CCIA Fostering Financial Security

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Board of Governors of the Federal Reserve System
Submitted via email: regs.comments@federalreserve.gov

Re: Interagency Questions and Answers Regarding Flood Insurance for Loans in Areas Having Special Flood Hazards, Docket No. OP-1720

Dear Board of Governors,

The Consumer Credit Industry Association ("CCIA") appreciates the opportunity to comment on the proposed Interagency Questions and Answers Regarding Flood Insurance for Loans in Areas Having Special Flood Hazards ("Interagency Q&A").

CCIA is a national trade association representing manufacturers, administrators and distributors of lender and consumer protection products such as lender-placed flood insurance. Since our members are "providers" of force placed flood insurance, our comments start with the FORCE PLACEMENT questions and then transition into other areas that have implications to force placed flood insurance as well.

Regardless of the outcome of this Interagency Q&A, industry will continue to execute processes that help assure safety and soundness for lenders while making the process as consumer-centric as possible. There simply is no incentive for industry not to adhere to force placed flood insurance requirements and we offer our comments in that spirit.

An overarching theme in this material focuses on defining what lender actions constitute making a "determination" that flood insurance is absent or inadequate and whether that determination (or those actions) are in fact conditional or does that determination prompt a certain consistent obligation of the lender in all cases.

First is the specific use of the verb "determine" in describing the process a lender follows to establish whether a loan is, or is not, adequately insured. Second is that notice to the borrower follows determination and third, that placement follows notice – there is a specific obligation of the lender or their servicer to provide notice after "determining" an absence or insufficiency in coverage.

Additionally, the National Flood Insurance Act ("Act") describes the lender's duty to "determine" sufficiency "*at any time during the term of the loan*" which we see as assigning no conditions as to whether an individual determination should, or should not, be performed. This language emphasizes the relationship between the act of determining coverage to be absent or insufficient and the requisite duty to begin the notice process. Force placement of coverage can only follow proper notice as notice can only follow determination. Hence, we would respectfully suggest that the Interagency Q&A reflect a consistent treatment of determination, notice and placement throughout the duration of the loan, for any and all events where coverage is found to be absent or insufficient.

FORCE PLACEMENT 1. What is the requirement for the force placement of flood insurance under the Act and the Regulation?

We recommend two small but important enhancements to assure this answer reflects the lender's or servicer's duty to determine sufficiency of coverage and provide notice to the borrower (if necessary) as reflected in the Act, Regulation and RESPA.

The main concern in the current answer is the Agencies' mandate for placement of coverage absent the formal notice process as defined in the Act. The last sentence in the answer for FORCE PLACEMENT 1 is problematic in that lenders do not simply become *"aware"* that flood insurance remains insufficient – this fact is "determined" (emphasis added) using the same processes that lenders follow to identify any insufficiency. Awareness that an insufficiency persists does not present itself in a vacuum, it is the result of detailed steps the lender takes to: intake a new borrower-provided insurance policy, edit the data, update the loan record, interrogate the policy against security instrument criteria (carrier rating, deductible, amount, term), establish escrow, and determine the impact to the monthly payment. These steps -- which constitute a "determination" – must occur each and every time a borrower submits an insurance policy as evidence of coverage. The process of determining whether the insurance is acceptable is a sequential process in the Act and Regulation and occurs prior to and as the trigger for any notice to the borrower(s) which must precede any placement of coverage.

We do not see an ability to justify linking a new determination of insufficiency (based on a newly submitted policy) to a prior notice given the sequential language in the Act and Regulation. The first sentence of this response says, "*When a lender makes a determination that the collateral securing the loan is uninsured or underinsured, it must begin the force-placement process"* this statement better characterizes that a lender/servicer simply does not become "*aware*" of an ongoing insufficiency; that fact is determined by the lender/servicer and that process triggers notice and force placement.

In addition, to describe the receipt and processing of any borrower-supplied insurance policy as anything other than a "determination" is also inconsistent with RESPA and its implementing Regulation X[1] which governs the establishment of escrow accounts and sets forth the servicer's duties with respect to payment of taxes and insurance. Note that escrowing for lender placed premiums is required under the Act (and also addressed in ESCROW 3) thereby invoking the servicer's obligations under Regulation X §1024.17 which uses the term "determine" a dozen

[1] See 12 CFR Part 1024

times in describing the actions of a servicer when processing tax and insurance documents and establishing escrow transaction including the payment of premiums.

Therefore, we recommend the following changes to the last sentence in this answer (shown in red underline):

> In addition, before the lender or servicer must force place flood insurance, if the lender or servicer determines ~~is aware~~ that a borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should ~~inform~~ provide notice to the borrower that an additional amount of insurance is needed in order to comply with the Regulation.

This updated language assures the duty of the lender or servicer to provide notice following a determination is clear, and the Interagency Q&A is better aligned with the Act, Regulation and RESPA.

FORCE PLACEMENT 2. When must a lender provide the force placement notice to the borrower?

Industry agrees with the Agencies' linkage that connects making a determination with providing subsequent notice and recommend aligning this answer with FORCE PLACEMENT 1 and 6. We also respectfully request that the answer surrounding "brief delay" should acknowledge additional circumstances for such delay(s).

First, with respect to the larger issue of better defining what constitutes a "determination" we agree with the Agencies' linkage between making a determination and providing notice. The response indicates: "*The Regulation requires the lender, or its servicer, to send notice to the borrower upon making a determination … The Agencies expect that such notice will be provided to the borrower at the time of determination of no or insufficient coverage.*" This language emphasizes a one-for-one relationship between making a determination and providing notice. The use of "or" in distinguishing between "*no*" and "*insufficient*" further emphasizes that these are two distinct conditions – the language indicates a lender may determine that coverage is either absent "*or*" insufficient, but the lender cannot simultaneously determine both factual conditions. We agree with this wording and see opportunity to align this answer with answers for FORCE PLACEMENT 1 and 6.

Second, the answer seems to address any gap between the time a determination of insufficiency is made by a lender and the time that notice of such insufficiency is sent to the borrower. We agree that any delay in providing the notice to the borrower following determination by the lender should be brief; however, such delay may be necessary in certain circumstances, such as newly acquired/transferred loans. For example, servicers will want to ensure welcome letters and other required communications are sent to borrowers, and systems data has been edited and verified prior to sending a lender-placed notice. Additionally, complex commercial transactions may require time for additional diligence.

Therefore, where "brief delay" is noted in the current response, we ask the Agencies to elaborate by listing additional circumstances where the servicer is solving for further obligations and an improved customer experience, such as inserting something similar to the following (shown in red underline):

> The Agencies expect that such notice will be provided to the borrower at the time of determination of no or insufficient coverage. The Agencies recognize there may be brief delays between determination and such notice, which can be caused by a number of processes, including but not limited to batch processing, manual exception processing, commercial transactions and newly acquired/transferred loans. 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~~.

FORCE PLACEMENT 4. May a lender satisfy its notice requirement by sending the force-placement notice to the borrower prior to the expiration of the flood insurance policy?

We agree with this wording in that it reflects the intent and specificity in the Act and Regulation: lenders must ensure that notice is provided upon determining (verifying) that the policy has actually lapsed or is insufficient.

This clarification of cause-and-effect and restatement of the lender's obligations under the Act is crucial for greater consistency in the application of this position specific to all determinations of an absence or insufficiency in coverage. The Act and Regulation do not describe any conditions or other factors that otherwise exempt a lender from providing notice any time they determine coverage to be insufficient.

FORCE PLACEMENT 6. Once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage and sends the borrower a force-placement notice, may a lender make a subsequent determination in connection with the initial notification period that the designated loan has no or insufficient coverage and send another force-placement notice, effectively providing more than 45 days for the borrower to obtain sufficient coverage?

We urge the Agencies to reconsider the answer to this question and allow for lenders to make subsequent determination(s) with subsequent notice(s) and corresponding placement of force placed flood insurance (if necessary). In this way, the answer is aligned with the Act, other answers in the FORCE PLACEMENT section, and well-established and examined industry practices.

Consistent Standards. A core issue is applying a consistent standard when referencing the process of "determining" coverage to be adequate. There is no question as to whether a lender "may" make a subsequent determination, rather, they are obligated to do so. Per RESPA, the security instrument language and the Act, any examination of sufficiency is done on a per-policy basis --

not on a per loan basis -- and the borrower has an expectation that the lender will examine any policy submitted and subsequently "determine" adequacy.

Each determination of adequacy stands on its own, separate and distinct from any prior determination that may have prompted a prior notice. In response to FORCE PLACEMENT 4, the Agencies mandate that proper notice can only follow the actual determination of a lapse and any notice sent in anticipation of that lapse does not serve as lawful notice for force placement. In the same way, a lender cannot base force placement on the *anticipated* expiration of a policy, neither can a lender *predict future insufficiency* based on receipt of partial coverage. The lender must determine that actual insufficiency as it occurs. Therefore, the lender would need to provide new notice upon the determination of the actual insufficiency. In this way, the borrower is provided only 45 days from each notice to obtain coverage and notice must follow determination per the Act. The critical distinction in the Act is that each 45-day period is specific to having "*provided notice*" and notice can only follow determination.

We ask the Agencies to consider the lender's perspective if FORCE PLACEMENT 6 was re-worded to read: "What is the lender's obligation should the borrower (in reaction to an initial notice to purchase flood insurance) submit a policy which they feel is sufficient but upon examination for acceptability by the lender is determined to be insufficient?" In this phrasing, the answer seems clear that under the Act, and more importantly under RESPA and the security instrument language, the lender may either accept that coverage or reject it. Only by rejecting the coverage could the lender continue with force placement upon expiration of the original 45-day notice period. By "accepting" the coverage and determining it to be insufficient, the lender must begin the force placement process based on the technical language in the Act. To do otherwise would equate to placement of coverage without specific notice of the insufficiency, thereby in contravention of the Act.

Risk Management and Borrower Impact. Also critical for consideration is understanding the balance between risk to the institution and the impact to the borrower. Modern, limited dual-interest, lender placed insurance programs include master policy agreements and individual certificates of coverage that allow for coverage of losses that may occur during the notice period or during any lapse in continuous coverage. If an absence or insufficiency has been noted, there is no risk of uninsured loss for the institution thereby mitigating safety and soundness risk. Coverage can be placed based on the date of lapse to ensure continuous coverage. Institutions (and individual borrowers) are equally protected against uninsured loss irrespective of whether a new notice is provided upon a new determination.

Notices of lender placement are used to alert customers of the need to obtain insurance or provide proof of existing coverage as required by the security instrument and based on language in the Act. The notices also satisfy state requirements under certain collateral protection insurance regulations and provide additional disclosures applicable in the lender placed process, including disclosures that have proven critical in defense of civil litigation.

From a practical perspective, the answer as currently written provides for a single cycle without regard to events surrounding the lending process. For example, as written there is no mechanism to address legitimate corrections, such as a wrong address, incorrect collateral description, lender error in determining the amount or date, or an increase in a loan balance.

Re-disclosing upon a new determination is not only required in the Act; it can only be seen as in the borrower's best interest and a failsafe against potential claims of bad faith. Servicers risk civil penalties, potential regulatory action, and UDAAP violations if they cannot prove that proper notice was provided prior to LPI placement. Via the plaintiff's bar, borrowers have proven aggressive in challenging lenders' enforcement of the mandatory purchase obligations, to include: status of the property as being in a SFHA, amount of coverage, date of coverage, refunding of LPI premiums, and placement in general. Servicers have overwhelmingly prevailed in their defense of current processes based partly on the practice of redisclosing any subsequent lapse in coverage and linking notices to the specific act of determining whether individual policies provide sufficient coverage. Protections enjoyed today in defense of civil litigation would evaporate if the current response is followed.

We therefore urge the Agencies to reconsider the answer to this question and allow for lenders to make subsequent determination(s) with subsequent notice(s) and corresponding placement of force placed flood insurance if necessary. In this way, the answer is aligned with the Act and other answers in the FORCE PLACEMENT section. Providing proper notice upon a new determination of insufficiency is critical for compliance with the Act, represents a practice found acceptable in civil litigation, presents no safety and soundness risk to lenders and *is overwhelmingly consumer-centric*.

If the answer stands as written, we urge the Agencies to acknowledge that any change in this practice represents a departure from well-established and previously examined industry practices, and appropriate time should be afforded the industry to examine current processes and amend existing notices and practices in order to accommodate any newly communicated guidance.

FORCE PLACEMENT 7. May a lender commence a force-placed insurance policy on the day the previous policy expires, or must the new policy begin on the day after?

We ask the Agencies to enhance the specificity of this answer by adding the time of day. As written, the answer could be construed as creating a one-day gap in coverage.

Industry wholeheartedly agrees that a lender may not require the borrower to pay for double coverage. The lender-placed flood insurance (and hazard insurance for that matter) business model is designed around only placing coverage during periods of actual exposure, whether that is due to a lapse or insufficient coverage.

In the primary insurance market, policies expire at a specific date *and time* (e.g., 12:01 AM). As written, this answer creates a lapse in coverage since forced placed flood insurance begins on "Day 2," the day after the previous policy expires.

Therefore, we urge the Agencies to enhance the precision of the answer by augmenting it with the specific time that force placed flood insurance is effective. This will ensure that lenders provide truly continuous coverage as required by statute and regulation by closing any inadvertent gaps in coverage continuity.

FORCE PLACEMENT 8. When force placement occurs, what is the amount of insurance required to be placed?

We strongly urge the Agencies to limit the scope of this proposed answer solely to loans where the lender or servicer does not have the provision in its loan agreement to add flood insurance premiums to the loan balance. In this way, it comports with the answer to FORCE PLACEMENT 10, aligns with the Act and Regulation, and helps avoid unnecessary process complexity, increased risk and increased consumer costs for a small and declining pool of loans.

Increased complexity, risk and consumer costs. The answer states that "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." This raises numerous practical questions and issues.

1. Coverage Amount -- If the flood insurance premium is added to the loan balance, does the lender or servicer have to *anticipate* such placement and require the borrower to provide a policy for the outstanding loan balance plus the premium? By the time actual placement is made, the loan balance will have changed (e.g., loan payment(s) made) and certain loan fees could have been applied (e.g., late fee).

   On the other hand, will lenders or servicers be required to anticipate full or partial refunds when determining if a newly provided evidence of insurance is sufficient? Using the agencies' example, if the borrower subsequently provides a flood insurance policy, is the new basis for determining the sufficiency of the borrower's policy now $202,000, or does it remain $200,000 and servicers would be required to anticipate a reduced balance amount with force placement cancelation?

2. Cancellations -- Referencing the points made in *Coverage Amount* above, what does the required coverage amount become upon cancellation of force-placed flood insurance? What portion of the premium goes to the loan balance and which is refunded, and accordingly what is earned and unearned premium for the insurer?

3. Borrower Notification -- Today, borrowers are provided with advance notice of the required coverage amount. The Agencies' answer would stipulate that the required coverage amount should also include the premium. However, since the loan balance can change over time, the ultimate coverage amount will change, thereby rendering the advance notice as inaccurate.

4. Equitable Treatment of Borrowers -- Borrowers with escrow or the rare direct billing are not required to provide as much coverage vs. non-escrow. Thus, the Agencies' response is punitive for non-escrow borrowers since they are required to provide more coverage than others in a like position. This may also expose lenders and/or their servicers to litigation under UDAAP or ECOA.

5. Insurance Theory -- Including the premium in the limit of coverage – the principal loan balance - is an invalid insurance structure in that the benefit (i.e., the principal loan balance) cannot be structured as paying for itself. The premium, while technically added to the loan balance, is a separate and distinct purchase that affords value as part of the lender's risk management system.

6. Data Processing -- This requirement introduces a recursive mathematical premium function, unknown cancellation logic and new loan tracking and reporting requirements. This functionality does not exist today in financial institution accounting systems, thereby raising complexity and costs that will be passed on to all borrowers.

In addition to these significant practical issues, the requirement of mandatory escrow at the time of a MIRE event codified in the Biggert-Waters Flood Insurance Reform Act means *these requirements apply to a small and declining pool of loans nationwide. The complexity and cost increases would be disproportionate to the benefits gained from such a requirement.*

Alignment with FORCE PLACEMENT 10. This response is in conflict with the answer to FORCE PLACEMENT 10, where the Agencies state that if the loan contract allows for the addition of flood insurance premiums to the loan balance, it is not an "increase" in the loan amount:

> "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…"

While the answer above is part of describing the methods of paying for premiums and whether each method constitutes a triggering event for the lender to determine the sufficiency of flood insurance coverage on the loan, this very same logic should flow through to the basis for premium calculation as well. That is, if the Agencies stipulate in FORCE PLACEMENT 10 that the loan balance is not "increased" when flood insurance is added to a loan that contractually allows for such an addition of premium, then the basis for flood insurance premium should follow the same logic and be defined as solely the principal loan balance -- without the addition of the flood insurance premium.

Alignment with the Act and Regulation. This answer accurately 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 (emphasis added). However, outstanding principal balance is a term applied throughout the Act and Regulation and therefore` has special meaning. The outstanding principal balance of a loan does not refer to fees, advances, or other charges which are not considered part of the principal and are treated differently for accounting purposes. Many lenders establish and maintain a separate account(s) to hold force-placed premiums, foreclosure fees, property preservation fees, late fees, inspection costs, and other charges due under the contractual loan agreement and securitized by the property but not considered part of the "principal balance." The drafters could not have contemplated including flood insurance premiums in the definition of outstanding principal balance. Consequently, the meaning of "outstanding principal balance" as the basis for the minimum amount of required flood insurance should not include the addition of flood insurance premium.

We therefore strongly urge the Agencies to limit the proposed response to only loans where the lender or servicer does not have the provision in its loan agreement to add the flood insurance premiums to the loan balance, as follows (changes in red underline):

> Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, and the lender has no provision in its loan agreement to add force placed flood insurance to the loan balance, 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.

This simple change will provide for process consistency by aligning with FORCE PLACEMENT 10, comport with the Act and Regulation, and avoid increased complexity, risks and increased costs to consumers for a small and declining pool of loans.

FORCE PLACEMENT 9. When may a lender or its servicer charge the borrower for the cost of force-placed insurance?

Industry seeks clarification on placing coverage with regard to the effective date (and thus the amount of coverage). We also recommend small but important edits to reinforce consistent terminology and correct a timing issue.

Coverage Effective Date. Industry provides continuous coverage for lenders and servicers to assure they comply with the Act and Regulation. In so doing, industry is highly cognizant that borrowers are only charged for periods of actual lapse or insufficient coverage, as charging for a period where a benefit was not provided would be in violation of state insurance laws. The typical business model provides for coverage continuously, so that even though the coverage effective date precedes the placement (or issuance) date, coverage was in force starting at the effective date. Should a claim occur prior to the placement date, benefits are thus still available (subject to policy provisions).

Remapping is noted by the Agencies as an exemplary event whereby the lender or servicer "discovers" a loan with no or insufficient coverage and can charge for premiums or fees back to the exposure date, provided coverage is afforded and effective back to the exposure effective date. In practice, remapping will almost always cause a determination of exposure in the past. The answer seems to imply that in the case of remapping, coverage could be placed immediately without the customary notice to the borrower. *This answer should be amended to provide such notice.*

Further, clear delineation between the effective date of coverage and the placement date of coverage would serve well as a guide to all parties. For example, assume that a servicer in June determines that flood insurance coverage is insufficient, but that insufficiency actually dates back to February of that year. Upon making the determination, the servicer initiates the 45-day notice period for this determination and placement of coverage as follows:

- Date of Lapse – February 15, 2020. For purposes of this example, assume that the borrower's insurance record indicated a policy for $150,000 was in effect as of this date (based on evidence of coverage submitted).

- Date of Determination – June 1, 2020. Per updated policy information, the lender or servicer determines that the policy thought to be $150,000 was actually endorsed down to $100,000 of coverage as of February 15, 2020 (resulting in an insufficiency of $50,000). The lender or servicer determined that an insufficiency of $50,000 existed as of February 15, 2020.

- Date of Notice – June 2, 2020. In connection with the foregoing determination, the servicer provides the first notice to the borrower.

- Date Notice Period Expires – July 17, 2020 (45 days from June 2, 2020)

- Date of Placement – July 18, 2020. Servicer orders and purchases coverage of $50,000 on the loan from a force placed flood insurance provider.

Based on the above example, we would respectfully request the Agencies' position as to the date that the servicer's coverage should be effective and what date should be the basis for borrower charge (should they be different) – (1) February 15, 2020 lapse date, (2) June 1, 2020 date of determination, (3) June 2, 2020 notice date or (4) July 18, 2020 date of policy issuance. We urge the Agencies to provide a working example with reference to justification under the Act and and/or Regulation in order to best convey regulatory intent for this answer.

Additional illustrative examples of exposure determinations would help guide industry, especially in the area of coverage amount and cases outside of the remapping process.

To assist the Agencies to that end and in general, business rules in the industry currently rely on the following terminology to describe events in the lender-placed cycle:

- Date of Lapse/Exposure – This is the date at which point coverage for the loan was either missing or insufficient. This is not necessarily the date the servicer determines that condition, but rather the date upon which the condition first existed.

- Date of Determination/Discovery – This is the date on which the servicer determines that there is an absence of coverage or coverage is insufficient. This is based on a review of evidence submitted by the borrower or evidence obtained through the course of servicing the loan. This date varies as to the interval from the Date of Lapse/Exposure due to a variety of factors.

- Date of Notice – Following a determination, this is the date that a valid lender-placed notice is sent to the borrower alerting them that coverage is necessary, initiating the 45-day notice period.

- Date Notice Period Expires – This is the date ending 45-days after the date a valid notice was provided to the borrower. This date marks the conclusion of the "notice period" or the period where the borrower is afforded time to obtain their own policy.

- Date of Placement/Issuance – This is the date a lender-placed policy is obtained by the servicer. This marks the date the policy is ordered by the servicer and the loan servicing system reflects that coverage has been procured. Note that this is not 100% analogous to the date the LPI policy is printed and mailed to the borrower; that date may occur after processing by the lender-placed vendor.

- Effective Date of Coverage – This is the date upon which coverage under the policy becomes, or became, effective. Coverage afforded through the policy begins on this date. This date determines the premium due.

- Date Borrower is Assessed a Charge – This is the date where a charge is made, typically an escrow account is established or assessed for premiums due once the policy is procured by the servicer.

Determination of a past exposure raises questions regarding how to establish the amount and term of coverage (i.e., how much coverage and how far back). We would ask that the Agencies provide additional guidance in this regard through clarification and examples. Barring such guidance, industry will continue to assure lenders and/or their servicers have continuous coverage available to mitigate lending risk.

Terminology and Timing. Noted at the outset, throughout the Interagency Q&A, we suggest using the term "determine" in lieu of "discover" or other similar terms. For this answer, we recommend the following edit (shown in red underline):

> If a lender or its servicer, despite its monitoring efforts, ~~discovers~~ determines that a loan ~~with~~ has no or insufficient coverage, for example, due to a re-mapping…

This helps reinforce the desired process pattern of "determine" → "notice" → "placement" for force-placed flood insurance.

In the very last sentence of this answer, the Agencies stipulate that "…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." It is important to note that outside of the Agencies' guidance, state insurance law strictly prohibits charging for coverage where no benefit exists.

Since the coverage amount and term are not known until coverage is actually purchased, we offer the following change (shown in red underline) : "…borrower's behalf does ~~did~~ not…"

Industry offers two small but important edits to address terminology and timing, and importantly, respectfully seeks clarification on the coverage effective date and additional guidance via illustrative examples rooted in the Act and/or the Regulation.

FORCE PLACEMENT 10. 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?

Industry appreciates and supports the Agencies' acknowledgement that if a lender's agreement allows for the advancement of funds to pay for flood insurance premiums and fees, such an advancement would not be deemed an increase in the loan balance, and therefore would not be deemed an event that triggers flood insurance requirements.

FORCE PLACEMENT 11. 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?

Industry respectfully recommends including additional data elements to validate sufficient evidence of flood insurance coverage: coverage amount, deductible and term.

Industry recognizes and appreciates that regulatory bodies are oftentimes limited by statute and their own regulations. In this case, the Agencies cite 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."

Insurance in general is largely centered around the coverage amount and the term of coverage. In fact, much of the Force Placed Flood Insurance section of the Interagency Q&A focuses on these very two critical elements. While this is stated in regulation, a declarations page with merely the policy number and insurer/agent information is insufficient to assure an efficient and effective process for mitigating flood insurance risk for lenders and conforming to other aspects of the Act. The lender or servicer needs to know the coverage amount, deductible and term to properly determine sufficiency of coverage.

From a practical perspective, many/most lenders require additional data elements beyond the Regulation in their loan documents, such as coverage amount, coverage term and deductible. The Interagency Q&A is an opportunity to align regulatory requirements with what is actually happening in the field.

Regulators are afforded leeway in the promulgation of guidance and interpretive rules, such as this Interagency Q&A. This is an instance where more specificity would benefit lenders, servicers, insurers and borrowers. To that end, *we would ask the Agencies to add coverage amount, deductible and coverage term as additional required data elements as sufficient documentation of coverage.*

Additionally, while coverage amount and term are needed to determine sufficiency of an NFIP standard flood insurance policy, additional data elements may be needed for lenders to determine policy adequacy on private flood policies based on a lender's interpretation of the agencies private flood rule finalized in 2019. As the Agencies mention their plan to address private flood in subsequent editions of the Q&A, we encourage the Agencies to consider this issue as part of that process.

FORCE PLACEMENT 14. If a borrower's force-placed flood insurance expires, is the lender required to send a force-placement notification to the borrower prior to renewing the force-placed flood insurance coverage?

Industry appreciates the Agencies allowing for lender flexibility in this answer and recommends expanding the answer to cover a broader array of consumer-centric processes regarding the renewal event.

Specifically, provided the regulatory requirement of continuous coverage is met, we suggest broadening this answer to state that the traditional notice cycle can be followed, whether a pre-expiration notice is sent to the borrower (i.e., in advance of the forced-placed flood insurance expiring), or whether a post-expiration notice is sent as part of the customary notice cycle.

In this way, the regulatory framework surrounding force-placed flood insurance enables a variety of consumer-centric processes deployed by lenders nationwide. In addition, while force placement is a lender obligation, allowing for the traditional notice cycle on renewals enables insurance carriers to assure they comply with the requisite state insurance regulations governing force-placed flood insurance.

To that end, we suggest the following changes to this answer (shown in red underline):

> "No. The regulation does not require the lender to provide any specific notice to the borrower of renewal, but the lender may, at its discretion, provide such notice either in advance or at the time of purchasing renewed coverage, as long as providing such notice does not prevent the lender from evidencing continuous coverage is in place within 45-days of the initial force-placed policy expiration. Such a notification may encourage the borrower to purchase his or her own policy, which may be available for a lower premium amount."

This recommended change helps expand the rules to include pre- and post- renewal notices within the context of continuous coverage and the customary notice cycle, thereby allowing lenders to offer consumer-centric renewal processes with enhanced regulatory certainty and allowing insurers to comply with state insurance requirements.

FORCE PLACEMENT 16. If a lender or its servicer receives a notice of remapping that states that a property will be remapped into an SFHA as a future effective date, what do the Act and Regulation require the lender or its servicer to do?

Industry respectfully requests the Agencies to clarify the required effective date of force placed flood insurance, confirm application of this answer to remappings with effective dates prior to the implementation date, and provide examples to help assure industry is properly complying with the requirements of this answer.

Effective Date. This answer states that the effective date of a [future] remapping is the date the lender or servicer must determine sufficiency of flood insurance coverage, and that the customary borrower notice and placement would follow (as applicable):

> "...when a lender or its servicer receives advance notice that a property will be remapped into an SFHA, the effective date of the remapping becomes the date on which the lender or its servicer must determine whether the property is covered by sufficient flood insurance. If the borrower does not purchase a flood insurance policy that begins on the effective date of the map change, the lender or its servicer must send the force-placement notice…"

However, this answer seems to also allow for the lender or servicer to immediately force place flood insurance as of the remapping effective date:

> "…as of the effective date of the remapping, the lender or servicer may force place flood insurance and charge the borrower for the force-placed insurance."

Thus, as written, it appears two different effective dates are possible. Industry has no financial interest in pushing out the effective date of coverage; rather, this issue is truly about the consumer and our desire to assure compliance with the Act and Regulation. We would therefore ask the Agencies to clarify the required effective date in the case of future remapping effective dates.

Remapping Date Precedes Implementation Date. Industry recognizes the Agencies' objective to address future effective dates of remappings. However, we find most remapping dates actually precede the implementation dates.

From a lender/servicer perspective, the typical process calls for: receipt of notification, time and effort to load and test the new data in the software systems, then starting the cycle with the new data. From a practical viewpoint, oftentimes the effective date of the remapping and the determination date of an uninsured or underinsured are different – the remapping effective date is in the past.

Given that most remapping effective dates actually precede the implementation date of the new map, industry asks the Agencies to confirm how to apply this answer in these instances.

Illustrative Examples. Remapping is a complex process, the consumer is unaware of such changes and it takes time for lenders or their servicers to implement new maps. Remapping can create different situations that may result in different requirements, or at the very least shed new light for all parties. Given the complexity of this matter, we urge the Agencies demonstrate the proposed requirements with a series of illustrative examples.

Coupling the examples with a clarification on the effective date of coverage and a confirmation of this answer's applicability to remapping dates that precede implementation dates will serve as a clear guide to help assure industry effectively and efficiently complies with the Act and Regulation.

ESCROW 3. Are lenders required to escrow force-placed insurance?

Industry recommends a change to this answer to align with the proposed answer to FORCE PLACEMENT 10. Industry also seeks additional guidance on when the escrow requirement would become effective in the event of force-placement.

ESCROW 3 requires "lenders or their servicers to escrow flood insurance premiums for any residential designated loan made, increased, extended, or renewed [a "MIRE" event] on or after January 1, 2016, unless the lender or the loan qualifies for an exception from the escrow requirement. The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance."

Industry appreciates that this question and answer is presented to avoid ambiguity on how the escrow requirement applies to force-placed flood insurance. However, as currently written, the proposed answer suggests that *all* force-placement of flood insurance premium would trigger the escrow requirement, which does not align with the proposed answer to FORCE PLACEMENT 10.

FORCE PLACEMENT 10 states that adding flood insurance premiums to the loan balance is <u>not</u> considered a MIRE event – thus not an escrow-triggering event per ESCROW 1 and 3 -- if the loan agreement "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."

To avoid ambiguity and resolve the dissonance in the proposed answers, industry proposes a revision of the last sentence in this answer to read as follows (change shown in red <u>underline</u>):

> The Act and Regulation do not include an exception to the escrow requirement for force-placed flood insurance <u>if the purchase by the lender of force placed flood insurance results in a MIRE event pursuant to Q&A FORCE PLACEMENT 10</u>.

With this change, the answer to ESCROW 3 provides an exception for the addition of flood insurance premiums to the loan balance where the loan agreement provides for such an advance, thereby providing consistency between this answer and FORCE PLACEMENT 10.

Additionally, industry is seeking guidance on when the escrow requirement would begin in the event the lender or servicer adds force-placement premiums to the loan balance and the loan documents do not provide for such advances (i.e. an "increase" according to FORCE PLACEMENT 10). If the escrow requirement is triggered upon increasing the loan balance, the lender is required to escrow force-placed premiums, but that is not possible because the premiums were already added to the loan balance. The force-placed flood insurance premiums cannot be both added to the loan balance and escrowed at the same time.

Therefore, the industry respectfully asks the Agencies to provide guidance on how the escrow requirement would need to be implemented in instances that a lender or servicer adds force-placed insurance premiums to the loan balance, but the loan documents do not provide for such advances.

ZONE 1. 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?

Industry supports the Agencies' change in position in this answer which no longer requires the lender to reconcile a policy declarations page that has a flood zone designation that is different from the flood zone shown on the Special Flood Hazard Determination Form ("SFHDF"). We also respectfully request that the Agencies apply this answer to the entire loan cycle, to amend its position on initiating the force placement process during claim handling if a homeowner does not pay the additional premium to reform the NFIP flood insurance policy.

Application throughout the loan. In its answer, the Agencies state that "This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed" (i.e., a "MIRE" event).

Industry observes that such a discrepancy can occur outside of a MIRE event, such as with a simple renewal of a flood insurance policy, a replacement flood insurance policy, and/or a remapping event. That is, there are ongoing events outside of a pure MIRE event where a lender may discover a discrepancy.

To assure this important change applies comprehensively in scope, industry recommends adding the following -- or something quite similar -- to the current answer (change shown in red underline):

> "This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed, or throughout the life of the loan."

Treatment of Misratings. This answer could be interpreted that the Agencies are suggesting that force-placement is appropriate during the claim handling process to address a premium deficiency. For numerous reasons, we urge the Agencies to reconsider amending this answer.

First, while relieved of the requirement to reconcile a policy declarations page that has a flood zone designation that is different from the flood zone shown on the SFHDF, industry believes it is also inappropriate for the lender to be responsible for ensuring the insurance company or agent utilize the correct rating elements. We are unaware of any reference in the Act or Regulation 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.

Second, the claim settlement process entails many unique situations that are best left to applying the contracted NFIP coverage, including but not limited to:

- The NFIP claim payment may be offset by the amount of premium owed.
- 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.
- 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 claims handling practicalities, force-placement is not necessarily appropriate or applicable *at the time of handling a flood loss*. In the given example, since the zone discrepancy was not a result of lender error, any force placement of flood insurance should be *prospective* in nature and not intended to supplement the insurance proceeds for the prior flood loss.

Third, a lender would not need to initiate its force-placement procedures (1) unless and until the policy is reformed due to the lack of payment of the additional premium, (2) the coverage amount of the reformed policy is insufficient to meet the regulatory requirement, (3) the lender otherwise receives notice of the reformed policy, and (4) *makes a determination that the coverage is insufficient.* 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).

Hence, it is important that lenders and their servicers do not 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. To that end, we offer the following suggested amendments (shown in red underline):

> "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. Any eligible losses that occur up to and including the loss effective date would be covered under the NFIP contracted coverage limit. Following the effective date of the loss, i~~I~~f the borrower does not pay the additional premium, resulting in inadequate coverage, lenders must proceed with force-placement procedures."

In this way, the customary 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.

Extending the answer in ZONE 1 to the entire loan cycle and providing for misrating remedies at the time of claim handling via the NFIP rather than force placed flood insurance will provide useful guidance and appropriate requirements for lenders and/or their servicers to properly administer their force placed flood insurance programs.

CONDO AND CO-OP 4. What action must a lender take for an individual unit owner/borrower if there is no RCBAP coverage?
CONDO AND CO-OP 9. What flood insurance requirements apply to a loan secured by a share in a cooperative building that is located in an SFHA?

Industry respectfully recommends that the Agencies to clearly state that mandatory purchase of flood insurance only applies to nonresidential unit owners where the loan is also secured by condominium contents, as contents coverage is the only coverage directly available from the NFIP.

CONDO AND CO-OP 4 omits addressing nonresidential condominium unit requirements when the association or building owner fails to provide coverage or fails to provide sufficient coverage. Similar to the explanation provided by the Agencies in CONDO AND CO-OP 9, coverage for nonresidential condominium units is not directly available for purchase from the NFIP, which conflicts with a stated requirement in the definition of a designated loan. This is in contrast to residential condominium units which can obtain coverage under the Dwelling policy form (inapplicable to nonresidential units).

We therefore recommend that the Agencies clearly state that mandatory purchase only applies to nonresidential unit owners when the loan is also secured by condominium contents, as contents coverage is the only coverage directly available from the NFIP. Should the Agencies take the opposing position that mandatory purchase does, in fact, still apply to the nonresidential unit owner, then instruction as to the type of coverage required of the unit owner is necessary.

NOTICE 2. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the requirement to provide the Notice of Special Flood Hazards applied in these situations?

Industry urges the Agencies to reflect in their examination manuals that lenders and/or their servicers are frequently unaware of mobile home movement(s) and may only learn of such a change well after it has occurred.

"Home only" transactions, where loans are secured by mobile homes not located on a permanent foundation, raise safety and soundness concerns for lenders. When a mobile home is moved, the lenders and/or their servicers are oftentimes unaware of such movement and may only learn of such a change well after it has occurred.

Therefore, we urge the Agencies to reflect this practical matter in their examination manuals, thereby aligning examiner methods with realities of the business processes.

OTHER SECURITY INTERESTS 4. When a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

For practical considerations, industry recommends that the Agencies reconsider their approach to this question by holding each lienholder accountable to assure sufficient flood insurance coverage for their respective exposure in their lien position.

This answer generally asserts that junior liens must assure sufficient coverage for superior liens in addition to the junior lien. In this way, and by examples in the answer, the Agencies explain that the junior lien is assured its exposure is covered since the entity with the superior lien has prior claim to insurance proceeds. In the case of force placement, this is not a correct assumption.

With that, while industry recognizes that this answer was "amended slightly with no intended changes in substance or meaning," it continues to create practical challenges for the flood insurance operating model, such as:

- Flood insurance administrators handling the junior lien are also required to monitor superior liens and corresponding coverage shortcomings to establish the proper amount of necessary coverage, *even though the superior lien entity may not have a contractual relationship with the junior lien administrator*.

- Junior lien flood insurance *administrators and/or insurers direct claim payments to their insured policyholders*, not superior lienholders with which they have no contractual arrangement.

For these two important practical reasons, industry recommends the Agencies reconsider their approach to this question, especially considering this answer is not derived from the language of Act or Regulation. To that end, we recommend a simple approach that requires each lienholder (and their servicer and administrators) as accountable to assure sufficient flood insurance coverage for their respective exposure in their lien position.

* * *

We applaud the Agencies' efforts to provide additional clarity around the ground rules regarding flood insurance for loans in areas having special flood hazards. Once again, we appreciate the opportunity to provide input to the proposal and hope that the Agencies find our feedback helpful in moving this forward.

We stand ready to assist should you have any questions or desire further assistance in this important effort.

Sincerely,

Tom Keepers

Tom Keepers