REGIONS

May 20, 2008

Sent via facsimile to:
(202) 452-3819

Sent via first class U.S. Mail to:

Ms. Jennifer J. Johnson
BOARD OF GOVERNORS of the
FEDERAL RESERVE SYSTEM
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Revisions to Interagency Questions and Answers Regarding Flood Insurance; Docket No. OP-1311

Dear Ms. Johnson:

We commend the regulatory agencies' work in proposing new questions and answers, as well as substantive and technical revisions to the *Interagency Questions and Answers Regarding Flood Insurance*. The proposed changes are an useful aid in defining our responsibilities under the federal flood insurance rules and legislation and the revisions clarify areas of potential misunderstanding. Thank you for providing the opportunity to comment on the proposed revisions. We have carefully considered the proposal and hope that the following comments will prove useful as you work to finalize the proposal.

Regions Financial Corporation is a financial holding company that conducts its banking operations through Regions Bank, an Alabama chartered commercial bank that is a member of the Federal Reserve System. Regions operates approximately 2,000 banking offices in sixteen states throughout the South, Midwest and Texas. Regions provides traditional commercial, retail and mortgage banking services and has total consolidated assets of approximately $141.0 billion.

The proposed guidance is effectively organized and for ease of reference, our comments follow the same section-by-section organization and use the same common terms, such as "Act" and "Regulation," throughout the letter.

II. Determining the appropriate amount of flood insurance required under the Act and Regulation.

The Regulation currently requires the amount of flood insurance to "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." Proposed question 7 introduces the insurance term "insurable value" as it relates to the determination of the maximum limit of coverage available under the act. However, when proposed question 7 defines "insurable value" it does so with the term "overall value" which is an undefined term. The proposed question confuses the regulatory definition in its attempt to combine terms from the insurance field with definitions established by regulation. With residential mortgages, a term such as the replacement cost of insurable value would prove more beneficial in clarifying the definition. In defining terms such as "insurable value" with "overall value" the proposal leaves the door open for the use of "market value" as the determining factor which we do not believe to be the intent of the proposal. Additionally, with the insurance term "insurable value" not being a term common in the financial services industry, issues such as the proper procedures for assessing improvements are left to the individual bank and are not clearly defined in the proposed question. Using the term "replacement cost," which is easily discernable on an appraisal, in place of the term "insurable value" would provide greater guidance when clarifying the appropriate amount of flood insurance. In the alternative, an example of the application of "insurable value" would be beneficial.

Proposed question 11 requires a lender to determine the amount of insurance required on each building if the real estate security contains more than one building. That proposed question does not address the common issue of determining flood insurance coverage adequacy based on a master flood insurance policy. In fact, the example assumes that all buildings are of equal value, which is seldom the case. Many issues resulting from multiple building situations are a result of a borrower insuring the buildings with a master policy. Placing the requirement on the lender to determine the applicability of a master flood insurance policy to multiple buildings, with differing values, results in various interpretations of the regulation. To achieve real clarification with respect to the issue of real estate security containing more than one building an example with different building amounts would be helpful. A common approach is to apply the coverage amounts of a master policy as a percentage of coverage relative to the buildings value. If this approach is acceptable, using it as the example would prove helpful.

A variation on proposed question 11 is the issue of how to divide building coverage on multiple buildings insured by separate NFIP policies. Consider for instance, a designated loan with three non-residential buildings located in a special flood hazard area ("SFHA"). The required coverage analysis requires coverage in the amount of the outstanding loan balance of $750,000. The values of the buildings are $450,000, $350,000 and $200,000 respectively. A common practice is to divide the NFIP coverage proportionally by square footage of the structures or by the values of the structures and apply the insurance equally among the eligible buildings. This approach appears consistent with proposed question 11, which seems to contemplate that insurance can be divided in any manner among the three buildings. However, the implication of the example provided in proposed answer 11 is that one building could have $5,000 in coverage, one could have $15,000 in coverage and the final building could have $130,000 in coverage. Without a required methodology to distribute the coverage for the three buildings, institutions must rely on a common practice. We request that this issue be clarified and if the common practice is acceptable, that an example be provided confirming the acceptance of the practice.

Proposed question 14 states that "[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." However, the National Flood Insurance Program ("NFIP") follows the standard practice in the financial industry of allowing "...lenders to dictate the amount of the deductible according to the authority found in the loan document hazard clause" (*Mandatory Purchase of Flood Insurance Guidelines*, September 2007, Section C(4)). Therefore, if a lender determines that a deductible is appropriate within the boundaries of its own safety and soundness guidelines it seems logical that a deductible should be allowed regardless of its amount. With the NFIP's allowance for optional deductibles, it seems that proposed question 14 contradicts the previously released guidelines. As long as the deductible falls within the allowed "optional deductible" parameters the flood requirements are not circumvented but the institution is operating within the guidelines.

IV. Flood Insurance requirements for construction loans.

We appreciate the regulatory agencies attempt to clarify the flood insurance requirements for construction loans. It is apparent that the questions and answers in Section IV follow a logical flow of considering loans secured by raw land (proposed question 16) up to a loan secured by a building in the course of construction (proposed question 19). However, additional clarity would be useful when the alternatives for requiring coverage are presented. Proposed question 18 contemplates purchasing an NFIP policy prior to the start of construction with its effective date at the commencement of construction or once materials are in an enclosed building on, or adjacent to, the premises. Alternatively, proposed question 19 allows a lender to defer the required purchase of flood insurance until a foundation slab has been poured and before the building construction funds are disbursed. While both questions address buildings in the course of construction, each question provides a different option for meeting the flood insurance requirements. If both are viable options for requiring coverage for buildings in the course of construction, a statement listing the available options would be beneficial and help clarify any ambiguity.

VI. Flood insurance requirements for residential condominiums.

As discussed in the comments related to Section II, the insurance term "insurable value" is again commingled with the term "replacement cost" in Section VI. The confusion of the requirements imposed by the terms "insurable value," "replacement cost," and "overall value" is magnified when you factor in the additional requirements resulting from the complexities related to insuring residential condominiums. Either a uniform definition of the term or concrete examples would help clarify the confusion.

XII. Gap insurance policies.

Proposed question 57 considers the reliance by a lender on a gap, or blanket, insurance policy to meet its regulatory obligations. In that discussion, the statement is made that

> ...when a policy has expired, and the borrower has failed to renew coverage, gap or blanket coverage may be adequate for protection for the lender for the 15-day gap in coverage between the end of the 30-day "grace" period after the NFIP policy expiration and the end of the 45-day force placement notice period.

In circumstances such as this, the reliance on gap, or blanket coverage, for the 15-day gap could be eliminated by extending the "grace" period to a 45 day grace period in place of a 30 day "grace period." It is our recommendation that to avoid having an exception to the gap, or blanket, prohibition that the 30 day grace period be extended to 45 days to protect the borrower, the lender, and eliminate the need for a limited exception.

Additional Questions and Answers

While we understand that developing questions and answers to comprehensively cover all areas where a misunderstanding could occur is close to impossible, there are additional areas of concern that arise frequently enough to warrant consideration. The areas that continue to generate questions that could be incorporated into the proposed questions or could be clarified in another section of the proposal are as follows:

- Once a lender has determined the appropriate amount of flood insurance required under the Act and Regulation, what documentation is appropriate to accept as proof of adequate coverage? The *Mandatory Purchase of Flood Insurance Guidelines*, Section C(2)(a) p.26, indicate that "Acceptable proof of coverage may be a copy of the Flood Insurance Application and premium payment, or a copy of the Declarations page." However, FEMA's *Flood Insurance Manual*, at p.GR8 (May, 2008), indicates that "the NFIP recognizes Certificates of Insurance for renewal policies." A clarification in the proposed questions and answers would prove beneficial.
- Whether there is an acceptable tolerance for when to require additional flood insurance coverage if the borrower is underinsured by a deminimus amount?

For example, suppose the "per unit" flood coverage under a Residential Condominium Building Association Policy is deficient by an amount which is lower than the maximum deductible ($5,000) if the condo unit were insured separately under the Dwelling Form of coverage. Would an exception to the Mandatory Purchase of Flood Insurance Guidelines be allowed rather than requiring the unit owner to obtain a separate dwelling policy for the deficiency amount?

- With the recent change in flood zone determinations, such as A1 to AE, whether the Act and Regulation require a discrepancy resolution when the flood certification and insurance policy use different zone classifications and the insurance premiums are not similarly rated based on the different classifications? In a FEMA memo to Write Your Own ("WYO") companies dated April 16, 2008, the WYOs are instructed to "use the most hazardous flood zone for rating when presented with two different flood zones, unless the building qualifies for the 'grandfathering rule'." We suggest that this be a recommended standard procedure when a borrower refuses to pursue a LOMA, LOMR or LODR.
- Additional guidance on various townhome scenarios and clarification on how a townhome should be treated (i.e. as a single building or as a condominium policy).
- In considering other policy forms and building types, it seems that settlement considerations are a component of the adequate coverage analysis. In regard to mobile homes, the Dwelling Policy indicates that special loss settlement provisions apply when the mobile home is a principal dwelling. The settlement will be paid at the lower of the replacement cost or 1.5 times the actual cash value. A question and answer on the proper determination of mobile home coverage would be helpful in clarifying misunderstandings.

We appreciate the opportunity, and invitation, to comment and thank you for considering our comments as you finalize the proposal. Should you have any questions or need additional information please do not hesitate to contact me.

Sincerely,

Joseph M. Dixon, III
Regions Financial Corporation