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Via Electronic Delivery to:
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Dec. 1, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. OP-1431
76 FR 64175-64183

Ms. Johnson and Board:

Iowa Bankers Association (IBA) is a trade association representing over 350 banks and savings and loan associations operating in the state of Iowa. Our membership is predominantly comprised of banks and savings associations deemed to be "small" for purposes of the Community Reinvestment Act (CRA) with a handful of intermediate small and large banks.

We appreciate the opportunity to comment on the Agencies' proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance and Loans in Special Flood Hazard Areas and offering the following comments.

Proposed Question 57 states force placement is required if <u>all</u> of the following occur:

- The lender determines at any time during the life of the loan that property securing the loan is located in a Special Flood Hazard Area for which flood insurance through the NFIP is available;
- The lender determines that flood insurance coverage is either not in place or the amount of insurance is inadequate; and
- After proper notice, the borrower fails to purchase the required amount of insurance.

The proposed Q & A then discusses what information the force place notice should include and that if the borrower does not purchase the required amount of flood insurance within the 45-day period, the lender will purchase flood insurance on the borrower's behalf and charge the borrower for the cost of the forced-placed policy, which is likely to be more expensive than if the borrower purchased a NFIP policy on their own. Further, the Q&A "encourages" lenders to explain their force placement policy, including if applicable, the fact the lender will charge the borrower for the policy premium and when such charge will be made. In addition, the Q&A suggest the lender send a "Notice of Special Flood Hazard and Availability of Federal Disaster Assistance" letter if the borrower has not previously been notified that the property was in a special flood hazard area; such as when an area has been remapped.

<u>Comments:</u>
The proposal to provide the Notice of Special Flood Hazard Area as a matter of "best practice" when it has not previously been provided, such as due to remapping, gives cause for concern. Clearly, this "best practice" goes

beyond the regulatory requirement found in §208.25(i) which states the notice is triggered when *"a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area."* While proposed as a "best practice" history has shown examiners often enforce "guidance documents" with same weight and vigor as an actual regulation (or Act). The inclusion of this "best practice" in the revised Q&A also then gives rise to the question if the regulatory expectation will be that the notice be signed by the borrower and retained in the loan file by the lender for the life loan?

The regulatory requirement currently provides details of information the force placement notice should include: *"The written notice must include the following information: (i) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area; (ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973;(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and (iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster."* The proposed Q&A appears to attempt to expand the notice content requirements to include the lender's force placement policy, including if applicable, the fact the lender will charge the borrower for the policy premium and when such charge will be made. Again, this proposed "best practice" goes beyond the regulatory requirement found in §208.25.

The "Background" information provided in the preamble to the final rule states the intent of the original guidance document, first issued as Q&A in 1997, was to "clarify specific issues covering a wide spectrum of the rule's provisions." If the intent of the Q&A remains that of providing clarification of the existing regulatory requirement; rather than expanding regulatory requirements (or regulatory expectations) through the use of "best practices," the references in proposed Q&A 57 to such "best practices" should be eliminated.

Proposed Question 62 indicates an institution may purchase a force placed policy prior to the expiration of the 45-day period, provided that the borrower agrees to allow the lender to obtain such coverage as a contractual condition of the loan. It also states a force placed policy must be the equivalent of an NFIP policy, and must protect the borrower and lender equally. Finally, it "encourages" lenders to explain force placement policies and procedures to borrowers (including the fact the borrower may be charged for coverage during the 45-day notice period) and to escrow flood insurance premiums.

Comments

The proposed Q&A's provision that the borrower agree to allow the lender to force place insurance prior to the end of the 45-day period is reasonable and typically done currently by virtue of most mortgage documents and notes. The standard Fannie Mae and Freddie Mac mortgage documents include a provision regarding the borrower's requirement to maintain property insurance. This provision specifically includes flood insurance.

The request for comment indicates the Agencies are concerned borrowers may not be aware that lenders' force placement may occur during the 45 day period and that the borrower could be charged for such coverage. As indicated above, most standard mortgage document state if the borrower fails to maintain insurance coverage of any type that is required by the lender, the lender may obtain insurance coverage at the borrower's expense and that the lender is under no obligation to purchase any particular type or amount of insurance. This clause warns the cost of insurance coverage obtained by the lender may significantly exceed the cost of insurance the borrower could have obtained on his/her own. In addition, the disclosure warns the insurance coverage will cover the lender, but may or may not protect the borrower and borrower's equity in the property. Many promissory notes also contain similar provisions.

We should also keep in mind pending proposed revisions to Reg. Z, issued at 76 FR 11598-11629, which would add a new disclosure at §226.19(f) for the purpose of providing information to the borrower regarding the establishment (or non-establishment) of an escrow account. This disclosure is to be provided at least three days prior to closing. The disclosure provided when an escrow account will not be established at the time of closing warns borrowers of the consequences if they fail to pay insurance premiums on their own and states: *"... We can also require that you pay for insurance we buy on your behalf. This insurance would likely be more expensive and provide fewer benefits than traditional homeowner's insurance."* This proposed revision to Reg. Z could easily be revised to reference both homeowner's insurance and flood insurance when required by the lender. Also, as stated above, the standard mortgage document contains a provision regarding the lender's ability to force place or require the establishment of an escrow if the borrower fails to maintain insurance on his/her own. Proposing this information be added to the force placement notice is duplicative, even as a "best practice," when it is included (or will be included after the proposed rulemaking is finalized) in other required mortgage disclosures and is also a contractual provision by virtue of the mortgage documents.

According the NFIP Flood Insurance Manual, to ensure that the policy is renewed without a lapse in coverage, the premium must be received by the insurer within 30 days after the policy expiration date. However, only mortgagee protection under the policy continues to be in force after the expiration of the policy for 30 days from the mailing date; the borrower's coverage does NOT continue during the 30-day period following the expiration date. If the intent of the force placement provision is to continuously protect both the lender's and the borrower's interests in the collateral property from flood losses for the life of the loan, lenders should be able to obtain coverage immediately and charge the borrower for the premium cost for the full 45-day force placement period when borrowers fail to obtain the insurance on their own during the 45-day period. Again, most mortgage documents currently have contractual provisions in place to this effect.

Thank you for the opportunity to comment on the Agencies' proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance and Loans in Special Flood Hazard Areas. If you have questions about these comments, please contact the undersigned at 515-286-4361 or via e-mail, rschlatter@iowabankers.com. Thank you for your time and consideration.

Sincerely,

Ronette K. Schlatter, CRCM
Senior Compliance Coordinator