not to complete a flood determination on the detached structures for safety and soundness purposes even though it is not required.

Likewise, given that a lender may determine that a flood determination needs to be completed, or that flood insurance needs to be required, on a detached structure as a condition of a loan, we strongly urge the Agencies to avoid the description of flood

[1] References herein to the federal flood regulations include 12 C.F.R. 22, 12 C.F.R. 172, 12 C.F.R. 208.25, 12 C.F.R. 339, and 12 C.F.R. 614.4920 – 614.4960.
[2] 79 F.R. 64522 (October 30, 2014)
[3] 79 F.R. 64526 (October 30, 2014)
[4] 79 F.R. 64523 (October 30, 2014)
[5] In 2013, NFDA member companies reported completing over 16 million flood determinations for loan originations according to the 2013 NFDA member survey.

determination fees paid by a borrower as being "unnecessary" and explicitly affirm that a lender may charge a borrower for such a flood determination provided that the determination will be "in connection with the making, increasing, extending, or renewing of the loan" or other covered reason under the *Determination Fees* regulations[6]. In most situations, NFDA member companies complete one flood determination for a subject property inclusive of all buildings on the property, thus the lender only charges the borrower for one flood determination[7]. **Nevertheless, the Agencies should avoid creating legal complications for lending institutions by characterizing as "unnecessary" a legitimate fee to a borrower which may result in flood insurance protection beneficial to the borrower.** Again, to know the flood risk zone a flood determination must be completed. Lenders must have the prerogative to complete a flood determination and charge for that flood determination, if appropriate.

Finally, our understanding is that lenders would likewise be relieved from any obligations under the remaining federal flood regulations with respect to these exempted detached structures. To avoid confusion we would ask that the Agencies clarify this in the final rule further acknowledging that lenders have discretion and flexibility as provided within the law.

Again, the NFDA appreciates the work expended by the Agencies to this point to implement and provide guidance on the many changes arising from HFIAA as well as the Biggert Waters Flood Insurance Reform Act of 2012. We appreciate the opportunity to provide comments which we believe are consistent with the intent of Congress when passing HFIAA and which will provide a benefit to federally-regulated lending institutions and their customers.

Upon review please do not hesitate to contact me should you have any questions or seek additional information.

Sincerely,

Steve Murchison, President
National Flood Determination Association

[6] Refer to footnote 1 for the respective Agency's federal flood regulations governing *determination fees.*
[7] Typically a flood determination is ordered very early in the process, such as at the time of application, in order to permit sufficient time for the lender to deliver the notice of special flood hazards to the borrower, when applicable, and for the borrower to procure flood insurance in advance of the closing of the loan.