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Cori Ann S. Zinter, AML/CA, CAMS, CRCM, CFCS, CFE
VP, Bank Compliance Officer
1150 Pittsford Victor Rd.
Pittsford, NY 14534
PH 585-419-0670 x51920
FAX 585-394-4001
czinter@cnbank.com

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Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW.
Suite 3E-218
Washington, DC 20219

Submitted electronically via the Federal eRulemaking Portal - https://regulations.gov/

RE: Docket ID OCC-2020-0033
Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Private Flood Insurance

Dear Sir or Madam:

The Canandaigua National Bank and Trust Company (CNB) appreciates the opportunity to comment on the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, and National Credit Union Administration's (the Agencies) proposed supplement to the Interagency Questions and Answers Regarding Private Flood Insurance.

The Agencies solicited comment on all aspects of the proposed questions and answers on the private flood insurance rule. CNB agrees with the majority of the proposed questions and answers, with the following exceptions and comments:

II. PRIVATE FLOOD INSURANCE – DISCRETIONARY ACCEPTANCE:

Discretionary 3Q. How can a lender evaluate the sufficiency of an insurer's solvency, strength, and ability to satisfy claims when determining whether a flood insurance policy provides sufficient protection of the loan, consistent with general safety and soundness principles?

Discretionary 3A. *Provides that a lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator's office of the State in which the property securing the loan is located, among other options. The proposed answer would further indicate that a lender could rely on the licensing or other processes used by the State insurance regulator for such an evaluation. The proposed answer would also include a reference to proposed Q&A Coverage 1 from the July 2020 Proposed Questions and Answers.*

While CNB does not contest the proposed question or answer, we do want to express our concern with the underlying regulatory requirements; specifically, the burdens that have been placed on financial institutions for determining the solvency of an insurance company. Just as financial institutions are heavily regulated, so are insurance companies. CNB does not understand the value or insight financial institutions, especially small community banks, can provide above and beyond that of an insurance company's prudential Federal and/or state regulator. CNB respectfully requests that the Agencies reconsider this rule and place this requirement back on those best situated to analyze the solvency of an insurance company and those that are in the best position to address noted deficiencies.

Discretionary 4Q. If a flood insurance policy issued by a private insurer that was originally accepted in accordance with the discretionary acceptance requirements is renewed annually, is the lender required to review the policy upon renewal?
Discretionary 4A. *If a lender had accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements and the policy is renewed, the lender must review the policy upon renewal to ensure that it continues to meet the discretionary acceptance requirements. The lender must also document its conclusion regarding sufficiency of the protection of the loan in writing upon each renewal to indicate that the policy continues to provide sufficient protection of the loan.*

CNB agrees that the initial policy should be thoroughly reviewed and vetted. However, it is our opinion that the initial policy review should be sufficient so that only a minimal review for material changes of the underlying policy should be required at renewal. If, during the cursory renew review, material changes are discovered that indicate a change in underlying policy terms, such as a new insurer, new policy number, flood risk rating change, change to the coverage amounts on the policy, etc., a thorough policy review should be conducted.

III. PRIVATE FLOOD INSURANCE – PRIVATE FLOOD COMPLIANCE

Private Flood Compliance 1Q. **What is the maximum deductible a flood insurance policy issued by a private insurer can have for residential or commercial properties located in an SFHA?**
Private Flood Compliance 1A. *The maximum deductible for a flood insurance policy issued by a private insurer varies depending on whether the lender accepts the policy under the mandatory acceptance or the discretionary acceptance provision. For purposes of compliance with the mandatory acceptance provision, the Regulation provides that a policy must contain a deductible that is "at least as broad as" in a Standard Flood Insurance Policy (SFIP)— i.e., no higher than the specified maximum under an SFIP — for any total coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender. For a private policy with a coverage amount exceeding that available under the NFIP, the deductible may exceed the specific maximum deductible under an SFIP. However, for*

safety and soundness purposes, the lender should consider whether the deductible is reasonable based on the borrower's financial condition, among other factors. See Q&A Amount 9.
• For example, if a private policy for a commercial building provided $1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of $500,000 for a commercial building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP. The lender should consider whether the deductible is reasonable based on the borrower's financial condition.

• Similarly, if a private policy for a residential building provided $1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of $250,000 for a residential building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP. The lender should consider whether the deductible is reasonable based on the borrower's financial condition.

For purposes of compliance with the discretionary acceptance provision, the Regulation requires that the policy provide sufficient protection of the loan, consistent with general safety and soundness principles. Among the factors a lender could consider in determining whether a policy provides sufficient protection of a loan is whether the policy's deductible is reasonable based on the borrower's financial condition. Unlike the limitation on deductibles for policies accepted under the mandatory acceptance provision for any total coverage amount up to the maximum available under the NFIP, a lender can accept a flood insurance policy issued by a private insurer under the discretionary acceptance provision with a deductible higher than that for an SFIP for a similar type of property, provided the lender has determined the policy provides sufficient protection of the loan, consistent with general safety and soundness principles.
Whether the lender is evaluating the policy under the mandatory acceptance provision or the discretionary acceptance provision, a lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance. See Q&A Amount 9.

CNB has come across several situations where there is a non-residential, detached structure located in a Standard Flood Hazard Area requiring flood insurance. Unfortunately, due to the nature of the property (commercial use), we are unable to utilize the detached structure exemption that is afforded to residential properties. This requires the pursuit of acceptable flood insurance coverage. Our experience has been that insurance companies are unsure how to insure these buildings that have relatively little value (most have a replacement cost value of less than $15,000) while also complying with the requirements above, i.e., that the deductible is not equal to the insurable value. Additionally, most of these structures are included on a policy for the main structure, causing the deductibles for the entire policy to be lowered to comply with the above requirement. While not the intended purpose of this comment letter, CNB respectfully requests that the Agencies revisit the exemption for non-residential detached structures and eliminate the applicability only to residential properties.

Private Flood Compliance 9Q. How can a lender determine: (i) whether an insurer is licensed or admitted in a particular State, (ii) or whether a surplus lines or nonadmitted alien insurer is permitted to issue an insurance policy in a particular State?
Private Flood Compliance 9A. *A lender may refer to the website of the State insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue an insurance policy in a particular State. If the lender cannot determine this information from the website, the lender could contact the State insurance regulator directly. Further, information with respect to surplus lines insurer eligibility also may be available in the Consumer*

Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders may consult commercial service providers regarding the eligibility of surplus lines insurers in particular States provided the lenders have a reasonable basis to believe that these service providers have reliable information.
With regard to nonadmitted alien insurers in particular, lenders could review the NAIC's Quarterly Listing of Alien Insurers.

While this is good information, in CNB's experience, we have found it difficult to identify the Lloyd's of London Syndicate that is behind a specific flood insurance policy. CNB respectfully requests that the Agencies reconsider the proposed Answer and allow financial institutions to rely on the regulated insurance companies to comply with their regulatory requirement to use a licensed insurance company.

CNB supports the Agencies' initiative to provide clarifications around the use of Private Flood Insurance Policies. We commend the work that has been done and urge the Agencies to continue pursuing, with slight revisions, publishing of the Flood Insurance Q&As.

Sincerely,

Cori Ann S. Zinter

Cori Ann S. Zinter, AML/CA, CAMS, CRCM, CFCS, CFE
VP, Bank Compliance Officer

Copy: Frank H. Hamlin, President & CEO
A. Rosamond Zatyko, EVP – Chief Administrative Officer
Charles J. Vita, EVP – Chief Lending Officer
Vincent K. Yacuzzo, EVP – Chief Financial Officer
Jennifer N. Weidner, Esq., SVP – General Counsel
Rita Nischal, Esq., SVP – Corporate Counsel
Vicki B. Mandrino, SVP – Chief Compliance Officer
Barbara A. Wagner, SVP – Director of Operations
Jeffrey A. Holman, Banking Officer – Loan Operations Assistant Manager