Outlook Live Transcript
2022 Interagency Flood Insurance Q&As
July 27, 2022

Jean Roark – Facilitator:

Hello and welcome to the 2022 Interagency Flood Insurance Q&As webinar. I am Jean Roark, with the Center for Learning Innovation at the St. Louis Fed. I will turn the call over to Simin Ho with the FDIC after I review our logistics on slide 2.

Upon logging into the webcast, you are automatically set up to stream the audio through your computer speakers or mobile device. This option allows you to sit back and enjoy the webinar. Although we encourage you to listen to the audio through the stream, there is a phone option if needed. Phone lines are limited, but they are there if you need them. Dial-in information can be found on the player page. You can access the PDF of the presentation using the Materials button.

We are offering CE credits for attending the session. Please complete the survey after the session, where you will be able to indicate whether you would like to receive those credits. We'd love for you to visit our website at www.consumercomplianceoutlook.org. There, you can find the session materials, and eventually, the archive of today's webinar. I will also cover some quick legal language before turning the call over to our speakers. The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve system or any other agency. With all of that out of the way, I will turn it over to Simin at the FDIC, and Simin, we are on slide 3.

Simin Ho – Federal Deposit Insurance Corporation (FDIC):

Hello everyone, my name is Simin Ho, and I am from the Federal Deposit Insurance Corporation. I would like to welcome all of you to the Outlook Live webinar.

Today's presentation will cover the updated 2022 Interagency Flood Insurance Questions and Answers that was issued in May this year. The 2022 Flood Insurance Q&As are a joint effort of the FDIC, the Federal Reserve System, the Office of the Comptroller of the Currency, the Farm Credit Administration, and the National Credit Union Administration.

Since 2011, which was the last update to the Flood Insurance Q&As, there have been significant changes to the flood insurance requirements, including requirements with respect to escrows, force placement, detached structures, and private flood insurance. Over the past few years, the Agencies have worked diligently in issuing several final flood insurance rules and overhauling the Flood Insurance Q&As. The overhaul included revising, expanding, and reorganizing a total of 144 Q&As. During this revision, we also made sure that the Q&As are updated to reflect changes brought on by FEMA's Risk Rating 2.0.

We hope that this comprehensive set of updated Q&As will assist lenders in meeting their responsibilities under Federal flood insurance law, and increase the public's understanding of the Agencies' flood insurance regulations. While we cannot cover all the Q&As today, we will highlight some of the most significant ones during this presentation.

Joining me today, we have the following speakers for the presentation:

- Rhonda Daniels and Heidi Thomas from the OCC,
- Navid Choudhury from the FDIC,
- Dan Ericson and Keshia King from the Federal Reserve,
- Ira Marshall from the Farm Credit Administration, and
- Simon Hermann from the NCUA.

Slide 4, please.

Here is the agenda for today's webinar. We will first cover the background information of the 2022 Flood Insurance Q&As. Next, we will explain the steps taken to update and reorganize the Flood Q&As. We will then take a deeper dive into some of the Q&As that are either brand new or have been significantly revised. Finally, we will wrap up and address some of your questions that you submitted to us in advance of this program.

I will now turn it over to Heidi to go over the background of the Flood Insurance Q&As.

Heidi Thomas – Office of the Comptroller of the Currency (OCC):

Thank you, Simin. Slide 5, please.

This slide walks you through a brief overview of the historical changes to the flood insurance statutes, the Agencies' implementing regulations, and the Interagency Flood Q&As. Additional information can be found in the preamble to the 2022 Flood Q&As.

As most of you already know, Federal statutes require the purchase of flood insurance in connection with loans made by Federally-regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a special flood hazard area in which flood insurance is available, and the Agencies have issued regulations to implement these statutes. Since 1997, the Interagency Flood Q&As have provided the lending industry with guidance addressing a wide spectrum of technical flood insurance-related issues related to complying with these statutes and regulations.

In 2009, the Agencies comprehensively revised and reorganized the initial 1997 Interagency Q&As. In 2011, the Agencies adopted two additional Q&As.

In 2013, the Agencies jointly issued proposed rules to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Then in March 2014, Congress enacted the Homeowner Flood Insurance Affordability Act, which amended the Biggert-Waters Act's requirements regarding the escrow of flood insurance premiums and fees, and created a new exemption for certain detached structures. In July 2015, the Agencies finalized regulations to implement the escrow, force placement, and detached structure provisions, and in February 2019, the Agencies finalized regulations to implement the private flood insurance provisions.

In light of these significant changes, the Agencies proposed new and revised Interagency Q&As in July 2020 that covered a broad range of topics related to technical flood insurance-related issues, including the escrow of flood insurance premiums, the detached structure exemption, and force placement procedures. Separately, in March 2021, the Agencies issued a set of private flood insurance Q&As for comment as well.

The Agencies consolidated the 2020 and 2021 proposed Q&As, and published the 2022 Flood Q&As in May. These Q&As supersede the Q&As previously issued by the Agencies.

Slide 6, please.

This slide focuses on the steps taken by the Agencies for this most recent update to the Q&As. After the Agencies issued the two final rules in 2015 and 2019, representatives from the Agencies presented at a number of industry conferences and webinars. The Agencies received numerous questions from these events on flood insurance compliance.

We also gathered some of the most frequently asked questions from our examiners. We then systematically organized all the questions we received, and focused on the questions where we could provide the industry guidance. We also reached out to our partners at FEMA to provide clarification on certain technical flood policy issues, including with respect to FEMA's recent implementation of Risk Rating 2.0 – Equity in Action.

As noted on slide 6, the initial July 2020 flood Q&A proposal included 118 questions.

The March 2021 private flood insurance proposal included 24 Q&As.

Finally, the Agencies issued the consolidated set of all 144 Q&As in May 2022, which reflect the comments received on the proposed Q&As and changes based on FEMA's Risk Rating 2.0. We have included a link to the 2022 Final Q&As on this slide.

As made clear in the preamble to the final 2022 Flood Q&As, the Agencies are providing the Interagency Questions and Answers as guidance only. As a guidance document, the Q&As themselves are not enforceable and not grounds for supervisory action. The Agencies have provided a statutory or regulatory cite for each requirement discussed in the 2022 Flood Q&As.

Slide 7, please.

The 2022 Flood Q&As cover a much more comprehensive list of topics, and they also include many more Q&As than the 2009 and 2011 revisions. As a result, the Agencies decided to reorganize the Q&As to provide a more logical flow of questions that might come up throughout the flood insurance process. The Agencies divided the 2022 Flood Q&As into 19 individual topics such as Applicability, which addresses the determination of the applicability of flood insurance requirements for certain loans, and Exemptions, which addresses exemptions from the mandatory flood insurance purchase requirement.

The Agencies also developed a new numbering system by numbering Q&As successively within each topic, rather than numbering all of the Q&As successively. For example, the Applicability topic includes Q&As Applicability 1 through Applicability 15, and the Exemptions topic includes Q&As Exemptions 1 through Exemptions 7. This change will allow the Agencies to easily add or delete Q&As in future revisions without needing to significantly renumber or reorganize all of the existing Q&As. Overall, commenters supported this reorganization, and we hope that you will also find this helpful in navigating the 2022 Flood Q&As.

Slide 8, please.

So, what's new, what's revised, and what is the same in the 2022 Flood Q&As? As you can see from the table on this slide, little has been left unchanged. The 2022 Flood Q&As contain a total of 144 questions and answers. Of those, 67 are brand new, 38 were significantly revised from the 2009 & 2011 revisions, and 39 either had no changes or only minor edits. The Q&As are organized into 19 topics. Some of which are new, including the topics related to private flood insurance.

Slide 9, please.

Now that we have covered the organization of the new Flood Q&As, we will highlight a few of the noteworthy Q&As that are either new or significantly revised since the 2009 and 2011 revisions. I will turn to Navid to start things off.

Navid Choudhury – FDIC:

Thank you, Heidi. Slide 10, please.

The first two Q&As we want to discuss both relate to a Triggering Event. Compliance with certain provisions of the flood insurance Regulation is required only when a designated loan has a triggering event. Applicability 13 is a new Q&A and was created in response to several comments requesting that we clarify what is, and what is not considered a triggering event under the Regulation. The question asks, "What is a 'triggering event' under the Regulation? If there is a triggering event, what is required under the Regulation?"

The answer clarifies that a triggering event occurs when a designated loan is made, increased, renewed, or extended, which is commonly known as a "MIRE event." If a triggering event occurs, the lender is required to comply with certain requirements of the Regulation. The Q&A also provides several examples of events that are not considered triggering events for purposes of the Regulation. These examples include:

- the purchase of a loan from another lender,
- a loan modification that does not increase the amount of the loan nor extend or renew the terms of the loan,
- the assumption of the loan by another borrower,
- the remapping of a building securing the loan into a Special Flood Hazard Area,
- the acquisition of an interest in a loan either by participation or syndication,
- a cashless roll,
- certain automatic extensions of credit, and
- certain treatments of force placement premiums and fees.

The second Q&A related to a triggering event we'd like to highlight is Applicability 6. This Q&A addresses whether the Regulation applies to loans that are being restructured or modified. In response to several commenters, the Agencies rewrote this Q&A from the proposal to address whether a loan that is being restructured or modified constitutes a triggering event under the Regulation. The answer clarifies that if a loan modification or restructuring involves recapitalizing delinquent payments and other amounts due under the loan, or amounts that were originally contemplated as part of the contract, and the maturity date does not change, the Regulation would not apply because the modification or restructuring would not increase, extend, or renew the terms of the loan.

However, if the loan modification or restructuring changes the terms of the loan, such as increasing the outstanding principal balance beyond what was originally contemplated as part of the contract, or by extending the maturity date of the loan, the Regulation would apply because the lender increased or extended the terms of the loan.

Slide 11, please.

The next Q&A I'd like to highlight is new Q&A Applicability 15. The Agencies drafted this Q&A in response to numerous questions regarding when mandatory flood insurance on a designated loan needs to be in place during the loan closing process, since closing (or making) a loan is a MIRE event. Applicability 15 provides that a lender should use the "closing date" as the date for which flood insurance must be in place. This Q&A highlights the impact of state law in determining the closing date of a loan. The "closing date" is defined by FEMA as the day the ownership of the property transfers to the new owner based on State law. This date depends on whether a state is a "wet funding" or a "dry funding" state. In "wet funding" states, the signing of closing documents, funding, and the transfer of the property all occur on the same day; however, in "dry funding" states, closing documents are signed on one date, but loan funding and the transfer occur at a later date. Therefore, in "dry funding" states, the closing date is the date of the actual property transfer. An easy way to remember this is that the ink has to "dry" in a dry funding state, so the loan closing takes longer.

We also addressed situations in which there is no transfer of property ownership, such as a refinance. In these cases, if the borrower is purchasing a new flood insurance policy, a lender should use the loan's consummation date as the effective date for determining when flood insurance should be in place.

Slide 12, please.

The next topic I want to bring to your attention deals with Detached Structures. With the passage of the Homeowner Flood Insurance Affordability Act, a new exemption from the mandatory flood insurance purchase requirement for detached structures was created. Lenders are no longer mandated to require flood insurance on a detached structure that is part of a residential property, and which does not serve as a residence, such as a barn, a silo, or a shed. However, before a lender determines whether the detached structure exemption applies, it must determine what structures are on a property, which is completed by using a standard flood hazard determination form. Q&A Exemptions 3 asks, "Is a flood hazard determination required even when the secured property may contain detached structures for which coverage is not required under the Regulation?" Commenters noted that the answer, as proposed, was confusing, so the Agencies made revisions to clarify the answer. Specifically, the answer as finalized clarifies that a flood hazard determination is required for a detached structure even though flood insurance coverage is not required because the determination is used to identify the number and type of structures present on the property. Therefore, in order to determine whether the exemption for detached structures may apply, a flood hazard determination must be conducted first, without regard to whether there may be any detached structures that could be exempt.

Similar to Exemptions 3, Exemptions 4 is a brand new Q&A. It involves the exemption for non-residential detached structures that are part of a residential property. Exemptions 4 addresses whether a lender or servicer may cancel its requirement to maintain flood insurance on a detached structure that is eligible for the exemption but is currently insured. The answer clarifies that yes, if a borrower has a flood insurance policy on a detached structure that is part of a residential property and does not serve as a residence, the lender is no longer mandated by the Act to require flood insurance on that structure, and the lender may allow the borrower to cancel the policy. The answer also states that lenders may continue to require flood insurance coverage on the detached structure if warranted, as a matter of safety and soundness. This Q&A highlights the lender's discretion to continue to require flood insurance on a detached structure to protect its collateral despite the Regulation not requiring such coverage.

With that, I will now turn the presentation over to Keshia to discuss some of the other Q&As.

Keshia King – Federal Reserve Board (FRB):

Thanks, Navid. Slide 13, please.

We will now turn to Q&As related to the Private Flood Insurance Rule. Under the Act and Regulation, a lender must accept a flood insurance policy issued by a private insurer if it meets the definition of "private flood insurance" as set forth in the Act and Regulation. As part of the Private Flood Rule that the Agencies implemented in 2019, the Agencies included a compliance aid statement designed to facilitate institutions' determination as to whether a flood insurance policy meets the definition of "private flood insurance." The compliance aid statement in the Regulation is included in this slide and specifically states:

"This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

We have a number of Q&As related to the use of the compliance aid statement, many of which incorporated guidance we first provided in the preamble to the 2019 Private Flood Rule, and there are a few that we wanted to highlight.

Slide 14, please.

First, Q&A Mandatory 4 provides that a lender may determine that a policy meets the definition of "private flood insurance" if the compliance aid statement is included within the policy or as an endorsement to the policy. However, a lender could choose not to rely on this statement and instead make its own determination as to whether the policy meets the definition of "private flood insurance."

It is important to note that a lender is required to accept a policy that both meets the definition of "private flood insurance" and fulfills the flood insurance coverage amount, even if the policy does not contain the compliance aid statement. In other words, a lender cannot reject a private flood insurance policy solely because it is not accompanied by this statement.

Q&A Mandatory 5 provides that if the compliance aid statement is included in the policy or as an endorsement to the policy, the institution may rely on the statement and would not need to further review the policy to determine whether it meets the definition of "private flood insurance."

The compliance aid statement needs to follow the wording of the statement provided in the Regulation for a bank to be able to rely on it. That being said, a lender can still accept the compliance aid statement if there are only stylistic differences, such as formatting, font, or punctuation that do not change the substantive meaning of the statement.

And finally, Q&A Mandatory 9 addresses the situation where a flood insurance policy contains the compliance aid statement but also includes a disclaimer indicating that the insurer is not licensed in the State or jurisdiction in which the property is located. This would suggest that the policy is being issued by a surplus lines insurer. In this case, the answer states that a lender may still rely on the compliance aid statement, provided that the policy complies with the Regulation and applicable State laws. The answer also cross references Q&A Private Flood Compliance 10, which addresses the acceptance of surplus lines insurance.

I will now turn the presentation over to Dan to discuss some other private flood related Q&As.

Dan Ericson – FRB:

Thank you, Keshia. Slide 15, please.

We will now move on to the discretionary acceptance provisions, which permit a lender to accept a flood insurance policy issued by a private insurer that does not meet the definition of "private flood insurance" under the Act and the Regulation. Under these provisions, the lender may accept these policies if certain conditions are met, including whether the policy provides sufficient protection of the loan. The intent of Q&A Discretionary 4 is to assist lenders in complying with the discretionary acceptance provision, as well as the mutual aid societies provision in the final Private Flood Insurance Rule. Q&A Discretionary 4 identifies some factors that a lender may consider when determining whether a flood insurance policy issued by a private insurer or mutual aid plan provides sufficient protection of the loan, consistent with safety and soundness principles. These factors include, as follows:

(1) whether a policy's deductible is reasonable based on the borrower's financial condition;
(2) whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force placement of flood insurance, if necessary;
(3) whether the terms and conditions of the policy, with respect to payment per occurrence or per loss and aggregate limits, are adequate to protect the regulated lending institution's interest in the collateral;
(4) whether the flood insurance policy complies with applicable State insurance laws; and finally,
(5) whether the private insurance company has the financial solvency, strength, and ability to satisfy insurance claims.

Please be reminded, as discussed in Q&A Discretionary 2, the private flood insurance Regulation requires the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles.

Slide 16, please.

Q&A Discretionary 3 addresses how a lender could evaluate concerns related to an insurer's solvency, strength, and claims-paying ability in order to determine whether an insurance policy provides sufficient protection of a loan, consistent with general safety and soundness principles.

The lender may obtain information from the relevant state insurance regulator, among other options. During this process, the lender also may rely on the licensing or other processes used by the state insurance regulator to conduct such an evaluation.

In response to this proposed Q&A, a number of commenters suggested that the Agencies provide additional examples for evaluating an insurer's solvency, including the role credit rating agencies play in such evaluation. The Agencies declined to address this issue however, on the grounds that this would be inconsistent with the Dodd-Frank Act, which required the Agencies to remove references to, or requirements of reliance on, credit ratings in their regulations regarding the assessment of the creditworthiness of a security or money market instrument using credit rating agencies.

Slide 17, please.

Moving on to the topic of deductibles, determining the maximum deductible permissible for a flood insurance policy issued by a private insurance company can be challenging, therefore, we wanted to highlight Q&A Private Flood Compliance 1, which addresses the topic of deductibles.

As set forth in Private Flood Compliance 1, the analysis begins with whether the lender is accepting the policy under the mandatory acceptance provisions of the Private Flood Insurance Rule or the discretionary acceptance provisions.

If the lender is attempting to accept the policy under the mandatory acceptance provisions, then the Regulation requires that the coverage be "as broad as" a Standard Flood Insurance Policy (or "SFIP") issued under the National Flood Insurance Program (or "NFIP"), including with respect to deductibles. This means that the deductible of the policy being evaluated must be no higher than the specific maximum deductible for an SFIP for any coverage amount up to the maximum deductible available under the NFIP at the time the policy is being provided to the lender. If the coverage amount of the policy exceeds the maximum amount available under the NFIP, then the deductible amount may exceed the specific maximum deductible for an SFIP. However, the lender should take into account safety and soundness considerations (including the borrower's financial condition), to determine the maximum deductible the lender can accept.

Please note that Private Flood Compliance 1 includes a couple examples to illustrate this concept.

Turning to the discretionary acceptance provisions. If a lender is trying to accept the policy under the discretionary acceptance provisions, please recall that the Regulation requires that the policy provide "sufficient protection of the loan, consistent with safety and soundness principles." As we mentioned when discussing Q&A Discretionary 2, among the factors a lender could consider in determining whether a policy provides sufficient protection of a loan is whether the policy's deductible is reasonable based on the relevant borrower's financial condition. Unlike the limitation on deductibles for policies accepted under the mandatory acceptance provision for any total coverage amount up to the maximum available under the NFIP, a lender can accept a flood insurance policy issued by a private insurer under the discretionary acceptance provision with a deductible higher than that for an SFIP for a similar type of property, provided the lender has determined the policy provides sufficient protection of the loan, consistent with safety and soundness principles. Again, we encourage you to have a look at the examples in Private Flood Compliance 1.

Please note also that this Q&A addresses deductibles for policies covering multiple buildings, which we will be covering in greater detail in Q&A Amount 10.

Next slide, please.

Slide 18 addresses Private Flood Compliance 11, which explains when a lender must review a private flood insurance policy in accordance with the requirements of the Agencies' Private Flood Insurance Rule.

Each time a borrower presents a lender with a new policy, the lender must review the policy to determine whether it satisfies the regulatory requirements. However, the lender may rely on its previous review and the written documentation related to that review, provided there have not been any changes to the policy terms and conditions that would affect the policy's acceptability. Under these circumstances, the lender's previous written documentation will constitute the documentation required under the Regulation when the policy comes up for renewal.

In all circumstances, please recall that if a policy does not satisfy the mandatory acceptance provisions, the discretionary acceptance provisions, or the mutual aid plan criteria of the Private Flood Insurance Rule, then the lender may not accept the insurance policy. Further, please be reminded that lenders should have effective internal controls in place through appropriate policies, procedures, training, and monitoring to ensure compliance with the Private Flood Insurance Rule.

I will now turn the presentation over to Ira.

Ira Marshall – Farm Credit Administration:

Thank you, Dan. Slide 19 please.

The next topic we are going to discuss is Flood Zone Discrepancies. The Q&A I would like to highlight is Zone 1. This question addresses whether a lender needs to reconcile flood zone discrepancies. We are highlighting this Q&A because Agencies' expectations have changed since the 2009 and 2011 Flood Q&As.

Zone 1 asks, if a lender needs to reconcile a discrepancy between the flood zone designation on the flood determination form and the flood zone associated with a flood insurance policy. The old Q&A 71 had set the Agencies' expectation that lenders should have in place a process to identify and also resolve flood zone discrepancies. The new Zone 1 reflects a change in this expectation – lenders are no longer expected to reconcile or otherwise be concerned with a flood zone discrepancy. Again, lenders are no longer expected to reconcile or otherwise be concerned with a flood zone discrepancy.

In addition, after the Agencies proposed these Q&As, FEMA implemented Risk Rating 2.0 – Equity in Action. As part of this change, premium rates are no longer determined by the flood zone, and the flood zone is no longer disclosed on newly issued NFIP policies. The Agencies made changes to the final Q&As to reflect Risk Rating 2.0.

Private flood insurance policies may still include the flood zone on the declarations page. The Agencies do not expect lenders to reconcile discrepancies in these cases. However, private flood insurance companies have discretion in how they may require lenders to handle flood zone discrepancies. Lenders may want to contact the insurance companies for further information.

I also want to note that the Standard Flood Hazard Determination Form is still necessary to determine if a property is located in a Special Flood Hazard Area. If the lender's flood zone determination indicates the building securing the loan is in a Special Flood Hazard Area, the lender must require the appropriate amount of insurance coverage as required by both the Act and Regulations.

Slide 20, please.

The next Q&A is Zone 3. This Q&A explains what a lender should do if a borrower disputes a lender's determination that the property is located in a Special Flood Hazard Area, and therefore, requires mandatory insurance coverage.

In this situation, the Agencies encourage the parties involved in making the determination to resolve the flood zone discrepancy before contacting FEMA for a final determination. If the parties cannot resolve the discrepancy, they may file an appeal with FEMA.

Depending on the nature of the dispute, FEMA has several different options for reviewing the dispute. Lenders and borrowers should consult FEMA for guidance on the appropriate process to follow, any applicable fees, and any deadlines by which they must request the review.

We note that until and unless FEMA determines that the building is not in a Special Flood Hazard Area, sufficient coverage must be placed in accordance with the Act and regulations as long as the lender's flood determination specifies that a building securing the loan is located in a Special Flood Hazard Area and requires mandatory flood insurance coverage.

Slide 21, please.

We're now going to discuss two Q&As about the amount of required flood insurance.

Amount 2 asks what the "insurable value" of a building is and how is it used to determine the required amount of flood insurance. The Q&A explains that the "insurable value" of a building may generally be the same as 100% Replacement Cost Value, which is the cost to replace the building with the same kind of material and construction without deduction for depreciation.

In calculating the amount of insurance to require, the lender and borrower may choose to, but are not required to, consult with the flood insurance provider or other appropriate professional(s) to establish the insurable value. They may choose from a variety of approaches or methods to establish the insurable value. Appropriate approaches might include the following:

1) an appraisal based on a cost-value approach (as opposed to a market-value approach),
2) a construction-cost calculation,
3) the insurable value used on a hazard policy, or
4) the replacement cost value listed on the declarations page of a flood insurance policy.

The lender and borrower may also choose any other reasonable approach to establishing the insurable value, as long as the approach can be supported. Lenders also should consider the extent of recovery allowed under the NFIP or a private policy for the type of property being insured when determining the amount of insurance required, as noted in Q&A Amount 8.

Slide 22, please.

Q&A Amount 10 is new and addresses whether a lender can accept a blanket flood insurance policy or blanket multi-peril policy covering multiple buildings that includes a deductible that may be higher than the insurable value of any individual building covered by the policy.

The answer explains that a lender may accept a blanket policy that covers multiple buildings that includes a per-occurrence deductible, regardless of whether any single building covered by the policy has an insurable value lower than the amount of the deductible. A blanket policy that includes a per-occurrence deductible provides coverage for each building covered by such a policy, regardless of whether any individual building covered under the policy has an insurable value that may be lower than the amount of the deductible.

However, a lender may not allow the borrower to use a deductible amount equal to the aggregate insurable value of the property to avoid the mandatory purchase requirement.

A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that the deductible would pose to both the borrower and the lender.

I will now turn it over to Simon who will discuss questions related to both Condos and also Co-ops.

Simon Hermann – National Credit Union Administration (NCUA):

Thank you, Ira. Slide 23, please.

Another Q&A that we want to highlight is the new Condo and Co-op 9. Several commenters requested clarification on commercial or non-residential condominiums. The Agencies are adopting this Q&A to address these comments. The Q&A includes two questions:

- What are the flood insurance requirements for a residential condominium unit, or a non-residential condominium unit located in a non-residential condominium building?

- What are the flood insurance requirements for a non-residential condominium unit located in a residential condominium building?

The answers to these questions clarify that coverage is not available under the NFIP for an individual residential condominium unit or for a non-residential condominium unit located in a non-residential condominium building. The answer further provides that NFIP coverage also is not available for a non-residential condominium unit located in a residential condominium building. Therefore, a loan secured by one of these types of units is not a designated loan under the Regulation, and the mandatory flood insurance requirement does not apply. However, contents coverage is available through the NFIP for these types of units. The Q&A then refers to the *NFIP Flood Insurance Manual* for further information.

We also want to highlight Condo and Co-op 10. The Agencies were asked to provide clarification on loans to cooperative unit owners where the loans are secured by the owner's share in the cooperative. Condo and Co-op 10 asks what flood insurance requirements apply to a loan secured by a share in a cooperative building that is located in a Special Flood Hazard Area?

The answer to this Q&A starts by clarifying the difference between ownership of a condominium and a cooperative by noting that a condo owner has title to real property while a cooperative unit holder has stock in a corporation with a right to occupy a particular unit, but owns no title to the building. As a result of this ownership structure, a loan to a cooperative unit owner that is secured by the owner's share in the co-op is not a designated loan that is subject to the Act or the Regulation. It is worth noting, however, that for safety and soundness purposes, residential or non-residential cooperative buildings may be insured by the association or corporation under the NFIP General Property Form. The entity that owns the cooperative building, not the individual unit members, is the named insured.

Slide 24, please.

We will now move on from the condo and co-op Q&As to address Other Security Interests, starting with Q&A 7. This Q&A asks if flood insurance is required if a building and its contents both secure a loan, and the building is located in a Special Flood Hazard Area in which flood insurance is available.

The answer provides that flood insurance is required for a building located in a Special Flood Hazard Area and any personal property securing the loan. Both the building and contents will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes so long as some reasonable amount of insurance is allocated to each category. For example, if a lender made a $200k loan that was secured by a warehouse with an insurable value of $150k and inventory in the warehouse worth $100k, the flood insurance requirements could be satisfied by placing $150k worth of flood insurance coverage on the warehouse and $50k worth of contents flood insurance coverage on the inventory, even though the inventory was worth $100k. This is because the flood insurance would provide total coverage of the outstanding principal balance of the loan.

The next Q&As that we want to cover are Other Security Interests numbers 9 and 10.

- Q&A 9 discusses whether the regulation applies when the lender takes a security interest in improved real estate and contents located in a Special Flood Hazard Area only as an "abundance of caution"
- Q&A 10 is new and was added to address situations in which the lender takes a security interest in contents located in a building in a Special Flood Hazard Area securing the loan but does not perfect the security interest.

The Act and Regulation look to the collateral securing the loan. The language in the loan agreement or security instrument determines whether the contents are taken as security for the loan. So, if a security interest is taken in improved real estate and contents, then flood insurance is required. This includes language inserted out of an "abundance of caution." Similarly, if the lender takes a security interest in contents located in a building in a Special Flood Hazard Area securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected.

I will now turn it over to Rhonda who will discuss the next set of Q&As that we would like to highlight.

Rhonda Daniels – OCC:

Thank you, Simon. Slide 25, please.

The agencies have adopted a number of questions and answers related to the escrow of flood insurance premiums, and we want to highlight a few of these.

New Q&A Escrow 3 clarifies that a lender must escrow force-placed flood insurance premiums because there is no exception from the escrow requirement for force-placed insurance under the Regulation.

New Q&A Escrow 6 addresses the situation where the junior lienholder determines that the primary lienholder does not have sufficient flood insurance in place and is also not escrowing for flood insurance. This Q&A clarifies that if the primary lienholder has not obtained adequate flood insurance, the junior lienholder would need to ensure adequate flood insurance is in place and also would need to escrow for that flood insurance premium. The answer also indicates that the escrow requirement would not apply to a junior lien that is a home equity line of credit (HELOC), since HELOCs have a separate escrow exception.

When the agencies proposed this Q&A, some commenters noted that there is no specific requirement in the Act or Regulation that requires junior lienholders to escrow. The Agencies considered these comments but noted that the junior lienholder qualifies for the escrow requirement exception if there is adequate flood insurance coverage in place with respect to the loan issued by the primary lienholder. If adequate flood insurance has not been obtained by the first lienholder and insurance must be purchased in connection with the second mortgage loan, the junior lender or its servicer would need to escrow the insurance obtained in connection with the second mortgage. The Agencies adopted this Q&A as proposed.

Slide 26, please.

Moving on to force placement of flood insurance, new Q&A Force Placement 6 clarifies that, once a lender makes a determination that a loan has no or insufficient coverage, the lender must notify the borrower. If the borrower fails to obtain sufficient flood insurance coverage within 45 days after that notice the lender must force-place insurance and may not extend the period for obtaining force-placed coverage by sending another force placement notice during that time.

Some commenters suggested that the Agencies permit subsequent determinations within the force placement process. After careful consideration, however, the Agencies didn't believe that the answer needed to be amended to essentially permit lenders to extend the time to force place beyond the 45 days allowed by the Regulation, which would put both the borrower and the lender at greater risk of the property not being covered by sufficient flood insurance for longer periods of time. Therefore, the Agencies adopted the Q&A as proposed.

Slide 27, please.

The Agencies proposed new Q&A Force Placement 16 to address what a lender or its servicer must do if it receives a notice indicating that the property will be remapped into a Special Flood Hazard Area as of a future effective date.

The answer provides that a loan that is secured by a property that was not located in a Special Flood Hazard Area does not become a designated loan until the effective date of the map change that remaps the property into a Special Flood Hazard Area. Therefore, when a lender or its servicer receives advance notice that a property will be remapped into a Special Flood Hazard Area, 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.

In response to a comment, the Agencies revised the answer to clarify that as of the effective date of the remapping, if the lender makes a determination that the property securing the loan is not covered by sufficient flood insurance, the lender or servicer must begin the force placement process and may charge the borrower for the force-placed insurance policy. The final answer also includes language that a lender may also send notice to the borrower prior to the effective date of a map change as a courtesy.

Many commenters stated that lenders do not always receive advance notice of a remapping and requested that the Agencies also provide guidance to lenders when they receive notice that a property already has been remapped. In response to these comments, the Agencies expanded the Q&A to include guidance on a lender's or servicer's responsibility when it receives notice after a property has been remapped. In those cases, the lender or servicer should follow the requirements outlined in Q&A Force Placement 1, which details the requirement for force placement of flood insurance. Q&A Force Placement 1 also addresses when the lender or servicer may charge the borrower for a force-placed insurance policy.

Slide 28, please.

I will now turn the presentation back over to Simin to lead us through a discussion of some of the questions that we received from audience members in advance of the webinar.

Simin Ho – FDIC:

Thank you, Rhonda. A number of participants submitted questions to us in advance of this webinar. Our presenters have agreed to respond to the questions for us. Let us start with a question related to Amount 2 for Navid.

Question – FEMA is currently documenting a replacement cost value, or RCV, on the policy declarations page for NFIP policies. What does this mean for lenders?

Navid – FDIC:

Lenders should not rely on FEMA's RCV listed on the policy declarations page for NFIP policies as FEMA's RCV is not intended to be used as a basis for determining the property's insurable value. This is because FEMA's RCV is meant to keep the policy premium calculation simple and only considers five factors (zip code, year build, square footage, number of floors, and number of units). FEMA's RCV is a key rating variable used to price flood insurance premiums more equitably under Risk Rating 2.0. Refer to FEMA's Replacement Cost Value Fact Sheet for more details.

Simin Ho – FDIC:

This is really helpful. Thank you. The next question is related to Q&A Condo and Co-op 9. Let's turn to Keshia:

Question – If an RCBAP would apply to a condo building that is predominantly residential (meaning 75% or more residential) but happens to have a few ground-level commercial units, why would a loan secured by such a commercial unit not be a designated loan under the flood insurance regulatory requirements since the unit would be covered by the association's RCBAP?

Keshia King – FRB:

Thanks Simin. As the question observes, there is an RCBAP that would cover the entire building. However, the NFIP does not offer coverage for the individual commercial units.

As defined by the Agencies' Regulations, a designated loan means a loan secured by a building or mobile home that is located or to be located in a Special Flood Hazard Area in which flood insurance is available under the Act. As discussed in Condo-Coop 9, NFIP coverage is not available for an individual non-residential condominium unit located in a residential condominium building. Therefore, the Regulation does not apply specifically to individual commercial units.

Simin Ho – FDIC:

Great, thank you. The next question is related to Q&A Force Placement 16. Heidi, here is the question:

Question – When should the lender notify the borrower of a need for coverage if the lender received the notice of remapping after the new flood map's effective date?

Heidi Thomas – OCC:

Thanks Simin. When the lender receives notice after the property has been remapped into a Special Flood Hazard Area, the lender must first determine whether the property securing the loan is covered by sufficient flood insurance. If the lender determines that the property securing the loan is not covered by sufficient flood insurance, then the lender must send the borrower the notice as required by the Agencies' force placement regulations. This is detailed in Q&A Force Placement 16.

Simin Ho – FDIC:

Thank you so much Heidi. The next question is for Dan and it is related to Discretionary 2. Dan, here is the question:

The criteria for demonstrating that the flood insurance policy provides sufficient protection of the loan are listed in Q&A Discretionary 4. Is it the position of the Agencies that a policy must meet all or some of the criteria listed to ensure sufficient protection of the loan?

Dan Ericson – FRB:

Thank you, Simin. No, that is not the position of the Agencies. Discretionary 4 offers suggested criteria as to some factors that the lender may consider in determining whether the policy provides sufficient protection of the loan, consistent with safety and soundness principles. However, the lender is not required to satisfy these criteria to satisfy the sufficient protection standard, as the Regulation itself does not require that these criteria be met.

Furthermore, please note that the interagency examination manual does not require examiners to review compliance with these criteria. Finally, while the regulatory requirements do not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, lenders may include any information that reasonably supports the lender's conclusion following review of the policy.

Simin Ho – FDIC:

Thank was really helpful. Thank you, Dan. Let us squeeze in one last question. Simon, please help us with this one. This question has to do with situations where a lender has a previous Standard Flood

Hazard Determination Form that is less than 7 years old, and the Flood Map for the property has not changed.

Assuming that the financial institution then gets a subsequent request to use the property as collateral for a new loan. Does the lender need to obtain a new flood determination?

Simon Hermann – NCUA:

Thank you for the question. The flood insurance statute permits a lender to rely on a previous flood determination using the Standard Flood Hazard Determination Form when the lender increases, extends, renews, or purchases a loan secured by a building or a mobile home. Under the Act, the "making" of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. However, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the determination form, and there were no map revisions or updates affecting the collateral property since the original determination was made. That concludes my answer.

Simin Ho – FDIC:

Thank you, Simon. We have reached a bit over the top of the hour. I would like to thank all of today's presenters and our broader interagency flood insurance team for all the work that went into preparing the material for this webinar. We are hopeful that this webinar and discussions will help you comply with flood insurance regulations within your institution. Jean, I will turn this back to you.

Jean Roark – Facilitator:

Thanks Simin. We will be sending an email with the link to our survey. Please take just a moment to fill it out. We de read every response and strive to make our sessions better based on your feedback. As a quick reminder, be sure to check our website, www.consumercomplianceoutlook.org for information on upcoming sessions. Thank you so much for joining us, today. This concludes today's Outlook Live webinar. Enjoy the rest of your day.

[Event Concluded]