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United States Court of Appeals, First Circuit.

Stanley KOLBE, Plaintiff- Appellant,
v.
BAC HOME LOANS SERVICING, LP, et al., Defendants - Appellees.

No. 11-2030.
December 18, 2012.

Property Casualty Insurers Association of America’s Amicus Curiae Brief in Support of Defendants - Appellees on Rehearing Enbanc

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***I CORPORATE DISCLOSURE STATEMENT**

Pursuant to [Federal Rule of Appellate Procedure 26.1](#), *amicus curiae* Property Casualty Insurers Association of America (“PCI”) states that it has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

***ii STATEMENT PURSUANT TO [F.R.A.P. 29\(c\)](#)**

No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. Other than PCI and its membership, no person contributed money that was intended to fund preparing or submitting this brief.

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***1 I. INTEREST OF THE AMICUS CURIAE**

PCI is the national association representing the property casualty insurance industry, an industry that employs more than 460,000 people nationwide. Headquartered in Chicago, Illinois, PCI promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers alike. PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI member companies write 40 percent of the nation's property casualty insurance, including 32 percent of the homeowners market and 52 percent of federal flood insurance premium.

At issue in this appeal is whether mortgage contracts conforming to the requirements of the Federal Housing Administration ("FHA") Model Form may reasonably be construed as limiting the discretion of lenders to require flood insurance coverage only to the amount of the outstanding balance of the loan, rather than for the full replacement cost of the securing property. That construction is contrary to the primary purpose of the National Flood Insurance Program ("NFIP"), contrary to published directives from multiple federal authorities with jurisdiction to enforce NFIP requirements, and contrary to the weight of case law addressing this question. And it is inconsistent with property casualty industry practice for insuring against other perils for full replacement *2 value. Federal administrators and courts across the country have construed the language at issue as establishing the limits of lender discretion in requiring flood insurance, rather than imposing the statutory minimum as the only permissible coverage amount.

The panel majority "acknowledge[d] that lenders may have good reason to require full replacement coverage," but attributed to Congress "an assumption that, at times, a more limited amount of flood insurance may be reasonable or appropriate." *Kolbe v. BAC Home Loans Servicing, LP*, 695 F.3d 111, 120 (1st Cir. 2012) (citing 42 U.S.C. § 3012a(b)(1)), *vacated*, No.

11-2030, Order (1st Cir. Nov. 1, 2012). But such an assumption is unsupported by - indeed, irreconcilable with - the intent of the NFIP, as expressed by Congress and by the agencies charged with its implementation. The reasoning of the panel majority places millions of homeowners in flood-prone areas at risk. While covered for replacement value against fire or other perils, their homes may be underinsured for flooding - the catastrophic hazard more likely to strike their homes. The dissent's reading of the Kolbe mortgage contract, as permitting lender discretion to require flood insurance coverage above the statutory minimum "to restore a damaged house that might otherwise be abandoned," is the only "sensible" construction. *Id.* at 127, 129.

*3 Prior to the NFIP, flood insurance was cost-prohibitive and largely unavailable in the private market. Major flood losses typically were covered by taxpayer-funded disaster relief. Since 1978, nearly two million NFIP claims have been submitted to cover more than \$41 billion in flood losses in the 50 states, District of Columbia, and U.S. Territories.¹ The massive devastation recently caused by **Superstorm Sandy** is a vivid reminder of the importance of replacement value flood insurance coverage. Initial estimates of insured losses from Sandy approach \$20 billion, making it one of the costliest storms in U.S. history.² Knowing their mortgage balances are covered would be cold comfort to Sandy flood victims with no homes to return to or insurance proceeds to rebuild them.

II. THE PANEL MAJORITY'S INTERPRETATION OF THE MORTGAGE CONTRACT IS CONTRARY TO THE PURPOSES OF THE NATIONAL FLOOD INSURANCE PROGRAM.

The NFIP is the primary source for flood insurance in the U.S. The program was authorized by Congress through the National Flood Insurance Act of 1968 ("NFIA"), making available federally-subsidized flood insurance at or below actuarial rates. 42 U.S.C. § 4001. The NFIP was created to address the *4 "increasing burden on the Nation's resources," 42 U.S.C. § 4001(a), of taxpayer-funded disaster relief to restore areas heavily damaged by floods.

Communities along the seacoast or in a river basin become completely immobilized following a major flood. Usually they must depend on the Federal Government and voluntary relief agencies to provide various forms of assistance. Some State and local governments have limited programs to assist a flood-stricken area, but disaster relief from all of these sources is inadequate to provide for the necessary *restoration* of heavily damaged areas. These facts underline the need for a program which will make insurance against flood damage available, ... and reduce the mounting Federal expenditures for disaster relief assistance.

H.R. Rep. No. 90-1585 (1968), reprinted in 1968 U.S.C.C.A.N. 2873, 2966-67 (emphasis supplied). Although "[i]nsurance protection against the risk of destruction caused by tornadoes and other natural catastrophes" generally was available, it was "not available against the risk of flood loss." *Id.* Congress recognized that only under a federally-sponsored insurance program, in conjunction with private insurers, "will it be possible for victims of flood disasters to *fully recover* from the losses which they now incur." 114 Cong. Rec. 14,973-74 (1968) (emphasis supplied).

When voluntary participation in the NFIP fell below program goals, Congress enacted the Flood Disaster Protection Act of 1973 ("FDPA"), mandating flood insurance coverage as "essential for protecting the hard-earned investments of homeowners and commercial property owners located in low-lying, flood-prone areas throughout the Nation." 119 Cong. Rec. 28420 (1973). Congress directed *5 lenders to require flood insurance "as they now generally require fire insurance; and that such flood insurance be considered in the interest of the borrowers [and] the lending institutions." S. Rep. No. 93-583 (1973), reprinted in 1973 U.S.C.C.A.N. 3217, 3220. "Even where federally subsidized flood insurance had been purchased, it did not in most cases cover actual damages," as homeowners found they were "only covered for a small fraction of the actual losses incurred." 119 Cong. Rec. S23206 (daily ed. Dec. 18, 1973) (statement of Sen. Williams). See also *id.* at S23207 ("What we are trying to do ... is to protect, as best we can, against the loss of property and lives.") (statement of Sen. Tower); S23221 ("I believe that it [the FDPA] is the most responsible means yet proposed of avoiding unnecessary Federal disaster relief expenditures and, more importantly, unnecessary loss of lives and property.") (statement of Sen. Taft).³

After widespread flooding in the Midwest in 1993, Congress passed the National Flood Insurance Reform Act of 1994 ("NFIRA"), which continued the minimum coverage mandate. 42 U.S.C. § 4012a. NFIRA went further, however, directing federally-regulated lenders to enforce the mandate by requiring *6 mortgagors to maintain flood insurance on property located in a designated Special Flood Hazard Area ("SFHA"), and to "force place" flood coverage when borrowers fail to comply. 42 U.S.C. § 4012a(b)(1); 4012a(e)(2). Congress recognized that "the effectiveness of federal flood insurance was and is dependent upon the authority of lenders to require borrowers to obtain necessary flood insurance." 140 Cong. Rec. H6694 (daily ed. Aug. 2, 1994). The *minimum* amount of required flood coverage for a home securing a mortgage loan issued by a federally regulated lender is *at least* the amount of the outstanding principal balance or \$250,000, whichever is less. 42 U.S.C. § 4012a(b)(1)(A). The intent of the NFIRA is to increase NFIP participation and to decrease the financial burden caused by flooding on victims and on taxpayers. H.R. Rep. No. 103-652, at 2025 (1994) (Conf. Rep.). On July 6, 2012, the Biggert-Waters Flood Insurance Reform Act of 2012 became law, reauthorizing the NFIP through fiscal year 2017. See 42 U.S.C. § 4026.

Throughout the 44-year history of the federal flood insurance program, Congress has made plain that its fundamental purpose is to protect victims, and ultimately taxpayers, from the heavy losses caused by flooding. That purpose is frustrated by reading the statutory coverage minimum as imposing the coverage maximum. Construing the FHA Model Form to require flood insurance that protects the interest of the lender, but not the borrower, protects no one - not *7 homeowners, whose insurance proceeds are insufficient to rebuild; not the federal government, which faces pressure to provide taxpayer-funded disaster relief to fill the void caused by inadequate insurance; not flood-ravaged communities, which are left with homes in disrepair or altogether abandoned; and not even the lenders, whose loans are repaid but are left with nonperforming assets and little likelihood that flood victims will qualify for new home loans. Moreover, as home loan balances are paid down, the amount of coverage permitted by the panel majority interpretation *decreases* even as the costs of repair and reconstruction from flood damage *increases* due to inflation and other factors, leaving homeowners and taxpayers even more exposed to catastrophic losses.

It is in this context that Kolbe's mortgage contract must be read, making the "assumption" attributed to Congress by the panel majority, "that, at times, a more limited amount of flood insurance may be reasonable and appropriate," plainly unreasonable. *See 695 F.3d at 120*. None of the expressions of Congressional intent - protecting lenders *and* borrowers, restoring destroyed homes, fully-recovering losses, paying actual damages, preserving hard-earned investments, or avoiding property loss - can be achieved by reading the FHA Model Form as limiting the NFIP mandate to its *minimum* flood insurance requirements. Indeed, as recently expressed by Senate sponsors urging its reauthorization, the NFIP is *8 "instrumental in protecting America's families, homes and businesses from financial ruin when flooding occurs."⁴

III. LIMITING LENDER DISCRETION TO REQUIRE FLOOD INSURANCE IN AN AMOUNT NOT TO EXCEED THE STATUTORY MINIMUM IS CONTRARY TO FEDERAL SUPERVISORY GUIDANCE.

When flood insurance coverage protects only the lender's interest in the property by paying off the outstanding balance, the borrower's equity and improvements are left underinsured. In the event the property is extensively damaged or destroyed, the borrower may be unable to secure financing on terms as favorable as the prior loan (if at all) to make the necessary repairs or to rebuild. As the NFIP legislative history and claim statistics demonstrate, flood devastation is far from hypothetical. When replacement cost coverage is required and in place, borrowers will repair the damage and the expected revenue stream to the lenders continues. With outstanding balance coverage, the inability of underinsured borrowers to repair damaged or destroyed property risks neighborhood blight and associated decreases in home values and property tax revenues.

The federal agencies charged with implementing NFIP requirements unanimously approve replacement cost coverage, interpreting the statute as setting *9 the permissible coverage *minimum*.⁵ Replacement cost coverage is explicitly endorsed by FEMA, the agency primarily responsible for administering the NFIP. "To meet compliance requirements," FEMA advises that "the amount of flood insurance must at least be, *but is not limited to*, the lowest of" outstanding principal balance, the \$250,000 program maximum coverage, or "[t]he full insurable value of the building and/or its contents, which is the same as 100 percent replacement cost value."⁶ FEMA further directs lenders to "follow the same general business practice in calculating the flood insurance coverage amount on a building as they do in placing other hazard coverage, e.g., homeowners insurance," and that a *10 "sound flood insurance risk management approach follows the insurance industry practice of insuring buildings to full RCV [replacement cost value]. Such a risk management strategy meets or exceeds the *minimal* compliance requirements." *Id.* (emphasis supplied). "If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the cost of repairing the building. *By insuring buildings to full RCV, the lender and borrower are both better protected.*" *Id.* at 27-28 (emphasis supplied). As the panel majority acknowledges, the FEMA guidelines "support the [] view" that the FHA Model Form "must be read to give the lender discretion to increase the [flood insurance] requirement above the statutory minimum." *Kolbe, 695 F.3d at 121*.

In addition to FEMA's primary role in implementing NFIP requirements, federal financial regulators also must enforce its provisions, including adopting regulations prohibiting lenders from making or increasing a loan secured by property located in a SFHA unless that property is adequately covered by flood insurance. *See 42 U.S.C. § 4012a(b)*.⁷ "To help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public *11 understanding of the flood insurance regulation," six federal agencies, in published guidance to lenders and borrowers, follow FEMA's interpretation of program requirements. *See 74 Fed. Reg. 35914 (July 21, 2009)*. "The Agencies" - Office of the Comptroller of the Currency ("OCC"), Federal Reserve, FDIC, Office of Thrift Supervision, Farm Credit Administration, and National Credit Union Administration - all endorse replacement cost value, or RCV, as the measure of required flood insurance coverage. *See 76 Fed. Reg. 64175, 64178 (Oct. 17, 2011)*. "In determining the amount of insurance to require, lenders should consider the extent of recovery allowed under the applicable NFIP policy." *Id.* Although the Agencies warn lenders to "avoid[] situations in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss, [l]enders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV [replacement cost value], they underinsure property." *Id.* at 64182.

Under rules promulgated by the FDIC, "[t]he amount of [flood] insurance coverage *may not be less than* the value of the

improved structure(s).” FDIC, *Compliance Manual* (2009), at V-6.3 (emphasis supplied).⁸ See also OCC, *Answers about Flood Insurance* (2011) (“Some lenders may require in their loan *12 agreements that the amount of flood insurance equal that of your hazard insurance so you are not underinsured. The reasoning is that if the insurable value (replacement cost) of the home is higher, and there is a total loss due to a flood, the lower amount ... might not be adequate to rebuild your home.”) (parenthetical in original).⁹ HUD’s stated mission “is to create strong, sustainable, inclusive communities and quality affordable homes for all.”¹⁰ That mission cannot be fulfilled if the FHA Model Form is construed to preclude lenders from requiring replacement cost coverage for flooding. Homeowners in federally-designated SFHAs are more than twice as likely to suffer property damage from flood than from fire.¹¹ And they face a one-in-four chance that their home will be damaged by flood at some point over the life of a 30-year mortgage.¹² Denying lenders discretion to require flood insurance coverage above the statutory minimum not only is contrary to federal regulations implementing the NFIP, it disserves homeowners, lenders, and the tax-paying public.

***13 IV. THE DISSENT IS CONSISTENT WITH THE WEIGHT OF OTHER CASE LAW AUTHORITIES.**

The Kolbe home loan utilizes the FHA Model Form, which obliges Kolbe to maintain “Fire, Flood and Other Hazard Insurance” “in the amounts and for the periods that Lender requires.” See *Kolbe*, 695 F.3d at 114. Kolbe’s lender required him to maintain flood insurance coverage in an amount equal to his home’s replacement cost value, rather than the lesser amount of the loan’s outstanding balance. As the panel majority noted, the question “is not what amount of flood insurance a lender reasonably could require, but what this particular [] mortgage provision in fact permits the lender to demand.” *Id.* at 121. The preponderance of other courts to address this question have answered in the same manner as the dissent in this case, that the language at issue “has only one sensible reading supported by salient practical reasons for why that reading was intended.” *Id.* at 129.

Relying on the same deed of trust language as Kolbe’s model mortgage form, obligating the borrower to maintain “fire, flood and other hazard insurance,” the court in *McKenzie v. Wells Fargo Home Mortgage, Inc.* recently dismissed claims for breach of contract and unjust enrichment in connection with allegedly excessive replacement cost flood insurance. No. C11-4965, 2012 WL 5372120 (N.D. Cal. Oct. 30, 2012). The court rejected the assertion that the defendants breached the contract or were unjustly enriched by placing “excessively priced” *14 lender-placed insurance. *Id.* at *19-21. Judge Spero’s analysis is equally applicable here, finding that by its plain terms the mortgage afforded the defendants the discretion to require flood coverage greater than the principal loan balance, *i.e.*, at replacement cost value and above the statutory minimum. *Id.* at *13-16 (rejecting the *Kolbe* panel majority opinion, and adopting Judge Boudin’s reasoning, in dismissing breach of contract, unjust enrichment, and other claims). The court observed that “Plaintiffs’ interpretation is further undermined by the fact that FEMA, the agency responsible for carrying out the NFIP, recommends that the lender set the amount of insurance coverage above the principal loan balance.” *Id.* at *15; see also *id.* at *6 (discussing federal agencies’ recommendations that flood insurance cover a property’s replacement cost).

The court in *LaCroix v. U.S. Bank, N.A.*, also was called upon to interpret the same “fire, flood and other hazard insurance” mortgage provision, finding no ambiguity or conflict in affording lender discretion to require replacement cost coverage. No. 11-3236, 2012 WL 2357602, *3-4 (D. Minn. June 20, 2012) (citing, *inter alia*, *Kolbe v. BAC Home Loans, Servicing, L.P.*, No. 11-10312, 2011 WL 3663394 (D. Mass. Aug. 18, 2011), *vacated*, 695 F.3d 111). “Therefore,” Judge Doty concluded, “the plain meaning of the hazard provision provides U.S. Bank discretion to set the applicable amount of flood insurance, and the complaint fails to state a claim for breach of contract.” *Id.* at *4. “Indeed, such an interpretation *15 aligns with the HUD requirement that ‘a special condition ... be included in the mortgage commitment, to obtain and to maintain NFIP flood insurance coverage’ ... and does not limit the amount of flood insurance that the lender may require.” *Id.* (citing 24 C.F.R. § 203.16a(a)(2)).

A recent Southern District of Alabama magistrate judge opinion “adopts the reasoning of *LaCroix* and the dissenting opinion of *Kolbe* in finding that the hazards provision in [p]laintiff’s mortgage agreement provides [d]efendant the legal authority to require [plaintiff] to obtain flood coverage in an amount that exceeds the principal amount due under the contract.” *Feaz v. Wells Fargo Bank, N.A.*, No. 1:12-cv-0350, slip. op. at 17-18 (S.D. Ala. Nov. 19, 2012) (Dkt. No. 45) (recommending that plaintiff’s four claims be dismissed). “With that finding, the Court concludes that [p]laintiff has not demonstrated that [d]efendant has breached the contract between them in force-placing flood insurance coverage at a level that exceeds the amount that [plaintiff] owes under the contract.” *Id.* at 18. The court interpreted the mortgage provision at issue here “to mean that the amount of flood insurance is left to [the lender’s] sole discretion,” and that the lender’s demand for full replacement cost coverage, subject to the statutory limit of \$250,000, “is consistent with the information provided by the [OCC], the FDIC, and FEMA.” *Id.* at 19-20.

*16 In *Custer v. Homeside Lending, Inc.*, the Alabama Supreme Court determined that requiring flood insurance “‘in an amount at least equal to’ the loan balance or the maximum coverage available under the Act” does not mean that it “sets a ceiling as opposed to a floor.” 858 So. 2d 233, 244 (Ala. 2003) (quoting 42 U.S.C. § 4012a(b)) (emphasis in original). Because the “‘primary purpose’” of the federal flood insurance program “is to reduce the massive burden on the national treasury resulting from escalating federal expenditures for flood-disaster relief assistance,” the court reasoned that “force-

placed insurance covering the full value of the property” is “logical [.]” *Id.* “After all, the obligation borne by the federal treasury for flood-disaster relief assistance to homeowners of properties damaged or destroyed by flooding may well extend beyond the balance of any mortgage loan encumbering them.” *Id.*

Other cases that follow the reasoning applied by Judge Boudin’s dissent include *Gibson v. Chase Home Fin. LLC*, No. 8:11-cv-1302, 2011 WL 6319401, at *3 (M.D. Fla. Dec. 16, 2011) (finding that lenders are permitted to demand more insurance than the statute requires, because “the NFIA mandates only a minimum amount of flood coverage (the lender must ensure the borrower is insured ‘at least equal to ...’). A lender is free to establish by contract a right to require that a borrower hold a larger amount of flood insurance, exactly as the mortgage in this action allows (‘insurance shall be maintained in the amounts ... that [l]ender *17 requires’).”) (parentheticals and ellipses in original). See also *Hayes v. Wells Fargo Home Mortg.*, No. 06-1791, 2006 WL 3193743, at *4 (E.D. La. Oct. 31, 2006) (The NFIA requires flood insurance in an amount “‘at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property, whichever is less.’ The ‘at least’ language indicates that this requirement is a minimum with which the lender must comply and does not prohibit a contractual agreement whereby the lender may require coverage in an amount greater than the balance of the loan secured by the property vulnerable to flooding.”) (citing 42 U.S.C. § 4012a(b)) (emphasis in original)).

Cases that survived a motion to dismiss, including the panel majority opinion, have not made contrary findings but held only that plaintiffs presented a sufficiently “plausible,” “tenable,” or “reasonable” alternative reading of the contract language to overcome a Rule 12(b)(6) motion. See *Kolbe*, 695 F.3d at 122 (“a rational jury could construe Paragraph 4 in favor of either Kolbe or the Bank.”). See also *Wulf v. Bank of Am., N.A.*, 798 F.Supp.2d 586, 588-89 (E.D. Pa. 2011) (finding the flood insurance requirement ambiguous, but expressly noting that “[i]t does seem incongruous that a lender would not be able to follow[] FEMA’s recommendation in connection with an FHA loan.”); *18 *Morris v. Wells Fargo Bank, N.A.*, No. 2:11-cv-00474, 2012 WL 3929805, at *8 (W.D. Pa. Sept. 7, 2012) (concluding, “[a]t the very least, plaintiff’s interpretation is tenable”); *Skansgaard v. Bank of Am., N.A.*, ___ F.Supp.2d ___, 2011 WL 9169945, at *2-3 (W.D. Wash. Oct. 13, 2011) (the relevant language “can be construed in two ways,” and therefore plaintiff “has adequately alleged a breach of contract claim” that survives a motion to dismiss).

PCI is unaware of a case, nor did the panel majority cite any such case, which construes the coverage language at issue - “at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property, whichever is less” - as denying lender discretion to require replacement value flood insurance, provided the coverage amount does not exceed the property value or the statutory limit.

V. CONCLUSION

The purposes of the federal flood insurance program are not served when homes are destroyed but not repaired or rebuilt. The contract construction that Kolbe asserts, and which the panel majority found plausible, undermines those purposes - as expressed by Congress, by federal regulators, and by the weight of case law to address the issue. For all of these reasons, and the reasons set forth by Appellees in their submissions to the Court, the order of the district court should be affirmed.

Footnotes	
1	Federal Emergency Management Agency (“FEMA”), <i>Flood Loss Statistics</i> (as of 10/31/2012), available at http://bsa.nfipstat.fema.gov/reports/1040.htm .
2	Erik Holm and Leslie Scism, <i>Sandy’s Insured-Loss Tab: Up to \$20 Billion</i> , Wall St. J, Nov. 2, 2011, available at http://online.wsj.com (search “Sandy’s Insured-Loss Tab”)
3	Senator Taft also noted, in discussing 48 Presidentially-declared disasters in 1972, “less than 5 percent of the \$3 to \$4 billion loss was covered by insurance. The balance was ultimately covered by disaster relief payments or restored through long-term indebtedness on the part of the property owner.” 119 Cong. Rec. S23212 (daily ed. Dec. 18, 1973).
4	Press Release, <i>U.S. Sens. Vitter; Tester Work to Extend National Flood Insurance Program</i> (Feb. 9, 2012), available at http://www.senate.gov/ (search “Vitter’s Work to Extend NFIP”).

5	For example, the Federal Deposit Insurance Corporation (“FDIC”) interprets the NFIA language as requiring “at least” outstanding balance coverage. <i>See</i> 12 C.F.R. § 339.3 (2008). <i>See also</i> 24 C.F.R. § 203.16a(c) (2011) (Department of Housing and Urban Development (“HUD”) regulation that flood insurance coverage be “at least equal to” the lesser of the outstanding mortgage balance or the value of property improvements); 12 C.F.R. § 208.25(c)(1) (2012) (Federal Reserve System (“Federal Reserve”) regulation requiring flood coverage in amount “at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage”) (emphases supplied). Such agency interpretations of NFIA requirements through administrative regulation are entitled to deference, absent a finding that it is arbitrary and capricious. <i>See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984). Moreover, the guidance announced by six federal agencies also are “accorded deference in proportion to their ‘power to persuade.’” <i>Lovgren v. Locke</i> , ___ F.3d ___, 2012 WL 5952880, *16 (1st Cir. Nov. 28, 2012) (quoting <i>Skidmore v. Swift & Co.</i> , 323 U.S. 134, 140 (1944)).
6	FEMA, <i>National Flood Insurance Program: Mandatory Purchase of Flood Insurance Guidelines</i> at 27 (Sept. 2007) (emphasis supplied), available at http://www.fema.gov/library (scroll down to “Resource Title Search” field and search “Mandatory Purchase of Flood Insurance Guidelines”).
7	In 1976, HUD, of which the FHA and its model mortgage form are a part, adopted implementing regulations for FHA-insured homes located in flood-prone areas, providing that “the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage insurance commitment, to obtain and to maintain NFIP flood insurance coverage on the property improvements during such time as the mortgage is insured.” 24 C.F.R. § 203.16a(a) (1976).
8	Available at http://www.fdic.gov/regulations/compliance/manual/index-pdf.html .
9	Available at http://www.helpwithmybank.gov/get-answers/insurance/flood-insurance/faq-flood-insurance-09.html .
10	HUD, <i>Mission</i> , available at http://portal.hud.gov/hudportal/HUD?src=/about/mission .
11	FEMA, <i>Resources: Flood Facts</i> (2012), available at http://www.floodsmart.gov/floodsmart/pages/flood_facts.jsp .
12	FEMA, <i>Defining Flood Risks</i> (2012), available at http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp .