



**Independent
Bankers
Association
of Texas**

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November 19, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Email: regs.comments@occ.treas.gov
Re: Docket ID OCC-2020-0008

Robert E. Feldman, Executive Secretary
Attention: Comments, Federal
Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Email: comments@fdic.gov
Re: RIN 3064-ZA16

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov
Re: Docket No. OP-1720

Greetings,

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing approximately 350 independent, community banks domiciled in Texas.

IBAT sincerely appreciates the collective action of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Farm Credit Administration ("the Agencies") to release the proposed Interagency Questions and Answers Regarding Flood Insurance ("proposed Q&As").

First and foremost, IBAT members will welcome the restructuring of the FAQs. Grouping these by topic is significantly more useful. In addition, it eliminates the awkward reference to multiple versions of FAQs, issued numerically.

I. Determining the Applicability of Flood Insurance Requirements for Certain Loans [Applicability]

A question and answer should be added that addresses situations when a portion of a property securing a loan is located in a Special Flood Hazard Area but the improvements located on that same property are not located in the Special Flood Hazard Area. IBAT recommends that if the structure—which is the true trigger for the insurance requirement—is not located within the zone, then insurance should not be required.

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improvements located on that same property are not located in the Special Flood Hazard Area. IBAT recommends that if the structure—which is the true trigger for the insurance requirement—is not located within the zone, then insurance should not be required.

A question and answer should be added that addresses situations where a lender obtains a security interest in "contents" when there is a cross collateralization clause or an abundance of caution situation. In particular, we are aware of situations in which the bank may not realize that a cross collateralization clause is in an old deed of trust. For example, the loan might have been acquired from another bank as a result of a merger. Also, some – but not all – attorneys automatically include a security agreement within the deed of trust itself instead of in a stand-alone document. In these scenarios, arguably, the contents secure later transactions. However, the current underwriter may simply not be aware of this potential. We would recommend that contents coverage not be required under these situations.

A question and answer should be added to further clarify scenarios in which the contents might be included in a deed of trust out of an abundance of caution. However, the contents are of limited value. Although they should be exempt from coverage, additional clarification on this point would be welcome.

II. Exemptions From the Mandatory Flood Insurance Purchase Requirements [Exemptions]

A question and answer should be added that addresses situations where the borrower will demolish a structure immediately after acquisition. A follow-up question should address what alternatives are there when a borrower or lender has determined that the building to be insured will not be insured to its full replacement cost because it will be demolished. Is the insurable value based upon the 'functional building cost value' or the 'demolition / removal cost value?'

VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief [Notice]

An issue that should be addressed with additional clarity is the meaning of "reasonable time" in connection with Question VII. #2 The FDIC and OCC interpret "reasonable time" to generally mean 10 days prior to loan closing but these agencies allow shorter periods of time when appropriate. The FRB, on the other hand, has a very strict definition of "reasonable time" to only mean 10 days, with no exceptions. Unfortunately, it is not uncommon for a lender to receive an updated flood determination closer than 10 days to closing. In such a case, IBAT would suggest that what is reasonable in that case would be the time between the revised finding and closing. Otherwise a borrower that is close to the end of an earnest money period for purchase of a property would be harmed. Community bankers, and their customers, have struggled with the lack of a clear and consistent interpretation from the Agencies long enough.

In closing, it should be noted that IBAT strongly supports the Agencies' commitment to provide clear and articulate guidance to community banks regarding the implementation and enforcement of the Flood Disaster Protection Act and we appreciate the opportunity to participate in this process.

Sincerely,



Christopher L. Williston, CAE
President and CEO