October 26, 2020

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Re: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; OCC Docket ID OCC-2020-0008; Federal Reserve System Docket No. OP-1720; FDIC RIN 3064-ZA16; FCA RIN 3052-AD42; NCUA RIN 3133-AF14

Dear Sir or Madam:

The member companies of the National Flood Association[1] (NFA) appreciate the opportunity to provide written comments to the Agencies on the proposed revised "Interagency Questions and Answers Regarding Flood Insurance" ("Q&A"). Each year hundreds of thousands of Americans face the daunting reality of

[1] The NFA includes dozens of companies, with thousands of employees, serving millions of customers, representing various industries such as flood determination companies, private and federal flood insurance, financial services, real estate, claims adjusting, engineering, risk modeling, mapping, reinsurance, and management consulting. For more information, go to www.nfaflood.com/.

recovering from a flood. In fact, floods are the nation's most common and costly natural disaster. The mandatory purchase of flood insurance requirement serves to ensure that families and businesses with a mortgage secured by a property in the high-risk special flood hazard area can more quickly recover because of flood insurance. While simple in its intent, member companies of the NFA know first-hand the confusion that results from unnecessarily complex or conflicting guidance; therefore, we encourage the Agencies consideration of these comments and to look for opportunities to reduce complexity and remove confusion for those attempting to comply with and support the mandatory purchase of flood insurance requirements.

We applaud the Agencies' efforts to make the Q&A more user-friendly and easier to keep current through the new organization. We appreciate the Agencies' efforts to compile guidance provided over the recent years following changes in the flood insurance laws in 2012 and 2014. We note the Agencies' intent to separately prepare and issue questions and answers regarding private flood insurance. We have heard from members that it creates some challenges to consider the impact of some of these questions without knowing the direction that the Agencies will go with the private flood insurance guidance. We would hope that the private flood guidance is forthcoming such that the public might review it before the Agencies finalize this particular set of questions and answers.

Proposed Question COVERAGE 2 (revised from existing Question 64)

> Question. May a lender rely on a private insurance policy providing portfolio-wide coverage to meet the flood insurance purchase requirement or the force placement requirement under the Regulation?
>
> Answer. No. A private insurance policy that provides a lender portfolio-wide coverage may provide protection to the lender in certain circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies providing portfolio-wide coverage may be useful protection for the lender for a gap in coverage in the period of time before a force-placed policy takes effect. However, even if a lender has portfolio-wide coverage to address gaps, the lender must still ensure the flood insurance purchase requirement is satisfied at the time a loan is made, increased, renewed or extended, and the lender must still force place coverage on the borrower's behalf in a timely manner, as required, and may not rely on a private insurance policy that provides portfolio-wide coverage as a substitute for a force-placed policy.

NFA Comments: We would recommend the Agencies consider changes to the question or answer to clarify that, as affirmed in the existing Question and Answer 64, there may be scenarios in which a portfolio-wide gap policy may be useful to a lender. We understand that the Agencies are describing a limited dual-interest master policy which utilizes an automatic coverage endorsement to provide for blanket coverage to a portfolio. We agree that such a master policy is not to be relied upon to satisfy the mandatory purchase requirements at loan closing, or to satisfy the force placement requirements for a specific loan following a full notice cycle to the borrower. However, we believe the wording of the question and answer calls into question whether a lender may continue to rely upon "portfolio-wide blanket coverage [which] may be useful protection for the lender for a gap in coverage in the period of time before a force placed policy takes effect" (existing Question and Answer 64). As the Agencies realize, such gaps may occur between the time that a revised FEMA flood map is issued and the full notice cycle lapses, or between the time that an existing flood insurance policy expires and a force placed policy takes effect. We encourage the Agencies to revise this question and answer to be more clear that a portfolio-wide gap policy may be useful to a lender in some circumstances.

Proposed Question SFHDF 2 (revised from existing Question 66)

> Question. May a lender provide the SFHDF to the borrower?

Answer: Yes. Although not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so they can better understand their flood risk. The Agencies note that under the FEMA process for a Letter of Determination Review (LODR), a lender would also need to make the determination available to the borrower. FEMA requires that the lender and the borrower request the LODR jointly within 45-days of the notification of the requirement to purchase flood insurance for a fee. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

NFA Comments: We have a simple recommendation to avoid confusion for lenders and their borrowers. We recommend that you strike the phrase "so they can better understand their flood risk" from the answer. It is largely understood, and acknowledged by FEMA, that the Flood Insurance Rate Map by itself does not contain sufficient information for a homeowner, business owner, or lending institution to assess flood risk for a given property. The Flood Insurance Rate Map is a critical tool for many stakeholder groups and is a necessity for regulatory uses by communities and lending institutions. However, FEMA has many other tools and resources that are more appropriate for flood risk assessment than the Flood Insurance Rate Map (https://www.fema.gov/flood-maps/tools-resources/flood-map-products). The purpose of the SFHDF is to "facilitate compliance with the flood insurance purchase requirements" (Instructions to FEMA Form 086-0-32). It may cause confusion for lender and borrower if the borrower makes personal decisions on flood risk solely based upon a compliance form, such as concluding that the property is not at risk to flooding because the SFHDF states the property is in Zone X (not a Special Flood Hazard Area).

Proposed Question ZONE 1 (revised from existing Question 71)

Question: What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

Answer: If a lender receives a policy declarations page that has a flood zone designation that is different from the flood zone shown on the SFHDF, it should consider documenting the discrepancy in the loan file. If the SFHDF indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage in accordance with the Act and Regulation, but the lender is not otherwise required to resolve a discrepancy between the flood zone designation on the SFHDF and the designation on the flood insurance policy declarations page provided by the borrower. This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed. In addition, the guidance applies to any building that has been rated in accordance with NFIP procedures.

For a policy issued under the NFIP, if a misrating is discovered at the time of loss resulting from an incorrect flood zone, and a policyholder has underpaid the flood insurance premium, a policyholder may keep the contracted coverage limits if an additional premium is paid. Once paid, a revised declarations page will be issued showing the corrected flood zone. The lender will receive a copy of the declarations page and may receive a copy of the underpayment notice. If the borrower does not pay the additional premium, resulting in inadequate coverage, lenders must proceed with force-placement procedures. On the other hand, if a policyholder has overpaid the flood insurance premium as a result of a misrating, FEMA may allow a refund of insurance premiums under certain circumstances. See NFIP Flood Insurance Manual for specific instructions. Private policies may resolve flood zone discrepancies differently.

NFA Comments: We commend the Agencies' proposal to remove the burden on lenders to identify and resolve flood zone discrepancies. Based on our experience, we believe that existing processes to ensure accuracy and consistency will continue going forward without the threat of sanctions or oversight.

We do not believe it to be appropriate for the lender to be responsible for ensuring the insurance company or agent utilize the correct rating elements. There is no reference in the Act or its legislative history, of which we are aware, that equates the flood zone used by an insurance company to rate a policy to a lender's compliance requirements. Even when properly applied, this responsibility fell short of its intent to ensure the accurate rating of policies because it did not include the various other elements that could lead to a misrating (e.g. Base Flood Elevation, presence of basement, year built) beyond the flood zone.

Importantly, NFA sees firsthand the efforts that flood determination companies, lenders, insurance companies, and agents expend to ensure that flood zones relied upon are accurate and consistent. Accurate flood determinations are critical for banks when determining the applicability of the mandatory purchase requirement. Similarly, insurance companies and agents want to ensure that NFIP policies are rated correctly which relies in part on an accurate flood zone. Finally, flood determination companies—the providers—must ensure the flood determination is accurate to eliminate liability under its flood determination guarantee, to ensure customer relations, and to reduce reputational risk. Going forward, we foresee continued cooperation between the stakeholders to ensure a positive outcome. The NFA has long been a proponent of these efforts as set forth in its "Common Dispute Resolution Practices" resource document (http://nfaflood.com/programs/nfa-resources/).

We would ask the Agencies to reconsider or rephrase the guidance to lenders around initiating force-placement processes during claim handling if a homeowner does not pay the additional premium to reform the NFIP flood insurance policy. This may not be the Agencies' intent, but it could be interpreted as though the Agencies are suggesting that force-placement is appropriate during the claim handling process to address a premium deficiency. There are many factors involved during the claim handling process and many possibilities that may occur including the possibility that the NFIP claim payment may be offset by the amount of premium owed, or the possibility that a third party such as the lender or the flood determination company may elect to pay the deficient premium based upon circumstances leading to the misrating. Further, based upon the condition of the property following the flood, the collateral may no longer exist or may not be insurable, which would create a situation in which a lender is force-placing flood insurance on a homeowner without a home. For these and other reasons, force-placement is not necessarily appropriate or applicable following a flood loss.

More specifically, it seems a lender would not need to initiate its force-placement procedures unless and until the policy is reformed due to the lack of payment of the additional premium, the coverage amount of the reformed policy is insufficient to meet the regulatory requirement, and the lender otherwise receives notice of the reformed policy and makes a determination that the coverage is insufficient. Importantly, according to NFIP's reduction and reformation guidelines, this process could last more than 60 days if the policyholder is required by the NFIP to provide additional information for rating purposes (e.g. Elevation Certificate). In sum, we do not want lenders to infer from the guidance that there should be special force-placement procedures in place to address the case of a flood zone discrepancy identified during the handling of a flood loss. Instead, as described above, normal procedures for force-placement will be triggered if the lender receives notice and makes a determination of the insufficiency which will be at some point following the claim handling process.

Proposed Question ZONE 3 (new question and answer)

> Question: What should a lender do when the lender's flood zone determination specifies that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, but the borrower disputes that determination?
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> Answer: If a borrower disputes a lender's determination that the building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, the parties involved in making the determination are encouraged to resolve the flood zone discrepancy before contacting FEMA for a final determination. If the flood zone discrepancy cannot be resolved, an appeal may

be filed with FEMA. Depending on the nature of the dispute, FEMA has different options for review, including:

• Letters of Determination Review (LODR), and
• Letters of Map Change (LOMC), which include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Letters of Map Revision Based on Fill (LOMR-F).

Lenders and borrowers should consult FEMA guidance on the appropriate process to follow, any applicable fees, and any deadlines by which the request to review must be made. However, as long as the lender's flood determination specifies that a building securing the loan is located in an SFHA and requires mandatory flood insurance coverage, sufficient coverage must be in place in accordance with the Act and the Regulation until FEMA has determined that the building is not in an SFHA. As noted in Q&A Zone 1, if there is sufficient insurance coverage in place, lenders are not required to resolve flood zone discrepancies between the flood zone determination form and the flood insurance policy.

NFA Comment: We appreciate the Agencies' inclusion of this helpful guidance to lenders. As described in our comments in response to ZONE 1 above, the NFA has long been a proponent of cooperation between the parties involved prior to contacting FEMA. In our experience, most flood zone discrepancies can be resolved without engaging FEMA for a final determination; as a result, the LODR process is utilized quite rarely although still a useful option in some circumstances. Our only recommendation for this answer is to perhaps add emphasis in the first paragraph to the possible role of the flood determination vendor, which could be inserting an additional sentence in the first paragraph, as follows:

First paragraph, after first sentence
If a borrower disputes a lender's determination that the building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, the parties involved in making the determination are encouraged to resolve the flood zone discrepancy before contacting FEMA for a final determination. This can include the lender contacting its flood determination provider and requesting that the provider conduct a recheck of the completed flood determination. If the flood zone discrepancy cannot be resolved, an appeal may be filed with FEMA.

Proposed Question AMOUNT 2 (revised from existing Question 9)

Question: What is the "insurable value" of a building and how is it used to determine the required amount of flood insurance?

Answer: The insurable value of the building may generally be the same as 100 percent Replacement Cost Value (RCV), which is the cost to replace the building with the same kind of material and construction without deduction for depreciation. In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market value) approach, a construction-cost calculation, the insurable value used on a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

In cases involving certain residential or condominium properties, insurance policies under the NFIP should be written to, and the insurance loss payout usually would be the equivalent of, RCV. However, lenders should avoid a situation in which the insured borrower pays for more coverage than the insured would recover in the event of a loss. Therefore, to strictly link insurable value to RCV is not always practical. In cases involving nonresidential properties, and even some

residential properties, the insurance loss payout might be based on actual cash value, which is RCV less physical depreciation. Insurance policies written at RCV for these properties would require an insured to pay for coverage that exceeds the amount the NFIP or private insurer would pay in the event of a loss, and this situation should be avoided. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP or private policy for the type of property being insured. Doing so would allow the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the insured would recover in the event of a loss.

Lenders should be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

NFA Comment: We recommend this answer be revised to provide applicable guidance to both commercial lenders and residential lenders, address possible inaccuracies, and to be consistent with property and casualty principles. First, we encourage the Agencies to work with both commercial lenders and residential lenders to ensure alignment with industry practice. Second, while we appreciate the Agencies' attempt to address lenders' and consumers' concerns about flood insurance being required in an amount that appears to be higher than a claim payment would reach in the event of a loss, the settlement basis for an insurance policy (whether RCV or ACV) does not impact the insurable value of a building. The lender has no role in whether the borrower has paid for coverage that could exceed the amount the borrower would recover in the event of a loss. Over or under-insurance is determined only by the difference between the amount of coverage on the policy and the amount necessary to replace the structure in the event of a loss. The estimated replacement cost (e.g. insurable value) is derived using sophisticated models based on detailed inputs as agreed upon by carrier and policyholder. The replacement cost value then drives the amount of coverage for the policy. As a practical matter, many banks rely upon the insurable value (e.g. replacement cost value) determined by the insurance carrier which generally speaking seems to be the best practice and the appropriate approach.

Another consideration for your review is that many homeowners' policies do in fact cover foundations and private flood insurance policies may cover at RCV, thus we do not believe these specific callouts are necessary and may even be misleading in determining insurable value.

Proposed Question FORCE PLACEMENT 2 (new question and answer)

Question: When must a lender provide the force-placement notice to the borrower?

Answer: The Regulation requires the lender, or its servicer, to send notice to the borrower upon making a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation. The Agencies expect that such notice will be provided to the borrower at the time of determination of no or insufficient coverage. If there is a brief delay in providing the notice, the Agencies will expect the lender or servicer to provide a reasonable explanation for the delay, for example, that the lender uses batch processing to send the force-placement notice to its borrowers.

NFA Comments: We recommend the Agencies provide for greater flexibility in the response in recognition of existing best practices in place to ensure accurate force-placement only when necessary. We appreciate the recognition that use of batch processing may result in additional time, but there are other processes, controls, and circumstances for which additional time is required. Rather than providing for a "brief delay" which requires an explanation, we would recommend that the Agencies utilize language such as "reasonable time from the point of identifying that there is no coverage or insufficient coverage". There are various circumstances for which additional time is required but "reasonable" such as when working to validate building-by-building requirements within a large commercial complex or with a cross-collaterized loan across several states and communities.

Proposed Question FORCE PLACEMENT 8 (revised from existing Question 59)

> Question: When force placement occurs, what is the amount of insurance required to be placed?
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> Answer: The Regulation states that the minimum amount of flood insurance required "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." Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees added to the loan balance.
>
> To illustrate this point, assume that there is a loan with an outstanding principal balance of $200,000, secured by a residential property located in a special flood hazard area that has an insurable value of $350,000. The borrower has a $200,000 flood insurance policy for that property, reflecting the minimum amount required under the Agencies' regulations. If the $200,000 flood insurance policy lapses, the lender or its servicer must notify the borrower of the need to obtain adequate flood insurance. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the lender or its servicer must purchase insurance on the borrower's behalf.
>
> If the lender intends to add the premium for the force-placed policy to the loan balance, the lender must ensure that the policy is issued in an amount sufficient to cover the anticipated higher loan balance, including the force-placed policy premium, even if the addition of the force placed premium is not considered a triggering event. (See also Q&A Force Placement 10). In this scenario, if the cost of the force-placed policy is $2,000, the coverage amount of the force-placed policy must be at least $202,000.

NFA comments: We believe this guidance, if not further clarified, will lead to different interpretations by lenders about what is required for flood insurance compliance purposes. And, depending on which interpretation is adopted by a lender, it will negatively impact lenders as well as consumers.

The proposed answer provided by the Agencies appears to assume a secured advance contemplated by the security instrument for a force-placed policy premium is part of the loan's "principal" balance. However, fees, secured advances, interest and other amounts authorized by a loan agreement are treated distinctly from the "principal balance" of the loan. So, while it is true that a secured advance is part of the loan balance, unless and until the secured advance is then subsequently capitalized as part of the principal balance, it is not part of the loan's principal balance. We believe that there is no reason to disregard these distinct categories for flood compliance purposes, including when determining the minimum amount of flood coverage required as defined by the statute and regulation (the statute and regulation expressly use the term "outstanding principal balance"). The term "outstanding principal balance" (and the components thereof) is precise and measurable in the context of: (i) the note or loan agreement, (ii) the security instrument, (iii) investor reporting rules, (iv) loan accounting standards under GAAP, and (v) the IRS. The term "loan/mortgage loan balance" however, is more general and can be used to describe the total amount that may be due at any one point in time, such as the aggregate total of all fees, noncapitalized advances, interest and principal. The "loan/mortgage loan balance" can often equate to a "payoff balance" or total indebtedness beyond the "outstanding principal balance". In describing the minimum standard for sufficient coverage, the Act is specific in its use of "outstanding principal balance". We recommend the Agencies clarify this answer and refer more specifically to this amount when instructing lenders on the appropriate amount of coverage for flood compliance purposes. That is, only if premiums for any coverage required under the Act were to be capitalized as additional principal due, the "outstanding principal balance" of the loan would consequentially reflect these amounts. If, however, any premiums due from the borrower are not capitalized and the principal balance is not adjusted, no additional

consideration is necessary. In either scenario, the "outstanding principal balance" remains the correct standard for coverage.

One possible way to clarify this is to make the following edits to the second sentence of the first paragraph and the first sentence of the third paragraph to this answer, as follows:

> *First paragraph, second sentence*
> *"Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees ~~added~~ capitalized to the loan's principal balance."*
>
> *Third paragraph, first sentence (in pertinent part)*
> *"If the lender intends to ~~add~~ capitalize the premium for the force-placed policy to the loan's principal balance,…"*

Without this clarification, in combination with FORCE PLACEMENT 10, this guidance could be interpreted to mean that a secured advance to pay the force-placed premium, even when not capitalized as principal, is part of the "outstanding principal balance" of the loan for flood insurance compliance purposes. If this interpretation is taken to its logical conclusion, this would mean all secured advances would need to be considered as part of the loan's principal balance for flood compliance purposes. We do not believe this was the intent of the statute or regulation since both use the specific term "outstanding principal balance."

The proposed answer, if not clarified as suggested above, would also present unneeded operational challenges for lenders as well as additional costs for consumers. Consumers who are affected by this change will see the cost of force placed insurance increase unnecessarily as premiums which are not part of the loan's principal balance would be required to be insured, thus effectively increasing the cost of force-placed insurance to the consumer. Further lenders' systems and that of their vendors are not equipped to handle the circular or iterative nature that the Agencies' example demonstrates. Taken to its conclusion, the Agencies' example would require multiple iterations of adding premium to the loan balance as each incremental addition becomes de minimis in its value to the lending institution or its borrower.

Finally, if implemented in practice, this would create unnecessary complexity when refunding force placed premiums when presented with evidence of insurance. Lenders would need to be retrospective and be able to account for potential balance reductions that would come from a premium refund regardless of whether that refund is for the full premium or only for a partial term. For all of the reasons above, we strongly encourage the Agencies to work with industry to edit and more precisely clarify this guidance (and the guidance in FORCE PLACEMENT 10) to make consistent with the existing statute and regulations, GAAP, and with existing best practices both for lenders and the consumers.

Proposed Question FORCE PLACEMENT 9 (revised from existing Question 62)

> Question: When may a lender or its servicer charge the borrower for the cost of force-placed insurance?
> Answer: A lender, or a servicer acting on its behalf, may force place insurance and charge the borrower for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf at any time starting from the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The lender or servicer would not have to wait 45 days after providing notification to force place insurance.
> Lenders that monitor loans secured by property located in an SFHA for continuous flood insurance coverage can minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force

placement. If a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, for example, due to a re-mapping, it may charge the borrower for premiums and fees incurred by the lender or servicer for a force-placed flood insurance policy purchased on the borrower's behalf, including premiums and fees for coverage, beginning on the date of no or insufficient coverage, provided that the policy was effective as of the date of the insufficient coverage. When a lender or its servicer purchases a policy on the borrower's behalf, the lender or its servicer may not charge for premiums and fees for coverage beginning on the date of lapse or insufficient coverage if that policy purchased on the borrower's behalf did not provide coverage for the borrower prior to purchase.

NFA Comments: We recommend the Agencies include an example to provide clarity as to its guidance and to ensure that the guidance is consistent with industry practice. Below is an example that could be useful as the Agencies consider this request.

For example, assume that the required amount of coverage for a loan is $150,000 and the servicer determines in June that flood insurance coverage is in the amount of $100,000. Upon review, the servicer determines the insufficiency dates back to February of that year. Upon making that determination, the servicer initiates the notice period and placement of additional coverage as follows:

Date of lapse – February 15, 2020. At this point, the flood insurance policy coverage was endorsed from $150,000 down to $100,000
Date of discovery – June 1, 2020. Servicer determined the insufficiency by review of updated policy received as the mortgagee
Date of notice – June 2, 2020. Servicer initiates 45-day notice to borrower
Date notice period expires – July 17, 2020 (45 days from June 2)
Date of placement – July 18, 2020. Servicer places additional coverage of $50,000 on the loan with the effective date of this coverage being February 15

In addition to consideration of an example, we ask the Agencies to consider removing or revising the phrase "prior to purchase" in its answer given that an insurance policy only provides coverage once purchased. While a policy may provide coverage effective to a date that precedes the date purchased, this is not effectively prior to purchase.

Proposed Question FORCE PLACEMENT 10 (new question and answer)

Question: Does adding the flood insurance premium to the outstanding loan balance constitute a triggering event- an "increase" that would trigger the applicability of flood insurance regulatory requirements?

Answer: The Act and the Regulation require a lender to notify the borrower that the borrower should obtain adequate flood insurance when the lender determines that a building or a mobile home located or to be located in a Special Flood Hazard Area is not covered by any or adequate flood insurance. If the borrower fails to obtain adequate flood insurance within 45 days, then the lender must purchase insurance on the borrower's behalf. The lender may charge the borrower for the premiums and fees incurred by the lender in purchasing the force-placed flood insurance.

Among the various methods that a lender might use to charge a borrower for force-placed flood insurance are: (1) adding the premium and fees to the existing mortgage loan balance; (2) adding the premium and fees to a separate, unsecured account; or (3) billing the borrower directly for the premiums and fees of the force-placed flood insurance. The treatment of force-placed flood insurance premiums and fees depends on the method the lender chooses for charging the borrower.

Premium and fees added to mortgage loan balance

If the lender's loan contract with the borrower includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt to be secured by the building or mobile home, such an advancement would be considered part of the loan. As such, the addition of the flood insurance premiums and fees to the loan balance is not considered an "increase" in the loan amount, and thus would not be considered a triggering event. If, however, there is no explicit provision permitting this type of advancement of funds in the loan contract, the addition of flood insurance premiums and fees to the borrower's loan balance would be considered an "increase" in the loan amount, and, therefore is considered a triggering event because no advancement of funds was contemplated as part of the loan. (*See also* Q&A Force Placement 8).

Premium and fees added to an unsecured account
If the lender accounts for and tracks the amount owed on the force-placed flood insurance premium and fees in a separate, unsecured account, this approach does not result in an increase in the loan balance and, therefore, is not considered a triggering event.

Premium and fees billed directly to borrower
If the lender bills the borrower directly for the cost of the force-placed flood insurance, this approach does not increase the loan balance and is not considered a triggering event.

NFA Comments: Consistent with our response to FORCE PLACEMENT 8, we strongly encourage the Agencies to further clarify this proposed answer as well. For example, the answer could reference four methods, the first being where the loan agreement authorizes the lender to add the premium to the loan's principal balance and the lender does in fact capitalize the premium into the loan's principal balance. The existing method (1) in the proposed answer could be renumbered as method (2) and further clarified to be the method where the loan agreement treats the premium as additional secured debt but the lender does not capitalize the premium into the loan's principal balance. For purposes of this proposed answer, neither of these methods would be an "increase" to the loan's principal balance for MIRE purposes since the loan agreement already authorizes these actions. In other words, even where a lender chooses to capitalize a secured advance into the principal balance, if the loan agreement already contemplated and allowed for this, this does not "increase" the principal balance for flood compliance purposes.

Proposed Question FORCE PLACEMENT 11 (new question and answer)

Question: What documentation is sufficient to demonstrate evidence of flood insurance in connection with a lender's refund of premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance?

Answer: With respect to when a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance, the Regulation specifically addresses the documentation requirements. The Regulation provides that, for purposes of confirming a borrower's existing flood insurance coverage, a lender must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent. The Regulation does not require that the declarations page contain any additional information in order to be accepted as fulfilling the mandatory flood insurance purchase requirement.

In situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does not specify what documentation would be sufficient. Generally, it is appropriate, although not required by the Regulation, for lenders to accept a copy of the flood insurance application and premium payment as evidence of proof of purchase for new policies.

NFA Comments: We recognize that the Agencies are limited by statute and appreciate that the answer to the question is dictated as such. However, we encourage the Agencies to add another paragraph to recognize and clarify that in most situations a declaration page will contain additional information beyond the insurance policy number and insurance company or agent contact information. When such additional information is adequate for a lender to determine that the policy is unacceptable (e.g. the coverage amount in insufficient, there is a gap in the coverage period, the policy covers a different property, the policy is a private flood insurance policy and the policy fails to meet the definition of private flood insurance, among others), a lender is not required to cancel and refund the force-place insurance. Instead, the lender would only need to cancel and refund the force-place insurance to the extent the existing coverage is sufficient. For example, if the lender had force-placed a policy and the required minimum coverage amount was $150,000, if the borrower subsequently submits a declaration page with the policy number and insurance company and/or agent's contact information but the declaration page indicates the policy's coverage amount is only $100,000, the lender would only need to partially cancel and refund on a prorated basis for any overlap of the force-place coverage (as opposed to having to completely cancel and refund entirely, despite the coverage amount being insufficient).

Regarding private flood insurance, as mentioned above we hope to see those proposed questions and answers soon. In the meantime, we recommend you consider removing COVERAGE 1 from this Q&A and withhold specific guidance on private flood insurance until the release of that proposed guidance. Further, we caution the Agencies against commenting about private flood insurance products or coverages (e.g. APPLICABILITY 12 "… after considering the costs of the private flood policy …", AMOUNT 2 "… exceeds the amount the … private insurer would pay …") outside of guidance on implementation and interpretation of the lending regulations governing the acceptance of private flood insurance (12 C.F.R. 22.3; 12 C.F.R. 208.25(c); 12 C.F.R. 339.3; 12 C.F.R. 614.4930; 12 C.F.R 760.3).

NFA membership includes private companies which offer or support private flood insurance; therefore, our hope is that the Agencies provide needed and valuable guidance to lenders to clarify and streamline the lenders' understanding and acceptance of private flood insurance. However, the private flood insurance industry does business distinctly from the federal lending regulations, thus we want to avoid commingling of your guidance to lenders with comments or guidance outside of federal purview and perhaps reserved for the states in which the products are sold.

We appreciate the Agencies' efforts to provide this proposed guidance and needed updates to the "Interagency Questions and Answers Regarding Flood Insurance". We encourage the Agencies to identify and consider opportunities for simplification in the guidance and to closely consider the recommendations from individual member companies and from other trade associations such as the American Bankers Association and the Mortgage Bankers Association.

Sincerely,

Cheryl Small, Executive Director
National Flood Association