Farmers & Merchants Bank®

Farmers and Merchants Bank of Long Beach
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Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street & Constitution Avenue NW
Washington, DC 20551

May 17, 2021

Re: Docket No. R-1742; Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Private Flood Insurance

Dear Ann E. Misback:

On behalf of Farmers and Merchants Bank of Long Beach (F&M"), thank you for the opportunity to submit this comment in response to the Interagency request for comment on the proposed Interagency Questions and Answers Regarding Private Flood Insurance.

F&M is a regional bank headquartered in Southern California with over $10 billion in assets, offering a broad range of consumer and business products and services including, but not limited to, demand deposit and time accounts, online banking, safe deposit boxes, escrow services, credit cards, residential mortgages, home equity lines of credit, and commercial real estate loans.

To better serve our clients and help ensure our compliance with the private flood insurance requirements, Questions and Answers or clarification regarding the following would be most appreciated:

I. PRIVATE FLOOD INSURANCE MANDATORY ACCEPTANCE

Mandatory 2: Apart from loan origination, when must a lender review a flood policy issued by a private flood insurer?

The Q&A identifies that the lender must purchase flood insurance on the borrower's behalf if the borrower does not purchase flood insurance that complies with the Regulation. While this is clear, additional guidance regarding the interaction of other parts of the force-placement requirements would be greatly appreciated. For example, the FDIC's Regulation (12 CFR Section 339.7) states:

(b) Termination of force-placed insurance – (1) Termination and refund. Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage the FDIC-supervised institution or its servicer shall:

(i) *Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under [Section 339.7(a)]; and*

(ii) *Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under [Section 339.7(a)] during any period d ring which the borrower's flood ins rance coverage and the ins rance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.*

(2) Sufficiency of demonstration. For purposes of confirming a borrower's existing flood insurance coverage under [Section 339.7(b)], an FDIC-supervised institution or its servicer shall 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 agent.

Supposing F&M force placed flood insurance and the borrower later submits a declarations page for a private flood insurance (PFI) policy. That alone would trigger the obligation to terminate the force-placed coverage and refund overlapping premiums and related fees. However, at that point F&M may know that the private flood insurance policy is in fact non-compliant. Guidance for scenarios such as the following would be most appreciated:

- F&M sends the 45-Day Notice because the borrower's PFI policy did not meet the PFI Final Rule;
- F&M force-places coverage because the borrower did not obtain sufficient coverage;
- While the force-place coverage is in effect, the borrower provides F&M with a declarations page for that same unacceptable PFI policy (or perhaps a different unacceptable PFI policy);
- Because the borrower submitted a declarations page, F&M terminates the force-placed coverage and refunds any overlapping premiums, and related fees, as the Regulation requires. At the same time, because the PFI policy does not comply with the PFI Final Rule, F&M must send another 45-Day Notice and eventually force place if the borrower does not obtain sufficient coverage;
- F&M force places coverage because the borrower did not obtain sufficient coverage;
- Borrower resubmits the declarations page for the same unacceptable policy (or perhaps another unacceptable policy); and
- The cycle continues.

<u>Mandatory 7</u>: What additional reviews does a lender need to conduct if the flood insurance policy issued by a private insurer includes the compliance aid assurance clause?

The Q&A identifies that the lender must "ensure the amount of coverage is 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.[35] The lender should also ensure that other key aspects of the policy are accurate, such as the borrower's name and address." Identification of all "key aspects" that should be reviewed for accuracy would be most helpful.

<u>Mandatory 9</u>: If the compliance aid assurance clause is on the declarations page, may a lender accept the policy without further review?

This Q&A identifies that while the lender may do so, it must also ensure compliance with the mandatory purchase requirement and refers to Q&A Mandatory 7. As with Mandatory 7, identification of specific items that must be reviewed for accuracy when the compliance aid assurance clause is included will be most helpful.

III. PRIVATE FLOOD INSURANCE – PRIVATE FLOOD COMPLIANCE

Private Flood Compliance 2: May a lender require that the deductible of any insurance policy issued by a private insurer be lower than the maximum deductible for an NFIP policy?

An example identifying that a lender would not have to accept the policy for safety and soundness reasons related to the deductible would be helpful. For example: The NFIP maximum deductible on a non-residential property is $50,000 and a borrower submits a PFI policy with a $50,000 deductible. Based on the borrower s financial condition (for example, the amount of money the borrower has on deposit or the borrower s other resources), the lender determines that a $50,000 deductible is too high for this borrower and thus general safety and soundness principles indicate a maximum $30,000 deductible. For this safety and soundness reason, the lender would not have to accept the PFI policy even though it meets the Eight Criteria.

Private Flood Compliance 3: If a lender utilizes a third party to review flood insurance policies, would it be permissible for a lender to charge the borrower a fee for this review?

It would be helpful if the Q&A is expanded to specifically speak to the lender's ability to condition a PFI policy's acceptance on payment of that fee.

Private Flood Compliance 5: Under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of a flood insurance policy. Does the declarations page have sufficient information for a lender to determine whether the policy complies with the Regulation?

Unless the declarations page includes the compliance aid assurance clause, lenders will usually need additional information. As such, guidance addressing situations in which the borrower and/or insurer do not provide the additional information would be most helpful along with guidance for handling situations in which the PFI policy does not meet the Eight Criteria as discussed under Mandatory 2 above.

Thank you in advance for your consideration of our comments.

Sincerely yours,
FARMERS AND MERCHANTS BANK

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