

December 17, 2010

By electronic delivery to:FEMA-RULES@DHS.gov

Federal Emergency Management Agency
Office of Chief Counsel
500 C Street, S.W., Room 840
Washington, D.C. 20472-3100

Re: National Flood Insurance Reform Effort, Docket ID: FEMA-2010-0065

Ladies and Gentlemen:

The American Bankers Association (ABA) welcomes the opportunity to comment on the Federal Emergency Management Agency's (FEMA) Straw Man Policy Options¹ for reform of the National Flood Insurance Program (NFIP). 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.

ABA appreciates FEMA's efforts to engage stakeholders in a critical review of the NFIP and a dialogue about options for reform. ABA believes that concerns about the actuarial soundness of the NFIP, the ever-increasing cost to the U.S. Treasury of providing federal disaster relief to the uninsured, and a host of complex mapping, environmental, and floodplain management issues necessitate wholesale reform of the NFIP. We believe that a necessary predicate to this reform must be the recognition that tying the mandatory purchase of flood insurance to only those with federally insured residential mortgages – and charging financial institutions with its enforcement – has failed to cover adequately all at-risk properties to the detriment of the viability of the NFIP, while imposing a significant and disproportionate compliance burden on insured depository lenders. Thus, we urge that any reform effort end the system's dependence on bank enforcement of NFIP coverage in favor of the establishment of a new framework that promotes market options, increases the availability and affordability of coverage for all at-risk properties, and eliminates compliance burden in favor of safe and sound risk management controls.

Ensuring participation in the NFIP has been a continuing challenge. From 1968 until the adoption of the Flood Disaster Protection Act of 1973 (1973 Act), the purchase of flood insurance was voluntary, and few property owners purchased flood insurance policies. The 1973 Act introduced the mandatory purchase requirement, requiring federally regulated financial institutions to ensure that a loan secured by improved real property located in a

¹ See http://www.fema.gov/business/nfip/nfip_reform.shtm.

specially designated flood hazard area is covered by a flood insurance policy for the life of the loan.² Nevertheless, multibillion dollar flood losses in the Midwest in 1993 demonstrated that compliance remained low, and a primary objective of the National Flood Insurance Reform Act of 1994 was to increase participation by strengthening the mandatory purchase requirement. These efforts, however, disregard the fact that less than 50% of at-risk properties are subject to a mortgage; therefore, bank enforcement of NFIP participation is inherently limited. ABA believes that any reform effort should end the system's dependence on bank enforcement of NFIP coverage in favor of the establishment of a new framework that promotes market options and incentives for coverage for all at-risk properties.

Moreover, what Congress intended to be a relatively straightforward enforcement role for banks – ensuring that a bank does not “make, increase, extend or renew any designated loan unless the building or mobile home securing the property is covered by flood insurance for the term of the loan” – has devolved into an increasingly complex and inefficient compliance exercise. Since the enactment of the National Flood Insurance Act of 1968, banks have scrambled to understand the complexities of FEMA's flood plain mapping and the intricacies of the NFIP in order to establish compliant lending policies and procedures.³

An unintended consequence of this complexity has been the failure of development of a robust private flood insurance market. Although private flood insurance is ostensibly an accepted alternative to a NFIP policy, FEMA's guidance in assessing the adequacy of private policies is limited⁴ and has engendered significant uncertainty among lenders trying to determine whether a policy meets the regulatory minimums. ABA member banks report considerable difficulty assessing the adequacy of private policies. Their compliance officers and loan administration personnel are not insurance experts, yet they are being asked to make difficult technical evaluations of private policies. In addition, banks are uncertain about whether gap or multiple peril policies can satisfy the regulatory minimums, and efforts to have FEMA or the federal banking agencies provide definitive guidance have been unsuccessful. Banks fear that their decisions as to the adequacy of a policy could subject them to regulatory criticism or other risks if a private policy accepted as sufficient was later determined to be inadequate. As a result of this uncertainty, many banks insist that borrowers purchase only NFIP policies, restricting the development of important flood insurance alternatives for borrowers and lenders.

Regardless of the policy alternative ultimately chosen for NFIP reform, ABA believes that FEMA should promote the establishment of private insurance alternatives, including multi-peril

² 42 U.S.C. §4002 *et seq.*

³ Indeed, the fact that since 1997 the federal banking agencies have had to issue more than 82 Interagency Questions and Answers Regarding Flood Insurance, and evidently cannot reach agreement on five additional questions and answers, underscores the complexity of compliance with the mandatory purchase requirement. *See* 62 Fed. Reg. 39523 (July 23, 1997); 74 Fed. Reg. 35914 (July 21, 2009)(revising the Interagency Questions and Answers and proposing new questions and answers on insurable value and force placement that have yet to be finalized).

⁴ Federal Emergency Management Agency, *Mandatory Purchase of Flood Insurance Guidelines* 57 - 58 (2007).

policies, as a means of encouraging competition and increasing the availability and affordability of coverage for all at-risk properties. We would encourage FEMA to set minimum standards for flood insurance coverage and permit state insurance regulators to approve private flood insurance policies using existing state guidelines or state policy form guidelines. Alternatively, FEMA could permit states to include flood as a covered peril under a standard hazard property insurance policy. ABA believes that this would promote market options while reducing bank compliance burden in favor of the risk management controls banks use to manage hazard insurance for property held as collateral for a loan.

Finally, ABA supports efforts to update and improve flood risk identification and communication. We agree that one hundred-year flood maps do not adequately inform property owners of residual risk and that educating property owners about residual risk is an essential step toward incentivizing individuals to purchase and maintain flood insurance. Our members report that far too often a property owner is first informed about flood risk by receipt of the Standard Flood Hazard Determination form. In addition, we agree that the residual risk of properties behind a levee, dam, or other flood control structures must be determined and communicated to property owners. Improved outreach by FEMA, working in conjunction with community partners, would better educate consumers about residual risk, increase participation in the NFIP, and build support for community floodplain management and mitigation.

ABA appreciates the opportunity to comment on Phase III of the NFIP reform process. We understand that there will be additional opportunities for stakeholders to provide comments, and we look forward to being an active participant in ongoing discussions about NFIP reform, particularly as the policy options are further refined.

If you have any questions about these comments, please contact the undersigned at 202-663-5073 or via email at voneill@aba.com.

Sincerely,



Virginia O'Neill
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ABA Center for Regulatory Policy