American Bankers Association
Building Success. Together.

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Communications Division
Office of the Comptroller of the Currency
Mail Stop 2 – 3, Attention: 1557-0202
250 E Street, S.W.
Washington, D.C. 20219

Re: PRA Notice and Request for Comment: Loans in Areas Having Special Flood Hazards, 12 CFR part 22; OMB Control Number 1557-0202, 76 Fed. Reg. 2753 (January 14, 2011) (the PRA Notice).

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposed renewal of the information collection requirements of the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Flood Insurance Reform Act of 2004 (collectively, the Act), and the OCC's implementing regulations (the Flood Insurance Regulations or the Regulations).[2]

The OCC proposes to renew, without change, the flood insurance information collection requirements. As required by the Paperwork Reduction Act of 1995 (PRA)[3], the OCC has developed an estimate of the time expended by the average bank to comply with the notice, disclosure, and recordkeeping requirements of the Flood Insurance Regulations. According to that estimate, the average national bank expends a total of 25.5 hours annually – or as little as

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees.
[2] *See* 12 CFR part 22.
[3] 44 U.S.C. §3501 et seq.

15 minutes per loan located in a special flood hazard area – to comply with the following "information collection" requirements:

- To use the Standard Flood Hazard Determination Form (SFHDF) to determine whether a building or mobile home offered as collateral for a loan is or will be located in a special flood hazard area and to maintain a completed copy of that form for the period of time that the bank owns the loan;[4]
- To provide the borrower and the loan servicer with the following notice(the Notice): a warning that the building securing the loan is located in a special flood hazard area; a description of the flood insurance purchase requirements; a statement, where applicable, that flood insurance is available through the National Flood Insurance Program (NFIP) and may be available through private insurers; and a statement about the availability of federal disaster relief assistance;[5]
- To ensure that the borrower maintains flood insurance throughout the life of the loan. If the borrower fails to do so, to notify the borrower of the obligation and to explain that if the borrower does not obtain flood insurance within 45 days after notification, the bank or its servicer will force place insurance and charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance;[6]
- To notify the Federal Emergency Management Agency (FEMA) in writing of the identity of the servicer of a designated loan and of any change in servicer.[7]

In addition, the OCC estimates that the average national bank expends 30 minutes annually to maintain records of its compliance with these requirements.

ABA believes the OCC's estimate grossly understates the burden imposed by the information collection requirements and fails to recognize the substantial effort banks make to enforce the mandatory purchase of flood insurance. The accuracy of this information is essential to ongoing efforts to reduce regulatory burden and policy discussions about the future of the national flood insurance program.

<u>Requirements for a PRA information collection estimate</u>

The Paperwork Reduction Act (PRA) expresses the national commitment to minimizing information collection burdens and improving the quality of information collected while ensuring the greatest possible benefit to the public.[8] This commitment takes on added significance in light of Executive Order 13563 which emphasizes the importance of – and

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[4] 12 CFR §22.6.
[5] 12 CFR §22.9.
[6] 12 CFR §22.7.
[7] 12 CFR §22.10.
[8] *See* 44 U.S.C. §3501.

President Obama's commitment to – reducing regulatory burdens and costs. As defined by the President that review must

> [I]dentify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.[9]

ABA believes that accurately quantifying an information collection burden is an essential predicate to the assessment and reduction of overall regulatory burden, and that the failure to assess and understand paperwork burdens will impede executive agency efforts to comply with the Administration's call to reduce regulatory burden.

Historically, PRA estimates have been poor representations of information collection burden because they usually do not include the costs of the compliance structure built to ensure that a disclosure or notice is properly completed, delivered, and filed. According to the Office of management and Budget's Implementing Guidance for OMB Review of Agency Information Collection, however, the following *must* be included in an estimate of a covered information collection (OMB Guidance):

1. **Design, procurement, and operation of data collection, data management, and data reporting systems** necessitated by the collection of information.
2. **Responding to changes in the requirements of an existing collection of information** where such collection requires different or more detailed information, redefines terms or concepts, or alters in any way the consequences of responding in the same manner as before.
3. **Training staff or other agents about how to comply with the collection**, including whatever time or money resources are necessary to ensure staff understands enough about the nature of the program and policy context to respond to the collection.
4. **Time, effort and other resources to perform all required tasks**, including completion and fulfillment of the information request, **as well as to certify the accuracy and/or reliability of information provided.** Effort to certify compliance with any statutory or regulatory provision represents paperwork burden, generally requires intensive scrutiny by senior officers, cannot be delegated and generally entails a comprehensive audit. Such certification burden should be evaluated with the context of the legal consequences to respondent for improper certification.

[9] Executive Order 13563, January 18, 2011, *available at* http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.

5. Time, effort, and other resources devoted to transmitting the collection of information to the federal agency or a third party.[10]

ABA understands that this data is difficult to obtain, but that difficulty does not excuse its absence from an information collection estimate. Moreover, it should be remembered that the responsibility for calculating burden lies with the regulator, not with the regulated.

The OCC's information collection burden estimate is deficient

The OCC's estimate of 15 minutes per loan clearly does not include estimates of the time expended on the compliance structure supporting the information collection – the considerable time and resources expended on procedures, systems, and monitoring to ensure compliance. A 15 minute estimate can only include the time required for the completion of administrative tasks – ordering the Standard Flood Hazard Determination Form, sending the Notice to the borrower, and retaining copies of each. The proper execution of each of these administrative functions, however, involves significantly more than the mere completion, mailing, and filing of forms. Indeed, the fact that there are 82 Interagency Questions and Answers Regarding Flood Insurance[11] underscores the complexity of compliance with the mandatory purchase obligation of the Act and its implementing regulations. What Congress intended to be a relatively straightforward compliance obligation for banks – ensuring that a bank does not "make, increase, extend or renew any designated loan unless the building or mobile home securing the loan is covered by flood insurance for the term of the loan" – has grown into an increasingly complex compliance obligation. 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. This ongoing effort must be quantified to achieve an accurate estimate of information collection burden.

Our members report that the time to comply with the information collection requirements of the Act and implementing regulations averages at least one hour per loan located in a special flood hazard area, a time period four times greater than that estimated by the OCC. Moreover, this number reflects the *average* amount of time required to comply; it does not include estimates of time expended in those instances when compliance with the Act and Regulations requires resolution of one of the myriad mapping or insurance issues bankers struggle to address. In addition, this one-hour time estimate includes only the time loan officers, loan processors, and loan servicers spend on a loan located in a special flood hazard area. Additional time expended on compliance monitoring and auditing, staff training, and making necessary

[10] *See* The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection, August 16, 1999 (Draft by Office of Information and Regulatory Affairs, OMB) at pp. 45 – 48 (emphasis added).
[11] *See* 74 Fed. Reg. 138 (July 21, 2009).

modifications to policies and procedures must be added to this estimate to accurately reflect the full information collection burden.

An explanation of the time estimates for each of the information collection requirements follows:

1. *Determine whether a building or mobile home offered as collateral for a loan is or will be located in a special flood hazard area.*

   ABA members report that it takes an employee between 5 - 30 minutes per file to order a Standard Flood Hazard Determination and to review the completed form. For a consumer mortgage transaction, ordering and reviewing the SFHDF is usually a straightforward and routine element of mortgage loan processing that can be achieved in approximately 5 minutes. The time expended on a commercial loan, however, may be considerably longer. Commercial loans may be secured by a variety of different forms of collateral, and determining whether a commercial loan is secured by property with a structure on it requires a careful review of the loan file, a process that extends considerably the time required to comply. This review is also necessary to determine whether the loan is being secured by a personal guarantee secured by improved real estate or is secured by a building or mobile home taken as an "abundance of caution." In each instance in which there is a property securing the loan with a structure on it – and there may be multiple properties securing a commercial loan – a SFHDF must be ordered and reviewed. Depending on the complexity of the commercial loan, the additional time required to review the loan file and to order and review the SFHDF(s) can range from 20 to 30 minutes, or more.

2. *Provide the borrower and the loan servicer with the following notice (the Notice): a warning that the building securing the loan is located in a special flood hazard area; a description of the flood insurance purchase requirements; a statement, where applicable, that flood insurance is available through the National Flood Insurance Program (NFIP) and may be available through private insurers; and a statement about the availability of federal disaster relief assistance.*

   Completing the administrative steps required to prepare and send the Notice to the borrower takes approximately 5 minutes per loan. However, our members report that the receipt of the Notice is usually the first time a borrower learns that a structure is located in a flood zone and of the requirement to purchase flood insurance. Most borrowers have questions about the flood zone determination and the process of obtaining a flood insurance policy. In addition, some customers challenge the determination. To ensure compliance with the Act, our members make every effort to address borrower questions and to assist those borrowers who believe a flood zone determination is incorrect. The time required to do so can range from an extra 5 to 10 minutes to several hours, depending on the customer's need.

It should be noted that according to FEMA's *Mandatory Purchase of Flood Insurance Guidelines,* a lender and borrower must submit a *joint* request for a Letter of Determination Review (LODR).[12] Although a request for a Letter of Map Amendment (LOMA) or a Letter of Map Revision (LOMR) may be filed individually by the borrower, our members report that they usually assist borrowers with this process, helping with the completion of paperwork, ordering surveys, ordering elevation certificates, and in the case of one rural bank, securing aerial photographs of land.[13] ABA believes that helping customers understand the requirements of the Act and, where necessary, assisting with a request for a flood zone determination review falls within the intent of the notification process contemplated by section 22.9, and that at a minimum, an additional 5 to 15 minutes per loan should be added to the estimate for this element of the information collection.

3. *Ensure that the borrower maintains flood insurance throughout the life of the loan. If the borrower fails to do so, notify the borrower of the obligation and explain that if the borrower does not obtain flood insurance within 45 days after notification, the bank or its servicer will force place insurance and charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance.*

   To ensure that flood insurance is purchased and maintained for the life of the loan, the National Flood Insurance Reform Act of 1994 added authority for, and a requirement that, lenders and servicers force place flood insurance if the borrower fails to obtain flood insurance within 45 days after notification of the requirement to obtain a policy. Although the statutory and regulatory requirements for providing this notice seem straightforward, the compliance structure necessary to ensure that lapses are discovered, notice is provided, and when necessary, a to force place a policy demand significant expenditures of time – time that must be factored into the burden estimate for this information collection.

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[12] Federal Emergency Management Agency, *Mandatory Purchase of Flood Insurance Guidelines,* 14 – 15 (2007).
[13] Moreover, according to the banking agencies, a lender may be found in violation of the Act and regulations if "a pattern or practice of unresolved discrepancies" between the flood hazard zone designation on the SFHDF and on the insurance policy is found in the lender's loan portfolio due to a lack of effort on the lender's part to resolve such discrepancies. *See* Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance Q & A # 72; 74 Fed. Reg. 35914, 35946 (July, 21, 2009).

To ensure continuous coverage, banks have established loan servicing review procedures. These loan file reviews require an employee to ensure that a current flood policy is in force, the amount of coverage the policy is written for meets the statutory minimums[14], and the zone on the policy matches that on the SFHDF. This review takes an average of 10 minutes, but if a lapse is discovered, an additional 15 - 25 minutes is required to send the 45-day notification to the borrower, to monitor whether the borrower purchases flood insurance (in which case the reviewer must ensure that the policy meets the statutory minimums and the zones match), and to purchase a force place policy in those instances in which a borrower does not purchase flood insurance.

In addition, because flood risk is constantly changing, FEMA regularly updates Flood Insurance Rate Maps (FIRMS). In addition, beginning in 2003, FEMA initiated an extensive Flood Map Modernization program (MapMod) to update and to improve the accuracy of flood zone maps. These efforts have yielded maps that more accurately calculate the flood risk, but as a result of these efforts, many structures located in areas that were previously considered low-risk have been designated as Special Flood Hazard Areas (SFHAs). Upon receipt of notification from FEMA that an area has been re-mapped, banks with real-estate secured loans in the affected area must undertake another loan file review by: ordering new determinations; notifying the customer if the SFHDF reports that a structure securing the loan is in a SFHA; reviewing the adequacy of a flood insurance policy if the borrower complies and purchases flood insurance; and finally, force placing a policy if the borrower does not. On average, completion of these steps requires at least 30 minutes per file. Because of the extent of recent re-mapping, we believe that the PRA estimate must recognize this burden in some way.

Finally, as ABA noted in our comments to the Interagency Questions and Answers Regarding Flood Insurance (the Q & As), there has been a continuing trend to insert safety and soundness comments into statements of regulatory expectation for compliance with the mandatory purchase requirement. Throughout the Q & As, the banking agencies state that despite the absence of a statutory "tripwire,"[15] safety and soundness considerations necessitate a loan file review to ascertain whether adequate flood insurance is in place. Thus, in the Q & As the agencies urge banks to conduct file reviews for purchased loans and when entering loan participations or loan syndication agreements. In turn, examiner enforcement of these statements has had the practical effect of improperly expanding the mandatory purchase requirement beyond that

[14] Ascertaining whether the policy coverage meets statutory minimums remains a significant challenge due to the fact that the banking agencies have never published final Q & As defining the term "overall value" or "insurable value" and providing guidance on how to determine and document the value of a residential and non-residential structure. The uncertainty caused by this failure adds considerably to the burden of this information collection.
[15] The Act and Regulations state, "A bank shall not **make, increase, extend or renew** any designated loan unless the building or mobile home securing the loan and any personal property securing the loan is covered by flood insurance for the term of the loan." The events of making, increasing, extending, and renewing a loan are the so-called statutory "tripwires" for the mandatory purchase requirement.

intended by the Act. ABA believes that the PRA estimate must account for the time spent conducting these reviews and sending the necessary notices. Depending on the complexity of a file and the follow-up required, banks estimate that they spend between 10 – 30 minutes per file on this information collection.

4. *Notify FEMA in writing of the identity of the servicer of a designated loan and of any change in servicer.*

   Our members report that complying with this information collection requirement requires only 2 minutes per loan.

<u>Additional elements that must be factored into the PRA estimate</u>

As previously discussed, the OMB Guidance recognizes that estimates of time expended to comply with any information collection requirement must also factor in the time required to audit procedures to confirm compliance and to make necessary adjustments. Our members report that they spend an average of 20 minutes per loan on compliance monitoring and auditing to ensure compliance.

Similarly, an information collection estimate must take into consideration "whatever time or money resources are necessary to ensure staff understands enough about the nature of the program and policy context to respond to the collection."[16] The federal banking agencies have consistently insisted on robust flood compliance programs by banks, assigning mandatory civil penalties for instances when a "pattern or practice" of non-compliance is discovered.[17] Accordingly, banks have implemented extensive training programs to ensure that lending, loan processing, and compliance staff understand the requirements of the Act and regulations, are trained to comply with bank procedures and recordkeeping requirements, and understand the implications of any NFIP policy changes that affect borrowers.[18] Our members report that each employee receives an average of two hours of flood-related training each year. It should also be noted that this time must be increased during those years when Congress fails to

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[16] OMB Guidance, *supra* at 47.

[17] Our members report that a finding of as few as two flood violations may be deemed a "pattern or practice," opening the flood compliance review form a representative sample to a review of all affected loans originated since the last examination.

[18] For example, at the end of 2010, FEMA announced a policy that went into effect on January 1, 2011, extending eligibility of low-cost preferred risk policies (PRPs) for properties newly mapped into an SFHA. Pursuant to the new PRP eligibility extension, owners of buildings newly mapped into an SFHA on or after October 1, 2008, and before January 1, 2011, are eligible to receive a reduced premium for up to two years beginning January 1, 2011 through December 31, 2012, and properties that will be added to an SFHA because of a map revision on or after January 1, 2011, are eligible to receive up to two policy years of reduced premiums. Although FEMA has directed NFIP and write-your-own insurance agents to validate and document PRP eligibility, banks will need to train staff about the PRP extension and its implications for bank customers.

reauthorize the NFIP as this requires banks to train staff about the effect of a lapse and bank procedures for operating during and after the lapse.

Finally, the OMB Guidance directs PRA estimates to consider time expended responding to changes in the requirements of an existing collection of information. The interagency Q & As, finalized in 2009, required the last extensive revision of flood insurance policies and procedures; however, at that time six additional questions and answers were proposed. When these final Q & As are published, they will require significant policy and procedure revisions as the outstanding questions concern issues pivotal to the required information collection – how to define and document insurable value and requirements for force placing insurance. Our members estimate that they will spend at least two hours revising procedures after the final Q & As are published and additional time for senior management or Board review because each person reviewing may read and comment on the change being made.

Conclusion

ABA appreciates the opportunity to comment on the PRA Notice and to provide information about the time required to comply with the information collection requirements of the Flood Insurance Regulations. ABA is committed to supporting Administration efforts to reduce regulatory burden, and believes that accurately quantifying an information collection burden is an essential predicate to the assessment and reduction of overall burden imposed by the Act and Regulations. We also believe that it is essential that policy makers considering the future of the NFIP understand the compliance burden imposed by the bank's role in enforcing the mandatory purchase requirement.

ABA concludes from the information we have obtained from members and presented above that the OCC should estimate burden for residential loans separately from commercial loans. If conducted in this manner, we believe that the following ranges would result:

- Property not within a SFHA: 5 to 20+ minutes[19]
- Residential property within a SFHA: 22 – 57+ minutes
- Commercial property within a SFHA: 37 – 67+ minutes

Moreover, as discussed previously, for those areas that have been re-mapped, an additional 30 minutes per loan must be added to this estimate and an additional 20 minutes per loan must be added to account for compliance monitoring and auditing. Finally, two hours per employee should be factored into the estimate to account for employee training and at least two hours should be added to account for time required to revise policies and procedures.

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[19] This range is due to the fact that for some properties not *ultimately* found to be in a SFHA, the initial determination may have initially identified the property within a SFHA. In these instances, before resolving the discrepancy, the bank would have had to expend additional time notifying the borrower and helping the borrower challenge the determination as described in paragraph #2 on page 5 above.

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

Sincerely,

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