

December 20, 2011

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for Department of Homeland Security,
Federal Emergency Management Agency
Via electronic mail to oir.submission@omb.eop.gov

Re: Federal Emergency Management Agency, Docket ID FEMA-2011-0017; OMB No. 1660-0040;
Submission for OMB Review; Standard Flood Hazard Determination Form

Dear Madam or Sir:

On November 21, 2011, the Federal Emergency Management Agency (FEMA) issued a Paperwork Reduction Act notice within the *Federal Register* requesting public comment on the information collection and estimated burden related to the proposed new version of the Standard Flood Hazard Determination Form (the "Form", currently FEMA Form 81-93). The National Flood Determination Association¹ (NFDA) and the Mortgage Bankers Association² (MBA) appreciate the opportunity to share our comments on the proposed changes to the Form.

The NFDA and MBA collectively represent the interests of the companies which must complete, use, store, and rely upon the Form. No other industries or stakeholder groups share the knowledge or have the experience with the Form and the federal regulations that govern its use and purpose. It is from this perspective that we provide these comments. While we understand that an additional *Federal Register* notice will be issued prior to implementation, given the material changes to the Form and their impact on the business interests of our member groups and to allow more time for FEMA's analysis and decision-making, we informed FEMA that we would be providing substantive comments for consideration now.

Background

The Standard Flood Hazard Determination Form was established by FEMA in 1995 as part of the implementation of the National Flood Insurance Reform Act of 1994 and was adopted by the Federal Regulatory Lending Agencies as "a standard form for determining whether a building or mobile home is located within an identified Special Flood Hazard Area, if flood insurance is required, and if federal flood insurance is available" (60 FR 35276). For each loan secured by improved real estate (e.g., building or mobile home), the Form must be completed and stored by the mortgage lender in order to determine if

¹ The National Flood Determination Association (NFDA) is a professional association of companies that works with federally regulated lenders to facilitate compliance with the mandatory purchase requirements under the NFIP to ensure that properties located in the Special Flood Hazard Area are protected by flood insurance. For additional information, visit NFDA's Web site: www.nfdaflood.com.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; and to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

flood insurance is to be required on the loan and have it available for Federal Regulators upon request. Improvements to the Form should be made to ensure the Form continues to facilitate lenders' compliance efforts, particularly in the event of regulatory changes, and to determine the need for flood insurance. Additionally, changes should also be made to reduce the burden on lenders that must comply with these regulations to ensure the regulatory burden is appropriate to its purpose.

General Considerations

We urge FEMA to reconsider the proposed changes described in the recent notice and shown on the draft of the proposed Form. We would prefer instead to extend the current version of the Form without change to allow for sufficient time for a public dialogue between FEMA, the users of the Form, and other interested stakeholders before substantive changes are made. The Form's current content and format have remained essentially unchanged since 1999. During the last 12 years, more than 200 million loan transactions have been conducted which required the completion and use of the Form. With such tremendous usage and longevity, the Form has held up to scrutiny and appears to adequately and appropriately meet the needs of its users. This is reflected by the fact that not a single lending institution or servicer provided a comment or suggestion to FEMA proposing any change to the Form, either during the public comment period which began in July 2011 or (as we understand it) during the comment period in 2008 when the Form was extended without change. Similarly, the NFDA endorsed FEMA's proposal to extend the current Form without change for three additional years (Letter from Cheryl Small, NFDA, to Docket Manager, FEMA, dated September 9, 2011). In fact, the only call for change was from the Association of State Floodplain Managers (ASFPM) whose members have no involvement in the completion, use or storage of the Form (76 FR 71990). While we respect and support the mission and important work performed by the ASFPM, we do not believe that the ASFPM has the direct experience needed to fully understand or appreciate the impact of proposed changes to the Form.

The NFDA and MBA welcome thoughtful improvements to the Form, even the addition of new fields which require additional work, if the changes improve the lenders' ability to comply with the federal regulations or reduce the regulatory burden required to comply. At this time, however, members of the NFDA and the MBA do not see any value or benefit of the proposed new data fields to lenders. The inclusion of this additional information will not improve the quality of the flood determination process, the lenders' ability to comply with regulations, or the usability of the Form and the information it contains. Thus, the NFDA and MBA recommend that the Form be extended without change. However, please understand that if this additional information is required, at least a six-month lead time would be necessary for lenders and service providers to update electronic forms and systems.

Estimated Burden per Respondent

Today, users of the Form (the flood determination industry which completes the Form more than 17 million times annually³ and the lenders and servicers which receive, store, and make decisions based on the Form) utilize sophisticated software and electronic platforms to complete, transmit and store the data contained on the Form. As part of the examination of the estimated burden imposed by proposed changes to the Form, the Federal Agencies must consider the work required to make changes to the numerous systems utilized by the lending institutions and their service providers.

The estimated burden of 20 minutes per respondent, if considered an average time per determination, does not adequately account for the time needed to consult appropriate FEMA maps, identify the location of the building, consider whether a Letter of Map Amendment or Revision applies to the subject property, confirm the flood zone, confirm the community's participation status, complete the Form, transmit the

³ Annual estimate based on the NFDA Annual Survey of its members.

Form, receive and act on the Form, transmit the Form to the insurance tracker (if applicable) or to loan origination or servicing systems, communicate with the loan applicant regarding insurance requirements (if applicable), review the results of the Form in the event of a flood zone discrepancy, cooperate with others if a flood zone discrepancy exists, or track the Form for future map revisions. If the proposed changes are implemented, users would also need to confirm the LOMA/R case number and confirm the respective dates of the community's program participation, which involves additional time and effort to check multiple sources.

The estimated burden has remained at 20 minutes per determination since 1998. While technology has reduced the amount of time to complete, transmit and store many flood determinations, certain flood determinations continue to require considerable time to complete and the additional work related to resolving flood zone discrepancies, the high volume of flood map revisions, and the proposed changes warrant the calculation of a new estimated burden per respondent. For a recent examination of the estimated burden associated with these compliance requirements, refer to the American Bankers Association's (ABA's) letter to the Office of the Comptroller of the Currency in response to its January 14, 2011 Paperwork Reduction Act notice, 76 FR 2753 (Letter from Virginia O'Neill, ABA, to OCC Communications Division, dated March 15, 2011).

Specific Recommendations

With respect to the specific changes being proposed, the NFDA and MBA urge FEMA to consider the impact and implications, as described below.

Section I, Part 2, Collateral

The proposed language can be interpreted to require that additional property information be added to this field. There may be a perception that the addition of this information may improve the ability to determine the location of the structure through the flood determination process. In most cases the complete property address is sufficient to both completing the Form and matching the Form to loan documentation stored by the lender or servicer. In the few instances when additional data is needed, current procedures are effective in receiving this information. We recommend that any new directions or guidance for the type of property information that *may* be included in the "Collateral" field be moved to the Instructions rather than on the Form itself which reduces the amount of space available to include additional information, such as a property's legal description.

Section II, Part B.3., LOMA/LOMR

We believe the "LOMA/R Number" being requested is the FEMA Case Number assigned to a given LOMA/R. If so, we are not aware of the current need for lenders and servicers to have this information. If a LOMA/R is needed by the lender, then the flood determination company provides that data; however, the requirement of the case number as a standard element of the Form provides no benefit to lenders. We recommend that the field be removed or made to be optional due to increased work, expense, and burden related to the acquisition, transmission and storage of the particular information.

Section II, Part C, Federal Flood Insurance Availability

We strongly recommend that the language remain the same as on the current version of the Form. We are willing to discuss ideas in the future for possible improvements to the wording in this section; however, we believe the current well-intended proposal to change the language in this section could have unintended, detrimental consequences.

Line 1 in this section should not specifically state that "federal flood insurance is available for this building/mobile home" because there may be extenuating circumstances outside of the parameters of the Form that could disqualify a property for flood insurance. The Form can communicate to the lender about the availability of flood insurance for the community in which the subject property is located based on the

community's participation status within the NFIP. The Form does not capture the possibility that a given building may not be eligible for federal flood insurance because the building is built entirely above

water after October 1, 1982, is a Section 1316 "out of compliance" property, is within a geographic area subject to a Federal Court injunction prohibiting the sale of flood insurance on new development, or other information that would render a given property ineligible for federal flood insurance. While the Form communicates important information that can be used by insurance personnel to rate flood insurance, it is not intended to include all necessary information to either determine the eligibility for insurance or the rate of such insurance. Insurance companies and agents have access to data and information made available by the NFIP, for example, which is not available to lenders or their service providers. Therefore, we strongly recommend that FEMA not force lenders to answer a question for which they do not have the necessary expertise or information.

As it relates to the addition of program date fields, we request an explanation of the source of the proposed change and the expected benefit to lenders. We believe the "Emergency Program" or "Regular Program" dates relate to the initial date on which a community enters this part of the NFIP program. If so, we are not aware of the current need for lenders and servicers to have this information. If it is determined that there is not a significant need for this information, we would recommend that the field be removed or made to be optional. As with the addition of the LOMA/R date field, new data requirements result in more work, expense, and burden related to the acquisition, transmission and storage of the particular information.

Lines 2 and 3 should not be tied together as proposed. Federal flood insurance is unequivocally not available to residents within a non-participating community. However, buildings or mobile homes within a Coastal Barrier Resources Area or Otherwise Protected Area *would be eligible* for flood insurance if constructed before the area's designation date. Thus, if a property was in a participating community, but in a Coastal Barrier Resources Area, then the complete sentence would read "Federal flood insurance is not available for this building/mobile home because ... Building/Mobile Home is in a Coastal Barrier Resources Area or Otherwise Protected Area. Federal Flood Insurance may not be available." The statement is contradictory on the surface and confusing and misleading to the user. The service provider does not have the necessary information to determine if a given building or mobile home is eligible for federal flood insurance, but can provide the information (including the designation date) needed by the lender to reach a conclusion.

Section II, Part D, Determination

We strongly urge FEMA to maintain the language and format of the current version of the Form. The proposed changes to this section (the insertion of a statement to borrowers about flood risk) represent the area of greatest concern to NFDA and MBA members because it may be interpreted to create a duty which currently does not exist with the lender or the service provider. As previously described, the Form is a compliance document intended to provide the lender with the information necessary to determine if flood insurance is required and to meet various regulatory requirements related to flood insurance. The Federal Regulators have not viewed the Form as a risk communication tool to be used by the applicant to understand the flood risk within a particular geographic area. Lenders or service providers are not trained and licensed insurance professionals and, as such, are not qualified to advise an applicant in this manner. Borrowers should be encouraged to seek risk, underwriting and coverage information from their local insurance agent. In fact, there is no requirement or guideline to mandate that a lender even provide the applicant or borrower with a copy of the completed Form. As a result, the well-intended language would not have the intended impact, but instead would have the unintended consequence of subjecting lenders to a potentially burdensome change in process to ensure the borrower receives a copy in order to avoid the exposure to increased liability should the institution not deliver the Form and an uninsured loss occurs.

While the NFDA and MBA promote the value of NFIP flood insurance and encourage the public to purchase flood insurance whether or not it is required, we strongly discourage FEMA from effectuating a change in guidelines and exposing lenders to additional exposure to liability through a simple, but ineffective sentence.

Conclusion

The NFDA and MBA welcome the opportunity to enter into a dialogue with stakeholders and interested parties about ways to improve the Form in support of its purpose. We feel, though, that the primary users of the Form (lenders, loan servicers and their service providers) have not had sufficient opportunity to analyze and comment on the recently proposed changes which followed FEMA's initial notice of an extension of the Form without change. In fact, FEMA has not even released the revised Instructions to the Form publicly to allow us to consider the implications of any related changes. Therefore, we urge FEMA to seriously consider the opinions of those groups most knowledgeable of and experienced with the Form as set forth in this letter and recognize the value of extending the Form without change for another three years. For the future, we welcome the opportunity to engage in a meaningful dialogue about changes to the Form that would benefit lenders' efforts to comply with federal flood insurance regulations.

The NFDA and MBA sincerely appreciate the time granted to provide these comments and urge FEMA's consideration. We look forward to FEMA's response and a further discussion on the Form and its future. For more information, please contact Cheryl Small at (512) 977-3728 or chsmall@corelogic.com; Vicki Vidal at (202) 557-2861 or vvidal@mortgagebankers.org; or Kathy Marquardt at (202) 557-2742 or kmarquardt@mortgagebankers.org.

Sincerely,

National Flood Determination Association

and

Mortgage Bankers Association

Cc: Susan Bernstein, Esq., Department of Homeland Security, Federal Emergency Management Agency
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