

December 21, 2011

**By electronic delivery to:**

[Oira.submission@omb.eop.gov](mailto:Oira.submission@omb.eop.gov)

Office of Information and Regulatory Affairs,  
Office of Management and Budget  
Attention: Desk Officer, Department of Homeland Security,  
Federal Emergency Management Agency

Re: Agency Information Collection: Submission for OMB Review: Standard Flood Hazard Determination Form; Docket ID FEMA-2011-0017; OMB No. 1660-0040

Dear Madam or Sir:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Federal Emergency Management Agency's (FEMA) information collection submission and proposed changes to the Standard Flood Hazard Determination Form, FEMA Form 81-93 (SFHDF).<sup>1</sup> ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. Our members, individually or using the services of a flood determination company, complete or review millions of standard flood determination forms annually.

Section 528 of the National Flood Insurance Reform Act of 1994 required FEMA to develop a standard form, the SFHDF, to document the initial step of compliance with the mandatory purchase requirement: the determination of whether a structure securing a loan is located in a Special Flood Hazard Area and whether federal flood insurance is available. As noted in the joint comments of the National Flood Determination Association (NFDA) and the Mortgage Bankers Association (MBA), which we support, the fact that there have been no calls for change to the content and format of the SFHDF since 1999 – and the form has been used in over 250 million mortgage transactions – clearly demonstrates its efficiency and effectiveness.

The banking industry urges FEMA to renew the SFHDF without change as initially proposed in the July 11, 2011, Paperwork Reduction Act notice<sup>2</sup> and to reject the changes to the form proposed in FEMA's November 21, 2011, notice. Consistent with the comments of NFDA and MBA, ABA questions FEMA's willingness to adopt changes proposed by the Association of State Floodplain Managers (ASFPM), an entity whose

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<sup>1</sup> 76 Fed. Reg. 71990 (November 21, 2011) (correcting a notice filed by FEMA on October 19, 2011, *see* 76 Fed. Reg. 64957).

<sup>2</sup> 76 Fed. Reg. 40738 (July, 11, 2011).

members have no involvement with the completion or use of the SFHDF and who, therefore, have little, if any, appreciation of the impact of the proposed changes to the form.

ABA supports each of the specific recommendations noted in the NFDA and MBA comment letter, but we have chosen to file our own letter to underscore our opposition to the proposed change to section II, part D. We believe that the proposed insertion of a statement about the flood risk of a property outside a standard flood hazard area reflects a fundamental misunderstanding of the limited purpose and use of the form. Moreover, these changes are consistent with a troubling trend the banking industry has consistently opposed – the assignment to the banking industry of ever-increasing responsibility under the National Flood Insurance Program.

As stated above, the SFHDF has a limited function, to provide *the lender* with information necessary to determine whether a building or mobile home securing a loan is located within a special flood hazard area and whether federal flood insurance is available. As such, the current SFHDF includes the following clear choice in section II, part D, “Is building/mobile home in special flood hazard area? Yes No. If yes, flood insurance is required by the Flood Disaster Protection Act of 1973. If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.” FEMA, following the recommendation of ASFPM, has proposed the insertion of the following warning following the statement that flood insurance is not required, “Please note, the risk of flooding in this area is only reduced, not removed. Property owners should seriously consider flood insurance.”

Although a well-intentioned warning, it serves no purpose to add it to the SFHDF, a form required only to be used and maintained by the lender, not provided to the loan applicant. The SFHDF is not a risk communication tool, and the banking industry opposes the addition of this language as its presence might be interpreted by some to impose a *de facto* obligation to ensure that the applicant receive a copy of the SFHDF (and, perhaps, to discuss the residual risk of flood loss with each applicant) in order to avoid potential claims of liability from borrowers who experience an uninsured loss. We strongly oppose this addition to the SFHDF.

ABA supports efforts to educate the public about flood risk and to encourage property owners to insure against the residual flood risk faced by all properties outside 100-year flood zones. However, the SFHDF is not the appropriate vehicle for such efforts. Moreover, we remind FEMA that lenders are not trained insurance professionals, and they are not qualified to advise borrowers about flood risk. Instead, borrowers should be

encouraged to seek risk, underwriting, and coverage information from FEMA and their insurance agent. Accordingly, communications about residual risk should originate with FEMA and the insurance industry, and should not be added to bank compliance documents.

ABA appreciates the opportunity to provide comments. If you have any questions, please contact the undersigned at 202-663- 5073 or via email at [voneill@aba.com](mailto:voneill@aba.com).

Sincerely,

A handwritten signature in black ink that reads "Virginia O'Neill". The signature is written in a cursive, flowing style.

Virginia E. O'Neill  
Senior Counsel  
Center for Regulatory Compliance