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Office of the Comptroller of the Currency
OCC – Docket ID OCC-2011-0024
Regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
FRB – Docket No. OP-1431
Regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
FDIC – RIN number 3064-ZA00
Comments@fdic.gov

Farm Credit Administration
FCA – RIN 3052-AC46
Reg-comm@fca.gov

National Credit Union Administration
NCUA – QBE FIRST Comments on Flood Insurance, Interagency Questions and Answers
regcomments@ncua.gov

RE: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance
OCC – Docket ID OCC-2011-0024
FRB – Docket No. OP-1431
FDIC – RIN number 3064-ZA00
FCA – RIN 3052-AC46
NCUA - QBE FIRST Comments on Flood Insurance, Interagency Questions and Answers Regarding Flood Insurance

To Whom It May Concern

QBE FIRST Insurance Agency, Inc. and its immediate parent, QBE Financial Institution Risk Services, Inc. (collectively, "QBE FIRST") appreciates the opportunity to comment on the proposed revisions to the "Interagency Questions and Answers Regarding Flood Insurance". Among other services, QBE FIRST provides flood insurance tracking services and lender placed flood insurance to mortgage originators and servicers who handle in excess of 20 million residential and commercial mortgages.

We respectfully submit the following comments.

Section II. Insurable Value. Finalized Q&A 9; Withdrawn Q&A 10.

9. *What is the "insurable value" of a building?*

Answer: The insurable value of a building is the same as the overall value of a property minus the land on which the property is located. FEMA's Mandatory Purchase of Flood Insurance Guidelines state that the insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building, which is defined as "[t] he cost to replace property with the same kind of material and construction without deduction for depreciation."8 FEMA's guidelines, however, also provide that lenders should avoid creating a situation in which the insured pays for more coverage than the NFIP would pay in the event of a loss.9 Strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV.10 However, in cases involving nonresidential properties, and even some residential properties, where the insurance loss payout would normally be based on actual cash value, which is RCV less physical depreciation,11 insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured. This allows the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

10. [Withdrawn- Reserved]

The agencies have Finalized Q&A 9 and withdrawn proposed Q&A 10. Final Q&A 9 addresses issues regarding the insurable value determination of buildings under the NFIP Dwelling and General Property Forms. We agree with the agencies' conclusion that using RCV as the basis of coverage for both residential and non residential buildings may not always be an appropriate method. We have concerns related to Q&A 9 regarding whether field examiners will be sufficiently instructed to recognize the latitude provided in Q&A 9 to lenders and servicers related to flood insurance coverage determination.

1. Lenders and servicers rely heavily upon the borrower and the borrower's insurance company and/or agent, who best know the characteristics of the property to be insured, to determine the estimated "*cost to replace the property with the same kind of material and construction.*" We agree with the agencies that there are a variety of approaches to establish insurable value. We believe one of the most appropriate methods used by many lenders and servicers is the borrower's homeowner insurance coverage amount. We encourage the agencies to instruct its examiners in the various methods that may be used to determine coverage, including the borrower-provided homeowner insurance coverage amount.

2. Lenders are hesitant to require full replacement cost coverage with knowledge that certain buildings insured by the NFIP Dwelling Form and General Property Form will not provide Replacement Cost loss settlement regardless of the amount of flood coverage purchased. The Dwelling Form, Section V. "Loss Settlement" limits Replacement Cost loss settlement to single family principal residences which are insured for at least 80% of the replacement cost at the time of loss. Losses for all other buildings insured under the Dwelling Form, including single family principal residences not insured for at least 80% replacement cost, single family seasonal or secondary residences, and 2-4 family residences are all settled on an Actual Cash Value basis. The General Property Form, which insures multifamily residential and non residential buildings, contains loss settlement provisions for the lesser of the coverage amount, the cost to repair or replace, or the Actual Cash Value. We encourage the agencies to consider these loss settlement provisions when reviewing lender portfolios for coverage adequacy.

3. Some non residential buildings have little or no value and may not be rebuilt in the event of a loss. This includes antique barns, sheds, and other outbuildings which may be of sentimental or family value, but have little or no replacement cost value. These buildings must currently be insured if they are located in a Special Flood Hazard Area. Lenders need the ability to waive insurance for these buildings if loss to the building would not negatively impact the collateral

securing the mortgage. We encourage the agencies to add language to Q&A 9 to permit lenders to waive or exclude coverage for such buildings.

Section X. Force placement of flood insurance. Finalized Q&A 61; Proposed Q&A 60, 62; Proposed Revision to Q&A 57.

> *61. <u>When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within the 45-day notice period?</u>*
>
> *Answer: The Regulation provides that the lender or its servicer <u>shall</u> purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay, for example, where a lender uses batch processing to purchase force-placed flood insurance policies.*

We agree with the final revisions to Q&A 61, but suggest one additional modification regarding insurance obtained by lenders or servicers whenever a borrower fails to provide insurance or provides an inadequate amount of insurance. The Act requires that flood insurance not only be purchased, but also maintained for the term of the loan. If the borrower fails to continuously maintain required flood insurance or provides flood insurance in an amount less than required, the lender or servicer must notify the borrower of the deficiency and purchase flood insurance if the borrower fails to purchase flood insurance within 45 days of such notice. For consistency with Federal Flood requirements that require flood insurance for the full term of the loan, lender placed flood insurance should be effective as of the date of lapse or inadequacy of the borrower's flood insurance coverage.

QBE FIRST suggests that the first sentence of Answer 61 ("*The Regulation provides that the lender or its servicer <u>shall</u> purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification.*") **should be revised to read** "The Regulation provides that the lender or its servicer <u>shall</u> purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. A lender or its servicer may charge a borrower for insurance coverage for any period of lapse or inadequacy, including prior to and during the 45-day notice period, in which no acceptable borrower-purchased flood insurance coverage is in effect."

All parties understand the obligation to obtain lender placed insurance at the end of the 45-day notice period, but it is also understood that brief delays may occur in this process. These delays may be the result of the 45-day notice period ending on weekends or holidays, or the actual time necessary for the lender to request coverage from the insurance company following the end of the 45-day notice period and the insurance company's issuance of the lender placed flood policy. We agree that lenders and servicers should have procedures outlining their process for requesting coverage at the end of the 45-day notice period and reasonable explanation for any delay. We also agree with the agencies that the number of days for an appropriate delay should not be indicated in the Q&A.

> *57. <u>What is the requirement for the force placement of flood insurance under the Act and Regulation?</u>*
> *Answer: The Act and Regulation require a lender to force place flood insurance, if <u>all</u> of the following circumstances occur:*
>
> - *The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;*
> - *Flood insurance under the Act is available for improved property securing the loan;*
> - *The lender determines that flood insurance coverage is inadequate or does not exist; and*
> - *After required notice, the borrower fails to purchase the appropriate amount of coverage within 45 days.*
>
> *The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The Act and Regulation also require the lender, or its servicer, to give notice and force-place such insurance, if necessary, when a lender learns that a property requires flood insurance coverage because it is in a SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program).*
> *The notice to the borrower must clearly state that the borrower should obtain, at the borrower's expense, flood insurance in an amount at least equal to the amount required under the NFIP, for the remainder of the loan's term. The notice should also state that if the borrower does not obtain the insurance within 45-days, the lender will*

> *purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage, which are likely to be more expensive than if the borrower purchases it. The Agencies encourage institutions to explain their force-placement policies to borrowers (including, where applicable, that they charge for force-placement coverage for the 45-day period and the timing of that charge). In situations where a borrower has not previously been required to have flood insurance (such as a map change), it is a best practice to also provide the Notice of Special Flood Hazards and Availability of Federal Disaster Assistance, which give borrowers important information about the implications of being in a SFHA.*
> *If adequate insurance is not obtained by the borrower within the 45-day notice period, then the lender must purchase insurance on the borrower's behalf. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.*
> *FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force-placement procedures. FEMA published these procedures in the Federal Register on August 29, 1995 (60 FR 44881). Appendix A of FEMA's September 2007 Mandatory Purchase of Flood Insurance Guidelines sets out the MPPP Guidelines and Requirements, including force-placement procedures and examples of notification letters to be used in connection with the MPPP.*

QBE FIRST generally agrees with the proposed revisions to Q&A 57 in light of the revisions to Proposed Q&A 60 and 62 and Finalized Q&A 61. We recommend the following language revisions to ensure that the changes to Q&A 57 are fully consistent with the remainder of the proposed and finalized changes.

1. The fourth bullet point ("*After required notice, the borrower fails to purchase the appropriate amount of coverage within 45 days.*") **should be revised to read** "After required notice, if the borrower fails to purchase the appropriate amount of coverage within 45 days, a lender or its servicer may charge a borrower for insurance coverage for any period of lapse or inadequacy, including prior to and during the 45-day notice period, in which no acceptable borrower-purchased flood insurance coverage is in effect."

2. The first sentence of the second full paragraph ("*The notice to the borrower must clearly state that the borrower shall obtain, at the borrower's expense, flood insurance in an amount at least equal to the amount required under the NFIP, for the remainder of the loan's term.*") **should be revised to read** "The notice to the borrower must clearly state that the borrower shall obtain, at the borrower's expense, continuous flood insurance coverage at least equal to the amount required by the lender or servicer, which may exceed the minimum amount required under the NFIP." This revision is consistent with the Act and Regulation permitting a lender or servicer to require flood insurance in an amount greater than the floor established (the property is to be covered for the term of the loan in an amount **<u>at least equal to</u>** the floor) and supports provisions of the Mandatory Purchase of Flood Insurance Guidelines, Section C. "General Provisions", 2. "Specific Provisions of the Law", a. Limits Available, (2) Calculating Coverage which encourages lenders and servicers to "consider whether its collateral is adequately insured against flood damage. A sound flood insurance risk management approach follows the insurance industry practice of insuring buildings to full RCV." The revision in this paragraph expresses a lender's or servicer's right to require coverage in excess of the floor established by the Act.

3. The parenthetical language in the third sentence of the second full paragraph ("*(including, where applicable, that they charge for force-placement coverage for the 45-day period and the timing of that charge)*") **should be revised to read** "(including, where applicable, that they charge for force-placement coverage for any period of lapse or inadequacy, including prior to and during the 45-day notice period, and the timing of that charge, considering that such coverage is issued at the end of the 45-day period").

4. QBE FIRST encourages the revision to the following language which appears to create an obligation for the lender or servicer which may not be consistent with the existing statutes and Mandatory Purchase Guidelines. The clause in the third sentence of the second full paragraph ("*The agencies encourage institutions to explain their force-placement policies to borrowers...*") **should be revised to read** "Lenders and servicers should consider the value of explaining their force-placement policies to borrowers..." and the clause in the fourth sentence of such paragraph ("*...it is a best practice to also provide the Notice of Special Flood Hazards...*")

should be revised to read "Lenders should consider appropriate procedures related to the Notice of Special Flood Hazards..."

QBE FIRST believes that these revisions are necessary to ensure that the language is consistent with Proposed Q&As, to avoid creating lender and servicer requirements not stated in the law, and to ensure that lenders and servicers are supported in their right to require more than the flood insurance coverage floor established by the Act and Regulation.

<u>60. When should a lender send the force placement notice to the borrower?</u>
Answer: To ensure that adequate flood insurance coverage is maintained throughout the term of the loan, a lender or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property. The lender must send this notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. Notice is also required when a lender learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change (which is occurring in many communities as a result of FEMA's map modernization program). To avoid the expiration of insurance, the Agencies recommend that the lender also advise the borrower when flood insurance on the collateral is about to expire <u>[Reserved]</u>

QBE FIRST generally agrees with the proposed revisions to Q&A 60, but requests modifications to ensure that the Q&A 60 is consistent with all other changes to the Q&A. We suggest the following revisions:

1. The first sentence of the answer *("To ensure that adequate flood insurance coverage is maintained throughout the term of the loan, a lender or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property.")* **should be revised to read** "To ensure that at least the minimum amount of flood insurance required by the lender or servicer is maintained continuously throughout the term of the loan, a lender or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the minimum amount required for the property."

2. The last sentence of the answer ("*To avoid the expiration of insurance, the Agencies recommend that the lender also advise the borrower when flood insurance on the collateral is about to expire")* **should be revised to read** "To avoid the expiration of insurance, the NFIP Flood Insurance Manual (REN 1) states that "All parties listed on the policy (insured, agent/producer, mortgagees) are mailed a Renewal Notice 45 days prior to the policy expiration date. The party designated on the policy record as the payor receives the payor's copy of the bill; all other parties receive a copy that states "THIS IS NOT A BILL."" Lenders may want to consider alerting borrowers to this requirement to ensure that the borrower's agent or carrier complies with this requirement and the borrower obtains a renewal notification." The borrower is currently notified by the NFIP agent/company prior to the expiration of all flood policies. QBE FIRST believes the lender should not be held responsible for a notification which is already addressed by and the responsibility of the agent or carrier.

<u>62. When may a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?</u>
Answer: A lender or its servicer may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect, if the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made. Any policy that is obtained by a lender or its servicer, the premium of which is charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of both the borrower and the lender.
The Agencies encourage institutions to explain their force-placement policies to borrowers (including their policy on charging for force-placement coverage for the 45-day period and the timing of that charge) and encourage lenders and servicers to escrow flood insurance premiums. Following these recommendations could result in less force placement of flood insurance. Further, Regulation Z requires lenders to establish an escrow account for the payment of property taxes and mortgage-related insurance required by the lender, including flood insurance, for all "higher priced" first-lien mortgage loans. <u>See</u> 12 CFR 226.35(b)(3).

We fully agree with the response to Q&A 62 that the lender or servicer must obtain lender placed insurance at the end of the 45-day notice period and may charge the borrower for insurance coverage for any period for which there is a lapse in coverage or inadequate coverage, including the 45-day notice period. QBE FIRST recommends that the first sentence of the first paragraph of the answer ("*A lender or its servicer may charge a borrower for insurance coverage for any part of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect, if the borrower has given the lender or its servicer the express authority to charge the borrower for such coverage as a contractual condition of the loan being made."*) ***should be revised to read*** "A lender or its servicer may charge a borrower for insurance coverage for any period of lapse or inadequacy, including prior to and during the 45-day notice period, in which no acceptable borrower-purchased flood insurance coverage is in effect." Such change will be consistent with the Act requiring the borrower to continuously maintain acceptable flood insurance coverage throughout the term of the loan and permits the lender to charge the borrower for insurance obtained by the lender effective the date of any period of lapse or inadequacy of the borrower's insurance. In addition, this recommended change removes the clause requiring the borrower's express authority to charge the premium for any lapse in coverage. The FDPA requires the lender or servicer to notify a borrower and obtain insurance coverage if the borrower does not provide insurance or if the borrower-provided insurance is inadequate. Q&A 61 reminds the lender or servicer that the Regulation states that the lender or its servicer <u>shall</u> purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. Despite language within many loan agreements that require the borrower to obtain and maintain required insurance throughout the term of the loan, the requirement to continuously maintain flood insurance is a statutory requirement independent of any contractual requirement. As provided in FEMA's mandatory purchase of flood guidelines, "[t]he 1994 reform Act contains preemption language stating that the NFIP force placement provisions prevail over state and local law." It further provides that "the language responds to those state laws that prohibit or limit force placement, or require the borrower's contractual agreement in order to force place coverage." Based on this, QBE FIRST believes it is proper that language regarding the borrower's express authority be deleted from the sentence.

Additionally, the second sentence of the first paragraph ("*Any policy that is obtained by a lender or its servicer, the premium of which is charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of both the borrower and the lender.*") **should be revised to read** "Any policy that is obtained by a lender or its servicer, the premium of which is charged to the borrower, should be considered as to whether such policy is acceptable to the lender's or the servicer's regulator, as applicable, by meeting the criteria for flood insurance established by FEMA and set forth in the Mandatory Purchase of Flood Insurance Guidelines." This change is consistent with language in FEMA's Mandatory Purchase of Flood Insurance Guidelines regarding a private insurance policy obtained by the lender or servicer and reduces potential conflicts between the original proposed answer and FEMA's response.

Please feel free to contact us if you need any additional comments or information. We look forward to the final responses to the outstanding Q&As.

Sincerely,

Wade D. Hardcastle
Director, Hazard Insurance and Compliance