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Flood Insurance Requirements

Compliance Division

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Flood Insurance Requirements

Introduction

Flood insurance laws and regulations remain a hot topic for regulatory agencies. Patterns and practices for significant flood insurance violations can result in retroactive file searches and the assessment of civil money penalties by the federal regulators.

This module will provide a detailed analysis of the current flood insurance laws and regulations, regulatory guidance and provide best practices to follow to avoid costly compliance pit falls.

Key Terms and Definitions

Act means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001--4129).

Administrator of FEMA means the Administrator of the Federal Emergency Management Agency.

Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

NFIP means the National Flood Insurance Program authorized under the Act.

Residential improved real estate means real estate upon which a home or other residential building is located or to be located.

Servicer means the person responsible for:

- (1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and
- (2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

Background

The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA). The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. The NFIP is administered by a department of the Federal Emergency Management Agency (FEMA) known as the Federal Insurance and Mitigation Administration (FIMA). The FDPA requires federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in a SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised the Federal flood insurance statutes. The purpose of the Reform Act is to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims. The Reform Act required the federal financial regulatory agencies to revise their current flood insurance regulations and brought the Farm Credit Administration (FCA) under coverage of the Act. These agencies issued a joint final rule (final rule) on August 29, 1996 (61 FR 45684).

The following are the current joint agency regulations implementing flood insurance requirements:

- OCC 12 CFR Part 22
- Federal Reserve 12 CFR Part 208
- FDIC 12 CFR Part 339

In addition, the joint agencies have provided additional guidance on technical flood insurance requirements through issuing Interagency Questions and Answers Regarding Flood Insurance (July 21, 2009, updated October 14, 2011). These documents supplement other guidance or interpretations issued by the agencies and FEMA regarding flood insurance requirements.

The FEMA Mandatory Purchase Guidelines, which previously served as a significant flood insurance guidance document for lenders and regulators was rescinded by FEMA on July 6, 2013 due to vast reforms in law.

The Reform Act also applied flood insurance requirements directly to the loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration, Federal Housing Administration, and the Veterans Administration.

Objectives of the FDPA:

- Provide flood insurance to owners of improved real estate located in SFHAs of communities participating in the NFIP.
- Require communities to enact measures designed to reduce or avoid future flood losses as a condition for making federally subsidized flood insurance available.
- Require federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located or to be located in an SFHA of a community participating in the NFIP, unless the property securing the loan is covered by flood insurance.
- Require federal agencies, such as the Federal Housing Administration (FHA), Small Business Administration (SBA) and the Department of Veterans Affairs (VA) not to subsidize, insure, or guarantee any loan if the property securing the loan is in an SFHA of a community not participating in the NFIP.

Congress amended the FDPA with the passage of the Biggert Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Biggert-Waters Act:

- Increased civil money penalties to \$2,000 per violation and eliminates the annual cap on penalties; • Allows for the lender to charge the borrower for force placed insurance coverage costs from the date the insurance lapsed or became insufficient;
- Requires lenders to accept certain private flood insurance policies;
- Increased flood insurance coverage for certain multifamily properties; and
- Revised the Housing and Urban Development (HUD) Special Information Booklet required under Real Estate Settlement Procedures Act (RESPA) to address the availability of flood insurance through the NFIP or through private insurance companies, whether or not the property is located in a flood hazard area.

The Biggert-Waters Act was later amended by the Homeowner Flood Insurance Affordability Act (HFIAA) of 2014. In addition to establishing strict guidelines for the premiums charged and several administrative requirements placed upon FEMA, HFIAA:

- Specifies that certain detached buildings for residential properties do not require insurance;
- Requires the escrowing of flood insurance premiums and fees for loans made, increased, renewed, or extended on or after January 1, 2016, unless an exemption applies; and
- Requires lenders to offer escrow accounts to borrowers with loans that are outstanding as of January 1, 2016.

Responsibilities of FIMA:

- Identifying communities with SFHAs.
- Issuing flood boundary and flood rate maps for flood prone areas.
- Making flood insurance available through the NFIP “Write Your Own” Program (WYO) which enables the public to purchase NFIP coverage from private companies that have entered into agreements with FIMA.
- Assisting communities in adopting flood plain management requirements.
- Administering the insurance program. Licensed property and casualty insurance agents and brokers provide the primary connection between the NFIP and the insured party. Licensed agents sell flood insurance, complete the insured party’s application form, report claims, and follow- up with the insured for renewals of the policies.

National Flood Insurance Program

The NFIP has two distinct phases, the Emergency Program and the Regular Program.

- The Emergency Program is for communities that first enter the NFIP. It is an interim program that provides lower levels of flood insurance on eligible structures at subsidized rates. FEMA issues flood hazard boundary maps with this program to determine whether properties are located in a flood plain area. A community that is in the Emergency Program will be admitted to the Regular Program upon completion of specific requirements.
- A community enters the Regular Program once a detailed study has been completed and a flood insurance rate map for the area has been issued by FEMA. The maps delineate communities by degrees of probable flood hazard and include more specific area identification than do the flood hazard boundary maps. They also indicate base flood elevations depicting depth or elevation of flooding. The Regular Program provides full insurance coverage for eligible structures and it requires additional flood-plain management responsibilities for the community.

Eligible Structures for Flood Insurance

The NFIP covers improved real property or mobile homes located or to be located in an area identified by FEMA as having special flood hazards. Generally each insurable structure requires a separate insurance policy, although FEMA does provide some exceptions.

The following types of structures are eligible for coverage:

- Residential, industrial, commercial, and agricultural buildings that are walled and roofed structures that are principally above ground.
- Buildings under construction where a development loan is made to construct insurable improvements on the land. Insurance can be purchased to keep pace with the new construction.

- Mobile homes that are affixed to a permanent site, including mobile homes that are part of a dealer's inventory and affixed to permanent foundations.
- Condominiums.
- Co-operative buildings.
- Flood insurance coverage is also available for personal property and other insurable contents contained in real property or mobile homes located in SFHAs. The property must be insured in order for the contents to be eligible.

Structures not eligible for flood insurance under the NFIP

- Unimproved land, bridges, dams, and roads.
- Mobile homes not affixed to a permanent site.
- Travel trailers and campers.
- Converted buses or vans.
- Buildings entirely in, on, or over water into which boats are floated.
- Buildings newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier with the Coastal Barrier Resource System established by the Coastal Barrier Resources Act (Public Law 97-348).

Standard Flood Hazard Determination Form

When an institution makes, increases, extends, or renews any loan secured by improved real estate or by a mobile home, it must use the standard flood hazard determination form (SFHDF) developed by FEMA to determine whether the building or mobile home offered as security property is or will be located in an SFHA in which flood insurance is available under the Act.

An institution can use a printed, computerized, or electronic form. It must retain a copy of the completed form, in either hard copy or electronic format, for the period of time it owns the loan. FEMA has stated that if an electronic format is used, the format and exact layout of the SFHDF is not required, but the fields and elements listed on the form are required. Any electronic format used by an institution must contain all mandatory fields indicated on the SFHDF.

Decisions as to the applicability of flood insurance may not be based on an institution's unilateral determination of elevations at which floods may occur. Official elevation determinations and, therefore, map revisions or amendments (LOMAs or LOMRs) may only be performed by FEMA. Flood maps, Standard Flood Hazard Determination forms, and Community Status Books may be obtained from FEMA by writing to:

- Federal Emergency Management Agency Map Services Center, P.O. Box 1038, Jessup, MD 20794-1038
- or calling: 1-800-358-9616
- or 1-800-611-6125 or ordering online: www.msc.fema.gov

Community status information is no longer published in the Federal Register. To obtain information on a community's participation status, telephone a FEMA representative at 1- 800-358-9616 to request a community status book. Information on community status is also available on the Internet at <http://www.fema.gov/fema/finifp.html>.

Reliance on prior determination

The Reform Act permits an institution to rely on a prior determination, whether or not the security property is located in an SFHA, and it is exempt from liability for errors in the previous determination if:

- The previous determination is not more than seven years old, and
- The basis for it was recorded on the SFHDF mandated by the Reform Act.

There are, however, two circumstances in which an institution may not rely on a previous determination:

- If FEMA's map revisions or updates show that the security property is now located in an SFHA, or
- If map revisions or updates affecting the security property have been made after the date of the previous determination.

The Reform Act also states that an institution cannot rely on a previous determination set forth on an SFHDF when it makes a loan, only when it increases, extends, renews, or purchases a loan. However, the preamble to the final rule indicates that the agencies will treat subsequent transactions by the same institution with respect to the same property, such as assumptions, refinancings and second lien loans, as renewals. A new determination would, therefore, not be required in those limited circumstances, assuming the other requirements are met.

Determination Fees

An institution or its servicer may charge a reasonable fee to the borrower for the costs of making a flood hazard determination under the following circumstances:

- The borrower initiates a transaction (making, increasing, extending, or renewing a loan) that triggers a flood hazard determination;
- There is a revision or updating of floodplain areas or risk zones by FEMA;

- The determination is due to FEMA’s publication of a notice that affects the area in which the loan is located; or
- The determination results in the purchase of flood insurance under the forced placement provision.

The preamble to the final rule indicates that the authority to charge a borrower a reasonable fee for a flood hazard determination extends to a fee for life-of-loan monitoring by either the institution, its servicer, or by a third party, such as a flood hazard determination company.

Truth in Lending Act Issues

The Official Staff Commentary to Regulation Z states that a fee for services that will be performed periodically during the loan term is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. This would include the fee for life-of-loan coverage. The fee for the determinations of whether a security property is in a SFHA is excluded from the finance charge. The Commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge. If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Flood Insurance Requirements for Lending Institutions

Basic Requirement

Flood insurance is required for the term of the loan on buildings or mobile homes when all three of the following factors are present:

- The institution makes, increases, extends, or renews any loan(s) (commercial or consumer) secured by improved real estate or a mobile home that is affixed to a permanent foundation (“security property”);
 - The property securing the loan is located or will be located in an SFHA as identified by FEMA; and
 - The community participates in the NFIP.
- In the case of mobile homes, the criteria for coverage turns on whether the mobile home is affixed to a permanent foundation. An institution does not have to obtain a security interest in the underlying real estate in order for the loan to be covered by the final rule. Institutions are not prohibited from making, increasing, extending, or renewing a conventional loan if the community in which the security property is located has been mapped by FEMA but does not participate in the NFIP. However, federal flood insurance is not available in these communities. In addition, it should be noted that government guaranteed or insured loans (secured or unsecured) cannot be made if the community has been mapped by FEMA and does not participate in the NFIP.

Flood insurance requirements apply to loans where a security interest in improved real property is only taken “out of an abundance of caution.” §102(b)(1) of the FDPA, as amended by the Reform Act,

provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute.

Special Situation—Table Funded Loans

In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding “at the table” when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer.

While the transaction is, in substance, a loan made by the funding party, it is structured as the purchase of a loan. The final rule reflects that, for flood hazard determination purposes, the substance of the table funded transaction should control and that the typical table funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds. Regulated institutions that provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be “making” a loan for purposes of the flood insurance requirements.

Treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices. The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer, as is currently done with respect to the requirements under the Real Estate Settlement Procedures Act (RESPA).

Exemptions to the Purchase Requirement

The flood insurance purchase requirement does not apply to the following two loan situations:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Director of FEMA. The Director will periodically publish a list of state property falling within this exemption.
- Loans with an original principal balance of \$5,000 or less, and having an original repayment term of one year or less.
- Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence.

Note: For these purposes, "a structure that is a part of a residential property" is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. A structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure and "serve as a residence" shall be based upon the good faith determination of the institution that the structure is intended for use or actually used as a residence, which generally includes

sleeping, bathroom, or kitchen facilities. The Agencies indicate that there is no duty to monitor the status of a detached structure following the lender's initial determination due to the minimal post-closing communications with borrowers or lack of systematic inspections of the property. Instead, the Agencies clarify that a lender must re-examine the status of a detached structure upon a qualifying triggering event of making, increasing, renewing, or extending a loan (MIRE). If a lender subsequently determines that a previously exempt structure has become subject to the mandatory flood insurance purchase requirement, the lender has a duty to inform the borrower of the obligation to increase insurance coverage and follow force-place flood insurance rules, as applicable. Although the statute provides this exemption, as a matter of safety and soundness or in the best interest of the borrower, lenders may nevertheless require coverage on these detached structures.

Contents Coverage

Flood insurance coverage for contents is not required unless personal property, in addition to a building that are located in a special flood hazard area secures the loan. Required contents coverage typically does not apply to 1-4 family residential loans as they rarely include personal property as part of the collateral. However, when a commercial loan on a building in a special flood hazard area includes inventory and other movable property as security for a loan, that property must be covered if it is eligible for flood insurance. Flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. However, it should be noted that Small Business Administration (SBA) underwriting rules may still require contents coverage in certain instances even if not required by federal rules.

Amount of Flood Insurance Required

The minimum amount of flood insurance required must be at least equal to the outstanding principal balance of the loan, the maximum amount available under the NFIP for the type of structure, or the total insurable value of the property, whichever is less.

Flood insurance coverage does not include the value of the land; rather, it only covers the amount of the insurable structure(s). Institutions may deduct the appraised value of the land from the total amount of the secured property to determine an estimated amount for insurance coverage, or institutions may use any other reasonable approach, so long as it can be supported.

Because an NFIP policy will not pay a claim in excess of a property's insurable value, it is important that this value be determined correctly. A miscalculation could cause the lender to inadvertently require the borrower to purchase too much or too little flood insurance, resulting in a violation. For example, if the value of the land is not excluded when determining the insurable value of a home or building, the borrower will purchase coverage exceeding the amount the NFIP will pay for a covered loss.

Strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV. However, in cases involving nonresidential properties, and even some residential properties, where the insurance loss payout would normally be based on actual

cash value, which is RCV less physical depreciation, insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured.

The guidance further states that when this occurs, lenders may choose from any reasonable approach to calculate insurable value, as long as it can be supported. The guidance provides examples of permissible methods, including appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, and the insurable value used in a hazard insurance policy.

Since March 1, 1995, the limits of coverage for NFIP flood policies are:

- \$250,000 for residential property structures and \$100,000 for personal contents
- \$500,000 for non-residential structures and \$500,000 for contents.

As of June 1, 2014, the maximum amounts of coverage for flood policies increased to the following:

- \$500,000 for non-condominium residential property structures of five units or greater and \$100,000 for personal contents.

Waiting Period

Effective March 1, 1995, the Reform Act increased the waiting period for flood insurance coverage from five days to thirty days. FEMA, through Policy Issuance 8-95, dated December 5, 1995, stated that increases in coverage amounts would be subject to the increased waiting period except in the following circumstances:

- When there is an existing policy and an additional amount of insurance is required in connection with the making, increasing, extension, or renewal of a loan, such as a second mortgage, home equity, or refinancing;
- When an additional amount of insurance is required as a result of a map revision, provided the insurance is purchased within 13 months of the map revision; or
- When an additional amount of insurance is being obtained in connection with the renewal of an existing policy.

Special Situations – Construction loans

The Interagency Flood Q&As provide detailed guidance on the flood insurance requirements for construction loans in questions 19-23. If a loan is secured only by land that will later be developed into a buildable lot, flood insurance is not required because the insurance requirements apply only to a loan secured by a building or mobile home. On the other hand, a loan secured by a building in the course of construction is subject to flood insurance requirements, even if the building is not yet walled and roofed, as long as the construction has not been halted for 90 days or longer and/or the lowest floor used for rating purposes is not below the base flood elevation (BFE). When insurance is obtained

for a building in the course of construction, materials or supplies used in construction or repair are not insurable unless they are in an enclosed building located on or adjacent to the premises.

The Interagency Flood Q&As offer two compliance options for a lender making a loan secured by a building to be constructed. A lender may require the borrower to acquire a flood insurance policy at the time of origination. Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either: (1) a foundation slab has been poured and/or an elevation certificate has been issued; or (2) the building is walled and roofed, provided the building to be constructed will have its lowest floor below the BFE. But, before the lender disburses funds for construction (except for pouring the slab or preliminary site work), it must require the borrower to have flood insurance in place. A lender who elects to allow the borrower to defer the purchase of flood insurance until after origination must have adequate internal controls in place to detect whether either of the above two mandatory purchase triggers has occurred. When any of these triggering conditions occur, the lender must require the borrower to purchase flood insurance or, if necessary, prepare to force place the insurance.

Special Situations—Condominium Policies

Residential Condominiums

Flood insurance is required for loans secured by an individual residential condominium unit, including a unit in a multi-story condominium complex, if the condominium is located in an SFHA where flood insurance is available under the NFIP. Loans secured by other condominium property are also covered, such as a loan to the condominium association or to a condominium developer.

The NFIP offers a specific insurance policy for a residential condominium complex — defined as a building having 75 percent or more of its floor area in residential use — known as the Residential Condominium Building Association Policy (RCBAP). This policy, which can only be purchased by condominium owners' associations, covers all individual units (including improvements) and common property. Content in the units can also be covered if content coverage is purchased.

The minimum amount of flood insurance for a loan secured by a condominium unit is the lesser of the outstanding principal balance of the loan or the maximum amount available under the NFIP, which is the lesser of:

- the maximum limit for a residential condominium unit; or
- the insurable value allocated to the unit, defined as 100 percent of the RCV of the entire condominium building divided by the number of units.

To facilitate compliance, the Interagency Flood Q&As include a condominium loan example. The example provides that a lender makes a \$300,000 loan secured by a residential condominium unit in a 50-unit condominium building that is located in an SFHA within a participating community, with a replacement cost of \$15 million and which is insured by an RCBAP with \$12.5 million of coverage.

In this example, additional flood insurance is not required because the RCBAP's \$250,000 per unit coverage ($\$12.5 \text{ million} \div 50 = \$250,000$) satisfies the mandatory flood insurance requirement, which is the lesser of: 1) the outstanding principal balance ($\$300,000$); 2) the maximum coverage available under the NFIP ($\$250,000$); or 3) 100 percent of the insurable value ($\$15 \text{ million} \div 50 = \$300,000$). Lenders may rely on the replacement cost value and number of units on the RCBAP declaration page when verifying compliance. Notwithstanding the minimum coverage requirements, the amount of the policy must be 80% or more of the replacement value of the building to avoid paying a coinsurance deductible at the time of loss. Therefore, the RCBAP policy must be at least equal to the lower of 80% of the replacement cost or the maximum available \$250,000 per unit to avoid the coinsurance penalty.

If a lender determines that a borrower's unit is not covered by an RCBAP or that the coverage under an RCBAP is below the minimum amount required by the NFIA, the lender must ensure that the borrower obtains sufficient coverage. The lender should first request that the borrower ask the condominium association to obtain coverage or obtain additional coverage sufficient to meet the regulation's requirements. If the association fails to comply, the lender must require the borrower to purchase a FEMA dwelling policy for supplemental coverage or force place the policy if necessary. When both the RCBAP and a dwelling policy cover the same unit, the RCBAP is considered primary insurance. The maximum amount of coverage for a residential condominium unit is \$250,000; therefore, when both an RCBAP and dwelling policy are in place, the policies are coordinated such that the maximum payout is capped at \$250,000.

Nonresidential condominium building

For a nonresidential condominium building, a condominium association must purchase FEMA's general property policy. Both building and contents coverage are available separately, in amounts up to \$500,000 per nonresidential building.

Special Situations—Second Mortgages/Home Equity Loans

Both second mortgages and home equity loans are transactions that come within the purchase provisions of the FDPA. Since only one flood insurance policy can be issued for a building, an institution should not request a new flood insurance policy if one already exists. Instead, the institution should have the borrower contact the insurance agent:

- To inform the agent of the intention to obtain a loan involving a subordinate lien
- To obtain verification of the existence of a flood insurance policy, and
- To check whether the amount of insurance covers all loan amounts.

After obtaining this information, the insurance agent should increase the amount of coverage if necessary and issue an endorsement that will reflect the institution as a lien holder.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan since the borrower will be drawing down differing amounts on the line at different times. In those instances where there is no policy on the collateral the borrower must,

at a minimum, obtain a policy as a requirement for drawing on the line. As a matter of administrative convenience to ensure compliance with the requirements, an institution may take the following alternative approaches:

- Review its records periodically so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or
- Upon origination, require the purchase of flood insurance for the total amount of the loan or the maximum amount of flood insurance coverage available, whichever is less.

Other Special Situations

Multiple Structures

Multiple structures that secure a loan located in an SFHA generally must each be covered by flood insurance, even though the value of one structure may be sufficient to cover the loan amount. FEMA does permit borrowers to insure nonresidential buildings using one policy with a schedule separately listing each building. Loans secured by agricultural properties and improvements may be particularly assisted through this practice. Insurance is not required for a structure that is part of a residential property but is detached from the primary residential structure and does not serve as a residence as noted under the exemption section above.

Mixed use properties

In some instances, a borrower may have a property which is a mixed-use building, such as a building that has some residential spaces and some commercial spaces. In such cases, the bank/servicer must determine whether the building qualifies as residential or non-residential in order to determine the maximum coverage limits available when determining minimum flood insurance coverage amounts to consider. Under the NFIP, a mixed use building would be considered a non-residential building if its square footage is less than 75% residential.

Other Real Estate Owned

An institution with other real estate owned (OREO) in flood hazard areas should, as a prudent practice, purchase flood insurance policies on its OREO property, although it is not required to do so by the regulation.

Private Flood Insurance

The mandatory purchase requirement has been amended to require lenders to accept private flood insurance policies if coverage satisfies the standards specified in the BWFA. The joint agencies are planning on addressing these requirements in a future rule making.

Notice Requirements

Notice of Special Flood Hazards and Availability of Federal Disaster Relief

The final rule requires that when the security property is or will be located in a SFHA, the institution must provide a written notice to the borrower and the servicer. This notice must be provided regardless of whether the security property is located in a participating or non-participating community. The written notice must contain the following information:

- A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area
- A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b))
- A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP
- A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company
- A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and
- A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster

The final rule permits an institution to use the sample form contained in appendix A to comply with the notice requirements. The sample form is an example of an acceptable form that notice may take and it does contain additional information not required under the regulation. Lenders may also personalize, change the format of, and add information to the sample form if they wish to do so. However, to ensure compliance with the notice requirements, a lender-revised notice form must provide the borrower, at a minimum, with the information required by the regulation.

The final rule permits an alternate notice provision by which an institution may rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee. This alternate form of notice might arise in a situation where the lender is providing financing through a developer for the purchase of condominium units by multiple borrowers. The lender may not deal directly with the individual condominium unit purchaser and need not provide notice to each purchaser but may instead rely on the developer/seller's assurances that the developer/seller has

given the required notice. The same is true for a cooperative conversion, where the sponsor of the conversion may be providing the required notice to the purchasers of the cooperative shares. A purchase of shares in a cooperative may be considered to be a “lessee” rather than a purchase with respect to the underlying real property.

The final rule provides that delivery of notice must take place within a “reasonable time” before the completion of the transaction. What constitutes “reasonable” notice will necessarily vary according to the circumstances of particular transactions. An institution should bear in mind, however, that a borrower should receive notice timely enough to ensure that:

- The borrower has the opportunity to become aware of the borrower’s responsibilities under the NFIP; and
- Where applicable, the borrower can purchase flood insurance before completion of the loan transaction. The preamble to the final rule states that the agencies generally continue to regard ten days as a “reasonable” time interval.

Notice to Servicer

The Reform Act added loan servicers to the entities that must be notified of special flood hazards. In many cases the servicer’s identity will not be known until well after the closing; consequently, notification to the servicer in advance of the closing would not be possible or would serve no purpose. In recognition that the servicer is often not identified prior to closing, the preamble to the final rule requires notice to the servicer as promptly as practicable after the institution provides notice to the borrower, and provides that notice to the servicer must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes. The final rule explicitly states that delivery of a copy of the borrower’s notice to the servicer suffices as notice to the servicer.

Notice to Director of FEMA

An institution must notify the Director of FEMA, or the Director’s designee, of the identity of the loan servicer and of any change in the servicer. FEMA has designated the insurance carrier as its designee to receive notice of the servicer’s identity and of any change therein, and at FEMA’s request this designation is stated in the final regulation. Notice of the identity of the servicer will enable FEMA’s designee to provide notice to the servicer of a loan 45 days before the expiration of a flood insurance contract. The final rule requires the notice to be sent within 60 days of the effective date of the transfer of servicing. No standard form of notice is required to be used; however, in the preamble to the final rule, the agencies stated that the information should be sufficient for the Director, or the Director’s designee, to identify the security property and the loan, as well as the new servicer and its address.

Escrow Requirements

The escrow provisions are designed to improve compliance with flood insurance requirements by ensuring that homeowners located in special flood hazard areas obtain and maintain flood insurance for the life of the loan. Unless an exception applies, a bank/servicer shall require the escrow of all premiums and fees for any mandatory flood insurance required for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed (MIRE) on or after January 1, 2016. There are certain loan level exceptions to the mandatory flood insurance escrow requirements. In addition, certain creditors that are considered “small lenders” are exempt from the mandatory flood insurance escrow rules.

For required escrows where no exception or exemption applies:

- A bank/servicer shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account
- The escrow must be payable with the same frequency as payments on the designated loan and are required to be made for the duration of the loan
- If the transaction is covered by RESPA, the escrow account will be subject to escrow requirements in Regulation X which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow disclosures and account statements for those accounts
- Following receipt of a notice from the insurer that premiums are due, the bank/servicer must pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due

Because a map change is not a triggering event, lenders would not be required to escrow flood insurance premiums and fees solely on that change even though it would need to follow notice and force-place procedures, if applicable as required.

Escrow Notice

For any loan with required escrow under this section or may be required to escrow due to a loan level exception change in status during the term of the loan, the bank/servicer shall mail or deliver a written escrow notice in or with the Notice of Special Flood Hazard. The purpose of the notice is to ensure that borrowers are informed about the escrow requirements. The notice must inform the borrower that bank is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A.

Option to escrow

Generally, a bank/servicer must offer and make available to the borrower the option to escrow all premiums and fees for any mandatory flood insurance required that is outstanding on January 1, 2016, unless:

- The transaction qualifies as a loan level exception from the escrow requirement
- The bank qualifies for the “small lender” exemption
- The borrower is already voluntarily escrowing all premiums and fees for flood insurance for the loan; or
- The bank is already required to escrow flood insurance premiums and fees

Notice – Option to escrow

For any covered loan, the bank/servicer must mail or deliver a notice of the option to escrow to the borrower no later than June 30, 2016. The notice must be in writing, or if the borrower agrees, electronically in accordance with E-Sign if applicable, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow. The notice language should be similar to the model clause in appendix B but a bank/servicer may insert additional language that it believes would help the borrower understand the options regarding escrow. The bank/servicer may choose whether to provide the notice as a separate notice or add it to another disclosure the lender provides the borrower on or before the deadline, such as a periodic statement. The bank/servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the bank/servicer receives the borrower’s request to escrow.

Loan level exceptions

Mandatory escrow requirements do not apply to the following transactions:

- The loan is an extension of credit primarily for business, commercial, or agricultural purposes (same determination as Regulation Z)
- The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements
- In the case of a condominium unit where the association has purchased an RCBAP that meets requirements of FEMA, the payments made by the borrower to the condominium association for the policy will constitute compliance with the requirements of the final rule for the escrow provisions. If the amount of the policy purchased by the condominium association, cooperative, homeowners association, or other applicable group does not satisfy the mandatory flood insurance purchase requirement, then the borrower would be required to obtain a supplemental policy to cover the deficiency. For example, if a condominium association purchases an NFIP Residential Condominium Building Association Policy (RCBAP) or a private flood insurance policy for less than the amount of insurance required by the mandatory purchase requirement under the FDPA, the borrower must obtain a dwelling policy for supplemental coverage. In those instances, a bank/servicer must escrow the premiums and fees for the supplemental policy unless the small lender exception applies.
- The loan is a home equity line of credit or reverse mortgage;
- The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full;
- The loan has a term of not longer than 12 months. This exception would also apply if a loan of 12 months or less is extended or renewed for an additional term of 12 months or less since this would be a separate MIRE triggering event.

Duration of loan level exception

If a bank determines at any time during the term of a designated loan that an exception under this section does not apply, then the bank/servicer shall require the escrow of all premiums and fees for any flood insurance required as soon as reasonably practicable. If applicable, the bank/servicer shall also provide the initial escrow disclosure in accordance with timing and contents requirements under Regulation X, RESPA.

The Agencies do not believe there is an ongoing duty to evaluate the applicability of the subordinate lien, non-performing loan, or any of the other exceptions. However, similar to the force-placement provisions relating to the mandatory flood insurance purchase requirement, when a lender makes a

determination that an exception no longer applies, for example, when it receives notice that the senior lien has been paid off or when it conducts the required inquiry at a MIRE triggering event, then the lender must begin escrowing flood insurance premiums and fees. Therefore, lenders should ensure that the loan documents executed in connection with a subordinate loan or non-performing loan permit the lender to require an escrow in connection with the loan in the event the loan has a change in status and becomes subject to the escrow requirement.

Small lender exemption

Qualification

Generally, the mandatory escrow rules do not apply to a bank:

- That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and
- On or before July 6, 2012:
 - Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and
 - Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home

A bank is not required to consolidate the assets of other institutions under common ownership with its assets for the measurement of asset size. An institution could qualify for the small lender exception if the policy of requiring escrow began after July 6, 2012, provided the lender meets the size threshold. If the lender maintains escrows only on a borrower's request, it is not considered to be a policy of uniformly or consistently requiring escrow. It is irrelevant why the lender (such as at the behest of a third party) is requiring the escrow so long as there is a policy of uniformly or consistently requiring borrowers to escrow.

Change in status

If a bank previously qualified for the small lender exception, but no longer qualifies for the exception because its assets exceed the limit at year end for two consecutive calendar years:

- It must escrow premiums and fees for flood insurance for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status
- It must mail or deliver the notice of option to escrow to applicable borrowers for covered loans outstanding July 1 no later than September 30 of the first calendar year in which the bank has had a change in status

For example, if a bank qualified for the exception in 2016, but had assets of \$1 billion or more as of December 31, 2016, and December 31, 2017, such regulated lending institution would be required to begin escrowing for any loans made, increased, extended, or renewed on or after July 1, 2018, and the bank would also be required to mail or deliver the notice of option to escrow to applicable borrowers for covered loans outstanding July 1, 2018 no later than September 30, 2018.

Forced Placement Requirements

The Reform Act does not specifically require an institution to monitor for map changes, and the final rule does not require that determinations be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan the institution or its servicer determines that required flood insurance is deficient, the final rule requires initiation of forced placement procedures. Forced placement should not be necessary at the time an institution makes, increases, extends, or renews a loan, when it is obligated to require that flood insurance be in place prior to closing. Rather, forced placement authority is designed to be used if, over the term of the loan, the institution or its servicer determines that flood insurance coverage on the security property is deficient; that is, whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum stipulated by statute for the particular category of structure securing the loan. The amount that must be force placed is equal to the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit.

The Reform Act imposed the requirement on an institution or a servicer acting on its behalf to purchase or “force place” flood insurance for the borrower if the institution or the servicer determines that coverage is lacking. The final rule, therefore, provides that an institution or servicer acting on its behalf, upon discovering that security property is not covered by an adequate amount of flood insurance, must, after providing notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, purchase flood insurance in the appropriate amount on the borrower’s behalf. The notice must state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on their behalf and may charge them for the cost of premiums and fees to obtain the coverage. There is no required specific form of notice to borrowers for use in connection with the forced placement procedures. An institution or its servicer may choose to send the notice directly or may use the insurance company that issues the forced placement policy to send the notice. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. For information concerning the contents of the notification letters used under the MPPP, lenders and others should consult FEMA’s MPPP Notice.

An institution or its servicer continues to be responsible for ensuring that where flood insurance was required at origination, the borrower renews the flood insurance policy and continues to renew it for as long as flood insurance is required for the security property. If a borrower allows a policy to lapse when insurance is required, the institution or its servicer is required to commence force placement procedures. The bank/servicer must send the notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system.

Notice is also required when a regulated lending institution learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change. The required notice may not be sent prior to the actual expiration of the policy and must be sent following the date of the lapse or insufficient coverage of the borrower's policy. A bank/servicer, at its discretion, may send one or more additional notices prior to the expiration date as a courtesy to assist the borrower.

A bank/servicer may force-place flood insurance that would provide coverage anytime during the 45-day notice period and would not have to wait 45 days after providing notice to force-place. A bank/servicer can force-place flood insurance beginning on the day the borrower's policy lapsed or did not provide sufficient coverage, and also, as of that day, it can charge the borrower for the force-placed insurance. However, if the borrower obtains a flood insurance policy that overlaps with the force-placed policy, the bank/servicer must refund any premiums paid by the borrower for this overlap period. As a practical matter, a bank/servicer may decide to wait until after the 45-day notice period has expired to collect premiums for coverage dating back to the date the force-placed policy was purchased to avoid the administrative burden of having to refund the borrower's premium for any period of overlapping coverage.

The rules permit a bank/servicer to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure continuous coverage. If a bank/servicer, despite its monitoring efforts, discovers a policy with insufficient coverage, for example due to a re-mapping, it may charge back to the date of insufficient coverage provided it has purchased a policy that covers the property for flood loss and that policy was effective as of the date of insufficient coverage. However, if purchasing a new policy is necessary to force-place insurance upon discovery of insufficient coverage, a bank/servicer may not charge back to the date of lapse or insufficient coverage because the policy did not provide coverage for the borrower prior to purchase.

Within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage the bank/servicer must:

- Notify the insurance provider to terminate any force-placed insurance purchased by the bank/servicer; and
- Refund to the borrower all premiums paid by the borrower for any insurance purchased by the bank/servicer during any period during which the borrower's flood insurance coverage and the force-placed insurance were each in effect, and any related fees charged to the borrower with respect to the force-placed insurance purchased during such period
- For purposes of confirming a borrower's existing flood insurance coverage, a bank/servicer must accept from the borrower or a third party an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent

Any further inquiry regarding the borrower's policy along with the termination and refund of premiums for the overlap period must be completed within the 30-day period following receipt of

confirmation of a borrower's existing flood insurance coverage. If the bank/servicer later determines the coverage amount or any terms and conditions fail to meet applicable requirements, it should notify the borrower and request that the borrower obtain an adequate flood insurance policy in accordance with the force-place notice rules. A bank/servicer has the discretion to accept other documents that may also demonstrate a borrower has adequate flood insurance coverage. Although a declarations page is the one option that a bank/servicer must accept, there are circumstances in which it can, subject to safe and sound banking practices, accept alternative evidence of insurance documents acceptable to the lender in order to cancel force-placed insurance. The final rule establishes the minimum information that a bank/servicer may require as sufficient demonstration of flood insurance coverage.

If a borrower after receiving a force-placement notice provides proof of a flood insurance policy purchased on a certain day that is subject to an additional 30 day waiting period to become effective:

- The bank/servicer may force-place flood insurance on a property retroactive from the date of lapse of coverage through the 30 day waiting period, and
- If a force-placed insurance policy is terminated upon the expiration of the 30 day waiting period, the lender would not need to refund premiums and fees for the force-placed coverage because there would not be an overlap period

Illustrative Examples

If a borrower has not renewed a flood insurance policy that expires on June 30, a bank/servicer must provide the 45-day notice to the borrower and may force-place flood insurance as early as July 1. The bank/servicer could bill the borrower upon force-placing the policy or could wait to bill the borrower at a later date, for example, when the 45-day notice period expires. If the borrower did not obtain a flood insurance policy and the bank/servicer had not force-placed insurance by August 14 (the end of 45-day period), it would be required by regulation to force-place flood insurance on August 15.

On the other hand, if the lender force-placed flood insurance as of July 1 and, if on July 15, the borrower renewed his or her flood insurance policy (effective from July 1) to satisfy the mandatory purchase requirement and provided sufficient evidence to the bank/servicer, then it would be required to refund any premiums paid by the borrower for the force-placed insurance coverage between July 1 and July 15.

Recordkeeping Requirements

The record keeping requirements of the final rule include retention of:

- Copies of completed SFHD forms, in either hard copy or electronic form, for as long as the institution owns the loan; and
- Records of the receipt of the notice to the borrower and the servicer for as long as the institution owns the loan.

The final rule does not prescribe a particular form for the record of receipt; however, it should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt may include:

- A borrower's signed acknowledgment on a copy of the notice,
- A borrower-initialed list of documents and disclosures that the lender provided the borrower, or
- A scanned electronic image of a receipt or other document signed by the borrower.

An institution may keep the record of receipt provided by the borrower and the servicer in the form that best suits the institution's business. Institutions that retain these records electronically must be able to retrieve them within a reasonable time.

Penalties and Liabilities

The Reform Act revised the FDPA to provide penalties for violations of:

- Flood insurance coverage requirements;
- Escrow requirements;
- Notice requirements; and
- Forced placement requirements.

If an institution is found to have a pattern or practice of committing violations, the agencies shall assess civil penalties in an amount not to exceed \$2,000. Any penalty assessed will be paid into the National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent purchaser of a loan. Liability for penalties expires four years from the time of the occurrence of the violation.

Exhibit 1: Standard Flood Hazard Determination Form

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
STANDARD FLOOD HAZARD DETERMINATION FORM (SFHDF)

See The Attached
 Instructions

O.M.B. No. 1660-0040
 Expires May 30, 2015

SECTION I - LOAN INFORMATION				
1. LENDER NAME AND ADDRESS		2. COLLATERAL (Building/Mobile Home/Property) PROPERTY ADDRESS AND PARCEL NUMBER (See Instructions section for more information)		
3. LENDER ID NO.	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED		
SECTION II				
A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION				
1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number	
B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME				
1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective/ Revised Date	3. LOMA/LOMR Number	4. Flood Zone	5. No NFIP Map
C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply)				
1. <input type="checkbox"/> Federal flood Insurance is available (community participates in the NFIP). <input type="checkbox"/> Regular Program <input type="checkbox"/> Emergency Program of NFIP 2. <input type="checkbox"/> Federal flood insurance is not available because community is not participating in the NFIP. 3. <input type="checkbox"/> Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood Insurance may not be available. <div style="text-align: center;">CBRA/OPA Designation Date: _____</div>				
D. DETERMINATION				
IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? <input type="checkbox"/> YES <input type="checkbox"/> 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. Please note, the risk of flooding in this area is only reduced, not removed.				
E. COMMENTS (Optional)				
This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.				
F. PREPARER'S INFORMATION				
NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender)			DATE OF DETERMINATION	

**STANDARD FLOOD HAZARD DETERMINATION FORM INSTRUCTIONS
PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for this form is estimated to average 20 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting the form. This collection of information is mandatory. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 1800 South Bell Street, Arlington VA 20598-3005, Paperwork Reduction Project (1660-0040). **NOTE: DO NOT SEND YOUR COMPLETED FORM TO THIS ADDRESS.**

SECTION 1

1. **LENDER NAME:** Enter lender name and address.
2. **COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS:** Enter property address for the insurable collateral. In rural areas, a postal address may not be sufficient to locate the property. In these cases, legal property descriptions may be used and may be attached to the form if space provided is insufficient. If other identifiers are available, such as Longitude/Latitude, please use any that will help describe the collateral location properly. Additional information may be attached.
3. **LENDER ID NO:** The lender funding the loan should identify itself as follows: FDIC-insured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number. Other lenders who fund loans sold to or securitized by FNMA or FHLMC should enter FNMA or FHLMC seller/service number.
4. **LOAN IDENTIFIER:** Optional. May be used by lenders to conform with their individual method of identifying loans.
5. **AMOUNT OF FLOOD INSURANCE REQUIRED:** Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. Lenders may exceed the minimum federal requirements. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the insured value of the building/mobile home/personal property.

SECTION 2

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. **NFIP Community Name.** Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worcester, Township of; Baldwin County; Jefferson Parish) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.
2. **County(ies).** Enter the name of the county or counties in which the community is located. For unincorporated areas of a county, enter "unincorporated areas." For independent cities, enter "independent city."
3. **State.** Enter the two-digit state abbreviation. (Examples: VA, TX, CA)
4. **NFIP Community Number.** Enter the 6-digit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website <http://msc/fema.gov> or by calling 1-800-358-9616. If no NFIP Community Number exists for the community, enter "none."

B. NFIP DATA AFFECTING BUILDING/MOBILE HOME

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map may be obtained from FEMA by calling 1-800-358-9616. Scanned copies of the NFIP maps can be viewed on FEMA's website at <http://msc.fema.gov>. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. **NFIP Map Number or Community-Panel Number.** Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075F). Some older maps will have a 9-digit number (Example: 12345601A). Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none."

2. **NFIP Map Panel Effective/Revised Date.** Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93) This will be the latest of all dates shown on the map.

3. **LOMA/LOMR.** If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, no entry is required. Information on LOMAs and LOMRs is available from the following sources:

* The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.

* For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the Federal Register. This information is also available on FEMA's website at <http://msc.fema.gov>.

* A subscription service providing digitized copies of these letters on CD-ROM is also available by calling 1-800-358-9616.

4. **Flood Zone.** Enter the flood zone(s) covering the building or mobile home. (Examples: A, AE, A4, AR, AR/A, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D) If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered Special Flood Hazard Areas (SFHAs). Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none."

5. **No NFIP Map.** If no NFIP map covers the area where the building or mobile home is located, check this box.

C. **FEDERAL FLOOD INSURANCE AVAILABILITY.** Check all boxes that apply; however, note that boxes 1 (Federal Flood Insurance is available ...) and 2 (Federal Flood Insurance is not available ...) are mutually exclusive. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book, which is available from FEMA and at <http://www.fema.gov/fema/csb.shtm>. The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in designated Coastal Barrier Resources Areas (CBRA) and Otherwise Protected Areas (OPAs) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. Information about the Coastal Barrier Resources System may be obtained on FEMA's website at <http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/cbrs.shtm>

D. **DETERMINATION.** If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

E. **COMMENTS.** Optional.

F. **PREPARER'S INFORMATION.** If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. An individual's name may be included, but is not required.

Date of Determination. Enter date on which flood hazard determination was completed.

MULTIPLE BUILDINGS: If the loan collateral includes more than one building, a schedule for the additional buildings/mobile homes indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building or mobile home. Any attachments should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

GUARANTEES REGARDING INFORMATION: Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

FORM AVAILABILITY: Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website http://www.fema.gov/plan/prevent/fhm/frm_form.shtm.

PURPOSE OF FORM: In accordance with P.L. 103-325, Sec. 1365, (b) (1), this form has been designated to facilitate compliance with the flood insurance purchase requirements of the National Flood Insurance Reform Act of 1994.

Exhibit 2: Flood Insurance Coverage Form

FLOOD INSURANCE COVERAGE FORM

Borrower(s): _____ Loan #: _____

Address of Property: _____

IMPORTANT ITEMS TO NOTE:

There should be a **separate** flood insurance policy for **each** insurable structure. Evidence of flood insurance **must** be provided **on or before** loan closing (note: special rules may apply to construction loans).

Our Loan Amount \$ _____ +	Prior Lien(s) Balance(s): \$ _____ =	Total of All Loans: \$ _____
Residential Property(Primary Dwelling): Total Replacement Cost Value (100% of RCV): RCV Source?	\$ _____	
Commercial Property & Non Primary Residential: Total Actual Cost Value (RCV- Physical depreciation): ACV Source?	\$ _____	
Maximum NFIP Insurance Available for Communities in Participating in Regular Program: Number of Units or Buildings: _____ x \$250,000 per 1-4 family dwelling or \$500,000 per Multi-family (5 or more units) "Other" Residential or Commercial Building =	Maximum NFIP Insurance Available \$ _____	
The Lesser of the 3 Values In the right column =	Amount of Insurance Required \$ _____	

CALCULATION OF COVERAGE ON INDIVIDUAL CONDOMINIUM UNITS

Total insurance carried by the Association: \$ _____ (Note if by building or entire condo association) _____	Divided by No. Units _____ equals (In either the building or total condo, based on coverage type)	Amount of Insurance Per Unit \$ _____ This figure is an average, based on master policy. Owners can purchase additional insurance on individual units if required.
---	---	--

Amount of Insurance required: \$ _____ (Insert same amount determined above)	Amount currently in place or applied for: \$ _____ From policy or evidence of insurance application for coverage or condo calculation above.	Is the amount of insurance adequate? _____ YES _____ NO
--	--	--

* To avoid co-insurance penalty RCBAPs must be at 80% of RCV at time of loss

Commercial loan also includes inventory or other personal property in building as security for a loan? Yes No	If yes, contents coverage covers the lesser of actual cash value or NFIP maximum? Yes No N/A Max: 100k RES 500k CRE
Flood zone discrepancy between policy and determination?	Term of Insurance:

Exhibit 3: Appendix A – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: _____ . This area has a one

percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

___ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover the lesser of:
 - (1) the outstanding principal balance of the loan; or
 - (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

- Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and contact an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.]

___ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

Exhibit 4: Appendix B – Sample Clause For Option to Escrow For Outstanding Loans

Appendix B to Part 339 – SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS

Escrow Option Clause

You have the option to escrow all premiums and fees for the payment on your flood insurance policy that covers any residential building or mobile home that is located in an area with special flood hazards and that secures your loan. If you choose this option:

- Your payments will be deposited in an escrow account to be paid to the flood insurance provider.
- The escrow amount for flood insurance will be added to the regular mortgage payment that you make to your lender or its servicer.
- The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy when your lender or servicer receives a notice from your flood insurance provider that the flood insurance premium is due.

To choose this option, follow the instructions below. If you have any questions about the option, contact [Insert Name of Lender or Servicer] at [Insert Contact Information].

[Insert Instructions for Selecting to Escrow]

Flood Insurance Requirements



W. Brad Washburn, CRCM
CAMS
Financial Institution
Specialist

1

Introduction

- Flood insurance laws and regulations remain a hot topic for regulatory agencies
- Patterns and practices for significant flood insurance violations can result in retroactive file searches and the assessment of civil money penalties by the federal regulators
- This module will provide a detailed analysis of the current flood insurance laws and regulations, regulatory guidance and provide best practices to follow to avoid costly compliance pit falls

2

Key terms and definitions

- *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001--4129).
- *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.
- *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.
- *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.
- *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

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Key terms cont.

- *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.
- *NFIP* means the National Flood Insurance Program authorized under the Act.
- *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

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Key terms cont.

- *Servicer* means the person responsible for:
 - (1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and
 - (2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.
- *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.
- *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

5

Background

Law and amendments

- National Flood Insurance Act – 1968
- The Flood Disaster Protection Act of 1973
- The National Flood Insurance Act of 1994
- The Biggert-Waters Flood Insurance Reform Act of 2012 (BWFA)
- Homeowner Flood Insurance Affordability Act of 2014 (HFIAA)

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Background cont.

- Regulations
 - OCC 12 CFR Part 22
 - Federal Reserve 12 CFR Part 208
 - FDIC 12 CFR Part 339
- Interagency Questions and Answers Regarding Flood Insurance (July 21, 2009, updated October 14, 2011)
 - Supplements other guidance or interpretations issued by the agencies and FEMA
- FEMA Mandatory Purchase Guidelines
 - Rescinded July 6, 2013 due to vast reforms in law

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Background cont.

- Objectives of FDPA
 - Biggert Waters Act of 2012
 - HFIAA of 2014
- Responsibilities of FIMA
- National Flood Insurance Program
 - Emergency Program
 - Regular Program

8

Background cont.

- On June 22, 2015 a press release was issued by the federal banking regulatory agencies announcing the approval of a joint final rule that modifies regulations that apply to loans secured by properties located in special flood hazard areas
- The final rule implements provisions of the HFIAA relating to the escrowing of flood insurance payments and the exemption of certain detached structures from the mandatory flood insurance purchase requirement
- The final rule also implements provisions in the BWFA relating to the force-placement of flood insurance
- The agencies plan on addressing requirements regarding acceptance of private flood insurance requirements in a later rulemaking

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Background cont.

Eligible Structures for NFIP flood insurance

- Residential, industrial, commercial, and agricultural buildings that are walled and roofed structures that are principally above ground
- Buildings under construction where a development loan is made to construct insurable improvements on the land
- Mobile homes that are affixed to a permanent site
- Condominiums and co-operative buildings
- Personal property and other insurable contents contained in real property or mobile homes located in SFHAs
- Generally, each insurance structure is required to have a separate policy, with some exceptions

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Background cont.

Structures not eligible for NFIP flood insurance

- Unimproved land, bridges, dams, and roads
- Mobile homes not affixed to a permanent site
- Travel trailers and campers
- Converted buses or vans
- Buildings entirely in, on, or over water into which boats are floated
- Buildings newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier with the Coastal Barrier Resource System established by the Coastal Barrier Resources Act (Public Law 97-348)

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Flood Hazard Determinations

- A lender must determine whether the building (including manufactured/mobile homes) offered as security for a loan is, or will be, located in a Special Flood Hazard Area (SFHA)
- A flood hazard determination must be documented on FEMA's Standard Flood Hazard Determination form (SFHDF)
- A lender must retain a copy of the completed SFHDF, in either hard copy or electronic form, for the period of time the bank owns the loan
- The flood hazard determination should be conducted as soon as reasonably possible in the process but not later than loan closing
 - *Note: If a lender waits until the last minute to conduct a flood determination it could lead to violations if the property is in a SFHA*

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Flood Hazard Determinations cont.

A lender may use a third party vendor to conduct flood hazard determinations or conduct them in house if it has the maps and expertise to conduct accurate determinations

- *Note: if a lender conducts flood hazard determinations in house it is responsible for keeping track of map amendments that could change a property's flood status*
- *Due to the risk involved with flood insurance requirements most lenders use third party vendors for flood determinations and life of loan monitoring of flood maps for changes*

A lender may charge reasonable fees for the cost of flood determinations, including life of loan monitoring

- *Note: Fees for life of loan monitoring after loan closing must be included in the finance charge for consumer loans subject to Regulation Z*

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Flood Hazard Determinations cont.

Flood hazard determinations from previous loans can be relied upon for refinances, renewals, or extensions only if:

- There have been no changes in the flood map the determination was based upon, **and**
- The previous determination is no more than seven years old

A flood hazard determination must be conducted even if the value of the land is sufficient to secure the loan without regard to the value of building or for property taken as an "abundance of caution"

- *Note: The lender may not waive flood hazard determinations under any circumstances for designated loans.*

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Flood Hazard Determinations cont.

Additional flood insurance requirements do not apply unless the building itself, or some part of the building, is in the SFHA
In some instances, only a portion of real property on which a building is located may lie within an SFHA

- The determination of a building's location must be made using the FIRM (Flood Insurance Rate Map) or FHBM (Flood Hazard Boundary Map)
- Third parties can be used to assist in the determination of the building's location only to the extent such person guarantees the accuracy of the information
 - *Note: neither FEMA nor the lending regulators have designated standards for what constitutes an adequate guarantee of the information provided to justify reliance upon the data*
- A lender cannot rely on the statements of a borrower that the structure in question is either inside or outside an SFHA

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Flood Hazard Determinations cont.

- A borrower can dispute and/or appeal flood determinations through FEMA by:
 - Letters of Determination Review (LODR)
 - Letter of Map Amendment (LOMA)
 - Letter of Map Revision (LOMR)
- The lender and the borrower should contact FEMA on the steps that should be taken for each dispute and/or appeal

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Flood Insurance Requirements

Basic Requirement

- If the building or mobile home is located in a SFHA, the lender may not make, increase, extend, or renew any loan unless the building or mobile home **and** any personal property securing the loan is covered by flood insurance for the term of the loan
- Generally, a separate policy is required for each building or mobile home, with some exceptions
- If a borrower will not voluntarily obtain coverage, the lender must deny the request
- Mandatory purchase requirements do not apply if the property is in an area that does not participate in the NFIP
- Discrepancies between the flood zone or community for which insurance policy is written for and the flood hazard determination should be resolved and documented

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Flood Insurance cont.

Table funded loans

- Regulated institutions that provide table funding to close loans originated by a mortgage broker or mobile home dealer are considered to be "making" a loan for purposes of the flood insurance requirements
- Treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices
- The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer

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Flood Insurance cont.

Exemptions to the Purchase requirement

- The flood insurance purchase requirement does not apply to the following two loan situations:
 - Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Director of FEMA. The Director will periodically publish a list of state property falling within this exemption
 - Loans with an original principal balance of \$5,000 or less, and having an original repayment term of one year or less
 - Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence

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Flood Insurance cont.

Contents coverage

- Flood insurance coverage for contents is not required unless personal property, in addition to a building, secures the loan
 - *Note: SBA rules may still require contents coverage in certain instances even if not required by federal rules*
- This typically does not apply to residential loans as they rarely include personal possessions as part of the collateral
- When a commercial loan on a building includes inventory and other movable property as security for a loan, that property must be covered
- Flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan

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Flood Insurance cont.

Minimum Coverage Requirements

The flood insurance coverage should be at least equal to the **lesser** of the following:

- The principal amount of the loan(s), **or**
- The 100% insurable value, **or**
- The maximum amount of coverage available under NFIP

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Flood Insurance cont.

Principal Amount of the Loan

- Principal balance of the loan must include the Bank's loan(s) and any other superior lien amounts on the property being financed
- Must cover the maximum credit amount for multiple advance LOC
 - Open-end
 - Closed-end

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Flood Insurance cont.

100% Insurable Value

- Primary Residence - Replacement cost value (RCV)
 - Flood Policy that identifies RCV
 - Hazard Insurance RCV with adjustments for cost of replacing foundation, if applicable
 - Cost approach appraisal
 - Construction-cost calculation
 - Any other reasonable approach, as long as it can be supported
 - Note: The Bank should avoid using market value minus the value of the land to determine RCV

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Flood Insurance cont.

100% Insurable Value cont.

- Non-owner occupied residential and non-residential property
 - Should not require more insurance than NFIP will payout if there is a loss
 - If a policy on property is on an actual cash value basis instead of RCV, the lender can deduct for physical depreciation when determining minimum coverage
- Contents
 - Contents coverage can be an amount to cover actual cash value (RCV less physical depreciation) if less than the maximum amount available under the NFIP

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Flood Insurance cont.

The maximum amounts of coverage available under NFIP:

- \$250,000 building / \$100,000 contents for residential properties
- \$500,000 building / \$100,000 contents for other residential (non-condominium multi-family dwellings)
- \$500,000 building / \$500,000 contents for commercial properties

Note: different maximum amounts of coverage are available for those communities participating in the Emergency program only

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Flood Insurance cont.

Waiting period

Generally, increases in coverage amounts are subject to a 30 day waiting period, except in the following circumstances:

- When there is an existing policy and an additional amount of insurance is required in connection with the making, increasing, extension, or renewal of a loan, such as a second mortgage, home equity, or refinancing;
- When an additional amount of insurance is required as a result of a map revision, provided the insurance is purchased within 13 months of the map revision; or
- When an additional amount of insurance is being obtained in connection with the renewal of an existing policy

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Flood Insurance cont.

Buildings during the course of construction

- Conservative approach is to require borrowers to have a flood insurance policy in place at the time of loan origination
- Proposed guidance indicates a lender may allow a borrower to defer the purchase of flood insurance if it has adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued
- The alternative approach would require the lender to monitor the loan more closely to determine when actual construction begins
- Hopefully additional guidance will come on this matter

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Flood Insurance cont.

Residential Condominium Building Association Policies (RCBAP)

The lender should obtain a copy of the RCBAP documenting the amount of insurance and effective date of coverage

- Minimum coverage 100% RCV of building or \$250,000 per unit, which ever is less
- The Declarations Page of each RCBAP issued or renewed must show the building's RCV and the number of units within that building
- If the RCBAP does not provide enough coverage the lender can require a Dwelling Form policy for the unit jointly or separately equaling at least the minimum statutorily required amount of insurance

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Flood Insurance cont.

Second Mortgages / Home Equity loans

The bank/servicer should have the borrower contact the insurance agent:

- To inform the agent of the intention to obtain a loan involving a subordinate lien
- To obtain verification of the existence of a flood insurance policy, and
- To check whether the amount of insurance covers all loan amounts
 - Special rules for approved lines of credit to be used in the future
- After obtaining this information, the insurance agent should increase the amount of coverage if necessary and issue an endorsement that will reflect the institution as a lien holder

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Flood Insurance cont.

Other special stipulations

- Multiple Structures
- Mixed-use property
- Other Real Estate Owned
- Private Flood Insurance

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Special Flood Hazard Notice

If the SFHDF reveals that the building is located in a SFHA the written "Notice to Borrower of Property in Special Flood Hazard Area" should be provided to the borrower(s)

- Timing: the notice should be provided as soon as reasonably possible ("rule of thumb" 10 days prior to action)
- The purpose of the notice is to advise the borrower about the Federal flood insurance coverage requirements and whether Federal disaster relief assistance is available in that location
- The notice not only must be provided for new loans but also at each refinance, renewal, or extension even if the lender relies upon a previous flood hazard determination as permitted
- The lender must retain a record of the receipt of the notice by the borrower for the period of time the bank owns the loan

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Notice of Special Flood Hazard

Notice of Special Flood Hazard

- The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

Specifically, the written notice must include the following information:

- A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area
- A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b))
- A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP

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Notice of Special Flood Hazard cont.

- A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company
- A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and
- A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster

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Notice of Special Flood Hazard cont.

Notice to Servicer

- Added loan servicers must be notified as soon as possible after borrower has been notified but no later than when information about taxes and insurance is transmitted to the new servicer
- Delivery of a copy of the notice provided to the borrower satisfies this requirement

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Notice of Special Flood Hazard cont.

Notice to Director of FEMA or designee

- Must notify insurance carrier of identity of servicer and any change in servicer within 60 days of transfer of servicing
- Notice must include information identifying the security property, loan, and the new servicer and its address

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Escrow Requirement

Escrow rules effective January 1, 2016

- Unless an exception applies, a bank shall require the escrow of all premiums and fees for any mandatory flood insurance required for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed (MIRE) on or after January 1, 2016
- Because a map change is not a triggering event, lenders would not be required to escrow flood insurance premiums and fees solely on that change even though it would need to follow notice and force-place procedures, if applicable as required
- The escrow must be payable with the same frequency as payments on the designated loan and are required to be made for the duration of the loan
- The escrow rules currently in effect the day before BWA was enacted will continue to be enforced through December 31, 2015

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Escrow Requirement cont.

For required escrows where no exception applies:

- A bank/servicer shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account
- If the transaction is covered by RESPA, the escrow account will be subject to escrow requirements in Regulation X which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow disclosures and account statements for those accounts
- Following receipt of a notice from the insurer that premiums are due, the bank/servicer must pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due

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Escrow Requirement cont.

Escrow Notice

- For any loan with required escrow under this section or may be required to escrow due to a loan level exception change in status during the term of the loan:
 - The bank/servicer shall mail or deliver a written escrow notice in or with the Notice of Special Flood Hazard
 - The purpose of the notice is to ensure that borrowers are informed about the escrow requirements
 - The notice must inform the borrower that bank is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A

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Escrow Requirement cont.

Option to escrow

Generally, a bank/servicer must offer and make available to the borrower the option to escrow all premiums and fees for any mandatory flood insurance required that is outstanding on January 1, 2016, unless:

- The loan or the bank qualifies for a loan level exception from the escrow requirement
- The borrower is already escrowing all premiums and fees for flood insurance for the loan; or
- The bank is already required to escrow flood insurance premiums and fees

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Escrow Requirement cont.

Notice – Option to escrow

- For any covered loan, the bank/servicer must mail or deliver a notice of the option to escrow to the borrower no later than June 30, 2016
- The notice must be in writing, or if the borrower agrees, electronically in accordance with E-Sign if applicable, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow
- The notice language should be similar to the model clause in appendix B but a bank/servicer may insert additional language that it believes would help the borrower understand the options regarding escrow
- The bank/servicer may choose whether to provide the notice as a separate notice or add it to another disclosure the lender provides the borrower on or before the deadline, such as a periodic statement
- The bank/servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable (similar to Reg. E standard) after the bank/servicer receives the borrower's request to escrow

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Exemptions – Escrow Requirement

Loan level exceptions – escrow requirements do not apply if:

- The loan is an extension of credit primarily for business, commercial, or agricultural purposes (same determination as Regulation Z)
- The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements
- Flood insurance coverage is provided by a policy that: (A) Meets the requirements; (B) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and (C) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense

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Exemptions – Escrow Requirement cont.

Loan level exceptions – escrow requirements do not apply if:

- The loan is a home equity line of credit or reverse mortgage;
- The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full;
- The loan has a term of not longer than 12 months. This exception would also apply if a loan of 12 months or less is extended or renewed for an additional term of 12 months or less since this would be a separate MIRE triggering event

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Exemptions – Escrow Requirement cont.

Duration of loan level exception

- If a bank determines at any time during the term of a designated loan that an exception under this section does not apply, then the bank/servicer shall require the escrow of all premiums and fees for any flood insurance required as soon as reasonably practicable (same as Regulation E standard)
- If applicable, the bank/servicer shall also provide the initial escrow disclosure in accordance with timing and contents requirements under Regulation X, RESPA

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Exemptions – Escrow Requirement cont.

Small lender exception – Qualification

Generally, the escrow rules do not apply to a bank:

- That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and
- On or before July 6, 2012:
 - Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and
 - Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home

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Exemptions – Escrow Requirement cont.

Change in status

- If a bank previously qualified for the small lender exception, but no longer qualifies for the exception because its assets exceed the limit at year end for two consecutive calendar years:
 - It must escrow premiums and fees for flood insurance for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status
 - It must mail or deliver the notice of option to escrow to applicable borrowers for covered loans outstanding July 1 no later than September 30 of the first calendar year in which the bank has had a change in status

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Exemptions – Escrow Requirement cont.

Change in status – Illustrative Example

- If a bank qualified for the exception in 2016, but had assets of \$1 billion or more as of December 31, 2016, and December 31, 2017, such regulated lending institution would be required to begin escrowing for any loans made, increased, extended, or renewed on or after July 1, 2018, and
- The bank would also be required to mail or deliver the notice of option to escrow to applicable borrowers for covered loans outstanding July 1, 2018 no later than September 30, 2018

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Force-placement of Flood Insurance

- The lender/servicer must have procedures in place to ensure that a borrower has adequate flood insurance throughout the life of the loan
- A lender/servicer must monitor covered loans to determine when a flood insurance policy lapses, coverage amounts are not sufficient, or if coverage is now required due to a map change
- The lender/servicer is required to send notice to the borrower upon making a determination that the coverage is deficient or newly required
- The notice must state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on their behalf and may charge them for the cost of premiums and fees to obtain the coverage

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Force-placement of flood insurance cont.

- The bank/servicer must send the notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system
- Notice is also required when a regulated lending institution learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change
- The required notice may not be sent prior to the actual expiration of the policy and must be sent following the date of the lapse or insufficient coverage of the borrower's policy
- A bank/servicer, at its discretion, may send one or more additional notices prior to the expiration date as a courtesy to assist the borrower

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Force-placement of Flood Insurance cont.

- If the borrower does not provide evidence of adequate insurance within 45 days of notification the lender/servicer must force place flood insurance
- A brief delay in force placing required insurance is permissible if there is a reasonable explanation (e.g. where a lender uses batch processing to purchase force-placed insurance policies)
- Most loan agreement documents permit the lender/servicer to add those charges to the principal amount of the loan

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Force-placement of flood insurance cont.

- A bank/servicer may force-place flood insurance that would provide coverage anytime during the 45-day notice period and would not have to wait 45 days after providing notice to force-place
- A bank/servicer can force-place flood insurance beginning on the day the borrower's policy lapsed or did not provide sufficient coverage, and also, as of that day, it can charge the borrower for the force-placed insurance
- However, if the borrower obtains a flood insurance policy that overlaps with the force-placed policy, the bank/servicer must refund any premiums paid by the borrower for this overlap period
- As a practical matter, a bank/servicer may decide to wait until after the 45-day notice period has expired to collect premiums for coverage dating back to the date the force-placed policy was purchased to avoid the administrative burden of having to refund the borrower's premium for any period of overlapping coverage

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Force-placement of flood insurance cont.

- The rules permit a bank/servicer to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure continuous coverage
- If a bank/servicer, despite its monitoring efforts, discovers a policy with insufficient coverage, for example due to a re-mapping, it may charge back to the date of insufficient coverage provided it has purchased a policy that covers the property for flood loss and that policy was effective as of the date of insufficient coverage
- However, if purchasing a new policy is necessary to force-place insurance upon discovery of insufficient coverage, a bank/servicer may not charge back to the date of lapse or insufficient coverage because the policy did not provide coverage for the borrower prior to purchase

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Force-placement of flood insurance cont.

Termination and refund of force-placed insurance

Within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage the bank/servicer must:

- Notify the insurance provider to terminate any force-placed insurance purchased by the bank/servicer; and
- Refund to the borrower all premiums paid by the borrower for any insurance purchased by the bank/servicer during any period during which the borrower's flood insurance coverage and the force-placed insurance were each in effect, and any related fees charged to the borrower with respect to the force-placed insurance purchased during such period
- For purposes of confirming a borrower's existing flood insurance coverage, a bank/servicer must accept from the borrower or a third party an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent

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Force-placement of flood insurance cont.

- Any further inquiry regarding the borrower's policy along with the termination and refund of premiums for the overlap period must be completed within the 30-day period following receipt of confirmation of a borrower's existing flood insurance coverage
- If the bank/servicer later determines the coverage amount or any terms and conditions fail to meet applicable requirements, it should notify the borrower and request that the borrower obtain an adequate flood insurance policy in accordance with the force-place notice rules
- A bank/servicer has the discretion to accept other documents that may also demonstrate a borrower has adequate flood insurance coverage. Although a declarations page is the one option that a bank/servicer must accept, there are circumstances in which it can, subject to safe and sound banking practices, accept alternative evidence of insurance documents acceptable to the lender in order to cancel force-placed insurance
- The final rule establishes the minimum information that a bank/servicer may require as sufficient demonstration of flood insurance coverage

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Force-placement of flood insurance cont.

If a borrower after receiving a force-placement notice provides proof of a flood insurance policy purchased on a certain day that is subject to an additional 30 day waiting period to become effective:

- The bank/servicer may force-place flood insurance on a property retroactive from the date of lapse of coverage through the 30 day waiting period, and
- If a force-placed insurance policy is terminated upon the expiration of the 30 day waiting period, the lender would not need to refund premiums and fees for the force-placed coverage because there would not be an overlap period

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Force-placement of flood insurance cont.

Illustrative Examples

- If a borrower has not renewed a flood insurance policy that expires on June 30, a bank/servicer must provide the 45-day notice to the borrower and may force-place flood insurance as early as July 1
- The bank/servicer could bill the borrower upon force-placing the policy or could wait to bill the borrower at a later date, for example, when the 45-day notice period expires
- If the borrower did not obtain a flood insurance policy and the bank/servicer had not force-placed insurance by August 14 (the end of 45-day period), it would be required by regulation to force-place flood insurance on August 15
- On the other hand, if the lender force-placed flood insurance as of July 1 and, if on July 15, the borrower renewed his or her flood insurance policy (effective from July 1) to satisfy the mandatory purchase requirement and provided sufficient evidence to the bank/servicer, then it would be required to refund any premiums paid by the borrower for the force-placed insurance coverage between July 1 and July 15

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Recordkeeping Requirements

- The record keeping requirements of the final rule include retention of:
 - Copies of completed SFHD forms, in either hard copy or electronic form, for as long as the institution owns the loan; and
 - Records of the receipt of the notice to the borrower and the servicer for as long as the institution owns the loan
- Examples of records of receipt may include:
 - A borrower's signed acknowledgment on a copy of the notice,
 - A borrower-initialed list of documents and disclosures that the lender provided the borrower, or
 - A scanned electronic image of a receipt or other document signed by the borrower
- An institution may keep the record of receipt provided by the borrower and the servicer in any form as long as it is retrievable in a timely manner

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Penalties and Liability

- If an institution is found to have a pattern or practice of committing violations, the agencies may assess civil penalties of \$2,000 per violation with no statutory limit
- Any penalty assessed will be paid into the National Flood Mitigation Fund and liability for violations cannot be transferred to a subsequent purchaser of a loan
- Liability for penalties expires four years from the time of the occurrence of the violation
- Penalties may be assessed for patterns of practice violations of:
 - Flood insurance coverage requirements;
 - Escrow requirements;
 - Notice requirements; and
 - Forced placement requirements

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Best Practices

- Monitor for additional changes in flood insurance law, regulations, and guidance
- Assess impact to loan origination, servicing, and customer service
- Conduct vendor oversight and due diligence
- Develop timelines for new processes, training deadlines, and internal/external monitoring
- Update written flood insurance policies and procedures
 - Checklists / Flowcharts
 - Flood Coverage Calculation forms
 - Safe Harbor, model notices, and letters
 - Detailed operating procedures


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Best Practices cont.

- Internal and External Monitoring
 - Review sample of residential and commercial loans for timely and accurate determinations, notices, escrow, and coverage
 - Review vendor list(s) of properties in SHFA to determine a sample of "seasoned loans" to review for adequate coverage and force-place provisions
 - Review third party vendor performance
 - Verify points of contact are receiving notice of map updates and taking appropriate action
- Complete targeted training for employees, Senior Management and Board of Directors

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QUESTIONS?



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