

# Breaking Down a Regulation

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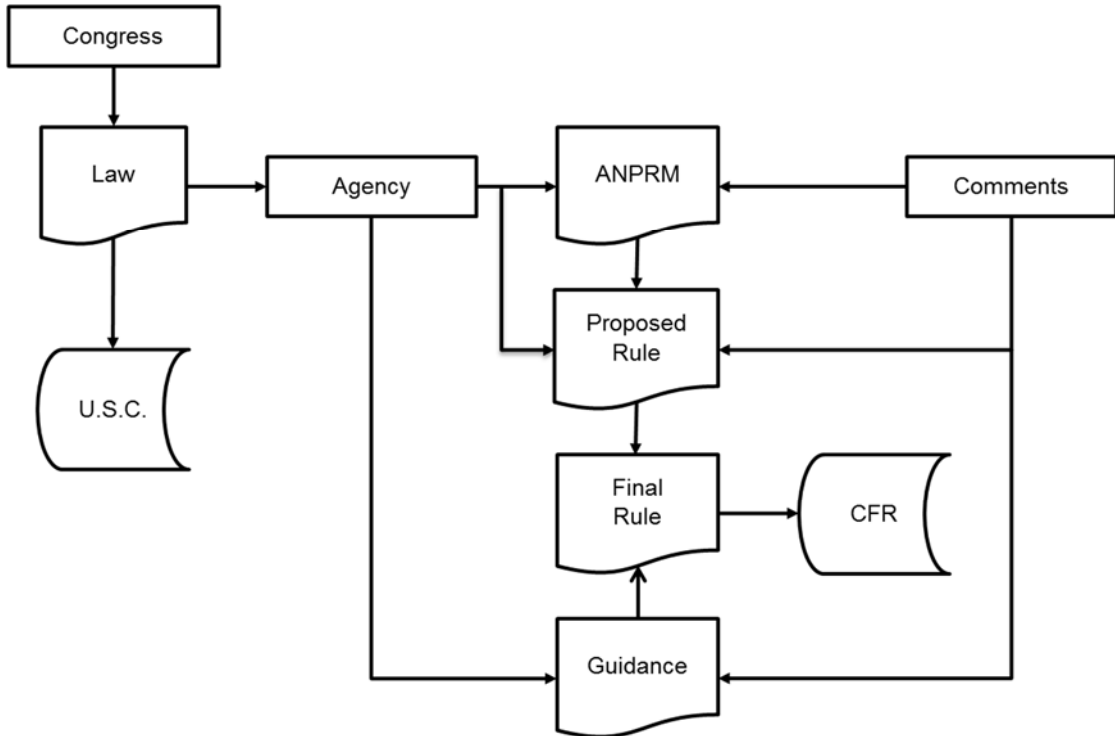
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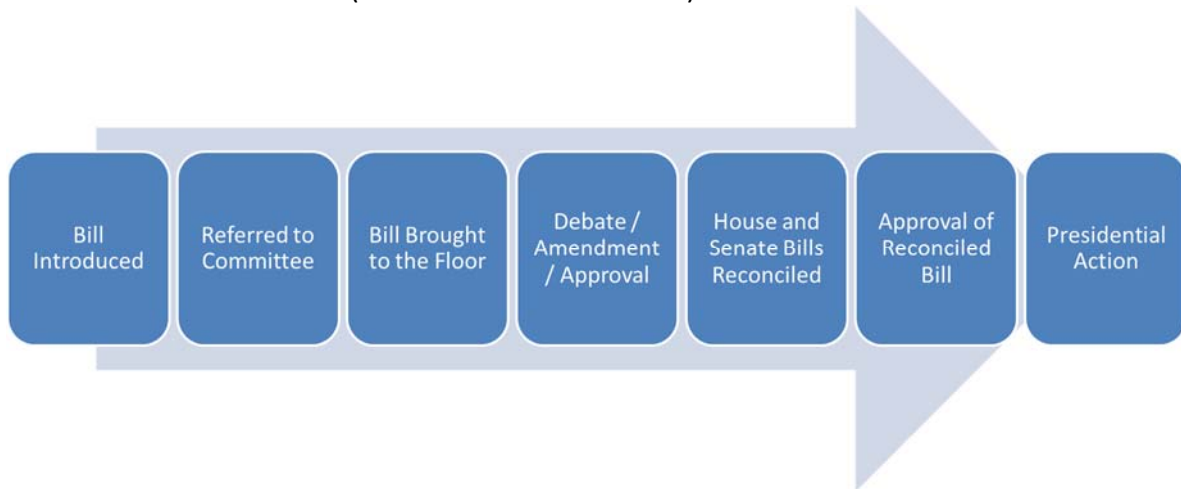
BANKING · MORTGAGE · WEALTH MANAGEMENT

- I. Change is the Only Constant
  - A. Laws and Regulations for banking are in a constant state of flux
  - B. Makes your knowledge and skills valuable

II. Overview of the Regulatory Process



## III. How a Bill Becomes a Law (nod to Schoolhouse Rock)



## IV. Most Federal Laws are Codified in U.S.C.

- A. United States Code of Statutes
- B. 54 Titles
  - 1. Title 12 is “Banks and Banking”
  - 2. Title 15 – Commerce and Trade
  - 3. Title 31 – Money and Finance
- C. Regulations will reference the Laws they implement typically by U.S.C. citation – for example, the Flood Regulations that are included in your package cite a section of the National Flood Insurance Reform Act of 1994 as 42 U.S.C. 4003(a)(1)
- D. Two great places to research U.S.C.
  - 1. <http://uscode.house.gov/> - U.S. House Office of Law Revision site
  - 2. <https://www.law.cornell.edu/uscode/text> - Cornell Univ Law School – Legal Information Institute

## V. Prudential Banking Regulators

- A. Federal Deposit Insurance Corporation (FDIC)
- B. Office of the Comptroller of the Currency (OCC)
- C. Federal Reserve Bank (FRB)
- D. Bureau of Consumer Financial Protection (CFPB)

- VI. How Do Federal Regulations Come Into Being
  - A. Administrative Procedures Act (APA)
    - 1. Standards for public notice, comment, and final rulemaking
    - 2. Requires notice to the public
    - 3. Sets the Federal Register as “constructive notice” to all
  - B. CFPB publication standards
    - 1. December 2012 – CFPB’s Final Rule on Rulemaking
    - 2. Indicates that earlier of date of publication on CFPB website or Federal Register will be deemed date of issuance
  
- VII. Federal Register
  - [www.federalregister.gov](http://www.federalregister.gov)
  
- VIII. Citations
  - 80 FR 43216 (July 21, 2015)
  - This is the citation for the Interagency Final Rule for Loans in Areas Having Special Flood Hazards
  
- IX. Initiating the Process
  - A. Advanced Notice of Proposed Rulemaking (ANPR) – published in FR
  - B. Proposed Rule – published in FR
  
- X. Proposed Rule – What’s In It?
  - A. Describes the proposal and explanation of reasons for the proposal – including section by section analysis
  - B. Lays out the proposed rule text
  - C. Invites public comment
    - 1. Instructions in the proposed rule
    - 2. Agencies required to consider comments in formulating final rule

3. Comment period is typically 30 – 180 days, depending on complexity and urgency of rulemaking
4. ABA website has great tips for writing a comment letter (now actually easiest to submit comments online) –  
[www.aba.com/Compliance/Pages/Comply\\_EffectiveLC.aspx](http://www.aba.com/Compliance/Pages/Comply_EffectiveLC.aspx)

#### XI. Comments

- A. Agencies are required to consider comments
- B. Must justify final rule based on comments
- C. You don't have to comment on every aspect
  1. Your comment letter may only be a paragraph long dealing with one specific point
  2. Provide details of impact – what does it mean for your bank
  3. Suggest alternatives to accomplish the goal
- D. Comments do make a difference and every one is read and considered
- E. Challenges:
  1. Manpower to assess the impact of the proposed rule and develop comments
  2. Some issues may not become apparent until well into implementation

#### XII. Final Rule – What's In It?

- A. Citation of applicable regulation
- B. Title
- C. Agency or Agencies
- D. Action Taken – Final Rule
- E. Summary
- F. Effective Date or Dates – May include optional and mandatory dates
- G. Contact names and phone numbers
- H. Supplemental Information
  1. Background
  2. Information about the Proposed Rule(s) and Overview of Public Comments
  3. Summary of the Final Rule
  4. Legal Authority

5. Section by Section Analysis (including analysis of specific Public Comments)
    - I. Text of the regulation (or amendment)
- XIII. Regulations are Codified in the CFR
- A. Code of Federal Regulations (CFR)
  - B. 50 Titles
    1. Title 12 – Banks and Banking
      - a. Chapter I – Office of the Comptroller of the Currency (OCC): Parts 1 - 199
        - i. Part 1 – 99 – National Banks
        - ii. Part 100 – 199 – Federal Savings Associations
      - b. Chapter II – Federal Reserve System: Parts 200 – 299
      - c. Chapter III – Federal Deposit Insurance Corporation: Parts 300 – 399
      - d. Chapter X – Bureau of Consumer Financial Protection (CFPB): Parts 1000 - 1099
    2. Title 31 – Money and Finance: Treasury
      - a. Chapter X – Financial Crimes Enforcement Network (FinCEN)
        - i. Part 1020: Rules for Banks
- XIV. Where Does the Alphabet Come Into Play?
- A. Federal Reserve began giving each of their Regs an alphabet designation corresponding to the number
    - 12 CFR 202 was called Reg B
    - 12 CFR 204 was called Reg D
    - 12 CFR 226 was called Reg Z
    - 12 CFR 229 was called Reg CC
  - B. With CFPB taking over consumer protection regulations, it's now a little more confusing
    - 12 CFR 226 transferred to 12 CFR 1026 – still called Reg Z
    - 12 CFR 202 transferred to 12 CFR 1002 – still called Reg B
    - 12 CFR 215 remains FRB Reg O – Loans to Insiders
    - 12 CFR 1015 is CFPB Reg O – Mortgage Assistance Relief Services

## XV. CFR Drilldown

## A. Citation gives standardized referencing notation

Example: Truth in Lending Disclosures

Part: 12 CFR **1026**

Section: 12 CFR 1026.**17**

Subsection: 12 CFR 1026.17(**c**)

Paragraph: 12 CFR 1026.17(c)(**6**)

Subparagraph: 12 CFR 1026.17(c)(6)(**ii**)

## XVI. Reading/Researching a Reg

## A. Look at the contents

## B. Statement of Authority, Purpose, and Scope/Coverage

1. Important, but often overlooked
2. Don't misinterpret, though

Example: Overdraft protection repayment plans have sometimes been mistakenly deemed to not be covered by Reg Z because they are payable in 4 or less installments and/or not subject to a finance charge as described in 1026.1(c)(1)(iii)

The mistake is this section describes the four conditions that make a person a creditor under Reg Z, one of which is the person regularly offers or extends credit to consumers that is subject to a finance charge or payable in more than 4 installments, not whether a particular loan is subject to Reg Z

## C. Definitions

1. Essential to read the definitions; terms don't always mean what you think they mean
2. Generally, one of the 1<sup>st</sup> sections, but other definitions may be hidden elsewhere in the Reg
  - a. Reg O – definitions are at 12 CFR 215.2, however 215.3 contains a separate definition of "Extension of Credit"
  - b. Reg Z – definitions are at 12 CFR 1026.2, but 1026.4 contains the definition of "Finance

Charge” and 1026.35(a) contains definitions specific to that section

- D. Exemptions or Exclusions
  - 1. Can help you eliminate need to research further
    - a. Example: 12 CFR 1005.3(c)(3) excludes “Wires or similar transfers” from coverage of Reg E, Electronic Fund Transfers
  - 2. Like definitions, exclusions may be in their own section or may be hidden in other places
- E. General Rule or Rules
  - 1. Example: Reg O - 12 CFR 215.4 is titled “General prohibitions” and lays out the basic rule of no favorability
- F. Specific Rules and Requirements – Details
  - 1. Bulk of the regulation text
  - 2. May be organized in many different ways
    - a. Reg Z – organized by type of credit
    - b. Reg B – structured mirroring the sequence of a credit transaction
- G. Administrative matters
  - 1. Enforcement, Liability, Penalties
  - 2. Relation to state law; Preemption
- H. Footnotes
  - 1. ALWAYS read them
  - 2. Just because they are a footnote doesn’t mean they aren’t really part of the regulation

Example: 12 CFR 204.2(d)(2) is part of the definition of a “savings deposit” that brings MMDAs under the definition. Footnote 4 is where it gives institutions the two options for ensuring the number of permitted withdrawals from an MMDA remain within the regulatory allowance.
- I. Appendices
  - 1. Model Forms – “safe harbor”
  - 2. Formulas and calculations
  - 3. Special tools or references
- J. Official commentary

## XVII. Where to Find the Regs



Here are few great places to research the Regs

A. Bankers Online Alphabet Soup:

<https://www.bankersonline.com/regulations>

1. Has key CFPB, FRB, FDIC, FinCEN and other Miscellaneous regs
2. Provides Official commentary at the end of each section rather than massed together at the end of the regulation
3. Easily identifies both current requirements and new language where final rule has been issued but not yet in effect (e.g., CFPB Regulation C, HMDA)
4. Not official legal edition of CFR

B. eCFR: [www.ecft.gov](http://www.ecft.gov)

1. Easy to access entire regulation or specific sections formatted well for copy/paste functions
2. Not official legal edition of CFR

C. Government Publishing Office:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

1. Official legal edition
2. Published by year

XVIII. Interpreting the Regulations

A. Official commentary

1. Subject to the APA process (notice, comment, publication in Federal Register)
2. Commentary citations mirror regulation

Example: 12 CFR 1002.7(d)(2)-1 is comment #1 to the section 1002(d)(2)

3. Carries full force of law
4. Essential to accurately interpreting the requirements

B. Agency Interpretations

1. Official Interpretations
  - a. Issued in writing
  - b. Less authority than regulation, but do provide some legal protection
  - c. Courts will rely on them
2. Unofficial Interpretations

- a. No force of law; do not create precedent
- b. Individual letters, fact specific
- c. Telephone opinions
- d. “No objection” letters

XIX. Other Agency Regulatory Tools

- A. Interim or Temporary Regulations
- B. Policy Statements
  - 1. Often developed as “Interagency” documents
- C. Supervisory Guidance
  - 1. CFPB Bulletins
  - 2. FDIC Financial Institution Letters (FILs)
  - 3. OCC Bulletins
  - 4. FRB Letters (SR or CA)
  - 5. FFIEC Guidance

XX. How to Keep Up With All the Changes

- A. Notification services
  - 1. Free email from most Agencies – sign up on their website
  - 2. Public Laws Electronic Notification Service (PENS): [www.archives.gov/federal-register/laws/updates.html](http://www.archives.gov/federal-register/laws/updates.html)
  - 3. Federal Register via RSS or email – sign up at [www.federalregister.gov](http://www.federalregister.gov)
  - 4. Bankers Online – Daily Briefing email service
- B. Trade associations
- C. Networking

*Acknowledgement is given to the American Bankers Association. Materials from the ABA National Compliance School course on “Anatomy of a Regulation” were used by permission in developing this outline.*

# A Guide to the Rulemaking Process

*Prepared by the Office of the Federal Register<sup>1</sup>*

## TABLE OF CONTENTS

### Before the Proposed Rule

- [What gives agencies the authority to issue regulations?](#)
- [How does an agency decide to begin rulemaking?](#)
- [When can the public learn that an agency plans to start a rulemaking?](#)
- [How does an agency involve the public in developing a proposed rule?](#)
- [What is the role of the President in developing a proposed rule?](#)

### The Proposed Rule

- [What is the purpose of the proposed rule?](#)
- [How is the proposed rule structured?](#)
- [What is the time period for the public to submit comments?](#)
- [Why do agencies re-open comments or issue multiple proposed rules?](#)
- [Do agencies have additional options for gathering public comments?](#)
- [Why should you consider submitting electronic comments?](#)

### Before the Final Rule

- [How do public comments affect the final rule?](#)
- [What is the role of the President in developing a final rule?](#)

### The Final Rule

- [How is the final rule structured?](#)
- [When do final rules go into effect?](#)
- [Can an agency issue a final rule without a publishing a proposed rule?](#)
- [What are interim final rules & direct final rules?](#)

### After the Final Rule

- [How are final rules integrated into the Code of Federal Regulations?](#)
- [How is the Congress involved in reviewing final rules?](#)
- [Does the regulatory process continue after rules are published?](#)
- [What are interpretive rules and policy statements?](#)
- [When do the courts get involved in rulemaking?](#)

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<sup>1</sup> The material presented in this guide is necessarily general in nature and should not be used to make legal decisions. We use the terms “rule” and “regulation” interchangeably in the text. The guide is adapted from several major sources: the Cornell e-Rulemaking Initiative (CeRI) “Regulation Room,” hosted by the Cornell Legal Information Institute (LII) at <http://regulationroom.org/learn-about-rulemaking/>; the “Reg Map” created by ICF Consulting with the cooperation of the General Services Administration’s Regulatory Information Service Center at <http://www.reginfo.gov/public/reginfo/Regmap/index.jsp>; the Office of the Federal Register’s tutorial: “The Federal Register: What it Is and How to Use It” at <http://www.archives.gov/federal-register/tutorial/online-html.html#top>; and the Department of Transportation’s “The Informal Rulemaking Process,” which has more detailed information and examples on the rulemaking process. In addition, you may wish to consult DOT’s “Rulemaking Requirements” (prepared by Neil Eisner, April 2009), which provides hyperlinks for easy access to the statutes, executive orders, guidance documents, memoranda, etc. that contain the actual legal requirements or provide guidance on the rulemaking process.

### What gives agencies the authority to issue regulations?

Agencies get their authority to issue regulations from laws (statutes) enacted by Congress. In some cases, the President may delegate existing Presidential authority to an agency. Typically, when Congress passes a law to create an agency, it grants that agency general authority to regulate certain activities within our society. Congress may also pass a law that more specifically directs an agency to solve a particular problem or accomplish a certain goal.

An agency must not take action that goes beyond its statutory authority or violates the Constitution. Agencies must follow an open public process when they issue regulations, according to the Administrative Procedure Act (APA). This includes publishing a statement of rulemaking authority in the *Federal Register* for all proposed and final rules.

### How does an agency decide to begin rulemaking?

Congress may pass a law that directs an agency to take action on a certain subject and set a schedule for the agency to follow in issuing rules. More often, an agency surveys its area of legal responsibility, and then decides which issues or goals have priority for rulemaking.

These are a few of the many factors that an agency may consider:

- New technologies or new data on existing issues;
- Concerns arising from accidents or various problems affecting society;
- Recommendations from Congressional committees or federal advisory committees;
- Petitions from interest groups, corporations, and members of the public;
- Lawsuits filed by interest groups, corporations, States, and members of the public;
- Presidential directives;
- “Prompt letters” from the Office of Management and Budget (OMB);
- Requests from other agencies;
- Studies and recommendations of agency staff.

## When can the public learn that an agency plans to start a rulemaking?

Agencies are required to publish a “Regulatory Plan” once a year in the fall and an “Agenda of Regulatory and Deregulatory Actions” in the spring and fall. The Regulatory Plan and the Regulatory Agenda are often referred to as the “Unified Agenda.” The Unified Agenda is how agencies announce future rulemaking activities update the public on pending and completed regulatory actions.

The Unified Agenda is posted on [RegInfo.gov](http://RegInfo.gov) and [Regulations.gov](http://Regulations.gov). Agencies also publish most of this material (their regulatory plans) in the *Federal Register*. The *Federal Register* version and a separate Unified Agenda collection are available on the Government Printing Office’s (GPO) Federal Digital system ([FDsys.gov](http://FDsys.gov)).

## How does an agency involve the public in developing a proposed rule?

An agency may take some preliminary steps before issuing a proposed rule. They gather information through unstructured processes and informal conversations with people and organizations interested in the issues. If an agency receives a “Petition for Rulemaking” from a member of the public, it may decide to announce the petition in the *Federal Register* and accept public comments on the issue.

An agency that is in the preliminary stages of rulemaking may publish an “Advance Notice of Proposed Rulemaking” in the *Federal Register* to get more information. The Advance Notice is a formal invitation to participate in shaping the proposed rule and starts the notice-and-comment process in motion.

Anyone interested (individuals and groups) may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against issuing a rule. Some agencies develop proposed rules through a negotiated rulemaking. In this process, an agency invites members of interested groups to meetings where they attempt to reach a consensus on the terms of the proposed rule. If the participants reach agreement, the agency may endorse their ideas and use them as the basis for the proposed rule.

## What is the role of the President in developing a proposed rule?

Before a proposed rule is published in the *Federal Register* for public comment, the President, as head of the Executive branch, may take the opportunity to review the rule. The President is assisted by the Office of Information & Regulatory Affairs (OIRA), which analyzes draft proposed rules when they are “significant” due to economic effects or because they raise important policy issues. For significant rules, the agency must estimate the costs and benefits of the rule and consider alternate solutions.

If the proposed rule requires the public to provide information to the government, the agency must estimate the paperwork burden on the public and obtain permission to proceed from OIRA. In addition, the agency may be required to analyze a proposed rule's impact on: small businesses; state, local and tribal governments; families; federalism. It may also need to analyze issues of just compensation and unfunded mandates.

## ***The Proposed Rule***

[Go to Top](#)

### **What is the purpose of the proposed rule?**

The proposed rule, or Notice of Proposed Rulemaking (NPRM), is the official document that announces and explains the agency's plan to address a problem or accomplish a goal. All proposed rules must be published in the *Federal Register* to notify the public and to give them an opportunity to submit comments. The proposed rule and the public comments received on it form the basis of the final rule.

### **How is the proposed rule structured?**

Proposed rules have preambles which contain a summary, date and contact information, and supplementary information. A proposed rule begins with a "Summary" of the issues and actions under consideration; it also states why the rule is necessary. Under the "Dates" and "Addresses" captions, the agency invites everyone to comment on the proposed rule, sets a date for comments to be submitted, and specifies various methods for conveying comments. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and the official federal electronic comment portal: Regulations.gov.

In the "Supplementary Information" portion, the agency discusses the merits of the proposed solution, cites important data and other information used to develop the action, and details its choices and reasoning. The agency must also identify the legal authority for issuing the rule.

Following the preamble, the agency usually publishes the regulatory text of the proposal in full. The regulatory text sets out amendments to the standing body of law in the Code of Federal Regulations. If the amendments are not set out in full text, the agency must describe the proposed action in a narrative form.

[Go to Top](#)

## What is the time period for the public to submit comments?

In general, agencies will specify a comment period ranging from 30 to 60 days in the “Dates” section of the *Federal Register* document, but the time period can vary. For complex rulemakings, agencies may provide for longer time periods, such as 180 days or more. Agencies may also use shorter comment periods when that can be justified.

Members of the public may request that the agency allow more time to submit comments, and agencies may consider late-filed comments, if their decision-making schedule permits it. Commentors should be aware that agencies generally are not legally required to consider late-filed comments. Agencies usually provide information in the proposed rule and/or their procedural rules indicating whether they will consider late-filed comments.

## Why do agencies re-open comments or issue multiple proposed rules?

An agency may extend or re-open a comment period when it is not satisfied that it has enough high quality comments or when the public comments make a good case for adding more time.

Similarly, an agency may find that people have raised new issues in their comments that were not discussed in the initial proposed rule. As new issues or additional complexity arises, the agency may publish a series of proposed rules in the *Federal Register*.

## Do agencies have additional options for gathering public comments?

During the comment period, an agency may also hold public hearings where people can make statements and submit data. Some agencies operate under laws that require rulemaking hearings. Others may hold public meetings to collect more information or to help affected groups get a better understanding of the proposed rule. Many agencies are beginning to use webcasts and interactive Internet sessions to broaden the audience attending public meetings.

After the comment period closes, an agency may establish a second period for reply comments (comments that respond to prior comments). A reply period is not required by law. The reply comment period enables people to respond to comments that agencies received at the end of comment period, creating more of a public dialog.

[Go to Top](#)

## Why should you consider submitting electronic comments?

Most agencies now prefer to receive comments electronically so that your input on a proposed rule or other document is more easily available to the public. Having electronic data helps agencies organize the comments by subject or in other ways to help the public and the agency make more effective use of them.

You can submit electronic comments to the agency docket site by following the instructions in the *Federal Register*. Many of the proposed rules and other documents on this site display a special button for submitting comments directly to the official electronic docket. For information on using the federal eRulemaking portal to submit comments, go to the Regulations.gov “Help” pages on submitting a comment.

## **Before the Final Rule**

[Go to Top](#)

## How do public comments affect the final rule?

The notice-and-comment process enables anyone to submit a comment on any part of the proposed rule. This process is not like a ballot initiative or an up-or-down vote in a legislature. An agency is not permitted to base its final rule on the number of comments in support of the rule over those in opposition to it. At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.

To move forward with a final rule, the agency must conclude that its proposed solution will help accomplish the goals or solve the problems identified. It must also consider whether alternate solutions would be more effective or cost less.

If the rulemaking record contains persuasive new data or policy arguments, or poses difficult questions or criticisms, the agency may decide to terminate the rulemaking. Or, the agency may decide to continue the rulemaking but change aspects of the rule to reflect these new issues. If the changes are major, the agency may publish a supplemental proposed rule. If the changes are minor, or a logical outgrowth of the issues and solutions discussed in the proposed rules, the agency may proceed with a final rule.



## What is the role of the President in developing a final rule?

In the same way that the President and the Office of Information & Regulatory Affairs (OIRA) review draft proposed rules prior to publication, the President and OIRA analyze draft final rules when they are “significant” due to economic effects or because they raise important policy issues. The Presidential level review takes place before the final rule is published in the *Federal Register*. OIRA’s final analysis of estimated costs and benefits may take into consideration any comments and alternate solutions suggested in public comments.

Agencies may also use this review and analysis phase to consult with other agencies who share responsibility for issues covered by the rule. In some cases, interagency review is mandatory.

## ***The Final Rule***

[Go to Top](#)

## How is the final rule structured?

Final rules also have preambles, including the summary, effective date, and supplementary information. The final rule published in the *Federal Register* begins with a “Summary” of the societal problems and regulatory goals and explains why the rule is necessary.

Every final rule must have an “Effective Date.” However, any portions that are subject to later approval under the Paperwork Reduction Act or are subject to Congressional approval may be excepted from that effective date. The “Dates” caption in the *Federal Register* may also contain compliance or applicability dates.

The agency must state the “basis and purpose” of the rule in the “Supplementary Information” part of the preamble. This statement sets out the goals or problems the rule addresses, describes the facts and data the agency relies on, responds to major criticisms in the proposed rule comments, and explains why the agency did not choose other alternatives.

The agency must identify its legal authority for issuing the rule and publish the regulatory text in full. The regulatory text sets out amendments to the Code of Federal Regulations (CFR). Each amendment begins with instructions for changing the CFR.

[Go to Top](#)

## When do final rules go into effect?

When an agency publishes a final rule, generally the rule is effective no less than thirty days after the date of publication in the *Federal Register*. If the agency wants to make the rule effective sooner, it must cite “good cause” (persuasive reasons) as to why this is in the public interest.

Significant rules (defined by Executive Order 12866) and major rules (defined by the Small Business Regulatory Enforcement Fairness Act) are required to have a 60 day delayed effective date.

## Can an agency issue a final rule without a publishing a proposed rule?

Yes, the Administrative Procedure Act (APA) permits agencies to finalize some rules without first publishing a proposed rule in the *Federal Register*. This exception is limited to cases where the agency has “good cause” to find that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.” These situations may include emergencies where problems must be addressed immediately to avert threats to public health and safety, minor technical amendments and corrections where there is no substantive issue, and some instances where an agency has no discretion to propose a rule because Congress has already directed a specific regulatory outcome in a law. The agency must state its reasoning for finding good cause in the preamble of the final rule published in the *Federal Register*.

There are other exceptions to conventional notice-and-comment rulemaking. An agency may go straight to final rulemaking without a proposed rule when they issue internal agency procedures, rules that affect only federal employees, and rules that manage federal property and real estate. Even these types of rules can be subject to proposed rulemaking because of a special statutory requirement or because an internal agency rule also has a substantial effect on the public.

Agencies can also issue and enforce rules by using “actual notice,” which requires direct notification of all affected persons and entities. Because it is difficult to pinpoint every person and entity affected by a rulemaking, this option is used mostly for rules that have a very narrow effect on known or readily definable persons or corporations.

[Go to Top](#)

## What are interim final rules & direct final rules?

**Interim Final Rule:** When an agency finds that it has good cause to issue a final rule without first publishing a proposed rule, it often characterizes the rule as an “interim final rule,” or “interim rule.” This type of rule becomes effective immediately upon publication. In most cases, the agency stipulates that it will alter the interim rule if warranted by public comments. If the agency decides not to make changes to the interim rule, it generally will publish a brief final rule in the *Federal Register* confirming that decision.

**Direct Final Rule:** When an agency decides that a proposed rule is unnecessary because it would only relate to routine or uncontroversial matters, it may publish a direct final rule in the *Federal Register*. In a direct final rule, the agency states that the rule will go into effect on a certain date, unless it gets substantive adverse comments during the comment period. An agency may finalize this process by publishing in the *Federal Register* a confirmation that it received no adverse comments. If adverse comments are submitted, the agency is required to withdraw the direct final rule before the effective date. The agency may re-start the process by publishing a conventional proposed rule or decide to end the rulemaking process entirely.

## After the Final Rule

[Go to Top](#)

## How are final rules integrated into the Code of Federal Regulations?

Agencies must publish the changes to the Code of Federal Regulations (CFR) in the final rule, instructing how amendments add, revise, remove, or re-designate regulatory text. The CFR contains all of the generally applicable rules of the Federal government with current or future effect.

On the day a final rule is published in the *Federal Register*, Office of the Federal Register and GPO staff begin processing the material for codification into the CFR. Rules that are immediately effective are integrated into the “Electronic Code of Federal Regulations” (e-CFR) database ([ecfr.gpoaccess.gov](http://ecfr.gpoaccess.gov)). Rules with delayed effective dates are placed in amendment files and linked from the main e-CFR database. The e-CFR is an unofficial, but authoritative editorial compilation published by the Office of the *Federal Register* and GPO. Users can check the update status of the e-CFR by consulting the home page.

The official annual editions of the CFR are assembled from the material published in the e-CFR. Each of the 50 subject matter titles are republished each year on a staggered, quarterly basis, and appear in print and online (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>).

## How is the Congress involved in reviewing final rules?

Under the Small Business Regulatory Enforcement Fairness Act (also known as the Congressional Review Act), new final rules must be sent to Congress and the Government Accountability Office for review before they can take effect. “Major rules” (ones that are economically significant and require OIRA review) must be made effective at least 60 days after the date of publication in the *Federal Register*, allowing time for Congressional review. In emergency situations, a major rule can be made effective before 60 days.

If the House and Senate pass a resolution of disapproval and the President signs it (or if both houses override a presidential veto), the rule becomes void and cannot be republished by an agency in the same form without Congressional approval. Since 1996, when this process started, Congress has disapproved only one rule.

Congress may also exercise its oversight in other ways, by holding hearings and posing questions to agency heads, by enacting new legislation, or by imposing funding restrictions.

## Does the regulatory process continue after rules are published?

The regulatory process enters the compliance, interpretation, and review phase after a final rule is published. Individuals and industries affected by a rule, and the agency compliance officers and inspectors who must enforce a rule, may need guidance to better understand the regulatory requirements. Agencies may write compliance materials and technical assistance manuals to distribute to the public. These guidance materials may be posted on a website or published in the *Federal Register* as interpretive rules. See more about interpretive rules and policy statements below.

Based on its experience in enforcing a rule, an agency may decide to change a rule, remove it from the CFR entirely, or let it stand. A law or a Presidential directive may require a formal review process every few years. An agency may undertake a review based on a petition from the public. Its own experts may also begin a review process when conditions change and rules seem outdated. If an agency decides to amend or revoke a rule, it must use the notice-and-comment process to make the change.

[Go to Top](#)

## What are interpretive rules and policy statements?

Interpretive rules, policy statements, and other guidance documents may be issued anytime after a final rule is published to help the public understand to how a regulation applies to them and affects their interests. An agency may explain how it interprets an existing regulation or statute, how a rule may apply in a given instance, and what things a person or corporation must do to comply.

There is a key distinction between an interpretive rule and a final “legislative” or “substantive” rule. The interpretive rule or policy statement must not set new legal standards or impose new requirements. Guidance documents do not contain amendments to the CFR and are not subject to the notice and comment process. But in some cases, agencies choose to request comments on interpretive rules and other guidance documents to improve the quality and clarity of the material. Interpretive rules and policy statements that have broad applicability are often published in the *Federal Register*, but some may only appear on agency websites.

## When do the courts get involved in rulemaking?

Individuals and corporate entities may go into the courts to make a claim that they have been, or will be, damaged or adversely affected in some manner by a regulation. The reviewing court can consider whether a rule: is unconstitutional; goes beyond the agency’s legal authority; was made without following the notice-and-comment process required by the Administrative Procedure Act or other law; or was arbitrary, capricious, or an abuse of discretion. An agency head can also be sued for failing to act in a timely manner in certain cases.

If a court sets aside (vacates) all or part of a rule, it usually sends the rule back to the agency to correct the deficiencies. The agency may have to reopen the comment period, publish a new statement of basis and purpose in the *Federal Register* to explain and justify its decisions, or restart the rulemaking process from the beginning by issuing a new proposed rule.

[Go to Top](#)

(b) *Inadmissible alien.* An applicant who is not admissible to the United States as described in 8 CFR 209.2(a)(1)(v), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by USCIS except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest. An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions. An applicant for adjustment under this part who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who is subject to the foreign resident requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement if otherwise eligible for adjustment.

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed in accordance with the form instructions. If an alien has been placed in removal, deportation, or exclusion proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

(d) *Medical examination.* For an alien seeking adjustment of status under section 209(b) of the Act, the alien shall submit a medical examination to determine whether any grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply. The asylee is also required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act.

(e) *Interview.* USCIS will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(f) *Decision.* USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request in removal proceedings under section 240 of the Act. If the application is approved, USCIS will record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

[FR Doc. 2012-31271 Filed 12-27-12; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 214

#### Nonimmigrant Classes

##### CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of January 1, 2012, in § 214.2, make the following corrections:

a. On page 289, reinstate paragraph (h)(2)(v);

b. On page 310, following paragraph (h)(9)(i)(B), reinstate paragraphs (h)(9)(ii)(A) and (B); and

c. On page 311, revise the third sentence of paragraph (h)(11)(i)(A).

#### § 214.2 Special requirements for admission, extension, and maintenance of status.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(v) *H-2A Petitions.* Special criteria for admission, extension, and maintenance of status apply to H-2A petitions and are specified in paragraph (h)(5) of this section. The other provisions of § 214.2(h) apply to H-2A only to the extent that they do not conflict with the special agricultural provisions in paragraph (h)(5) of this section.

\* \* \* \* \*

(9) \* \* \*

\* \* \* \* \*

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new H petition is approved before the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

(B) If a new H petition is approved after the date the petitioner indicates that the services or training will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed either the limits specified by paragraph (h)(9)(iii) of this section or other Service policy.

\* \* \* \* \*

(11) \* \* \*

(i) \* \* \*

(A) \* \* \* If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the

change(s) to the director who approved the petition. \* \* \*

\* \* \* \* \*

[FR Doc. 2012-31272 Filed 12-27-12; 8:45 am]

BILLING CODE 1505-01-D

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1074

[Docket No. CFPB-2012-0051]

#### Procedure Relating to Rulemaking

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is adopting a procedural rule (Final Rule) that specifies how the Bureau issues rules and when rules are considered issued.

**DATES:** The Final Rule is effective on December 28, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lea Mosena and Martha Fulford, Attorneys, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435-7152.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Summary

The Final Rule specifies how the Bureau issues rules and when rules are considered issued. In the future, the Bureau may issue further rules on procedures for rulemaking.

Part 1074.1 establishes that the Bureau's rules are deemed issued upon the earlier of: (1) When the final rule is posted on the Bureau's Web site, or (2) when the final rule is published in the **Federal Register**. The Bureau's Web site is [www.consumerfinance.gov](http://www.consumerfinance.gov).

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>1</sup> and other statutes authorize the Bureau to issue rules. Ordinarily, a rule may be considered issued at least when the rulemaking document containing the final rule has been placed on public inspection by the Office of the Federal Register or published in the **Federal Register**. However, an agency may treat other events as constituting the issuance of a rule.<sup>2</sup> The key prerequisite for issuing a

<sup>1</sup> Public Law 111-203.

<sup>2</sup> See *Nat'l Grain & Feed Ass'n v. OSHA*, 845 F.2d 345, 346 (D.C. Cir. 1988); *United Techs. Corp. v. OSHA*, 836 F.2d 52, 53 (2d Cir. 1987); *Indus. Union Dep't, AFL-CIO v. Bingham*, 570 F.2d 965, 970 (D.C. Cir. 1977) (Leventhal, J., concurring).

rule appears to be providing public notice of the rule's content.

It is beneficial for regulated entities to know what constitutes issuance of an agency's rules.<sup>3</sup> Pursuant to a commitment to using modern technology to facilitate the Bureau's performance of its functions, the Bureau regularly posts final rules on its Web site. Typically on the same day, the Bureau will submit the document to the Office of the Federal Register. After a period of time that depends on the length of the document and other factors, the Office of the Federal Register will then make the document available for public inspection and then publish it in the **Federal Register**. The Bureau does not believe that delaying issuance until the rule is published in the **Federal Register** is necessary or in the public interest. Accordingly, today's rule provides that when a final rule<sup>4</sup> is posted on the Bureau's Web site before it is published in the **Federal Register**, the posting on the Web site shall constitute the official issuance of the rule.

Clarifying what constitutes issuance of a rule is beneficial because in some cases the date of issuance of a rule has legal consequences.<sup>5</sup> For example, under section 1400(c)(3) of the Dodd-Frank Act, certain provisions of title XIV will go into effect on the date that is 18 months after the designated transfer date,<sup>6</sup> unless relevant regulations are "issued" by that date. Given the Bureau's practice of posting rules on its Web site before the Office of the Federal Register makes the rules available for public inspection or publishes the rules in the **Federal Register**, uncertainty could arise regarding the date on which such rules were issued. The Final Rule eliminates uncertainty by clarifying when the Bureau's rules are deemed issued.

The Bureau generally intends to issue rules by posting them on its Web site, but, as a precaution, the Final Rule provides that a rule will be considered issued upon publication in the **Federal Register** if by inadvertence or for some other reason the rule is not posted on the Web site or is published in the **Federal Register** before it is posted on the Web site.

<sup>3</sup> It is important to note that the date of issuance of a rule and the effective date of a rule are distinct.

<sup>4</sup> For the purposes of this rule, the Bureau intends "final rule" to encompass an interim final rule.

<sup>5</sup> Clarity about what constitutes issuance may be of practical moment for regulated entities, potentially assisting in planning for implementation of a rule.

<sup>6</sup> Pursuant to section 1062 of the Dodd-Frank Act, 12 U.S.C. 5582, the Secretary of the Treasury designated July 21, 2011 as the transfer date. 75 FR 57252.

## II. Legal Authority and Effective Date

Section 1022(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions of those laws. In addition, section 1012(a) of the Dodd-Frank Act authorizes the Bureau "to establish the general policies of the Bureau with respect to all executive and administrative functions, including—(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title \* \* \*."

The Final Rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the Final Rule effective immediately upon publication in the **Federal Register**.

## III. Section 1022(b)(2) of the Dodd-Frank Act

In developing the Final Rule, the Bureau has considered the potential benefits, costs, and impacts, and the Bureau has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.<sup>7</sup>

Certainty about the timing of issuance of the Bureau's rules will likely benefit consumers and covered persons. The Bureau is not aware of costs to consumers or covered persons, including the potential reduction of access by consumers to consumer financial products or services, that can be predicted to result from treating rules as issued when the Bureau has posted them on its Web site.

Further, the Bureau is not aware of any unique impact the Final Rule might

<sup>7</sup> Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

have on insured depository institutions or insured credit unions with total assets of \$10 billion or less as described in section 1026(a) of the Dodd-Frank Act, or on rural consumers.

## IV. Regulatory Requirements

The Final Rule relates solely to agency procedure and practice and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, this rule does not require an initial or a final regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*

### List of Subjects in 12 CFR Part 1074

Administrative practice and procedure.

### Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1074 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

## PART 1074—PROCEDURE RELATING TO RULEMAKING

Sec.

§ 1074.1 Date of issuance of Bureau rules.

**Authority:** 12 U.S.C. 5492(a)(1), 5512(b).

### § 1074.1 Date of issuance of Bureau rules.

■ A final Bureau of Consumer Financial Protection (Bureau) rule is deemed issued upon the earlier of the following:

- (a) When the final rule is posted on the Bureau's Web site; or
- (b) When the final rule is published in the **Federal Register**.

Dated: December 21, 2012.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2012–31310 Filed 12–27–12; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 19 and 109

[Docket ID OCC–2012–0011]

RIN 1557-AD61

### Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.



# FEDERAL REGISTER

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## Part III

### Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 22 and 172

### Federal Reserve System

12 CFR Part 208

### Federal Deposit Insurance Corporation

12 CFR Parts 339 and 391

### Farm Credit Administration

12 CFR Part 614

### National Credit Union Administration

12 CFR Part 760

Loans in Areas Having Special Flood Hazards; Proposed Rule



**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

12 CFR Parts 22, 172

[Docket ID OCC–2013–0015]

RIN 1557–AD67

**FEDERAL RESERVE SYSTEM**

12 CFR Part 208

[Regulation H, Docket No. R–1462]

RIN 7100 AE–00

**FEDERAL DEPOSIT INSURANCE CORPORATION**

12 CFR Parts 339, 391

RIN 3064–AE03

**FARM CREDIT ADMINISTRATION**

12 CFR Part 614

RIN 3052–AC93

**NATIONAL CREDIT UNION ADMINISTRATION**

12 CFR Part 760

RIN 3133–AE18

**Loans in Areas Having Special Flood Hazards**

**AGENCY:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are proposing to amend their regulations regarding loans in areas having special flood hazards to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The proposal also would clarify the Agencies' flood insurance regulations with respect to other amendments made by the Act and make technical

corrections. Furthermore, the OCC and the FDIC are proposing to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

**DATES:** Comments must be received on or before December 10, 2013, except that comments on the Paperwork Reduction Act analysis in part V of the **SUPPLEMENTARY INFORMATION** must be received on or before December 30, 2013.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "Loans in Areas Having Special Flood Hazards" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Loans in Areas Having Special Flood Hazards" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*— "regulations.gov": Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2013–0015" in the Search Box and click "Search." Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments. Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- *Email:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Fax:* (571) 465–4326.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC–2013–0015" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including

attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2013–0015" in the Search box and click "Search." Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

**Board:** You may submit comments, identified by Docket No. R–1462 or RIN 7100 AE–00, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as

submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

Comments submitted must include "FDIC" and "Loans in Areas Having Special Flood Hazards." Comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

**FCA:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- **Email:** Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- **Agency Web site:** <http://www.fca.gov>. Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Submitting a Comment."

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the

Web site, Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

**NCUA:** You may submit comments, identified by RIN 3133-AE18 by any of the following methods (Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Agency Web site:** <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- **Email:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include [Your name] Comments on "Loans in Areas Having Special Flood Hazards" in the email subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for email.

- **Mail:** Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- **Hand Delivery/Courier:** Same as mail address.

You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:**

**OCC:** Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649-5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649-6350, or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, Office of the Chief Counsel.

**Board:** Lanette Meister, Senior Supervisory Consumer Financial

Services Analyst (202) 452-2705; Vivian W. Wong, Counsel (202) 452-3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**FDIC:** Navid Choudhury, Senior Attorney, Consumer Compliance Section (202) 898-6526, Legal Division; or John Jackwood, Senior Policy Analyst (202) 898-3991, Division of Depositor and Consumer Protection.

**FCA:** Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy (703) 883-4203, TTY (703) 883-4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

**NCUA:** Sarah Chung, Staff Attorney, (703) 518-1178, Office of General Counsel.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Introduction*

The Biggert-Waters Flood Insurance Reform Act of 2012<sup>1</sup> (the Act), signed into law by the President on July 6, 2012, significantly revised Federal flood insurance statutes. Section 100209 of the Act, relating to the escrow of flood insurance payments, and section 100239 of the Act, relating to the acceptance of private flood insurance coverage, amended provisions of the Flood Disaster Protection Act (FDPA)<sup>2</sup> that require the Agencies to issue implementing regulations. Section 100244 of the Act, relating to force-placed insurance, necessitates conforming revisions to the Agencies' current flood insurance regulations. The Agencies jointly are issuing this proposal to revise their regulations accordingly. In connection with the issuance of this proposal, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain provisions of the flood insurance statutes.<sup>3</sup> The Agencies' proposal would implement only certain provisions of the Act over which the Agencies have jurisdiction. Accordingly, the Agencies encourage lenders to consult the Act for further information about revisions to the flood insurance statutes that will not be implemented through this rulemaking.

<sup>1</sup> Public Law 112-141, 126 Stat. 916 (2012).

<sup>2</sup> Public Law 93-234, 87 Stat. 975 (1973).

<sup>3</sup> See 42 U.S.C. 4012a(b)(1). The heads of four of the five Agencies (OCC, Board, FDIC, and NCUA) comprise part of the membership of the FFIEC.

### B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)<sup>4</sup> and the FDPA govern the National Flood Insurance Program (NFIP).<sup>5</sup> The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if the community where the improved real estate or mobile home is located participates in the NFIP. A special flood hazard area (SFHA) is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year.<sup>6</sup> SFHAs are delineated on maps issued by FEMA for individual communities.<sup>7</sup> A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.<sup>8</sup>

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. The FDPA required the mandatory purchase of flood insurance and directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS)<sup>9</sup> to issue regulations governing the lending institutions that they supervised. The resulting regulations directed these lending institutions to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (secured property) if the secured property was located in a SFHA in a participating community. The regulations also required lenders to notify borrowers that the secured property is located in a SFHA and that Federal disaster assistance is available with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, also known as the National Flood Insurance Reform Act of 1994 (Reform Act),

comprehensively amended the Federal flood insurance statutes.<sup>10</sup> The Reform Act established new requirements on Federally regulated lending institutions, such as the escrow for flood insurance premiums under certain conditions and mandatory force-placement of flood insurance coverage. The Reform Act was intended to increase compliance with the mandatory flood insurance purchase 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. In addition, the Reform Act broadened the definition of “Federal entity for lending regulation” to include the FCA, thereby increasing the number of regulated lending institutions subject to the mandatory flood insurance purchase requirement to include lenders regulated by the FCA.

The Reform Act required the Agencies to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The Agencies fulfilled these requirements by issuing a joint final rule in August 1996.<sup>11</sup>

### C. The Biggert-Waters Act Amendments

Among other changes,<sup>12</sup> the Act significantly amends the NFIP requirements, over which the Agencies have jurisdiction. Specifically, the Act: (i) Increases the maximum civil money penalty (CMP) that the Agencies may impose per violation when there is a pattern or practice of flood violations and eliminates the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year;<sup>13</sup> (ii) requires regulated lending institutions to escrow premiums and

fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;<sup>14</sup> (iii) directs regulated lending institutions to accept private flood insurance, as defined by the Act, and to notify borrowers of the availability of private flood insurance;<sup>15</sup> and (iv) amends the force-placement requirement to clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.<sup>16</sup>

The civil money penalty provisions,<sup>17</sup> and the force-placement requirements were effective upon enactment. In contrast, both the escrow and private flood insurance provisions will become effective when the Agencies finalize implementing regulations. The Agencies previously published guidance regarding the effective dates of these amendments.<sup>18</sup>

## II. Summary of the Proposal

As indicated above, the Agencies propose to revise their respective flood insurance regulations to implement the Act’s amendments addressing the escrow of flood insurance payments, private flood insurance, and force-placed insurance. These provisions, and other amendments, proposed by this rulemaking are summarized below and more specifically described in IV. Section-by-Section Analysis of this preamble. Although the Agencies’ proposals are substantively consistent, the format of the regulatory text varies

<sup>10</sup> Public Law 103–325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

<sup>11</sup> 61 FR 45684 (Aug. 29, 1996).

<sup>12</sup> The Agencies note, for example, that section 100222 of the Act mandates a revision to the Special Information Booklet required under section 5 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2604(b)) to include a notice to the borrower of the availability of flood insurance under the NFIP or from a private insurance company, whether or not the real estate is located in an area having special flood hazards. The requirement to revise the Special Information Booklet is the responsibility of the Bureau of Consumer Financial Protection (CFPB) under RESPA. In addition, section 100204 of the Act directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage made available to such residential properties will be equal to the coverage made available to commercial properties. Policies for such properties will be made available by FEMA at a later date.

<sup>13</sup> Section 100208 of the Act, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

<sup>14</sup> Section 100209 of the Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)). Congress further amended section 42 U.S.C. 4012a(d) subsequent to the enactment of the Act to clarify that the flood insurance escrow requirement applies only to loans secured by residential improved real estate. *See* Public Law 112–281, 125 Stat. 2485 (Jan. 14, 2013).

<sup>15</sup> Section 100239 of the Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

<sup>16</sup> Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

<sup>17</sup> Some of the Agencies have revised their regulations to incorporate these increased civil money penalties. *See* OCC: 77 FR 66529 (Nov. 11, 2012) and 77 FR 76354 (Dec. 28, 2012); Board: 77 FR 68680 (Nov. 16, 2012); FDIC: 77 FR 74573 (Dec. 17, 2012); and FCA: 78 FR 24336 (April 25, 2013). The NCUA is in the process of updating its rule to reflect this civil money penalty change.

<sup>18</sup> “Interagency Statement on the Impact of Biggert-Waters Act,” March 29, 2013 (Board: CA 13–2; OCC: Bulletin 2013–10; FDIC: FIL 14–2013; FCA: Information Memorandum, March 29, 2013; NCUA: 13–RA–03).

<sup>4</sup> Public Law 90–448, 82 Stat. 572 (1968).

<sup>5</sup> These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

<sup>6</sup> 44 CFR 59.1.

<sup>7</sup> 44 CFR part 65.

<sup>8</sup> 44 CFR part 60.

<sup>9</sup> Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), (Dodd-Frank Act), transferred the powers, duties, and functions formerly performed by the OTS among the FDIC, as to State savings associations, the OCC, as to Federal savings associations, and the Board as to savings and loan holding companies. The OTS was abolished 90 days after the transfer date.

to conform to each Agency's current regulation.

First, the Agencies' proposal generally would require regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home, unless the institutions qualify for the statutory exception. Except as may be required under applicable State law, a regulated lending institution is not required to escrow if it has total assets of less than \$1 billion and, as of the Act's date of enactment, July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance. The Agencies are proposing to implement the exception substantially as set forth in the statute.

Second, consistent with the Act, the Agencies' proposal would require that regulated lending institutions accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement. The proposal also specifically requests comment on whether the Agencies should use their authority under the FDPA to include a provision in the final rules that expressly permits regulated lending institutions to accept a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance" to satisfy the FDPA's general mandatory purchase requirement. The Agencies are also soliciting comment on what criteria the Agencies might require for such a policy. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition, and if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Third, the Agencies' proposal includes new and revised sample notice forms and clauses. Specifically, the proposal amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the Agencies' respective regulations, to add language concerning the availability of private flood insurance coverage (pursuant to the notice requirements under section 100239 of the Act) and the escrow requirement. The proposal also adds an additional sample notice form, Notice of Requirement to Escrow for Outstanding Loans, as Appendix B to assist

institutions in complying with the proposal's requirement to inform existing borrowers about the new escrow requirement. An institution would provide this notice for existing loans when neither the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance nor the notice of force-placement is provided. Finally, as Appendix C, the Agencies are proposing a sample clause regarding the new escrow requirement that may be included with the force-placement notice.

Fourth, the proposal would amend the force-placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The proposal also would stipulate the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

Fifth, the Agencies propose needed technical corrections. For example, the Agencies' current flood insurance regulations refer to the "Director" of the FEMA. The correct title for the head of that agency is "Administrator."<sup>19</sup> The Agencies' proposal would correct all references to the head of FEMA.

Finally, the OCC and the FDIC propose to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively. Specifically, the OCC proposes to add language to its flood insurance regulation for national banks, 12 CFR part 22, to make it applicable to both national banks and Federal savings associations, and to remove its regulation for Federal savings associations, 12 CFR part 172. Similarly, the FDIC proposes to add language to 12 CFR part 339, its flood regulation for State non-member banks, to make it applicable to both State non-member banks and State savings associations and to remove its flood regulation for State savings associations, 12 CFR part 391 subpart D. Parts 22, 172, 339, and 391 subpart D, are nearly identical and contain no substantive differences, as they were originally adopted through an interagency rulemaking process.<sup>20</sup>

<sup>19</sup> 6 U.S.C. 313.

<sup>20</sup> The OCC republished the former OTS rule as an OCC rule with respect to Federal savings

### III. Legal Authority

Section 102(b) of the FDPA (42 U.S.C. 4012a(b)), as amended by the Act, provides that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator of FEMA as an area having special flood hazards and in which flood insurance has been made available under the NFIP, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance. Thus, section 102(b) of the FDPA grants the Agencies rulemaking authority to implement this mandatory flood insurance purchase requirement as it pertains to regulated lending institutions.

Furthermore, under section 102(b) of the FDPA, as amended by section 100239 of the Act, the Agencies (after consultation and coordination with the FFIEC) must by regulation direct regulated lending institutions to accept private flood insurance as satisfaction of the mandatory flood insurance purchase requirement, described above. Section 102(b) of the FDPA, as amended by section 100239 of the Act, also authorizes the Agencies to implement the definition of private flood insurance under section 102(b) of the FDPA, as amended by the Act, as well as the requirement that the lender disclose to the borrower the availability of flood insurance from private insurance companies.

The OCC, Board, and FDIC have general authority to issue regulations assuring the safety and soundness of depository institutions.<sup>21</sup> The NCUA and FCA have similar authority with respect to the institutions that they supervise.<sup>22</sup> In addition, section

associations and the FDIC republished the former OTS rule with respect to State savings associations in 2011, with only nomenclature changes. See 76 FR 49140 (Aug. 9, 2011) (OCC) and 76 FR 47811 (Aug. 5, 2011) (FDIC).

<sup>21</sup> See 12 U.S.C. 1 and 93a; 12 U.S.C. 321 (granting the Board authority to impose conditions for membership in the Federal Reserve System); 12 U.S.C. 1820(g) (granting the FDIC authority to prescribe regulations to carry out the FDI Act; See also section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1)).

<sup>22</sup> The Federal Credit Union Act (12 U.S.C. 1751 et seq.) and section 5.17 of the Farm Credit Act of 1971, as amended, (12 U.S.C. 2252). Sections 106, 201, and 206 of the Federal Credit Union Act (12 U.S.C. 1756, 1781, and 1786) provide NCUA with the authority to examine and supervise Federally insured credit unions to protect the credit union system and the safety and soundness of the National Credit Union Share Insurance Fund.

100239(a)(1), which amended section 102(b) of the FDPA, provides that nothing in that subsection shall be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance.

Finally, section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 100209 of the Act and Public Law No. 112-281,<sup>23</sup> states that the Agencies (after consultation and coordination with the FFIEC) must by regulation require all premiums and fees for flood insurance under the 1968 Act for residential improved real estate or a mobile home be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home with the same frequency as payments on the loan are made for the duration of the loan. The statute requires that such funds be deposited in an escrow account on behalf of the borrower and used to pay the flood insurance provider when premiums are due. Section 102(d) of the FDPA, as amended, also authorizes the Agencies to implement the exception to this requirement for certain regulated lending institutions with assets less than \$1 billion.

#### IV. Section-by-Section Analysis

##### \_\_\_\_ Authority, purpose, and scope

Since the Agencies last revised their regulations in 1996, the title of the head of FEMA has changed from "Director" to "Administrator." In accordance with this change, the Agencies are proposing an amendment to the reference to the head of FEMA in the scope section.

As part of the OCC's and FDIC's consolidation of their flood insurance rules, the OCC and FDIC also are proposing to insert the term "Federal savings association" or "FDIC-supervised institution" where necessary throughout their flood insurance rules.

##### \_\_\_\_ Definitions

*Private flood insurance.* The Agencies are proposing to add a new definition for "private flood insurance" consistent with section 100239 of the Act, which added a new section 102(b)(7) to the FDPA. Under section 102(b)(7) of the FDPA, "private flood insurance" means an insurance policy that: (i) Is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance in

the State or jurisdiction in which the insured building is located by the insurance regulator of the State or jurisdiction or, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction;<sup>24</sup> (ii) provides flood coverage at least as broad as the coverage provided by a standard flood insurance policy (SFIP) under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer; (iii) includes a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution; (iv) includes information about the availability of flood insurance coverage under the NFIP; (v) includes a mortgage interest clause similar to the clause contained in an SFIP; (vi) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and (vii) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

*Other definitions.* The Agencies also are proposing technical amendments to change the references to the head of FEMA from Director to Administrator in the definitions and to renumber the definitions to accommodate the inclusion of the new definition for "private flood insurance."

*OCC-only definitions.* The OCC also proposes the following amendments to the definition section for purposes of integrating its national bank and Federal savings association flood insurance rules. First, the proposed rule provides that the term "Federal savings association" means a Federal savings association as defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof. This definition is identical to the definition of "Federal savings association" in 12 CFR part 172, except that part 172 specifically referenced "subsidiaries." Current 12 CFR part 22 does not specifically include a reference to bank operating subsidiaries because

<sup>24</sup> The Agencies note that with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners' (NAIC) International Insurer's Department (IID List). See The Nonadmitted and Reinsurance Reform Act of (NRRRA), Title V of the Dodd-Frank Act, Public Law 111-203 (July 21, 2011).

such subsidiaries are subject to the rules applicable to the operations of their parent bank pursuant to 12 CFR 5.34. Because Federal savings association operating subsidiaries also are subject to the same rules applicable to the parent savings association, as provided by 12 CFR 159.3(h), the inclusion of "subsidiary" in this definition is unnecessary and its removal will not affect the applicability of 12 CFR part 22 to Federal savings association operating subsidiaries.

Second, the OCC proposes to remove the definition of "bank," which the rule currently defines as meaning a national bank. Instead, the term "bank" is replaced with "national bank" throughout the rule.

*FDIC-only definition.* The FDIC also proposes the following amendments to the definitional section for purposes of integrating its State nonmember bank and State savings association flood insurance rules. The FDIC proposes to remove the definition of "bank" and replace it with "FDIC-supervised institution" which would be defined to mean any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

##### \_\_\_\_ Requirement to purchase flood insurance where available.

In General.

The current regulation provides that a regulated lending institution shall not make, increase, extend, or renew any designated 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. This provision further provides that flood insurance coverage is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. A "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 1968 Act, as amended.<sup>25</sup> The Agencies are proposing to revise the language relating to the coverage limit to reflect more accurately what is actually covered under Federal flood insurance statutes. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is limited to the building or mobile home

<sup>25</sup> OCC: 12 CFR 22.2(e); Board: 12 CFR 208.25(b)(4); FDIC: 12 CFR 339.2(e); FCA: 12 CFR 614.4925(e); NCUA: 12 CFR 760.2(f).

<sup>23</sup> 126 Stat. 2485 (Jan. 14, 2013).

and any personal property securing the loan and not the land itself.

#### Private flood insurance

The Agencies also are proposing to amend this section to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, which requires that all regulated lending institutions accept private flood insurance if certain conditions are met. Specifically, the proposal would require a regulated lending institution to accept private flood insurance that meets the definition of this term to satisfy the FDPA's insurance requirement, provided that the private flood insurance policy also meets the conditions set forth in the general mandatory purchase requirement. Therefore, a regulated lending institution may only accept private flood insurance coverage under this provision if the building or mobile home and any personal property that secures the mortgage loan is covered for the term of that loan by the amount of flood insurance required by section 102(b)(1)(A) of the FDPA. As described above in      *Definitions*, this proposal also would amend the Agencies' regulations to include the statutory definition of "private flood insurance."

The Agencies understand that there have been concerns regarding the ability of regulated lending institutions to evaluate whether a flood insurance policy meets the definition of "private flood insurance" set forth in the Act because some regulated lending institutions lack the necessary technical expertise. To facilitate compliance in this regard, the Agencies are proposing a safe harbor to allow lenders to rely on the expertise of State insurance regulators. Under the proposed safe harbor, if a State insurance regulator makes a written determination that a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" set forth in the Act, then the Agencies will deem such policy to meet the statutory definition of "private flood insurance."

The Agencies note that regulating insurance providers is generally the domain of State insurance regulators. As a result, State insurance regulators may be the appropriate parties to determine whether a flood insurance policy meets all the criteria set forth in the statutory definition of "private flood insurance." The Agencies solicit comment on whether: (i) Any mechanism exists or may be developed by State regulators to make such a determination; (ii) a written determination would facilitate lenders' acceptance of flood insurance

by private insurers; (iii) such a safe harbor would alleviate the concerns of regulated lending institutions in evaluating private flood policies; and (iv) a safe harbor would enable the growth of the private flood insurance market.

Although section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, requires a regulated lending institution to accept private flood insurance that meets the statutory definition, the Agencies note that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition. The Agencies believe that the Congressional intent of the statute was to stimulate the private flood insurance market.<sup>26</sup> Consequently, in addition to requiring regulated lending institutions to accept private flood insurance policies that comply with the statutory definition of "private flood insurance," the Agencies are considering whether to include a provision in the final rules that expressly permits regulated lending institutions to accept, as satisfaction of the FDPA's mandatory purchase requirement, a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance." The Agencies would include this provision pursuant to their authority under the FDPA to issue regulations directing lending institutions not to make, increase, extend, or renew any loan secured by property in a SFHA unless the property is covered by "flood insurance."<sup>27</sup>

To assist with determining whether the Agencies should include this provision, the Agencies solicit comment on whether policies issued by private insurers that do not meet the statutory definition of "private flood insurance" should be permitted to satisfy the mandatory purchase requirement. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition and, if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Furthermore, if the Agencies decide to include a provision in the final rules

<sup>26</sup> The Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to "increase the role of private markets in the management of flood insurance risk." H. Rep. No. 112-102, at 1 (2011); see also 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

<sup>27</sup> See 42 U.S.C. 4012a(b).

that expressly permits regulated lending institutions, at their discretion, to accept policies issued by private insurers that do not meet the statutory definition of "private flood insurance" to satisfy the mandatory purchase requirement, the Agencies are requesting comment on whether they should require the following criteria for such discretionary policies pursuant to the Agencies' authority to implement the FDPA's general mandatory purchase requirement.

First, State insurance regulators, as the functional regulator of insurance companies, may be in the best position to evaluate the condition and ability of a private insurer to issue a flood insurance policy. Accordingly, the Agencies could require that flood insurance issued by a private insurer that a regulated lending institution may accept at its discretion must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located by the insurance regulator of the State. Further, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, the Agencies could require that the private insurance provider must be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located.<sup>28</sup>

Second, the Agencies could require that the coverage provided under any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must be at least as broad as the coverage provided by a SFIP under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For example, the private flood insurance policy must provide coverage for the foundation of a building in addition to the above-ground portion of the building. This criterion could ensure that a private flood insurance policy accepted by a regulated lending institution provides the institution and the borrower with appropriate and sufficient coverage for the property securing the loan.

<sup>28</sup> As discussed above in the **SUPPLEMENTARY INFORMATION** accompanying the definition of "private flood insurance" in      *Definitions*, with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC's IID List.

Finally, the Agencies could require that any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must include a mortgage interest clause similar to the clause contained in a SFIP.<sup>29</sup> Therefore, the Agencies could require the mortgage interest clause to cover the interests of both the insured (whether such insured is a mortgagor/borrower or another entity that purchased the policy, such as a condominium owners' association) and the mortgagee (the lender). Having both the insured and the mortgagee covered in the mortgage interest clause would mean that, in the event of a loss, the interests of both the regulated lending institution and the insured would be protected.

The Agencies solicit comment as to whether requiring the above criteria for any flood insurance policy issued by a private insurer that a lender accepts at its discretion would be inconsistent with State legal requirements and industry practice with respect to private flood insurance. The Agencies also solicit comment as to whether criteria, additional to those discussed above, should be imposed if the Agencies permit regulated lending institutions to accept a private flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance."<sup>30</sup> The Agencies believe that the proposed mandatory acceptance approach is consistent with both the statutory language and Congressional intent.<sup>31</sup> Additionally, the Agencies request comment on whether allowing discretionary acceptance of flood insurance policies issued by private insurers not meeting the statutory definition of private flood insurance but requiring that such discretionary policies meet certain criteria could encourage development of the private flood insurance market while also ensuring that regulated lending institutions and borrowers are properly protected. The Agencies also seek comment regarding the experience of both lenders and their borrowers with respect to policies issued by private

<sup>29</sup> "Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear." NFIP Dwelling Form.

<sup>30</sup> Additionally, as indicated above, nothing in the Act can be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance. See 42 U.S.C. 4012a(b)(5).

<sup>31</sup> 158 Cong. Rec. H4616–01, H4621–H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

insurers that do not meet the statutory definition of "private flood insurance" as compared to policies issued by private insurers that meet the statutory definition of "private flood insurance."

Regulated lending institutions have previously relied upon FEMA's "Mandatory Purchase of Flood Insurance Guidelines" (Guidelines) for guidance when determining whether a private insurance policy conforms to the flood insurance requirements. FEMA had advised that, to the extent that the private policy differs from the NFIP's policy, the differences should be carefully examined before accepting the policy. On February 4, 2013, FEMA rescinded the Guidelines and advised lenders to "consult their respective regulatory agency for information regarding compliance with the mandatory purchase requirements."<sup>32</sup> The Agencies note that currently institutions continue to have the discretion to accept flood insurance issued by a private insurer pursuant to section 102(b)(1)(A) of the FDPA.

#### Exemptions

The Agencies are proposing a technical amendment to change the reference to the head of FEMA from Director to Administrator.

#### Escrow requirement

##### In General

Pursuant to section 102(d) of the FDPA, as amended by section 100209(a) of the Act and Public Law 112–281,<sup>33</sup> the Agencies are proposing to revise their regulations to require regulated lending institutions, or servicers acting on behalf of a regulated lending institution, to escrow all premiums and fees for flood insurance required for any loans secured by residential improved real estate or a mobile home unless the lending institutions qualify for the statutory exception.<sup>34</sup> In addition, these

<sup>32</sup> FEMA Letter, February 4, 2013. See <http://www.fema.gov/library/viewRecord.do?fromSearch=fromsearch&id=2954>.

<sup>33</sup> 126 Stat. 2485 (Jan. 14, 2013).

<sup>34</sup> The Agencies note that CFPB's mortgage servicing rule promulgated the new escrow requirements set forth in section 6 of RESPA, which were enacted in the Dodd-Frank Act. The CFPB's rule excludes flood insurance that is required under the FDPA from the new escrow requirements. 78 FR 10696, 10880 (Feb. 14, 2013). That is, the CFPB rule exempts from the definition of force-placed insurance, insurance required by the FDPA. *Ibid.* The CFPB's rule requires a servicer to advance funds to a borrower's escrow account and to disburse such funds in a timely manner to pay the premium charge on a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges). Thus, even if a borrower were delinquent by more than 31 days, a

premiums and fees must be payable with the same frequency as payments on the loan are made for the duration of the loan. Consistent with section 102(d) of the FDPA, as amended, the proposed provision applies to any loan secured by residential improved real estate or a mobile home that is made or is outstanding on or after July 6, 2014.

The Agencies are proposing to implement amended section 102(d) of the FDPA with some clarifications. First, as noted above, Public Law 112–281 amended section 102(d) of the FDPA, as amended by section 100209 of the Act, to insert the word "residential" prior to every mention of "improved real estate." The Agencies' understand that Congress's intent was to apply the escrow requirement to residential loans and exclude commercial loans.<sup>35</sup> Consequently, the Agencies are proposing that regulated lending institutions need not escrow flood insurance premiums and fees for loans that are an extension of credit for a business, commercial, or agricultural purpose even if secured by residential real estate. This exception is consistent with similar exceptions in the RESPA<sup>36</sup> and the Truth in Lending Act.<sup>37</sup>

Second, the Agencies are proposing that when a regulated lending institution has determined that a borrower has obtained flood insurance coverage that meets the mandatory purchase requirement for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees into an escrow account that has been established by another lender, the institution need not establish another escrow account for the same purpose. Such circumstances may arise, for example, when the regulated lending institution takes a second lien position on a particular property and the borrower is already paying flood insurance premiums and fees on such

servicer would be required under the CFPB's rule to advance funds to continue the borrower's hazard insurance policy. In promulgating this rule, the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. The Agencies do not have a similar grant of consumer protection authority under any of the Federal flood statutes.

<sup>35</sup> In a floor statement on January 1, 2013, in support of S. 3677, which was adopted as Public Law No. 112–281, Congresswoman Biggert stated that the bill is "necessary to clarify that this escrowing provision only applies to 'residential' mortgage loans and not commercial and multifamily loans." The statement further provides that the bill does not impose new escrow obligations on commercial and multifamily real estate servicers.

<sup>36</sup> See 12 U.S.C. 2606(a).

<sup>37</sup> See 15 U.S.C. 1603(1).

property into an escrow account established by the first lienholder. It is the Agencies' understanding that, in such cases, the lender in the second lienholder position will generally request the borrower to increase the current flood insurance policy coverage amount to satisfy the flood insurance purchase requirement for the second loan. The Agencies believe that the increase in premiums and fees due to the expanded coverage would then be paid into the escrow that was previously established by the first lienholder. Therefore, requiring a second escrow account to be established would not be necessary. However, if the first lienholder is not required to or otherwise does not escrow flood insurance premiums and fees for adequate insurance coverage for the residential improved real estate or a mobile home, the proposed rule would require the regulated lending institution in the second lienholder position to escrow required flood insurance premiums and fees, unless such regulated lending institution qualifies for an exception from the escrowing provisions.

Third, the Agencies recognize that when flood insurance coverage for a residential improved real estate or a mobile home is provided by a policy purchased by a common interest community, such as a condominium owners' association, the borrower is not the purchaser of the policy. If that policy is purchased by a common interest community in an amount that is sufficient to meet the mandatory flood insurance purchase requirement, then escrowing flood insurance premiums and fees on behalf of the borrower would not be necessary because the borrower would not be directly responsible for paying the flood insurance premiums or fees. As a result, the Agencies are proposing that a regulated lending institution need not establish an escrow account for flood insurance premiums and fees when the institution has determined that flood insurance coverage is provided by a policy purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the mandatory flood insurance purchase requirement, including coverage for the proper amount. If the amount of the policy purchased by a common interest community is insufficient to meet the mandatory flood insurance purchase requirement, however, the borrower would be required to obtain a supplemental policy to cover the

deficiency, and the proposed rule would require that the regulated lending institution escrow the premiums and fees for the supplemental policy. For example, if a condominium owners' association purchases an RCBAP or a private flood insurance policy for less than the maximum amount of insurance available under the NFIP, the borrower may be required to obtain a dwelling policy for supplemental coverage. If the borrower is required to obtain a dwelling policy, the proposed rule would require the regulated lending institution to escrow the premiums and fees for such policy.

#### Timing

The Agencies' proposal sets forth timing provisions that stipulate when regulated lending institutions must begin escrowing premiums and fees for required flood insurance. Section 100209(b) of the Act (42 U.S.C. 4012a note) provides that the escrow provisions apply to any mortgage outstanding or entered into on or after the expiration of the two-year period beginning on the date of enactment of the Act. Therefore, loans secured by residential improved real estate or a mobile home that are outstanding or entered into on or after July 6, 2014 are covered by this requirement, provided the loan is required to have flood insurance. Consequently, the Agencies propose that for any designated loans made on or after July 6, 2014, the regulated lending institution must begin escrowing upon loan consummation.

With respect to designated loans that are outstanding on July 6, 2014, the proposed rule would require regulated lending institutions to begin escrowing with the first loan payment after the first renewal date of the borrower's flood insurance policy that occurs on or after July 6, 2014. For example, if a borrower's current flood insurance policy will renew on March 15, 2015, and the borrower's loan payments are generally due the first of each month, the institution must begin escrowing with the loan payment due on April 1, 2015. The borrower would be responsible for paying the premium to renew the policy on March 15, 2015, however. Payments that are escrowed beginning April 1, 2015 will be used by the lender to pay the premiums for subsequent years.

The Agencies' proposal is intended to alleviate the potential burden to lenders and borrowers of establishing an escrow account for an outstanding loan for which a borrower was not previously escrowing flood insurance premiums and fees. By tying the establishment of the escrow to the time of flood

insurance policy renewal, the proposal would allow regulated lending institutions to comply with the requirement on a staggered basis, rather than requiring them to establish escrow accounts for all outstanding designated loans at one time.

The Agencies believe this proposal will also benefit borrowers. Delaying the establishment of the escrow until immediately after their flood insurance policy is renewed will ensure that all borrowers will have the maximum amount of time to escrow for their subsequent flood insurance policy renewal. If the Agencies were to require regulated lending institutions to establish escrow accounts for all outstanding designated loans at one time, some borrowers may be burdened with larger escrow payments to cover the premium for the full term over a shorter period of time than other borrowers. For example, if the Agencies required all regulated lending institutions to establish escrow accounts for all outstanding loans on July 6, 2014, then a borrower whose yearly flood insurance policy renewal date is September 15, 2014, would have only approximately two months to escrow for a full year of flood insurance premiums and fees while a borrower whose yearly flood insurance policy renewal date is March 15, 2015, would have approximately eight months to escrow for a full year of flood insurance premiums and fees. Consequently, the borrower with the March 15, 2015, renewal date would have smaller escrow payments each payment period than the borrower with the September 15, 2014 renewal date. Requiring regulated lending institutions to begin escrowing with the first loan payment after the borrower renews the existing policy would mean that all borrowers will have the maximum amount of time to escrow for the next flood insurance payment, regardless of when their policies renew.

The Agencies request comment on the timing proposed for complying with the escrow requirement for outstanding loans and whether regulated lending institutions should be provided the option of complying with the escrow requirement earlier than the dates set forth in the proposal. Lenders with a small number of designated loans that are not otherwise excepted from the escrow requirement may prefer to establish all required escrow accounts for outstanding designated loans in their portfolio at one time, prior to the insurance policy renewal dates. Permitting institutions to comply with the escrow requirement earlier, however, may mean that some



borrowers will have less time to make escrow payments for flood insurance premiums and fees associated with the first insurance policy payment to be paid out of the funds in the escrow than other borrowers, depending on when the regulated lending institution, or its servicer, decides to comply with the escrow requirement. Although borrowers would ultimately pay the same amount regardless of when the escrow begins, the Agencies request comment on whether lenders' early compliance with the escrow requirements would be otherwise detrimental to borrowers, and if so, how it may be detrimental.

The Agencies are also proposing to address the timing applicable to loans that were not designated loans at the time that they were made, but become designated loans after July 6, 2014. This may occur, for example, when there is a FEMA map change, and a building that was not previously located in an SFHA is now located in an SFHA. In those instances, the loan secured by such building may be required to have flood insurance under the FDPA. If flood insurance is required, a regulated lending institution, or a servicer acting on its behalf, also would be required to establish an escrow account to comply with the FDPA, as amended by the Act. The proposed rule would require regulated lending institutions to begin escrowing premiums and fees for required flood insurance with the first loan payment after the flood insurance policy is established. Under the proposal, this initial flood insurance policy may either be purchased by the borrower or, if the borrower failed to purchase a policy, force-placed by the regulated lending institution.

The following explanation illustrates how this provision would operate. Under the Agencies' proposal, in the situation in which a lender determines that a loan that was not originally a designated loan, but has become a designated loan, for example, due to remapping, the lender would notify the borrower that flood insurance is required, as provided in the force-placement provision of the rule. After the required notification, either the borrower would purchase and pay for a flood insurance policy or the lender would force-place a policy and charge the borrower for the cost of coverage. The lender also would commence escrowing payments to cover premiums and fees, which would be applied to the next annual policy renewal, upon the borrower's next loan payment.

The Agencies solicit comment on whether the requirement to begin escrowing for a loan that becomes a

designated loan after July 6, 2014, should be limited only to when a borrower-purchased flood insurance policy is established and exclude instances in which a lender-placed flood insurance policy is established. If the rule were to be limited only to when a borrower-purchased flood insurance is established, a regulated lending institution would not be required to escrow flood insurance premiums and fees when it force-places an initial flood insurance policy. In this instance, after the expiration of such a force-placed insurance policy, there would be no funds escrowed for any policy that may be purchased at that time, whether it is borrower-purchased or lender-placed. Under the proposed rule, a regulated lending institution would be required to escrow flood insurance premiums and fees following the establishment of a force-placed policy for a loan that becomes a designated loan after July 6, 2014. If a borrower fails to purchase the requisite flood insurance upon the expiration of such force-placed insurance, then the lender would use the escrowed funds to renew or purchase a new force-placed policy.

#### Notice

In order to ensure that borrowers are well-informed about the escrow requirement to collect premiums and fees for required flood insurance, the Agencies are proposing that regulated lending institutions provide borrowers with a written notice. Specifically, the proposed rule would mandate that a regulated lending institution, or a servicer acting on its behalf, mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. In order to facilitate compliance with the proposed notice requirement, the Agencies are proposing model language for this notice as discussed in more detail below in the **SUPPLEMENTARY INFORMATION** to Appendices A, B, and C. To minimize the burden to regulated lending institutions of providing this notice and to ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance, the proposal takes advantage of flood insurance notices that already are required under current law. Specifically, the proposal adds language regarding the escrow requirement to the existing Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, included in the Agencies' current rules as Appendix A. The proposal would require that, for designated loans made on or after July 6, 2014, a regulated lending institution,

or a servicer acting on its behalf, must provide a notice that contains language substantially similar to model clauses on the escrow requirement in the revised sample notice provided in Appendix A with or on the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Similarly, under the proposal, for a loan that becomes a designated loan after July 6, 2014, a regulated lending institution, or a servicer acting on its behalf, must provide notice concerning the escrow requirement with the force-placement notice, using language that is substantially similar to the sample language proposed in Appendix C.

However, for loans that are outstanding on July 6, 2014, there are no required notices under current law that the regulated lending institution would be certain to provide before the institution would be required to begin escrowing under the proposal. Consequently, the Agencies are proposing that a regulated lending institution, or a servicer acting on its behalf, provide a separate notice describing the escrow requirement, substantially similar to the sample notice proposed by the Agencies in Appendix B, at least 90 days before the regulated lending institution must begin escrowing. The Agencies believe that 90 days' advance notice would give borrowers sufficient time to gather the necessary funds for the escrow. However, the Agencies solicit comment on whether 90 days is an appropriate time period to provide notice for loans outstanding on July 6, 2014.

#### Exception

This proposal implements the statutory exception to the escrow requirement substantially as included in the Act with some clarifications. The statute states that, except as provided by State law, regulated lending institutions that have total assets of less than \$1 billion are exempt from this escrow requirement if, on or before July 6, 2012, the institution: (i) in the case of a loan secured by residential improved real estate or a mobile home, 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 the loan; and (ii) 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 loans secured by residential improved real estate or a mobile home.

Because the Act does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the

exception, the Agencies are proposing that a regulated lending institution may qualify for the exception if it has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years. Thus, a regulated lending institution would only be subject to the escrow requirement if it has assets of \$1 billion or more as of December 31 for at least two consecutive years. Consequently, if the proposal is finalized and becomes effective in 2014, regulated lending institutions with assets of \$1 billion or more as of both December 31, 2012, and December 31, 2013, would not qualify for the exception. In contrast, a regulated lending institution with assets of less than \$1 billion as of either December 31, 2012 or December 31, 2013, may qualify for the exception, provided the other conditions for the exception are met.

This measurement method is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under the Community Reinvestment Act (CRA).<sup>38</sup> The Agencies believe the asset measurement method these agencies have used with respect to CRA is an appropriate model in this case as it ensures an institution is definitively over the size threshold before requiring the institution to expend the resources needed to establish a new escrow program.

Moreover, the Agencies are proposing transition rules for a change in status of a regulated lending institution that may initially qualify for the exception, but later grows to exceed the \$1 billion asset size threshold. Similar to the Board's Regulation II, the Agencies propose to give regulated lending institutions approximately six months to begin complying with the escrow requirement.<sup>39</sup> The proposed rules would mirror the proposed rules concerning the timing requirements for when regulated lending institutions must begin to escrow for loans outstanding or entered into on or after July 6, 2014. Therefore, for any designated loans outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require the institution to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year. For any designated loan made after July 1 of the succeeding calendar year

after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing upon loan consummation. Finally, for any loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing with the first loan payment after the flood insurance policy is established.

For example, assume a regulated lending institution qualified for the exception in 2014, but had assets of \$1 billion or more as of December 31, 2014, and December 31, 2015. In that case, 2016 would be the succeeding calendar year. Under the proposal, such regulated lending institution would be required to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1, 2016, for any loan outstanding on July 1, 2016. For any designated loan made after July 1, 2016, the proposal would require such institution to begin escrowing upon loan consummation. For any loan that becomes a designated loan after July 1, 2016, the proposal would require such institution to begin escrowing with the first loan payment after the flood insurance policy is established.

In addition, the Agencies are proposing the same notice obligation for regulated lending institutions after a change in status with similar timing requirements as would apply to other regulated lending institutions that are subject to the escrow requirement. As a result, for loans that are outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require a regulated lending institution to provide notice on the escrow requirement at least 90 days before the regulated lending institution must begin escrowing, using language that is substantially similar to the language provided in Appendix B. For designated loans that are made on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the Agencies propose that notice concerning the escrow requirement be provided with the notice of special flood hazards, using language that is substantially similar to the escrow requirement language provided in the sample form of notice contained in Appendix A. Finally, for a loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, notice concerning the escrow requirement would be provided

with the force-placement notice under the proposal, using language substantially similar to the sample language provided in Appendix C.

#### Change in Ownership

The Agencies also are proposing a provision to address situations in which a regulated lending institution that is required to comply with the escrow requirement acquires a designated loan that is covered by FDPA-required flood insurance that becomes subject to the escrow requirement as a result of the acquisition. For example, this may occur if a lender that qualifies for the statutory exception sells the loan to or merges with a regulated lending institution that must comply with the escrow requirement. In these cases, the Agencies are proposing that the regulated lending institution must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan. For instance, suppose a regulated lending institution that is required to comply with the escrow requirement purchases loans from an institution that is not subject to the escrow requirement, and the transfer date for the loans is February 1, 2015. Under the proposal, for any designated loan that is transferred on February 1, 2015, the regulated lending institution that acquires the loan must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after August 1, 2015.

This proposed timing is similar to the timing the Agencies have proposed for regulated lending institutions that no longer qualify for the statutory exception. Furthermore, as with the notice requirement proposed for other outstanding designated loans, the Agencies are proposing that a regulated lending institution provide notice at least 90 days before the institution must begin to escrow for a designated loan that becomes subject to the escrow requirement as a result of a change in loan ownership.

#### *Required use of standard flood hazard determination form.*

The Agencies are proposing technical amendments in this section to change the reference to the head of FEMA from Director to Administrator and to update how a lending institution may obtain the standard flood hazard insurance form by directing the institution to FEMA's Web site.

<sup>38</sup> See 12 CFR 25.12(u); 12 CFR 195.12(u); 12 CFR 228.12(u); and 12 CFR 345.12(u).

<sup>39</sup> See 12 CFR 235.5(a)(3).

### *Force placement of flood insurance.*

Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies are proposing to amend their rules for the force-placement of flood insurance.<sup>40</sup> The proposal implements section 100244 of the Act by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate a borrower has flood insurance coverage.

### Notice and Purchase of Coverage

Under current regulations, if a regulated lending institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the FDPA, then the regulated lending institution or its servicer must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under the mandatory purchase requirements, for the remaining term of the designated loan. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the regulated lending institution or its servicer must purchase flood insurance on behalf of the borrower. The regulated lending institution or servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies propose to amend their regulations to provide that the regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Agencies' understanding is that the date on which the flood insurance coverage lapsed is the expiration date provided in the policy.

<sup>40</sup> The Agencies note that section 1463(a) of the Dodd-Frank Act sets forth requirements relating to the force placement of hazard insurance. The CFPB has excluded flood insurance required under the FDPA from the force placement requirements in its rule implementing this provision. 78 FR 10696, 10880 (February 14, 2013).

The Agencies seek comment on whether the Agencies' interpretation of the term "lapsed" is consistent with the insurance industry's use of the term and as to whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.

For purposes of safety and soundness, regulated lending institutions should monitor the continuous coverage of flood insurance for the building or mobile home and any personal property securing a designated loan. Additionally, the Agencies interpret the Act to permit a regulated lending institution 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 that it is continuous. Such a practice will ensure that institutions complete the force-placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution.

### Termination of Force-Placed Insurance

As provided in section 102(e)(3) of the FDPA, as added by section 100244 of the Act, the Agencies propose that within 30 days of receipt by a regulated lending institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to: (i) Notify the insurer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer; and (ii) refund to the borrower all premiums paid by the borrower for any insurance purchased by the regulated lending institution or its servicer under this section for any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the regulated lending institution or its servicer were each in effect (overlap period), and any related fees charged to the borrower with respect to the insurance purchased by the regulated lending institution or its servicer during such overlap period.

The Agencies realize that, although regulated lending institutions and servicers can request that a force-placed insurance policy be terminated, the insurer is the party that actually cancels the policy. The Agencies' proposal therefore clarifies the statutory language in section 102(e)(3) of the FDPA, as amended by section 100244 of the Act, to require the institution only to notify the insurer to terminate the force-placed policy and to fully refund to the borrower the premiums and fees for the

overlap period within the 30-day period required by the statute.

In addition, the Agencies note that section 102(e)(3) of the FDPA, as amended, and the Agencies' proposed regulations, do not specify a party from which a regulated lending institution must receive confirmation of a borrower's existing flood insurance coverage. Therefore, regulated lending institutions may receive the confirmation from either the borrower or a third party, such as an insurance agent or insurer with whom the institution has direct contact.

### Sufficiency of Demonstration

Pursuant to section 102(e)(4) of the FDPA, as amended by section 100244 of the Act, the Agencies propose that for the purposes of confirming a borrower's existing flood insurance coverage, a regulated lending institution or its servicer must accept from the borrower 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 its agent, as confirmation of the existence of coverage. A lender is responsible for making all necessary inquiries into the adequacy of the borrower's insurance policy to ensure the policy complies with the mandatory purchase requirement. If the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request the borrower to obtain an adequate flood insurance policy.

### *Determination fees.*

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

### *Notice of special flood hazards and availability of Federal disaster relief assistance.*

Section 100239 of the Act adds a new section 102(b)(6) to the FDPA (42 U.S.C. 4012a(b)(6)) requiring regulated lending institutions to disclose to a borrower that: (i) Flood insurance is available from private insurance companies that issue SFIPs on behalf of the NFIP or directly from the NFIP; (ii) flood insurance that provides the same level of coverage as an SFIP under the NFIP may be available from a private insurance company that issues policies on behalf of the company; and (iii) 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 to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent. Furthermore, section 100239(b) of the Act amends section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)) to require that the disclosures in section 102(b)(6) of the FDPA be provided in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Therefore, the proposal requires the disclosures set forth in section 102(b)(6) of the FDPA to be included in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Agencies have proposed model language to include in the sample form of notice contained in Appendix A.

#### *Notice of servicer's identity.*

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

#### *Appendices A, B, & C*

As noted above in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Notice of special flood hazards and availability of Federal disaster relief assistance*, the Agencies are proposing to amend the sample form of notice contained in Appendix A to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of the Act, regarding the availability of private flood insurance coverage. The proposed additions to the sample form closely track the statutory language. The Agencies also are proposing to revise the language relating to the coverage limit to more accurately reflect what is actually covered under the Federal flood statutes, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Requirement to purchase flood insurance coverage where available*. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is available only on the building or mobile home and any personal property that secures the loan and not the land itself. The Agencies propose other technical amendments to the sample form of notice contained in Appendix A, to change the references to the head of FEMA from Director to Administrator.

In addition, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Escrow requirement*, the Agencies are proposing that regulated lending

institutions mail or deliver a written notice informing borrowers about the requirement to escrow premiums and fees for required flood insurance. To facilitate compliance with the proposed notice requirement, the Agencies are proposing model language that may be included, if applicable, in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance as set forth in the sample form of notice contained in Appendix A. The Agencies also are proposing a sample form of notice in new Appendix B that may be used for designated loans that are outstanding as of the date a regulated lending institution becomes subject to the escrow requirement or acquires a designated loan that becomes subject to the escrow requirement. Finally, new Appendix C provides a proposed Sample Clause with respect to the escrow requirement notice that regulated lending institutions could include in a notice of force-placement for a loan that becomes a designated loan after a regulated lending institution becomes subject to the escrow requirement.

#### **V. Regulatory Analysis**

##### *Regulatory Flexibility Act*

**OCC:** In general, the Regulatory Flexibility Act (RFA) requires that in connection with a notice of proposed rulemaking an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>41</sup> Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. We have concluded that the proposed rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,257 small national banks, Federal savings associations, trust companies, and branches or agencies of foreign banks.<sup>42</sup> If

<sup>41</sup> See 5 U.S.C. 601 *et seq.*

<sup>42</sup> We base our estimate of the number of active small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$500 million and \$35.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR § 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2012 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8

implemented, the draft NPRM would impact approximately 871 of these small institutions. Thus, the proposed rule impacts a substantial number of small institutions. The OCC classifies the economic impact of total costs on an institution as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small institution is approximately \$23,000 per year.<sup>43</sup> Using this cost estimate, we believe the proposed rule will have a significant economic impact on eleven small institutions supervised by the OCC, which is not a substantial number. Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

**Board:** The RFA requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is proposing revisions to Regulation H to implement certain provisions of the Act over which the Agencies, including the Board, have jurisdiction. Consistent with the Act, the proposal would require a regulated lending institution (or its servicer) to escrow the premiums and fees for required flood insurance for any loan secured by residential improved real estate or a mobile home, unless the lender qualifies under the statutory exception for certain small lenders.

The proposal also would implement the Act's requirement that regulated lending institutions accept any private insurance policy that meets the Act's definition of "private flood insurance" in satisfaction of the mandatory purchase requirement. The proposed

of the U.S. Small Business Administration's *Table of Size Standards*.

<sup>43</sup> Because the OCC does not have the information to determine whether a small institutions would meet the exception for the escrow requirement provided by proposed § 22.5(c), we have not applied this exception in our calculations. Therefore, our estimated costs per small bank may be overstated.

rule would also include a safe harbor allowing lenders to rely on a State insurance regulator's written determination that a particular private insurance policy satisfies the Act's definition. Regulated lending institutions would also be required to provide disclosures on the availability of private flood insurance, as mandated by the Act.

The Act also includes provisions related to the force placement of flood insurance, which the proposal would implement. These provisions clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred in the purchase of force-placed flood insurance from the date coverage lapsed or did not provide a sufficient amount of coverage. The provisions also provide that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to terminate any force-placed insurance purchased by the regulated lending institution, and refund to the borrower all premiums paid by the borrower for lender-placed coverage for any period during which the borrower's flood insurance coverage and the lender-place coverage overlapped.

*2. Small entities affected by the proposed rule.* All State member banks that are subject to Regulation H would be subject to the proposed rule. As of June 30, 2013, there were 844 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of \$500 million or less are considered small. Of the 844 State member banks subject to Regulation H, approximately 634 State member banks would be considered small entities by the SBA.

As discussed in detail above in the **SUPPLEMENTARY INFORMATION**, regulated lending institutions with total assets less than \$1 billion would generally be exempt from the proposed rules implementing the escrow provisions of the Act. Therefore, the escrow provisions of the proposed rule would generally not affect small entities. Furthermore, the Act's force placement provisions already went into effect upon passage of the Act on July 6, 2012. As a result, the proposed rules implementing the Act's force placement provisions should not have any impact on small entities who were required to comply with the provisions as of July 6, 2012. Even prior to the Act's passage, regulated lending institutions, including those that are considered small entities, would have had mechanisms in place to refund premiums and fees to borrowers

for any period of overlap between a force placed policy and a borrower's policy. Consequently, the Act's force placement provisions, which set forth procedures for terminating force placed insurance and refunding premiums and fees to the borrower, nevertheless would have had minimal impact on regulated lending institutions.

With respect to the proposed rules regarding the acceptance of private flood insurance, the Board believes the rules will not have a significant impact on small entities because regulated lending institutions, including those that are considered small entities, currently are permitted to accept private flood insurance policies. Moreover, as discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule would seek to alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" by providing a safe harbor permitting lenders to rely on the determination of a State insurance regulator. Small entities will be required under the proposal to amend their notices of special flood hazards to include information on the availability of private flood insurance. The proposal provides sample forms to facilitate compliance and reduce burden upon small institutions.

*3. Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

*4. Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

*FDIC:* The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. As of March 31, 2013, there were approximately 3,711 small FDIC-

supervised banks which include 3,398 State nonmember banks and 259 State-chartered savings banks, and 54 savings associations.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of the small entities, which the FDIC supervises. The FDIC reaches this conclusion in reliance upon the fact that the only requirements that the Act requires the Agencies to impose upon supervised entities as a matter of regulation are the escrow requirement and the requirement to accept private flood insurance. The Act provides that generally a depository institution with assets of less than \$1 billion is not required to comply with the escrow requirement. As a result, due to this statutory exclusion, by law the escrow requirement cannot have a significant economic impact on a substantial number of small entities. The requirement to accept private flood insurance also cannot have a significant economic impact on a substantial number of small entities since depository institutions were permitted to accept private flood insurance for NFIP purposes even before the Act's amendments. For these reasons, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities that it supervises.

*FCA:*

Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

*NCUA:*

The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>44</sup> For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.<sup>45</sup> As of June 30, 2013, there are 1,803 small, federally insured credit unions. The proposed rule would require a credit union to escrow the premiums and fees for required flood

<sup>44</sup> 5 U.S.C. 603(a).

<sup>45</sup> Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

insurance for any loan secured by residential improved real estate or a mobile home. The proposed rule would also implement the requirement that credit unions accept any private insurance policy that meets the statutory definition of "private flood insurance", and includes provisions related to the force placement of flood insurance.

Under this proposed rule, credit unions with total assets less than \$1 billion would generally be exempt from the escrow provisions. Therefore, the escrow provisions of the proposed rule would not affect small credit unions. For private flood insurance, NCUA does not believe the proposed rule will have a significant impact on small credit unions since credit unions are currently allowed to accept private flood insurance. In addition, the proposed rule provides a safe harbor for regulated lending institutions (which includes credit unions), including small entities, for evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance". Lastly, the force placement provisions in the proposed rule were effective on July 6, 2012, and credit unions have been enforcing force placement provisions already. In addition, credit unions currently have the tools to refund premiums and fees whenever a borrower's policy overlaps a force-placed policy, as required in the proposed rule.

NCUA finds that this proposed rule would affect relatively few federally insured, small credit unions and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small entities.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) requires certain agencies, including the OCC, to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has estimated that the total cost associated with this NPRM, if implemented, would be approximately \$72 million and the average cost per institution would be \$55,000. However, pursuant to section 201 of the UMRA,

a regulation does not impose a mandate to the extent it incorporates requirements "specifically set forth in the law." Therefore, we exclude from our UMRA estimate costs specifically related to requirements set forth in the Act, such as costs related to establishing escrow accounts, amendments to the force placement provisions, and the acceptance of private flood insurance policies. Furthermore, under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. Therefore, based on these exclusions, our UMRA cost estimate for the NPRM, if implemented, is zero.

Accordingly, because the OCC has determined that this proposed rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more, we have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)<sup>46</sup> have determined that this proposed rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as permitted by the PRA, the OCC, Board, and FDIC also propose to extend for three years their respective information collections.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557-0202 (OCC), 7100-0280 (Board), and 3064-0120 (FDIC).<sup>47</sup>

<sup>46</sup> The FCA has determined that the proposed rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

<sup>47</sup> NCUA's part 760 contains various information collection requirements as described in the PRA and previously submitted by NCUA.

The proposed rule adds a notice requirement stating that institutions or services that are required to escrow all premiums and fees for required flood insurance must issue a written notice to the borrower.

This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers. Because the Agencies do not collect any information, no issue of confidentiality arises. The respondents are for-profit and non-profit financial institutions, including small businesses.

Entities subject to the Agencies' existing flood insurance rules will have to review and revise disclosures that are currently provided to ensure that such disclosures accurately reflect the disclosure requirements in this proposed rule. Entities subject to the rule may also need to develop new disclosures to meet the proposed rule's timing requirements.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Agencies. The Agencies expect that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The Agencies estimate that respondents would take, on average, 40 hours to update their systems in order to comply with the disclosure requirements and the one-time escrow notice under the proposed rule. In an effort to minimize the compliance cost and burden, particularly for small entities that do not meet the requirement for the statutory exception, the proposed rule contains model disclosures in appendices A, B, and C that may be used to satisfy the requirements.

#### Burden Estimates

##### OCC:

Number of Respondents: 1,316.

Burden for Existing Recordkeeping Requirements: 196,907 hours.

Burden for Existing Disclosure Requirements: 244,208 hours.

Burden for Proposed Rule: 52,640 hours.

Total Burden for Collection: 493,755 hours.

##### Board:

Number of Respondents: 843.

Burden for Existing Recordkeeping Requirements: 14,191 hours.

Burden for Existing Disclosure Requirements: 17,632 hours.

Burden for Proposed Rule: 33,720 hours.

Total Burden for Collection: 65,543 hours.

**FDIC:**

Number of Respondents: 4,421.

Burden for Existing Recordkeeping Requirements: 61,894 hours.

Burden for Existing Disclosure Requirements: 76,999 hours.

Burden for Proposed Rule: 176,840 hours.

Total Burden for Collection: 315,733 hours.

**NCUA:**

Number of Respondents: 4,192.

Burden for Existing Recordkeeping Requirements: 57,230.85 hours.

Burden for Existing Disclosure Requirements: 70,966.26 hours.

Burden for Proposed Rule: 8,240 hours.

Total Burden for Collection: 136,437.11 hours.

These collections are available to the public at [www.reginfo.gov](http://www.reginfo.gov).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agencies' functions; including whether the information has practical utility; (2) the accuracy of the Agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

**OCC:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: [1557-0202], 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**Board:** Cynthia Ayouch, Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop 95, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0280), Washington, DC 20503.

**FDIC:** You may submit comments, which should refer to "Interagency Flood Insurance, 3064-0120" by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

Include "Interagency Flood Insurance, 3064-0120" in the subject line of the message.

- **Mail:** Gary A. Kuiper, Counsel, Attn: Comments, Room NYA-5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

**Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

**NCUA:** Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOpra@ncua.gov](mailto:OCIOpra@ncua.gov).

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395-6974; or by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

#### List of Subjects

##### 12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 172

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 391

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

##### 12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

#### Office of the Comptroller of the Currency

##### 12 CFR CHAPTER I

##### Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the OCC proposes to amend Part 12 Chapter I as follows:

■ 1. Revise Part 22 to read as follows::

#### PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

##### Sec.

22.1 Purpose and scope.

22.2 Definitions.

22.3 Requirement to purchase flood insurance where available.

22.4 Exemptions.

22.5 Escrow requirement.

22.6 Required use of standard flood hazard determination form.

22.7 Force-placement of flood insurance.

22.8 Determination fees.

22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

22.10 Notice of servicer's identity.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Appendix B to Part 22—Sample Form of Notice of Requirement to Escrow For Outstanding Loans

Appendix C to Part 22—Sample Escrow Requirement Clause for Loans That Become Designated Loans

**Authority:** 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

**§ 22.1 Purpose and scope.**

(a) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

**§ 22.2 Definitions.**

For the purposes of this part:

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *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.

(d) *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.

(e) *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.

(f) *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.

(g) *NFIP* means the National Flood Insurance Program authorized under the Act.

(h) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of

insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage;

(2) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property for which the insurance is providing coverage;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

(j) *Federal savings association* means, for purposes of this part, a Federal savings association as that term is defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof.

(k) *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.

(l) *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.

(m) *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.

**§ 22.3 Requirement to purchase flood insurance where available.**

(a) *In general.* A national bank or Federal savings association shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A national bank or Federal savings association that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance.* (1) *Mandatory acceptance.* A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(h), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 22.2(h) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 22.2(h).

**§ 22.4 Exemptions.**

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.



**§ 22.5 Escrow requirement.**

(a) *In general.* (1) *Applicability.*

Except as provided in paragraph (c) of this section, a national bank or Federal savings association, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the national bank or Federal savings association has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 22.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 22.3(a).

(2) *Timing.* A national bank or Federal savings association that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow Account.* The national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be

maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A national bank or Federal savings association that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the national bank or Federal savings association, shall mail or deliver a written notice informing the borrower that the national bank or Federal savings association is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 22.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 22.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a national bank or Federal savings association:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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 a loan secured by residential improved real estate or a mobile home; and

(B) 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 loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a national bank or Federal savings association

previously qualified for the exception in paragraph § 22.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the national bank or Federal savings association must begin escrowing premiums and fees for flood insurance pursuant to § 22.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a national bank or Federal savings association that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 22.3(a) that becomes subject to paragraph (a) of this section as a result of the bank's or savings association's acquisition of the loan, the bank or savings association must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

**§ 22.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* A national bank or Federal savings association shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A national bank or Federal savings association may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A national bank or Federal savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank or savings association owns the loan.

**§ 22.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a national bank or Federal savings association, or a servicer acting on behalf of the bank or savings association, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the national bank or Federal savings association, or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the national bank or Federal savings association, or its servicer, shall purchase insurance on the borrower's behalf. The national bank or Federal savings association, or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a national bank or Federal savings association, or a servicer acting on the bank's or saving association's behalf, of a confirmation of a borrower's existing flood insurance coverage, the national bank or Federal savings association, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the national bank or Federal savings association or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the national bank or Federal savings association or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a national bank or Federal savings association or its servicer shall accept from the

borrower 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.

**§ 22.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001— 4129), any national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located;

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 22.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**§ 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank or savings association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether

or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) 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;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) 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

(6) 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.

(c) *Timing of notice.* The national bank or Federal savings association shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank or savings association provides notice to the borrower and in any event no later than the time the bank or savings association provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The national bank or Federal savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a national bank or Federal savings association may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The national bank or Federal savings association shall retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

(f) *Use of prescribed form of notice.* A national bank or Federal savings association will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### **§ 22.10 Notice of servicer's identity.**

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the national bank's or Federal savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The national bank or Federal savings association shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

#### **APPENDIX A TO PART 22—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE**

##### **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.

##### **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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

##### **[Escrow Requirement for Residential Loans]**

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

#### **APPENDIX B TO PART 22—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS**

##### **Notice of Escrow Requirement**

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### **How the Escrow Will Work**

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### **When the Escrow Will Start**

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### APPENDIX C TO PART 22—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

##### Escrow Requirement Clause

Federal law requires 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. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### PART 172—[REMOVED]

##### ■ 2. Remove part 172.

#### Federal Reserve System

##### 12 CFR CHAPTER II

##### Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

##### ■ 1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

##### ■ 2. Revise § 208.25 as follows:

#### § 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose*. The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of

1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope*. This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions*. For purposes of this section:

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

(2) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(3) *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.

(4) *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.

(5) *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.

(6) *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 section, 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 National Flood Insurance Program.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of

difference in conditions, multiple peril, all risk, or other blanket coverage;

(ii) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(iii) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(1) The insured; and

(2) The member bank that made the designated loan secured by the property for which the insurance is providing coverage;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

(10) *Servicer* means the person responsible for:

(i) 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

(ii) 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.

(11) *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.

(12) *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.

(c) *Requirement to purchase flood insurance where available*—(1) *In general*. A member bank shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(3) *Private flood insurance.* (i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(8) of this section, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (c)(1) of this section.

(ii) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in paragraph (b)(8) of this section for purposes of paragraph (c)(1) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in paragraph (b)(8) of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* (1) *In general.*

(i) *Applicability.* Except as provided in paragraph (e)(3) of this section, a member bank, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the member bank has determined that:

(A) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(B) The borrower has obtained flood insurance coverage that meets the requirements of paragraph (c)(1) of this section for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(C) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of paragraph (c) of this section.

(ii) *Timing.* A member bank that is subject to paragraph (e)(1) of this section, other than due to a change in status under paragraph (e)(3)(ii) of this section or for acquired loans subject to paragraph (e)(4) of this section, shall begin escrowing premiums and fees for flood insurance:

(A) for any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(B) for any designated loan made on or after July 6, 2014, upon loan consummation; or

(C) for any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(iii) *Escrow account.* The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(2) *Notice.* A member bank that is required to comply with paragraph (e)(1) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the member bank is required to

escrow all premiums and fees for required flood insurance:

(i) For loans subject to paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, using language that is substantially similar to the model form in appendix B; or

(ii) For loans subject to paragraphs (e)(1)(ii)(B) or (e)(3)(ii)(B) of this section, with the notice provided under paragraph (i) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(iii) For loans subject to paragraphs (e)(1)(ii)(C) or (e)(3)(ii)(C) of this section, with the notice provided under paragraph (g) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(3) *Exception.* (i) *Qualification.* Except as may be required under applicable State law, paragraphs (e)(1) and (2) of this section do not apply to a member bank:

(A) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(B) On or before July 6, 2012:

(1) 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 a loan secured by residential improved real estate or a mobile home; and

(2) 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 loans secured by residential improved real estate or a mobile home.

(ii) *Change in status.* If a member bank previously qualified for the exception in paragraph (e)(3)(i) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section:

(A) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(B) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(C) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first

loan payment after the flood insurance policy is established.

(4) *Change in ownership.* If a member bank that is required to comply with paragraph (e)(1) of this section acquires a designated loan covered by flood insurance required under paragraph (c) of this section that becomes subject to paragraph (e)(1) of this section as a result of the member bank's acquisition of the loan, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

(f) *Required use of standard flood hazard determination form.*—(1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Force placement of flood insurance.* (1) *Notice and purchase of coverage.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees

incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(2) *Termination of force-placed insurance.* (i) *Termination and refund.* Within 30 days of receipt by a member bank, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the member bank or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the member bank or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the member bank or its servicer during such period.

(ii) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (g)(2)(i) of this section, a member bank or its servicer shall accept from the borrower 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.

(h) *Determination fees.*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(iii) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) 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;

(ii) 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));

(iii) 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;

(iv) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(v) 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

(vi) 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.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of prescribed form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) of this section by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity.* (1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60

days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) of this section shall transfer to the transferee servicer.

#### **APPENDIX A TO § 208.25—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE**

##### **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.

##### **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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

##### **[Escrow Requirement for Residential Loans]**

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

#### **APPENDIX B TO § 208.25—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS**

##### **Notice of Escrow Requirement**

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### **How the Escrow Will Work**

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### **When the Escrow Will Start**

When you receive your next flood insurance bill with the renewal of your

policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### APPENDIX C TO § 208.25—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

##### Escrow Requirement Clause

Federal law requires 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. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### Federal Deposit Insurance Corporation 12 CFR CHAPTER III

##### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations to read as follows:

■ 1. Part 339 is revised to read as follows:

#### PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.

339.2 Definitions.

339.3 Requirement to purchase flood insurance where available.

339.4 Exemptions.

339.5 Escrow requirement.

339.6 Required use of standard flood hazard determination form.

339.7 Force-placement of flood insurance.

339.8 Determination fees.

339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

339.10 Notice of servicer's identity.

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

Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

##### § 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

##### § 339.2 Definitions.

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *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.

(d) *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.

(e) *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.

(f) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g)

of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

(g) *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.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the FDIC-supervised institution;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

(k) *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.

(l) *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.

(m) *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.

**§ 339.3 Requirement to purchase flood insurance where available.**

(a) *In general.* An FDIC-supervised institution shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

(c) *Private flood insurance. (1) Mandatory acceptance.* An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 339.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 339.2(i).

**§ 339.4 Exemptions.**

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

**§ 339.5 Escrow requirement.**

(a) *In general. (1) Applicability.* Except as provided in paragraph (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the FDIC-supervised institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 339.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 339.3(a).

(2) *Timing.* An FDIC-supervised institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with

the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The FDIC-supervised institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* An FDIC-supervised institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B; or

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 339.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 339.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.*

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to an FDIC-supervised institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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

a loan secured by residential improved real estate or a mobile home; and

(B) 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 loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If an FDIC-supervised institution previously qualified for the exception in paragraph § 339.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to § 339.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If an FDIC-supervised institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 339.3(a) that becomes subject to paragraph (a) of this section as a result of the FDIC-supervised institution's acquisition of the loan, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

**§ 339.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard

determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

**§ 339.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall accept from the borrower 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.

**§ 339.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any FDIC-supervised institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised

institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) 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.

(5) 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

(6) 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.

(c) *Timing of notice.* The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the

period of time the FDIC-supervised institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) *Use of prescribed form of notice.* An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### **§ 339.10 Notice of servicer's identity.**

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

#### **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.

#### **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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

#### Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

##### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your

flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

##### Escrow Requirement Clause

Federal law requires 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. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 2. The authority citation for Part 391 continues to read as follows:

Authority: 12 U.S.C. 1819.

#### Subpart D—[Removed and Reserved]

■ 3. Remove and reserve Subpart D consisting of §§ 391.30 through 391.39.

#### Farm Credit Administration

##### 12 CFR CHAPTER VI

##### Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

■ 2. Part 614 is amended by revising subpart S to read as follows:

#### Subpart S—Flood Insurance Requirements

Sec.

614.4920 Purpose and scope.

614.4925 Definitions.

614.4930 Requirement to purchase flood insurance where available.

614.4935 Escrow requirement.

614.4940 Required use of standard flood hazard determination form.

614.4945 Force placement of flood insurance.

614.4950 Determination fees.

614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

614.4960 Notice of servicer's identity.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance  
Appendix B to Subpart S of Part 614—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Subpart S of Part 614—Sample Escrow Requirement Clause for Loans that Become Designated Loans

#### Subpart S—Flood Insurance Requirements

##### § 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

##### § 614.4925 Definitions.

For the purposes of this subpart:

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *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.

(d) *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.

(e) *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 1968 Act.

(f) *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.

(h) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the System institution;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(j) *Residential improved real estate* means real estate upon which a home or

other residential building is located or to be located.

(k) *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.

(l) *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.

(m) *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.

**§ 614.4930 Requirement to purchase flood insurance where available.**

(a) *In general.* A System institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance purchased under the NFIP or private flood insurance, as that term is defined in § 614.4925, for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the 1968 Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this subpart.

(c) *Private flood insurance.*

(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in § 614.4925, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 614.4925 for purposes of paragraph (a) of this section if a State insurance

regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 614.4925.

(d) The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of 1 year or less.

**§ 614.4935 Escrow requirement.**

(a) *In general.*

(1) *Applicability.* Except as provided in paragraph (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the System institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 614.4930(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 614.4930(a).

(2) *Timing.* A System institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The System institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the System institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A System institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the System institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraph (a)(2)(i) or (c)(2)(i) or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraph (a)(2)(i) or (c)(2)(i) or (d), using language that is substantially similar to the model form in Appendix B; or

(2) For loans subject to paragraph (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 614.4945, using language that is substantially similar to model clauses on the escrow requirement in Appendix A; or

(3) For loans subject to paragraph (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 614.4955, using language that is substantially similar to model clauses on the escrow requirement in Appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraph (a)(1) and (2) of this section do not apply to a System institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the 2 prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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 a loan secured by residential improved real estate or a mobile home; and

(B) 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 loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a System institution previously qualified for the exception in § 614.4935(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for 2 consecutive calendar year ends, the System institution must begin escrowing premiums and fees for flood insurance pursuant to § 614.4930(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a System institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 614.4930(a) that becomes subject to paragraph (a) of this section as a result of the System institution's acquisition of the loan, the System institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is 6 months from the transfer date of the loan.

**§ 614.4940 Required use of standard flood hazard determination form.**

(a) *Use of form.* A System institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic

manner. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A System institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the System institution owns the loan.

**§ 614.4945 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a System institution, or a servicer acting on its behalf, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 614.4930, then the System institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the System institution or its servicer shall purchase insurance on the borrower's behalf. The System institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a System institution, or its servicer, of a confirmation of a borrower's existing flood insurance coverage, the System institution or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the System institution or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the System institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the System institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the System institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's

existing flood insurance coverage under paragraph (b) of this section, a System institution or its servicer shall accept from the borrower 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.

**§ 614.4950 Determination fees.**

(a) *General.* Notwithstanding any federal or state law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any System institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the System institution shall mail or deliver a written notice to the borrower and to the servicer of the loan. Notice

is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP; and

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from a private insurance company that issues policies on behalf of the company.

(5) 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

(6) 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.

(c) *Timing of notice.* The System institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the System institution provides notice to the borrower and in any event no later than the time the System institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The System institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the System institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a System institution may obtain satisfactory written assurance from a

seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The System institution shall retain a record of the written assurance from the seller or lessor for the period of time the System institution owns the loan.

(f) *Use of prescribed form of notice.* A System institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the 1968 Act.

**§ 614.4960 Notice of servicer's identity.**

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the System institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

**Appendix A to Subpart S of Part 614—  
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 at least 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 improvements that have been made to the real property that secure the 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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

#### Appendix B to Subpart S of Part 614— Sample Form of Notice of Requirement to Escrow for Outstanding Loans

##### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### *How the Escrow Will Work*

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your premiums will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### *When the Escrow Will Start*

*When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.*

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the institution will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert

Name of Lender or Servicer] at [Insert Contact Information].

#### Appendix C to Subpart S of Part 614— Sample Escrow Requirement Clause for Loans That Become Designated Loans

##### Escrow Requirement Clause

Federal law requires 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. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### National Credit Union Administration

##### 12 CFR CHAPTER VII

##### Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA Board proposes to revise part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

#### PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

##### Sec.

760.1 Authority, purpose, and scope.

760.2 Definitions.

760.3 Requirement to purchase flood insurance where available.

760.4 Exemptions.

760.5 Escrow requirement.

760.6 Required use of standard flood hazard determination form.

760.7 Force-placement of flood insurance.

760.8 Determination fees.

760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

760.10 Notice of servicer's identity.

Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Part 760—Sample Escrow Requirement Clause for Loans that Become Designated Loans

**Authority:** 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

##### § 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the



National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope*. This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

#### § 760.2 Definitions.

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(d) *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.

(e) *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.

(f) *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.

(g) *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.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring non-residential commercial policies;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to the insured and the credit union;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

(k) *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.

(l) *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.

(m) *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.

#### § 760.3 Requirement to purchase flood insurance where available.

(a) *In general*. A credit union shall not make, increase, extend, or renew any

designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loan*. A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance*.

(1) *Mandatory acceptance*. A credit union must accept private flood insurance, as defined in § 760.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor*. A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 760.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 760.2(i).

#### § 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

#### § 760.5 Escrow requirement.

(a) *In general*. (1) *Applicability*. Except as provided in paragraph (c) of this section, a credit union, or a servicer acting on behalf of the credit union, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are

made for the duration of the loan, unless the credit union has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 760.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 760.3(a).

(2) *Timing.* A credit union that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A credit union that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the credit union, shall mail or

deliver a written notice informing the borrower that the credit union is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 760.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 760.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.*

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a credit union:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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 a loan secured by residential improved real estate or a mobile home; and

(B) 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 loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a credit union previously qualified for the exception in paragraph § 760.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the credit union must begin escrowing premiums and fees for flood insurance pursuant to § 760.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a credit union that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 760.3(a) that becomes subject to paragraph (a) of this section as a result of the credit union's acquisition of the loan, the credit union must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

#### **§ 760.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

#### **§ 760.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance, or is covered by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage

beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a credit union, or a servicer acting on the credit union's behalf, of a confirmation of a borrower's existing flood insurance coverage, the credit union, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the credit union or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a credit union or its servicer shall accept from the borrower 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.

#### **§ 760.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

#### **§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) 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;

(5) 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

(6) 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.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction and to the servicer as promptly as practicable after the credit union provides notice to the borrower and in any event no later than the time the credit union provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of prescribed form of notice.* A credit union will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### **§ 760.10 Notice of servicer's identity.**

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic

transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

### Appendix A to Part 760—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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

### Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

#### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

#### How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same

frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

#### When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the credit union will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

### Appendix C to Part 760—Sample Escrow Requirement Clause for Loans That Become Designated Loans

#### Escrow Requirement Clause

Federal law requires 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. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

Dated: October 9, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, October 10, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

By order of the Board of Directors of the Federal Deposit Insurance Corporation.  
Dated at Washington, DC, this 8th day of October, 2013.

**Robert E. Feldman,**  
*Executive Secretary.*

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 10th day of October, 2013.

**Dale Aultman**  
*Secretary.*

By order of the Board of the National Credit Union Association.

Dated at Alexandria, VA, this 9th day of October, 2013.

**Gerard Poliquin,**  
*Secretary of the Board.*

[FR Doc. 2013-24724 Filed 10-29-13; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6705-01-P; 7535-01-U**



# FEDERAL REGISTER

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## Part III

### Department of the Treasury

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Office of the Comptroller of the Currency

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12 CFR Parts 22 and 172

### Federal Reserve System

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12 CFR Part 208

### Federal Deposit Insurance Corporation

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12 CFR Part 339

### Farm Credit Administration

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12 CFR Part 614

### National Credit Union Administration

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12 CFR Part 760

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Loans in Areas Having Special Flood Hazards; Final Rule

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Parts 22 and 172**

[Docket ID OCC–2014–0016]

RIN 1557–AD84

**FEDERAL RESERVE SYSTEM****12 CFR Part 208**

[Regulation H, Docket No. R–1498]

RIN 7100 AE–22

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 339**

RIN 3064–AE27

**FARM CREDIT ADMINISTRATION****12 CFR Part 614**

RIN 3052–AC93

**NATIONAL CREDIT UNION ADMINISTRATION****12 CFR Part 760**

RIN 3133–AE40

**Loans in Areas Having Special Flood Hazards**

**AGENCY:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are amending their regulations regarding loans in areas having special flood hazards to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which amends some of the changes to the Flood Disaster Protection Act of 1973 mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). Specifically, the final rule requires the escrow of flood insurance payments on residential improved real estate securing a loan, consistent with the changes set forth in HFIAA. The final rule also incorporates

an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. Furthermore, the final rule implements the provisions of Biggert-Waters related to the force placement of flood insurance. Finally, the final rule integrates the OCC's flood insurance regulations for national banks and Federal savings associations. The Agencies plan to address the private flood insurance provisions in Biggert-Waters in a separate rulemaking.

**DATES:** The effective date of amendatory instructions 1, 6, 7, 8, 10, 15, 16, 21 and 22 is October 1, 2015. The effective date of amendatory instructions 2, 3, 4, 5, 9, 11, 12, 13, 14, 17, 18, 19, 20, 23, 24, 25, and 26 is January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:**

**OCC:** Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649–5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350; or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Chief Counsel.

**Board:** Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452–2705; Vivian W. Wong, Counsel (202) 452–3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452–3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**FDIC:** Navid Choudhury, Counsel, Consumer Compliance Section, (202) 898–6526, Legal Division; or John Jackwood, Senior Policy Analyst, (202) 898–3991, Division of Depositor and Consumer Protection.

**FCA:** Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy (703) 883–4203, TTY (703) 883–4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883–4020, TTY (703) 883–4056.

**NCUA:** Frank Kressman, Associate General Counsel, Office of General Counsel, (703) 518–6540.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Introduction**

In October 2013, the Agencies jointly issued a proposal to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012<sup>1</sup> (Biggert-

Waters) over which the Agencies have jurisdiction (the October 2013 Proposed Rule).<sup>2</sup> Specifically, the October 2013 Proposed Rule would have required regulated lending institutions<sup>3</sup> to escrow flood insurance premiums and fees on residential improved real estate securing a loan, unless the regulated lending institution met the statutory small institution exception. The October 2013 Proposed Rule also would have required regulated lending institutions to accept private flood insurance coverage, as defined in Biggert-Waters, to satisfy the mandatory flood insurance purchase requirement. Furthermore, the October 2013 Proposed Rule contained provisions to implement the Biggert-Waters changes related to force-placed flood insurance.

In March 2014, the President signed into law the Homeowner Flood Insurance Affordability Act of 2014<sup>4</sup> (HFIAA), which amends some of the changes made by Biggert-Waters to the Flood Disaster Protection Act (FDPA).<sup>5</sup> The Agencies jointly issued a proposal in October 2014 (the October 2014 Proposed Rule) to implement the provisions in HFIAA over which they have jurisdiction.<sup>6</sup> The October 2014 Proposed Rule would have required regulated lending institutions to escrow flood insurance premiums and fees on residential improved real estate securing a loan, consistent with HFIAA's amendments to Biggert-Waters, and excluded certain detached structures from the mandatory flood insurance purchase requirement.

The Agencies are issuing this final rule to implement the escrow provisions and the detached structures provision detailed in the October 2014 Proposed Rule. In addition, this final rule incorporates the force-placed flood insurance provisions that the Agencies proposed in the October 2013 Proposed Rule, which were unaffected by HFIAA. The Agencies plan to address the private insurance provisions of the October 2013 Proposed Rule in a separate rulemaking. In connection with the issuance of this final rule, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain

<sup>2</sup> 78 FR 65108 (Oct. 30, 2013).

<sup>3</sup> The National Flood Insurance Reform Act of 1994 defines "regulated lending institution" to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).

<sup>4</sup> Public Law 113–89, 128 Stat. 1020 (2014).

<sup>5</sup> Public Law 93–234, 87 Stat. 975 (1973).

<sup>6</sup> 79 FR 64518 (Oct. 30, 2014).

<sup>1</sup> Public Law 112–141, 126 Stat. 916 (2012).

provisions of the flood insurance statutes.<sup>7</sup> Furthermore, the Agencies encourage lenders to consult Biggert-Waters and HFIAA for further information about revisions to the flood insurance statutes that will not be implemented through the Agencies' rulemakings.

### B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)<sup>8</sup> and the FDPA, as amended, govern the National Flood Insurance Program (NFIP).<sup>9</sup> The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if the community where the improved real estate or mobile home is located participates in the NFIP. A special flood hazard area (SFHA) is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year.<sup>10</sup> SFHAs are delineated on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities.<sup>11</sup> A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.<sup>12</sup>

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. The FDPA made the purchase of flood insurance mandatory in connection with loans made by regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a SFHA in a participating community. The FDPA directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS)<sup>13</sup> to issue regulations governing the lending institutions that they supervised. These

regulations also require lenders to notify borrowers that the secured property is located in a SFHA and whether Federal disaster assistance is available with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, also known as the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively amended the Federal flood insurance statutes.<sup>14</sup> The Reform Act established new requirements for Federally regulated lending institutions, such as the escrow for flood insurance premiums under certain conditions and mandatory force placement of flood insurance coverage. The Reform Act was intended to increase compliance with the mandatory flood insurance purchase requirements and participation in the NFIP 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. In addition, the Reform Act broadened the mandatory flood insurance purchase requirement to include lenders regulated by the FCA.

The Reform Act required the OCC, Board, FDIC, NCUA, and the former OTS to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The Agencies fulfilled these requirements by issuing a joint final rule in August 1996.<sup>15</sup>

### C. The Biggert-Waters and HFIAA Amendments

Among other changes,<sup>16</sup> Biggert-Waters significantly amended the NFIP

requirements over which the Agencies have jurisdiction. Specifically, Biggert-Waters: (i) Increased the maximum civil money penalty (CMP) that the Agencies may impose per violation when there is a pattern or practice of flood violations and eliminated the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year;<sup>17</sup> (ii) required the Agencies to issue a rule to direct regulated lending institutions to escrow premiums and fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;<sup>18</sup> (iii) required the Agencies to issue a rule to direct regulated lending institutions to accept private flood insurance, as defined by Biggert-Waters, and to notify borrowers of the availability of private flood insurance;<sup>19</sup> and (iv) amended the force-placed insurance requirement to clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the borrower's flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.<sup>20</sup>

HFIAA further amended the changes set forth in Biggert-Waters. Among these changes were amendments that tied the escrow requirement to the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016, and provided additional exceptions to the escrow requirement.<sup>21</sup> HFIAA also mandated that the Agencies by regulation direct regulated lending institutions that are not excepted from the escrow requirements to provide an option to borrowers to escrow flood insurance premiums and fees for

Memorandum, May 30, 2014; NCUA: <http://www.ncua.gov/Legal/Documents/InteragencyIncreasedCoverageGuidance.pdf>.

<sup>17</sup> Section 100208 of Biggert-Waters, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

<sup>18</sup> Section 100209 of Biggert-Waters, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)). Congress further amended section 42 U.S.C. 4012a(d) subsequent to the enactment of Biggert-Waters to clarify that the flood insurance escrow requirement applies only to loans secured by residential improved real estate. See Public Law 112-281, 125 Stat. 2485 (Jan. 14, 2013).

<sup>19</sup> Section 100239 of Biggert-Waters, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

<sup>20</sup> Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

<sup>21</sup> Section 25 of HFIAA, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).

<sup>7</sup> See 42 U.S.C. 4012a(b)(1). Four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

<sup>8</sup> Public Law 90-448, 82 Stat. 572 (1968).

<sup>9</sup> These statutes are codified at 42 U.S.C. 4001-4129. The Federal Emergency Management Agency administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

<sup>10</sup> 44 CFR 59.1.

<sup>11</sup> 44 CFR part 65.

<sup>12</sup> 44 CFR part 60.

<sup>13</sup> Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), (Dodd-Frank Act), transferred the powers, duties, and functions formerly performed by the OTS to the FDIC for State savings associations, the OCC for Federal savings associations, and the Board for savings and loan holding companies. The transfer took effect on July 21, 2011, and the OTS was abolished 90 days after that date.

<sup>14</sup> Public Law 103-325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

<sup>15</sup> 61 FR 45684 (Aug. 29, 1996).

<sup>16</sup> The Agencies note, for example, that section 100222 of Biggert-Waters mandates a revision to the Special Information Booklet required under section 5 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2604(b)) to include a notice to the borrower of the availability of flood insurance under the NFIP or from a private insurance company, whether or not the real estate is located in an area having special flood hazards. The requirement to revise the Special Information Booklet is the responsibility of the Bureau of Consumer Financial Protection (CFPB) under RESPA. See 80 FR 17414 (Apr. 1, 2015). In addition, section 100204 of Biggert-Waters directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage made available to such residential properties is now equal to the coverage made available to commercial properties. FEMA made policies for such properties available as of June 1, 2014. See "Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings," May 30, 2014 (Board: CA 14-3; OCC: Bulletin 2014-26; FDIC: FIL 28-2014, FCA: Informational



outstanding loans.<sup>22</sup> In addition, HFIAA provided a new exemption to the mandatory flood insurance purchase requirement 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.<sup>23</sup>

As previously discussed in guidance issued by the Agencies,<sup>24</sup> the CMP provisions<sup>25</sup> and the force-placed insurance requirements in Biggert-Waters were effective upon enactment of Biggert-Waters. Similarly, the provision in HFIAA excluding certain detached structures from the mandatory flood insurance purchase requirement became effective upon the enactment of HFIAA. In contrast, Biggert-Waters and HFIAA require the Agencies to issue regulations implementing both the escrow and private flood insurance provisions.

## II. The Agencies' Proposed Revisions

### A. Summary of the October 2013 Proposed Rule

In the October 2013 Proposed Rule, the Agencies proposed to revise their respective flood insurance regulations to implement the Biggert-Waters amendments addressing the escrow of flood insurance payments, private flood insurance, and force-placed insurance. The October 2013 Proposed Rule would have required a regulated lending institution, or servicer acting on its behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that was made or outstanding on or after July 6, 2014, unless the institution qualified for the statutory exception for small institutions.<sup>26</sup>

<sup>22</sup> "Outstanding loan" is defined in section 25(b)(1)(B)(i)(II) of HFIAA.

<sup>23</sup> Section 13 of HFIAA, amending section 102(c) of the FDPA (42 U.S.C. 4012a(c)). The Agencies note that Section 13 of HFIAA also amends section 5(b) of RESPA (12 U.S.C. 2604(b)) to require language related to detached structures be included in the required Special Information Booklet. The requirement to revise the Special Information Booklet under RESPA falls under the jurisdiction of the CFPB.

<sup>24</sup> "Interagency Statement on the Impact of Biggert-Waters Act," March 29, 2013 (Board: CA 13-2; OCC: Bulletin 2013-10; FDIC: FIL 14-2013, FCA: Informational Memorandum, March 29, 2013; NCUA: 13-RA-03).

<sup>25</sup> Some of the Agencies have revised their regulations to incorporate these increased CMPs. See OCC: 77 FR 66529 (Nov. 11, 2012) and 77 FR 76354 (Dec. 28, 2012); Board: 77 FR 68680 (Nov. 16, 2012); FDIC: 77 FR 74573 (Dec. 17, 2012); and FCA: 78 FR 24336 (April 25, 2013). The NCUA is in the process of updating its rule to reflect this CMP change.

<sup>26</sup> However, with HFIAA's enactment in March 2014, the Agencies issued the October 2014 Proposed Rule to modify the proposed escrow provisions in the October 2013 Proposed Rule,

The October 2013 Proposed Rule also would have amended the provisions concerning the force placement of flood insurance to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. Furthermore, the October 2013 Proposed Rule would have stipulated the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower and the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The October 2013 Proposed Rule included new and revised sample notice forms and clauses that included language concerning the availability of private flood insurance coverage, consistent with Biggert-Waters, and that provided sample language for regulated lending institutions to use to comply with the proposal's escrow notice requirement. The OCC and the FDIC proposed in the October 2013 Proposed Rule to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

Finally, consistent with Biggert-Waters, the October 2013 Proposed Rule would have required a regulated lending institution to accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement and specifically requested comment on various issues related to this requirement.<sup>27</sup>

### B. Summary of the October 2014 Proposed Rule

Under the October 2014 Proposed Rule, the Agencies proposed to exempt certain detached structures on residential property from the mandatory flood insurance purchase requirement and to amend the requirement to escrow flood insurance premiums and fees, consistent with the Biggert-Waters escrow provisions as amended by HFIAA. Specifically, the October 2014 Proposed Rule would have provided that flood insurance would not be required for any structure that is part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence, consistent with HFIAA.

consistent with HFIAA's changes to the Biggert-Waters escrow provisions.

<sup>27</sup> As mentioned above, the Agencies will address issues related to private flood insurance in a separate rulemaking.

In addition, the October 2014 Proposed Rule generally would have required regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The Agencies also proposed in the October 2014 Proposed Rule several exceptions to the escrow requirement as set forth in Biggert-Waters and HFIAA, including an exception for certain regulated lending institutions with total assets of less than \$1 billion, and exceptions for business, commercial, and agricultural purpose loans, certain subordinate lien loans, certain condominium and similar loans, home equity lines of credit, nonperforming loans, and short-term loans.

The October 2014 Proposed Rule also would have required regulated lending institutions not subject to an escrow exception to offer borrowers the option to escrow loans outstanding as of January 1, 2016. Regulated lending institutions that no longer qualified for the small lender exception of less than \$1 billion in assets also would have had to comply with the general escrow requirement and the option to escrow requirement.

### C. Overview of Public Comments

The Agencies received 81 written comments on the October 2013 Proposed Rule and 52 written comments on the October 2014 Proposed Rule. Between the two proposed rules, the Agencies received comments from a wide range of commenters, such as: Financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, home building and realtor trade associations, and a flood hazard determination trade association); the insurance industry (including insurance companies, trade associations, and brokers); individuals; public interest/consumer advocates; state insurance regulators; and a municipal government. In addition to receiving written comments, the Agencies conferred with several stakeholders in the flood insurance community, including state insurance regulators, the National Association of Insurance Commissioners (NAIC) staff, and FEMA staff.<sup>28</sup>

<sup>28</sup> The Agencies have placed summaries of these meetings in the public comment file.

The Agencies received numerous comments supporting the exemption for certain detached structures from the mandatory flood insurance purchase requirement. Many of these commenters requested clarifications of the terms used in the exemption, including the meanings of the terms “residential property,” “detached structure,” and “serve as a residence.” The Agencies also sought comment on whether the exemption should be restricted to consumer purpose loans. Many commenters opposed the Agencies incorporating such a limitation. Some commenters also wanted the Agencies to expand the exemption to include non-residential property. Commenters also were uniformly opposed to the Agencies stating that regulated lending institutions need not perform a flood hazard determination for any properties or structures that are exempt from the mandatory flood insurance purchase requirement because a flood hazard determination is often needed to determine what types of structures exist on the property.

Many commenters also offered suggestions on the Agencies’ proposed escrow provisions. Several commenters recommended that the Agencies apply the general escrow requirement to applications received on or after January 1, 2016. Some commenters suggested clarifications of the language of the escrow notice. Commenters were supportive of the exceptions to the escrow requirement, and some commenters asked for additional exceptions. Most commenters on the proposed escrow provisions requested clarifications on the various exceptions to the escrow requirement. There were also comments questioning whether regulated lending institutions are expected to monitor the status of excepted loans to ensure they continue to meet the exception from the escrow requirement, especially with respect to excepted subordinate lien loans and nonperforming loans. Furthermore, the Agencies received several comments on the proposed rule to implement the option to escrow requirement. Commenters were supportive of the Agencies’ interpretation that the option to escrow requirement does not apply to loans and issuers that are excepted from the general escrow requirement. The Agencies also received comments supporting the proposal that a regulated lending institution must establish an escrow “as soon as reasonably practicable” after a consumer requests the option to escrow, although other commenters requested further clarification.

In addition, the Agencies received many comment letters that addressed force placement issues. Commenters generally supported the proposed provisions on force placement. However, commenters sought clarification on various force placement issues, such as, sufficiency of proof of coverage when a borrower obtains flood insurance after the lender or its servicer has force placed the insurance; the definition of the term “lapsed;” whether force-placed insurance only should be terminated when the borrower provides proof of NFIP-compliant flood insurance coverage; whether a refund for any period of overlapping coverage should be made to the borrower by the lender within 30 days of the borrower obtaining coverage; when a lender should cancel force-placed flood insurance; what constitutes proof of coverage for purposes of determining whether a borrower has obtained alternative flood insurance coverage; and how to resolve force placement issues when a borrower is in default.

Finally, the Agencies received numerous comment letters on the private flood insurance provisions the Agencies proposed in the October 2013 Proposed Rule. As the Agencies have explained above, the Agencies plan to address these issues in a separate rulemaking.

### III. Summary of the Final Rule

The amendments finalized by this rulemaking are summarized below and more specifically described in V. Section-by-Section Analysis of this preamble. Although the Agencies’ final regulations are substantively consistent, the format of the regulatory text varies to conform to each Agency’s current regulation.

The final rule sets forth the new exemption in the FDPA, as amended by section 13 of HFIAA, to the mandatory flood insurance purchase requirement for any structure that is a part of a residential property, but is detached from the primary residential structure and does not serve as a residence. Consistent with commenters’ suggestions, the final rule includes clarifications of the terms “a structure that is part of a residential property,” “detached,” and “serve as a residence.”

In accordance with the FDPA, as amended by Biggert-Waters and HFIAA, the final rule also requires regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The FDPA, as

amended by Biggert-Waters, also provides that, except as may be required under applicable State law, a regulated lending institution would not be required to escrow if it has total assets of less than \$1 billion and, as of the date of enactment of Biggert-Waters, July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy of uniformly and consistently escrowing taxes and insurance. The Agencies are implementing this exception in the final rule with some clarifications. Furthermore, the Agencies are adopting transition rules for regulated lending institutions that have a change in status and no longer qualify for this small-lender exception.

Moreover, the final rule implements the following additional exceptions from the escrow requirement, as amended by HFIAA for: (i) Loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided; (ii) loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met; (iii) loans that are extensions of credit primarily for a business, commercial, or agricultural purpose; (iv) home equity lines of credit; (v) nonperforming loans; and (vi) loans with terms not longer than 12 months. The Agencies are clarifying in the final rule that, when a regulated lending institution determines that an exception no longer applies, the institution must require the escrow of flood insurance premiums and fees.

The Agencies note that the escrow provisions in the Agencies’ rules in effect on July 5, 2012, the day before Biggert-Waters was enacted, remain in effect, and will be enforced by the Agencies, through December 31, 2015, the day before the effective date of the escrow provisions.<sup>29</sup>

The final rule also implements the requirement under HFIAA that regulated lending institutions not excepted from the escrow requirement offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. The final rule is generally consistent with the language the Agencies proposed in

<sup>29</sup> Each Agency’s current escrow provision provides that a regulated lending institution must escrow all premiums and fees for required flood insurance if the institution requires the escrow of taxes, insurance premiums, fees or other charges. See 12 CFR 22.5 and 172.5 (OCC); 12 CFR 208.25(e) (Board); 12 CR 339.5 (FDIC); 12 CFR 614.4935 (FCA); and 12 CFR 760.5 (NCUA).

the October 2014 Proposed Rule. However, the Agencies are providing additional time, until June 30, 2016, for regulated lending institutions to mail or deliver information to borrowers about the option to escrow, based on some commenters' suggestions. The Agencies' final rule also adopts the proposal to require regulated lending institutions that no longer qualify for the small lender exception to offer and make available to a borrower the option to escrow flood insurance premiums and fees.

The Agencies' final rule includes new and revised sample notice forms and clauses. Specifically, the final rule amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the Agencies' respective regulations, to add language concerning the escrow requirement. The Agencies are adopting minor amendments to the language the Agencies proposed in the October 2014 Proposed Rule regarding the escrow requirement in light of recommendations from commenters. Moreover, the Agencies concur with commenters' suggestions to include language in Appendix A similar to the language HFIAA section 13(b) requires to be included in the Special Information Booklet in connection with the exemption from the mandatory flood insurance purchase requirement for certain detached structures. Appendix A, as amended by the Agencies in this final rule, also contains language proposed in the October 2013 Proposed Rule to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of Biggert-Waters, regarding the availability of private flood insurance coverage and other technical changes.

The final rule also includes an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B, to assist institutions in complying with the requirement to inform borrowers of outstanding loans about their option to escrow flood insurance premiums and fees. The Agencies are making minor language and formatting changes to Appendix B as proposed in the October 2014 Proposed Rule to be consistent with a commenter's recommendations and to improve readability.

Furthermore, consistent with Biggert-Waters, the Agencies' final rule amends the force placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or

became insufficient. The final rule also stipulates the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The Agencies also adopt needed technical corrections proposed in the 2013 Proposed Rule. For example, the Agencies' final rule corrects all references to the head of FEMA from "Director" to "Administrator."<sup>30</sup> In addition, the OCC is finalizing the integration of its flood insurance regulations for national banks and Federal savings associations. The FDIC has integrated its flood insurance regulations for State non-member banks and State savings associations in a separate rulemaking.<sup>31</sup>

The escrow and option to escrow provisions in this final rule, as well as the revisions to Appendix A and new Appendix B, will become effective on January 1, 2016, consistent with HFIAA. Although the amendments to Appendix A include changes unrelated to the escrow provisions, the Agencies are delaying the effective date of all changes to the Appendix in the interest of reducing compliance burden on regulated lending institutions. All other provisions implemented in this final rule will become effective on October 1, 2015.

#### IV. Legal Authority

Section 102(b) of the FDPA (42 U.S.C. 4012a(b)), as amended, provides that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator of FEMA as an area having special flood hazards and in which flood insurance has been made available under the NFIP, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance. Thus, section 102(b) of the FDPA grants the Agencies rulemaking authority and also requires the Agencies to implement this mandatory flood insurance purchase requirement for regulated lending institutions by regulation.

Section 102(c) of the FDPA (42 U.S.C. 4012a(c)) sets forth specific exceptions

to the mandatory flood insurance purchase requirement. The Agencies are authorized to implement these exceptions.

Section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 25 of HFIAA, states that the Agencies (after consultation and coordination with the FFIEC) must by regulation require all premiums and fees for flood insurance under the 1968 Act for residential improved real estate or a mobile home be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home with the same frequency as payments on the loan are made for the duration of the loan. The statute requires that such funds be deposited in an escrow account on behalf of the borrower and used to pay the flood insurance provider when premiums are due. Section 25(b) of HFIAA applies these requirements to loans that are originated, refinanced, increased, extended, or renewed on or after January 1, 2016.

Section 102(d) of the FDPA, as amended by HFIAA, also directs the Agencies to implement the seven exceptions to this requirement that are set forth in the statute. Section 25(b) of HFIAA further states that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct that each regulated lending institution offer and make available to a borrower of an outstanding loan the option to have the borrower's payment of flood insurance premiums and fees escrowed.

#### V. Section-by-Section Analysis

##### *Authority, Purpose, and Scope*

As discussed in the October 2013 Proposed Rule, the title of the head of FEMA has changed from "Director" to "Administrator" since the Agencies last revised their flood insurance regulations. The Agencies proposed a technical amendment consistent with that change. No comments were received on the proposed technical amendment to designate correctly the head of FEMA. The Agencies therefore adopt the change in title of the head of FEMA from "Director" to "Administrator" in the scope section as proposed, and in subsequent sections of their regulations.

As part of the OCC's consolidation of its flood insurance rule, the OCC also proposed the insertion of the term "Federal savings association" where necessary throughout its flood insurance rule. No comments were received on this proposed change. The OCC

<sup>30</sup> 6 U.S.C. 313.

<sup>31</sup> 79 FR 75742 (Dec. 19, 2014).

therefore adopts the change as proposed.

#### Definitions

As noted above in *Authority, purpose, and scope*, the Agencies proposed technical amendments to change the references to the head of FEMA from “Director” to “Administrator” in the definitions. The Agencies are adopting these changes as proposed.

#### OCC-Only Definitions

The OCC proposed amendments to the definition section for purposes of integrating its national bank and Federal savings association flood insurance rules. First, the proposed rule provided that the term “Federal savings association” means a Federal savings association as defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof. This definition is identical to the definition of “Federal savings association” in 12 CFR part 172, except that part 172 specifically referenced “subsidiaries.” Current 12 CFR part 22 does not specifically include a reference to bank operating subsidiaries because such subsidiaries are subject to the rules applicable to the operations of their parent bank pursuant to 12 CFR 5.34. Because Federal savings association operating subsidiaries also are subject to the same rules applicable to the parent savings association, as provided by 12 CFR 5.38(e)(3), the inclusion of “subsidiary” in this definition is unnecessary and its removal will not affect the applicability of 12 CFR part 22 to Federal savings association operating subsidiaries.

Second, the OCC proposed to remove the definition of “bank,” which the rule currently defines as meaning a national bank, and replaced “bank” with “national bank” throughout the final rule. The OCC did not receive any comments on these technical changes. However, the final rule adds a definition of “national bank” to include Federal branches and agencies of a foreign bank. Federal branches and agencies are currently subject to the same flood insurance requirements as national banks.<sup>32</sup> The addition of this definition clarifies the scope of the rule and promotes consistency throughout the OCC’s rules and regulations.

<sup>32</sup> See, e.g., Comptroller’s Handbook, Federal Branches and Agencies Supervision, September 2014, p. 22 (“Federal branches and agencies must ensure appropriate flood insurance coverage when making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located in a special flood hazard area in a community participating in the National Flood Insurance Program.”).

#### Requirement To Purchase Flood Insurance Where Available

The current regulation provides that a regulated lending institution shall not make, increase, extend, or renew any designated loan<sup>33</sup> unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. This provision further provides that flood insurance coverage is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. The October 2013 Proposed Rule would have revised the language relating to the coverage limit to reflect more accurately what is actually covered under Federal flood insurance statutes. Specifically, the Agencies proposed that the language be amended to state that flood insurance coverage is limited to the building or mobile home and any personal property securing the loan and not the land itself. Some commenters indicated the proposed amendment may add confusion because there may be concern that the amendment indicates a change from past practice. One commenter suggested defining the value of the building as either the replacement cost of the structure or the appraised value minus the land value as determined from the appraisal or the insurable value as obtained from the insurance agent writing the policy.

In response to these comments, the Agencies emphasize that the proposed change does not set forth a new requirement, but merely clarifies the long-standing legal interpretation that Federal flood insurance coverage does not apply to land. In proposing this change, the Agencies simply intended to reduce confusion by clarifying the meaning of the term to reflect what is actually covered. In response to the comment that suggests the use of replacement cost or the appraised value of the property minus the land, it is the Agencies’ opinion that using other insurance terms to clarify the coverage limit would not reflect what is covered under Federal flood insurance legislation as accurately as the proposed language. For these reasons, the Agencies adopt the language as proposed.

<sup>33</sup> “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 [National Flood Insurance] Act.” 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(4) (Board); 12 CFR 339.2(d) (FDIC); 12 CFR 614.4925(c) (FCA); and 12 CFR 760.2(e) (NCUA) under current regulations.

#### Exemptions

Section 13 of HFIAA, which amends section 102(c) of the FDPA (42 U.S.C. 4012a(c)), adds a new exemption to the mandatory flood insurance purchase requirement. Specifically, HFIAA provides that flood insurance is not required, in the case of any residential property, on any structure that is a part of such property, but is detached from the primary residential structure and does not serve as a residence. The October 2014 Proposed Rule would have incorporated this exemption as provided in HFIAA into the Agencies’ regulations. The Agencies solicited comment on whether the final rule should clarify certain terms in the provision, such as “residence” and “residential property.” For instance, the Agencies suggested that there may be some ambiguity as to when a structure may serve as a residence even if it may not conform to certain State or local requirements for residential property or when a detached structure should be deemed a residence. Specifically, the Agencies solicited comment on whether the term “residential property” should not only refer to the type of property securing the loan, but also to the loan’s purpose. Thus, the Agencies suggested in the October 2014 Proposed Rule that the detached structure exemption could be available only if the residence serving as collateral does not secure a loan made primarily for a business, commercial, or agricultural purpose.

Numerous commenters provided general support for the proposed rule’s implementation of the exemption for detached structures. Commenters strongly supported providing lenders with the discretion to exempt low-value non-residential structures from the mandatory purchase obligation. Many commenters requested that the Agencies clarify the meaning of various terms to assist lenders in applying the exemption and to ensure consistent application of the exemption.

Several commenters asserted that the detached structure exemption should be available regardless of whether the loan is made for a business, agricultural, or commercial purpose, contrary to the Agencies’ suggestion. These commenters maintained that lenders should be able to exclude non-residential detached structures regardless of the loan’s purpose, as long as the loan is secured by residential property. Numerous commenters, including trade associations, financial institutions, and individuals, suggested that the final rule should broaden the exemption to include business, agricultural, and commercial loans and

not apply solely to consumer loans. Commenters noted that loan proceeds may be used for different purposes than that of the property that secures those proceeds and that section 13 of HFIAA does not limit the exemption only to consumer loans. Several commenters noted that a borrower who uses a residence to secure a business, commercial, or agricultural purpose loan faces the same affordability challenges when required to insure a low-value detached structure as a borrower who uses the same collateral to secure a consumer loan. One commenter noted that low-value structures are a common issue for both consumer and commercial borrowers and therefore should be treated consistently.

The Agencies acknowledge that, with respect to flood insurance, the purpose of a loan may be immaterial to the borrower when the borrower uses his or her residence to secure the loan. Therefore, the Agencies agree with commenters that the detached structure exemption should be available in connection with consumer loans as well as those made for business, commercial, or agricultural purposes if the loan is secured by a residence.

The Agencies considered the various comments concerning the definition of “residential property.” Several commenters, including trade associations and financial institutions, suggested that “residential property” should be defined consistently with “residential improved real estate”<sup>34</sup> as defined in the FDPA. Another commenter suggested “residential property” should be interpreted as a parcel of collateral property containing a 1–4 family building actually used as a residence. Several commenters suggested the Agencies adopt a definition of “residential property” that focuses on the structure’s residential use—regardless of its nature or size—consistent with similar definitions in the FDPA. These commenters believed the term should be broadly defined to encompass any residential structure, including single-family dwellings, 1–4 family dwellings, multi-family dwellings, and mixed-use buildings as long as the primary purpose of the building is for a residential purpose. A trade association suggested the Agencies look to the Department of Housing and Urban Development (HUD) lead-based paint regulations for a definition of “residential property.” One commenter

inquired whether the detached structures exemption excludes all detached structures on a property with a primary residence or only those the lender deems to be part of the residential property. Lastly, two commenters believe the final rule should leave the term undefined, similar to the treatment of the term in other Federal statutes.<sup>35</sup>

As previously explained, the Agencies have determined that the meaning of the term “residential property” should not focus on a loan’s purpose. In addition, the Agencies have determined that using the FDPA definition of “residential improved real estate” would render the exemption too expansive for its intended purpose because it could result in exempting all commercial or agricultural structures on a property merely because a residence is also located on the property. The Agencies believe detached structures used for commercial, agricultural, or other business purposes should be protected adequately by flood insurance as collateral given their value to the borrower and lender, and should not be covered by the detached structures exemption.

The Agencies, however, did find the HUD definition of “residential property” to be helpful.<sup>36</sup> The HUD lead-based paint regulation seeks to limit its scope only to properties and structures used solely for residential purposes, and to exclude land used for agricultural, commercial, industrial, or other non-residential purposes. The Agencies have determined that “residential property” in the detached structure exemption should be similar to the HUD regulation’s definition in that it should apply only to structures for which there is a residential use and not to structures for which there is a commercial, agricultural, or other business use.

Additionally, the Agencies were guided by Regulation Z, which implements the Truth in Lending Act (TILA), and its well-established interpretations for further clarification on residential purpose because TILA generally covers consumer extensions of

credit.<sup>37</sup> In particular, Regulation Z applies to credit “primarily for personal, family, or household purposes.”<sup>38</sup> Consistent with Regulation Z, for purposes of the detached structures exemption, the final rule clarifies that the phrase “a structure that is part of a residential property” refers to a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. The Agencies are aware that certain structures may be used for both residential and business purposes and therefore have decided to limit the exemption only to structures with a primarily residential purpose. Furthermore, the final rule makes clear that the exemption applies only to structures that the lender deems part of the residential property.

Although the Agencies decline to adopt the FDPA’s definition of “residential improved real estate” for “residential property,” the Agencies agree with commenters that “residential property” should be interpreted as broadly as “residential improved real estate” as set forth in the Interagency Questions and Answers Regarding Flood Insurance (Q&As). Commenters in particular referenced Q&A 51, which indicates that “residential improved real estate” does not distinguish whether a building is single- or multi-family, or owner- or renter-occupied, and includes single-family dwellings, two- to four-family dwellings, multi-family dwellings containing five or more residential units, and mixed-use buildings, so long as the building is used primarily for residential purposes.<sup>39</sup>

Several commenters also suggested that the Agencies provide further clarification of the term “detached” and how to interpret the statutory phrase “detached from the primary residential structure.” One trade association commenter believed “detached” should be defined more precisely than the Agencies did in the October 2014 Proposed Rule and that a structure joined to a residence by a covered walkway or breezeway should be treated as a separate, stand-alone residential structure. Two commenters believed “detached” should be defined as “standing alone; not joined by any structural connection to any structure to which flood insurance is required.” Other commenters provided varying definitions of the term as well. The Agencies agree that a clear definition of

<sup>34</sup> The FDPA defines “residential improved real estate” as “improved real estate for which the improvement is a residential building.” 42 U.S.C. 4012a(d)(4).

<sup>35</sup> See, e.g., Real Estate Settlement Procedures Act, 12 U.S.C. 2602(1)(A); Truth in Lending Act, 15 U.S.C. 1602(w)–(x).

<sup>36</sup> “Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.” 24 CFR 35.110.

<sup>37</sup> See 15 U.S.C. 1602(i).

<sup>38</sup> See 12 CFR 1026.1(c)(1).

<sup>39</sup> See 74 FR 35914, 35943 (July 21, 2009).

“detached” would ensure consistent application by lenders in determining which structures qualify for the exemption. Therefore, for purposes of the detached structure exemption, the Agencies have drafted the final rule to clarify that a structure is “detached” from the primary residential structure if it is not joined by any structural connection to the residential structure. That is, a structure is “detached” if it stands alone. This clarification is consistent with the coverage provision of the NFIP’s Standard Flood Insurance Policy (SFIP) for additions and extensions to a dwelling unit.

To be exempt from the mandatory flood insurance purchase requirement, the detached structure also may not “serve as a residence.” The Agencies received numerous comments on the necessity for additional clarification on this aspect of the exemption. Some commenters suggested it would be helpful to describe the features or facilities that, if present, could indicate that a structure serves as a residence, but ultimately to defer to a lender’s good faith determination. Several commenters suggested the Agencies provide a bright line test to facilitate determinations, such as total square footage or assessed value. Some commenters suggested a bright line test of whether a structure is designed for use as a residence, not how the structure is being used either at the time of the triggering event or subsequently. One large trade association suggested that “serve as a residence” be defined to include sleeping, bathroom, and kitchen facilities, while a large bank commenter asserted that a structure lacking one or more of these facilities should be deemed non-residential. Another trade association commenter suggested referring to the definition of “residence” set forth in the Internal Revenue Service (IRS) regulations,<sup>40</sup> while some commenters referenced other Federal regulations for similar definitions. Lastly, one commenter suggested a structure must be occupied to be considered a residence and that a structure intended only for periodic use or that serves as a home office should not be deemed a residence.

Based on these comments, the Agencies believe it would be beneficial

<sup>40</sup> IRS regulations provide that “[w]hether property is a residence shall be determined based on all the facts and circumstances, including the good faith of the taxpayer. A residence generally includes a house, condominium, mobile home, boat, or house trailer, that contains sleeping space and toilet and cooking facilities. A residence does not include personal property, such as furniture or a television, that, in accordance with the applicable local law, is not a fixture.” See 26 CFR 1.163–10T(p)(3)(ii).

to clarify the meaning of “serve as a residence.” However, given the numerous types of detached structures that could serve as a residence, the Agencies find that a single bright line test, for example, square footage or appraised value, to determine whether a structure serves as a residence, is not appropriate. Instead, the Agencies have concluded that a more practical approach to applying this exemption is to rely on the good faith determination of a lender on whether a detached structure serves as a residence. The Agencies believe the lender is in the best position to consider all the facts and circumstances involving a detached structure securing a loan, and this approach is similar to how the IRS evaluates whether property constitutes a “residence.”<sup>41</sup> In making this determination, as suggested by several commenters, the lender should focus on a structure’s intended use. By focusing on the intended use of the structure, a lender could determine objectively whether a structure could serve as a residence and therefore not qualify for the exemption.

The Agencies note that the IRS definition of “residence” provides that a residence generally contains sleeping, bathroom, and kitchen facilities.<sup>42</sup> The Agencies agree that a structure that serves as a residence would generally have such facilities. Therefore, a lender could examine the structure for the presence of these facilities to make a determination of whether it serves as a residence. However, the Agencies decline to accept certain commenters’ suggestions that a structure must contain sleeping, bathroom, and kitchen facilities, and that the lack of at least one of these facilities would render the structure non-residential. Detached structures can vary greatly in terms of size, value, purpose, and facilities. Furthermore, not all three facilities are necessary in order for a structure to serve as an individual’s residence. For example, a structure can have sleeping and kitchen facilities, while the resident makes use of a separate structure as a bathroom facility. Similarly, a structure can have sleeping and bathroom facilities but lack kitchen facilities. Because a structure without one or more of these facilities may be intended for use as a residence, the final rule provides that a structure could serve as a residence if it *generally* includes sleeping, bathroom, or kitchen facilities.

Moreover, some commenters suggested that the standard for whether a structure serves as a residence should

be its actual use as a residence. The Agencies disagree with employing “actual use” as the sole indicator of a structure serving as a residence. Such a standard would exclude homes under construction, vacant rental units, vacant garage apartments, and numerous other structures from being deemed to serve as a residence. Although the Agencies decline to accept “actual use” as an appropriate indicator of residency by itself, a lender should take reasonable steps to determine if a structure is actually occupied by a resident. Therefore, the Agencies clarify that whether a detached structure in a residential property serves as a residence shall be based upon the regulated lending institution’s good faith determination that the structure is intended for use or actually used as a residence.

Additionally, with respect to the “serve as a residence” provision, several commenters, including financial institutions, trade associations, and an individual, requested that the Agencies confirm that there is no duty to monitor residential collateral subsequent to the lender’s making, increasing, renewing, or extending a loan to determine whether an exempt detached structure has been repurposed to serve as a residence. The Agencies agree 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. In response to these commenters, the Agencies clarify that a lender must re-examine the status of a detached structure upon a qualifying triggering event under the FDPA—making, increasing, renewing, or extending a loan. However, consistent with existing obligations under the FDPA, if a lender subsequently determines that a property has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is underinsured, the lender has a duty to inform the borrower of the obligation to increase insurance coverage.<sup>43</sup> If the borrower fails to increase the flood insurance to the appropriate amount, the lender must force place flood insurance, as required by the FDPA.

Moreover, as the Agencies noted in the October 2014 Proposed Rule, although the exemption would address borrowers’ and lenders’ concerns by excluding relatively low-value detached structures from the mandatory flood insurance purchase requirement if they secure a designated loan, there may be

<sup>41</sup> See footnote 40.

<sup>42</sup> See footnote 40.

<sup>43</sup> 42 U.S.C. 4012a(e).

some detached structures that are of relatively high value, such as a detached greenhouse. The Agencies further noted that, although the statute does not require flood insurance for such structures, as a matter of safety and soundness, lenders may nevertheless require coverage on these detached structures, and that such coverage also may be in the borrower's best interest. Furthermore, the Agencies also noted in the October 2014 Proposed Rule that section 13(b) of HFIAA, which the Consumer Financial Protection Bureau (CFPB) has implemented, amends section 5(b) of the Real Estate Settlement Procedures Act of 1974 (RESPA) to require a related disclosure in the Special Information Booklet provided to borrowers informing them that they may still wish to obtain, and mortgage lenders may still require borrowers to maintain, flood insurance even if not required by the FDPA.<sup>44</sup>

Several commenters supported the ability of lenders to require flood insurance for safety and soundness purposes or if it is in the best interest of the borrower, even if not required by statute. The Agencies reaffirm that a lender may require flood insurance on a detached structure, even though the statute does not require it, to protect the lender's and borrower's collateral securing the loan.<sup>45</sup>

In addition, a trade association suggested the Agencies consider adding language in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance (Notice of Special Flood Hazards) on the ability of a lender to waive flood insurance requirements for detached structures because some borrowers might not receive the Special Information Booklet.<sup>46</sup> The Agencies believe that the commenter's suggestion has merit and have determined that it also would be appropriate to amend the notice to include the related disclosure required by section 13(b) of HFIAA. This additional disclosure is intended to ensure that borrowers receive full disclosure on this aspect of flood insurance coverage, as discussed below in the **SUPPLEMENTARY INFORMATION** related to *Appendices A & B*.

Finally, the Agencies are adopting a change to their regulations in this section to amend the reference to the head of FEMA from "Director" to "Administrator" as discussed above in the **SUPPLEMENTARY INFORMATION** related

to \_\_\_\_\_. *Authority, purpose, and scope.*

#### \_\_\_\_\_. *Escrow requirement*

##### In General

The Agencies proposed to revise their regulations in the October 2014 Proposed Rule in accordance with section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 25 of HFIAA,<sup>47</sup> to require a regulated lending institution, or a servicer acting on behalf of a regulated lending institution, to escrow all premiums and fees for flood insurance required for loans secured by residential improved real estate or a mobile home unless the loan or the lending institution qualifies for one of the statutory exceptions. In addition, under the October 2014 Proposed Rule, these premiums and fees would be payable with the same frequency as payments on the loan are made for the duration of the loan. Several commenters, including a municipal government commenter, supported the escrow requirement, although some financial institution commenters opposed the requirement. As escrows are required by the statute, the Agencies are adopting a final rule that will implement the escrow requirement in section 102(d) of the FDPA, as amended.

Consistent with section 25(b) of HFIAA, the Agencies proposed that the escrow requirement would apply to any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. Although section 25(b) of HFIAA applies the escrow requirement to loans "originated, refinanced, increased, extended, or renewed," the Agencies proposed regulatory language in the October 2014 Proposed Rule that applies the requirement to loans "made, increased, extended, or renewed" to be consistent with the way these triggering events are referenced elsewhere in the regulation.<sup>48</sup> Several commenters agreed

with the Agencies' proposal, and the Agencies adopt this non-substantive wording change in the final rule.

One financial institution commenter suggested that the Agencies' regulations be amended to reference "designated" loans because that is a defined term for loans that are subject to the mandatory flood insurance purchase requirement. The commenter also recommended that the regulation be amended to state that the escrow payments be payable with the same frequency as payments on the loan are "required to be" made for the duration of the loan because such wording would be technically accurate. The Agencies agree with these suggested changes, and the final rule adopts the changes recommended by the commenter.

Several financial institution and trade association commenters suggested that the Agencies apply the escrow requirement to loan applications received on or after January 1, 2016. These commenters stated that loan applications could be received prior to January 1, 2016, but may not close before January 1, 2016. Thus, these commenters suggested, these loans may initially be designated as non-escrow loans, but if they close on or after January 1, 2016, lenders will have to re-categorize these loans as loans requiring the escrow of flood insurance premiums and fees. The Agencies note that the statute specifically and clearly applies the escrow requirement to loans that experience a triggering event on or after January 1, 2016. Furthermore, the Agencies believe that lenders have the capability to anticipate whether loan applications submitted prior to January 1, 2016 may close on or after January 1, 2016 and thus should structure those transactions accordingly. Therefore, the Agencies decline to make the change suggested by these commenters.

Another financial institution commenter requested that the Agencies clarify that a flood map change on or after January 1, 2016 that causes a building, which had not previously been located in an SFHA, to be located in an SFHA would not impose a duty on a lender to begin escrowing flood insurance premiums and fees for a loan that is secured by such building. Section 102(d) of the FDPA, as amended, applies to loans that experience a triggering event 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 based solely on that change.

CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

<sup>44</sup> See 80 FR 17414 (Apr. 1, 2015).

<sup>45</sup> See section 13(b) of HFIAA.

<sup>46</sup> The Special Information Booklet is provided only to borrowers who submit a written application for a Federally related mortgage loan. See 12 CFR 1024.6(a).

<sup>47</sup> As discussed above, the Agencies note that section 25(b)(3) of HFIAA provides that these new escrow requirements will not supersede the current escrow provisions during the period beginning on July 6, 2012 and ending on December 31, 2015. Therefore, as provided under section 25(b)(3) of HFIAA, the escrow requirements under section 102(d)(1) of the FDPA in effect on July 5, 2012 will continue to remain in effect and be enforced by the Agencies until December 31, 2015. Each Agency's current escrow provision provides that a regulated lending institution must escrow all premiums and fees for required flood insurance if the institution requires the escrow of taxes, insurance premiums, fees or other charges. See 12 CFR 22.5 and 172.5 (OCC); 12 CFR 208.25(e) (Board); 12 CFR 339.5 (FDIC); 12 CFR 614.4935 (FCA); and 12 CFR 760.5 (NCUA).

<sup>48</sup> See, e.g., 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12

Finally, some credit union association commenters recommended that the escrow status be detailed on an insurance declarations page and that changes in escrow status should be reported to insurance companies who should, in turn, notify all lienholders and homeowners of changes in escrow. The Agencies note that the FDPA, as amended, does not address how insurance companies compose their declarations pages or when and how they must notify lienholders and homeowners regarding escrow status. Accordingly, the Agencies decline to make that requested change.

#### Loan-Related Exceptions

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, contains several exceptions to the general escrow requirement. These exceptions include: (i) Loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided; (ii) loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met; (iii) loans that are secured by residential improved real estate or a mobile home that is used as collateral for a business purpose; (iv) home equity lines of credit; (v) nonperforming loans; and (vi) loans with terms not longer than 12 months. These exceptions are in addition to the small lender exception applicable to certain regulated lending institutions that have total assets of less than \$1 billion set forth in section 102(d) of the FDPA, as amended by section 100209 of Biggert-Waters, discussed below. Numerous commenters supported these exceptions.

Although the Agencies proposed the exceptions largely as provided in HFIAA, the Agencies did propose some clarifications in the October 2014 Proposed Rule. With respect to the exception for loans secured by residential improved real estate or a mobile home that is used as collateral for a business purpose, the Agencies proposed that the exception apply to a loan that is an extension of credit primarily for a business, commercial, or agricultural purpose.

Commenters supported the Agencies' clarification regarding the business purpose loan exception. Some commenters, however, recommended that the Agencies provide further guidance on the exception. Some commenters suggested that the Agencies specifically adopt or refer to the interpretations in Regulation Z, which implements TILA, on the meaning of

“primarily for a business, commercial, or agricultural purpose.”<sup>49</sup>

The Agencies are adopting the exception on business, commercial, or agricultural purpose loans as proposed. As the Agencies explained in the October 2014 Proposed Rule, this is identical to language the Agencies initially proposed in the October 2013 Proposed Rule, which commenters to the October 2013 Proposed Rule supported. As discussed in the October 2013 Proposed Rule and noted in the October 2014 Proposed Rule, the Agencies specifically proposed this language to be consistent with similar exemptions in RESPA<sup>50</sup> and TILA.<sup>51</sup> There is a long history of established guidance on the meaning of “primarily for a business, commercial, or agricultural purpose,” including the interpretations set forth in Regulation Z and associated commentary. Consequently, the Agencies do not believe further interpretations or an explicit referral to Regulation Z is necessary; however, the Agencies intend that those interpretations be used as guidance in connection with this provision.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also includes an exception for a loan in a junior or subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which flood insurance is being provided at the time of the origination of the loan. The Agencies proposed language in the October 2014 Proposed Rule similar to the language in HFIAA for this exception, with some changes to improve readability and clarity. Commenters supported the Agencies' proposed clarifications. Some commenters, however, suggested that the exception be available for subordinate lienholders regardless of whether there is already coverage in place because determining such coverage can be difficult. The Agencies note that HFIAA explicitly provides that the exception is only available for subordinate loans secured by property for which flood insurance is already in place. Furthermore, the Agencies note that, as discussed in the Q&As at Q&A 36, regulated lending institutions are already expected to inquire as to the amount of flood insurance coverage that

is in place when they make, increase, extend, or renew a subordinate lien loan.<sup>52</sup> Accordingly, the Agencies are adopting the exception as proposed.

Several commenters also requested that the Agencies clarify whether a lender has a duty to monitor its lien position over the life of the loan to determine whether the loan qualifies for the subordinate lien exception. As discussed further below, the Agencies do not believe there is an ongoing duty to evaluate the applicability of the subordinate lien exception, or any of the other exceptions. However, similar to the force placement provisions relating to the mandatory flood insurance purchase requirement, the Agencies believe that when a lender makes a determination that the subordinate lien 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 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 permit the lender to require an escrow in connection with the loan in the event the loan takes a first lien position and becomes subject to the escrow requirement.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also exempts from the escrow requirement loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development when covered by a flood insurance policy that: (i) Meets the mandatory flood insurance purchase requirement; (ii) is provided by the condominium association, cooperative, homeowners association or other applicable group; and (iii) the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense. The Agencies proposed in the October 2014 Proposed Rule to implement this exception substantially as stated in the statute.

As the Agencies discussed in both the October 2013 Proposed Rule and the October 2014 Proposed Rule, 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. In those instances, the Agencies expect the regulated lending institution to escrow

<sup>49</sup> One credit union association commenter inquired whether a loan for residential investment properties would be considered a loan that is “primarily for business, agricultural or commercial purposes.” The Agencies note that Regulation Z contains commentary that addresses this question. See comments 3 and 4 under 12 CFR 1026.3(a).

<sup>50</sup> See 12 U.S.C. 2606(a).

<sup>51</sup> See 15 U.S.C. 1603(1).

<sup>52</sup> See 74 FR 35914, 35940–41 (July 21, 2009).



the premiums and fees for the supplemental policy unless the small lender exception applies. 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.

Commenters were generally supportive of the exception as included in the October 2014 Proposed Rule. One community association commenter suggested that the Agencies require insurance companies to disclose the beneficial owner of a policy. However, the FDPA does not compel insurance companies to disclose the beneficial owner of a policy. The Agencies are adopting the condominium association, cooperative, and homeowners association exception as proposed in the October 2014 Proposed Rule.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, includes an exception from the escrow requirement for home equity lines of credit (HELOCs), which was an exception requested by many commenters on the October 2013 Proposed Rule. The Agencies proposed this exception, consistent with HFIAA, in the October 2014 Proposed Rule. One consumer group commenter suggested that the Agencies exclude fully drawn HELOCs from the exception on the theory that such loans are really closed-end loans disguised as HELOCs to qualify for the exception and evade other mortgage requirements. The Agencies note that the FDPA, as amended by section 25 of HFIAA, does not include any exclusion to the exception. Moreover, the issue of whether credit qualifies as open-end credit is addressed by Regulation Z.<sup>53</sup> Therefore, the Agencies are adopting the exception as proposed.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also includes an exception from the escrow requirement for nonperforming loans. The Agencies proposed to implement this exception with a clarification that the exception be available for a nonperforming loan that is 90 or more days past due and solicited comment on the clarification. Several commenters supported the Agencies' clarification. Other commenters, however, requested that the Agencies look to the CFPB's foreclosure and servicing rules or the FCA's rules on categorizing assets for

accounting and reporting purposes in 12 CFR 621.6. In addition, many commenters suggested that once a designated loan is 90 or more days past due, it should not lose the exception if the borrower makes additional payments.

Based on these comments, the Agencies believe further clarification is required regarding this exception. Although it appears that 90 or more days past due is an appropriate measure of when a loan is nonperforming and is consistent with many lenders' current practices, there is confusion on when a nonperforming loan may become a performing loan that is no longer entitled to the exception. The Agencies generally agree that a borrower making some additional payments would not render a nonperforming loan a performing loan; however, the Agencies believe some guidance is necessary to help lenders determine when a loan is no longer nonperforming. Therefore, the Agencies are adopting language that is adapted from the FCA's regulations on categorizing assets<sup>54</sup> to provide that a nonperforming loan 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 final exception provided by section 25 of HFIAA is for a loan that has a term of not longer than 12 months, which the Agencies proposed as provided by the statute. Several financial institution commenters suggested that the term of the exception be extended to 15 months or 24 months to include all construction loans. The Agencies note the statute provides an exception only for loans with a term of 12 months or less, and therefore, the exception is adopted as proposed. However, if a loan of 12 months or less is extended or renewed for an additional term of 12 months or less, the Agencies' regulations would permit the exception to apply to the extended or renewed loan because an extension or renewal is a triggering event. Therefore, at the time of the triggering event, the regulated lending institution may apply the exception if the term of the newly extended or renewed loan is for a term of 12 months or less.

Moreover, the Agencies are adding new language to address questions the Agencies received about the duration of an exception to the escrow requirement. These questions were raised particularly with respect to exceptions based on a

loan status that could change, such as the subordinate lien and nonperforming loan exceptions. Given the ambiguity in the FDPA, as amended, regarding how the exceptions would apply, the final rule clarifies that if a regulated lending institution, or its servicer, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception does not apply, then the lender or its servicer shall require the escrow of all flood insurance premiums and fees as soon as reasonably practicable. In addition, consistent with section 102(d)(3) of the FDPA, which states that escrow accounts established by section 102(d) of the FDPA shall be subject to section 10 of RESPA, the rule provides that a regulated lending institution must provide any disclosure required by section 10 of RESPA if such loan is otherwise subject to RESPA. The Agencies modeled this language on the force placement provisions for the mandatory flood insurance purchase requirement. As with the force placement provisions, the Agencies do not believe this imposes a duty to monitor the exception. However, if the regulated lending institution becomes aware that the status of the loan has changed, then the Agencies expect that the lender should take action, similar to the Agencies' expectations in the force placement context.

The Agencies also received several requests for additional exceptions from the escrow requirements. Some commenters suggested that the Agencies add an exception for closed-end home equity loans in a senior lien position of \$100,000 or less or with a loan-to-value ratio of 60 percent or less. Another commenter suggested adding an exception for any loan with a loan-to-value ratio of 80 percent or less. An additional commenter suggested that the Agencies provide an exception for force-placed loans. Some farm credit commenters also requested that the Agencies provide an exception for loans with nontraditional payment structures such as semi-annual or annual payment schedules. The Agencies note that none of these exceptions are provided for in the FDPA, as amended, and therefore decline to add them.

In addition, a financial institution commenter requested that the Agencies create an exception for reverse mortgages. This commenter stated that it is not possible to align the frequency of escrow payments with loan payments because a borrower makes no payments on a reverse mortgage. The Agencies agree that given the terms of a reverse

<sup>53</sup> See 12 CFR 1026.2(a)(20) and associated commentary.

<sup>54</sup> See 12 CFR 621.6(c).

mortgage, such loans are already excluded based on the plain language of the escrow requirement, which requires lenders to collect flood insurance premiums and fees with the same frequency as payments on the loan are made. As a borrower makes no payments on a reverse mortgage, the lender is not required to escrow flood insurance premiums and fees for such loans.

#### Notice

The Agencies proposed that a regulated lending institution, or a servicer acting on its behalf, mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. As noted in the October 2014 Proposed Rule, this proposal was similar to the notice requirement proposed in the October 2013 Proposed Rule. The purpose of the proposed notice was to ensure that borrowers are informed about the requirement to escrow premiums and fees for mandatory flood insurance.

As the Agencies explained in the October 2014 Proposed Rule, the proposal would require that a regulated lending institution, or a servicer acting on its behalf, provide a notice on the escrow requirement with, or in, a notice the lender is already required to provide: The Notice of Special Flood Hazards. The Agencies proposed this approach in order to minimize the burden to regulated lending institutions of providing this notice and to ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance. The Agencies' current rules provide a sample form of this notice as Appendix A. Because HFIAA amendments tie the escrow requirement to a triggering event (*i.e.*, when a loan is made, increased, extended, or renewed), borrowers already will receive the Notice of Special Flood Hazards, as required by the Agencies' regulations, at the same time that the escrow of flood insurance premiums and fees will be required. To facilitate compliance, the Agencies proposed model language for the escrow notice to be included in or with the Notice of Special Flood Hazards, as applicable.

One commenter supported the proposed requirement to include the notice with the Notice of Special Flood Hazards. The final rule continues to include the escrow notice with the Notice of Special Flood Hazards.

The Agencies are making one modification to the escrow notice requirement in the October 2014

Proposed Rule. As discussed above with respect to the duration of the exception, the Agencies are clarifying that a regulated lending institution or its servicer must require the escrow of all flood insurance premiums and fees if the lender, or a servicer acting on the lender's behalf, determines at any time during the term of a loan that an exception to the escrow requirement for the loan no longer applies. To alert borrowers to the potential need to escrow in those circumstances, the Agencies also are requiring lenders to provide the escrow notice in connection with any excepted loan that could lose its exception during the term of the loan. Consequently, borrowers of loans that may eventually become subject to the escrow requirement will be informed of that possibility.

The Agencies also received some comments related to the content of the notice. These comments will be addressed below in the **SUPPLEMENTARY INFORMATION** accompanying the discussion on *Appendices A & B*.

#### Small Lender Exception

In addition to the exceptions to the escrow requirement discussed above, section 102(d) of the FDPA, as amended by section 100209 of Biggert-Waters, contains an exception for certain small lenders. The FDPA, as amended, states that, except as provided by State law, regulated lending institutions that have total assets of less than \$1 billion are excepted from the escrow requirement if, on or before July 6, 2012, the institution: (i) In the case of a loan secured by residential improved real estate or a mobile home, 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 the loan and (ii) 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 loans secured by residential improved real estate or a mobile home. The Agencies proposed to implement this exception to the escrow requirement substantially as provided in the statute with some clarifications.

One of these clarifications addressed the measurement of the asset size to qualify for the exception, which the Agencies proposed in both the October 2013 Proposed Rule and the October 2014 Proposed Rule. Because Biggert-Waters does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the exception, the Agencies proposed that a regulated lending institution may qualify for the

exception if it has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years. Consequently, regulated lending institutions with assets of \$1 billion or more as of both December 31, 2014, and December 31, 2015, would not qualify for the exception in 2016. In contrast, a regulated lending institution with assets of less than \$1 billion as of either December 31, 2014, or December 31, 2015, would qualify for the exception in 2016, provided the other conditions for the exception are met. As the Agencies explained in both the October 2013 Proposed Rule and the October 2014 Proposed Rule, the Agencies proposed this method, which is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under their Community Reinvestment Act (CRA) regulations,<sup>55</sup> to ensure an institution remains above the size threshold for a substantial period before requiring the institution to expend the resources necessary to establish a new escrow program.

Similar to comments received on the October 2013 Proposed Rule, some financial institution commenters to the October 2014 Proposed Rule suggested that the Agencies set the threshold at \$2 billion in assets to be consistent with the CFPB escrow rules under Regulation Z for higher-priced mortgage loans.<sup>56</sup> A credit union association commenter suggested that the Agencies adjust the threshold annually for inflation. As the Agencies noted in the October 2014 Proposed Rule, the \$1 billion asset-size threshold for the exception from the escrow requirements is specified in the FDPA, as amended, and the Agencies are therefore adopting the \$1 billion asset-size threshold without an annual adjustment, consistent with the FDPA, as amended.

Some commenters also asked whether the assets to be measured applied per institution or whether the assets of all institutions under common ownership must be aggregated. The Agencies' regulations state that the measurement reflects the assets of only the regulated lending institution. As a result, regulated lending institutions need not consolidate the assets of other institutions under common ownership with the regulated lending institution for the measurement of asset size.

The Agencies also proposed transition rules for a change in status of a regulated lending institution that may

<sup>55</sup> See 12 CFR 25.12(u) and 195.12(u) (OCC); 12 CFR 228.12(u) (Board); and 12 CFR 345.12(u) (FDIC).

<sup>56</sup> See 12 CFR 1026.35(b)(2)(iii)(C).

initially qualify for the exception, but later grows to exceed the \$1 billion asset-size threshold. Specifically, the Agencies proposed to give regulated lending institutions approximately six months to begin complying with the escrow requirement, which the Agencies explained in both the October 2013 Proposed Rule and October 2014 Proposed Rule is similar to the Board's Regulation II change in status rules.<sup>57</sup> Under the proposal, a regulated lending institution would be required to escrow flood insurance premiums and fees for any loans made, increased, extended, or renewed on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status. Therefore, under the proposed rule, if a regulated lending institution 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. The final rule similarly would require regulated lending institutions that have had a change in status to begin escrowing for any loans made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status. The Agencies have clarified the language in the final rule with no intended change in meaning.

Several financial institution trade association commenters suggested that lenders be given 12 months to comply with the escrow requirements after a change in status. The Agencies believe that this would be too long a period for lenders to comply in light of the Agencies' regulations measuring the lender's assets over a period of two years. Thus, a lender who has had assets of \$1 billion or more one year and is on track during the second year to have assets of \$1 billion or more should begin to prepare escrowing in the following year. In the Agencies' view, requiring such lenders to escrow flood insurance premiums and fees for loans made, increased, extended, or renewed on or after July 1 after the lender has had a change in status should be sufficient time for the lenders to comply.

The Agencies also received questions from commenters on whether an institution that experienced a change in status, which no longer qualifies it for the small lender exception, could regain the small lender exception if the institution's asset size decreased to less than \$1 billion in a calendar year. Based on the Agencies' regulation, a regulated

lending institution could technically reclaim small lender status in these circumstances. However, given the burden that a regulated lending institution would undertake to establish an escrow program, the Agencies question whether an institution would find it appropriate to abandon a program in which it has invested resources to develop and risk causing confusion to borrowers who have grown accustomed to escrowing flood insurance premiums and fees, especially if the institution could lose the small lender exception again in the future.

The FDPA, as amended, states that the small lender exception is available only if, on or before July 6, 2012, the institution: (i) 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 the loan, in the case of a loan secured by residential improved real estate or a mobile home; and (ii) 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 loans secured by residential improved real estate or a mobile home.

The Agencies proposed clarifications to these conditions in the October 2014 Proposed Rule based on comments received on the October 2013 Proposed Rule. Specifically, the Agencies proposed that if, on or before July 6, 2012, the institution: (i) 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 (ii) 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, the institution may be eligible for the small lender exception provided it meets the size threshold. The Agencies are adopting this language in the final rule.

A farm credit commenter suggested that the conditions should only apply to an institution's consumer loan portfolio. The Agencies note that the statute applies the conditions to any loan secured by residential improved real estate or a mobile home. Therefore, based on the plain language of the FDPA, as amended, and the Agencies' regulations, the institution should include all loans secured by residential improved real estate or a mobile home, regardless of whether the loan is for a consumer purpose. Some commenters, including several farm credit

commenters, suggested that instead of adopting the conditions set forth in the FDPA, the Agencies develop a bright line test, for example less than 100 mortgages per year or 200 loans per year or 5 percent of the institution's portfolio, to determine whether or not an institution has a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account. The Agencies do not believe these limits would be consistent with the FDPA and decline to adopt such standards.

The Agencies also received several questions about the conditions, which the Agencies believe can be resolved by looking to the plain language of the FDPA, as adopted and implemented by the Agencies' regulations. A financial institution trade group commenter asked whether a lender who began a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account after July 6, 2012 could still qualify for the small lender exception. Based on the FDPA and the Agencies' regulations, which reference a lender's policy on or before July 6, 2012, an institution could qualify for the exception if the policy of requiring escrow began *after* July 6, 2012, provided the lender meets the size threshold. Commenters also requested clarification on whether the small lender exception is available if the lender maintains escrows only on a borrower's request or if the policy of consistently and uniformly requiring escrow accounts comes at the behest of a third party. Regarding the former situation, the Agencies note that the FDPA and the Agencies' regulations state that the condition is based on a lender having a policy of *requiring* the escrow accounts. Therefore, if the lender is only maintaining escrows based on borrowers' requests, the Agencies do not believe this to be a policy of uniformly or consistently requiring escrow. With respect to the situation involving a third party, the Agencies believe that under the FDPA and the Agencies' regulations, it is irrelevant why the lender is requiring the escrow so long as there is a policy of uniformly or consistently requiring borrowers to escrow.

#### Option To Escrow

Section 25(b) of HFIAA requires regulated lending institutions to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans secured by residential improved real estate or a mobile home that are outstanding as of

<sup>57</sup> See 12 CFR 235.5(a)(3).

January 1, 2016. The Agencies proposed this provision in the October 2014 Proposed Rule generally as provided in the statute with changes to the language for clarity and organization. Consistent with section 25(b) of HFIAA, the proposal also clarified that providing an option to escrow would not apply to loans or lenders that are excepted from the general escrow requirement.

Commenters were generally supportive of the Agencies' proposal on the option to escrow. Some credit union and credit union trade group commenters, however, opposed requiring lenders to offer an option to escrow for loans outstanding on January 1, 2016. The Agencies note that offering an option to escrow is required by section 25(b) of HFIAA. As a result, the Agencies are adopting a requirement to offer an option to escrow, consistent with HFIAA.

Several commenters supported the Agencies' proposal stating that the option to escrow does not apply to loans or lenders that are excepted from the general escrow requirement. Many commenters requested the Agencies to clarify that the status of the loan as of the "outstanding" date should determine whether the lender must send the notice of the option to escrow. For example, if a loan outstanding as of January 1, 2016 is a subordinate lien loan excepted from the escrow requirement, then a lender that is not subject to the small lender exception need not provide the notice of the option to escrow even if the lien status for such loan could subsequently change. The Agencies agree that this is consistent with section 25(b) of HFIAA, which requires a regulated lending institution to offer and make available an option to escrow for loans outstanding as of January 1, 2016, and therefore, the status of the loan as of January 1, 2016 should determine whether the requirement to offer and make available an option to escrow applies.

The Agencies also received several comments on providing additional exceptions for the option to escrow requirement. Several commenters suggested that there should be an exception to offering an option to escrow for borrowers that already are escrowing. The Agencies agree section 25(b) of HFIAA provides an exception for certain loans that are already escrowing.<sup>58</sup> Furthermore, the Agencies

do not find any reason for a borrower who is already escrowing to receive a notice of the option to escrow. Consequently, the Agencies are adding language to their regulations to clarify that the option to escrow does not apply to an outstanding loan with a related escrow of flood insurance premiums and fees, or to a loan that is already subject to the escrow requirement. Therefore, if a loan is outstanding on January 1, 2016, for example, and subsequently experiences a triggering event on February 1, 2016 so that the lender must begin escrowing flood insurance premiums and fees for such loan, the lender need not provide the option to escrow notice to the borrower.

Commenters also requested that the Agencies exclude loans for which borrowers have previously waived escrow or for which lenders previously offered an option to escrow from having to offer the option to escrow again. The Agencies decline to include such exceptions. Although a borrower may have previously decided to waive escrow or been offered an option to escrow, it is possible that the borrower's circumstances have changed, and if offered another chance to escrow, the borrower may do so. Moreover, including such exceptions would be inconsistent with section 25(b) of HFIAA.

Furthermore, the Agencies proposed in the October 2014 Proposed Rule to use their authority to implement the escrow requirement to mandate that regulated lending institutions that no longer qualify for the small lender exception provide the option to escrow for borrowers of loans outstanding on July 1 of the succeeding calendar year following the lender's change in status. For example, suppose a loan is made on March 1, 2016, by a regulated lending institution that qualifies for the exception for small lenders. If the lender then no longer qualifies for the exception for small lenders as of January 1, 2018, under the Agencies' regulations, the lender would be required to escrow flood insurance premiums and fees for loans made, increased, extended, or renewed on or after July 1, 2018. The lender would have the capability to escrow flood insurance premiums and fees on July 1, 2018, and could provide that service to the borrower of the March 1, 2016 loan. Consequently, under the Agencies' October 2014 Proposed Rule, the regulated lending institution would be

required to offer the borrower of that loan the option to escrow.

A few credit union and farm credit commenters opposed the Agencies' proposal while a consumer group commenter supported the proposal. Several financial institution and financial institution trade association commenters did not oppose applying the option to escrow requirement to institutions that lose the small lender exception, but stated that additional time may be needed for such institutions to comply. The Agencies continue to believe that a regulated lending institution that no longer qualifies for the small lender exception should be required to provide an option to escrow. Because a regulated lending institution that experiences a change in status will be required to establish an escrow program, borrowers on existing loans should benefit from the institution's program and be offered the option to escrow. Therefore, the Agencies are adopting the proposed regulations to require regulated lending institutions that lose the small lender exception to offer the option to escrow to existing borrowers with outstanding loans secured by residential improved real estate or a mobile home as of its compliance date.

In the October 2014 Proposed Rule, the Agencies also proposed additional clarifications to provide more specific guidance to regulated lending institutions in administering this requirement. First, the Agencies proposed to implement the requirement that regulated lending institutions "offer and make available" the option to escrow flood insurance premiums and fees by requiring that for outstanding loans, a lender, or its servicer, mail or deliver, or provide electronically if the borrower agrees, a notice informing borrowers of the option to escrow by March 31, 2016. For lenders that no longer qualify for the small lender exception, the Agencies proposed that the notice informing borrowers of the option to escrow be provided by September 30 of the succeeding calendar year following the lender's change in status.

Several financial institution and trade group commenters stated that requiring notice for outstanding loans by March 31, 2016 provided sufficient time for regulated lending institutions to comply. There were, however, some commenters that suggested the notice be required by January 1, 2017, because certain institutions must manually identify outstanding loans for which the notice on the option to escrow must be provided. The Agencies believe that providing institutions with one year to

<sup>58</sup> Section 25(b)(1)(B) of HFIAA states that the term "outstanding loan" to which the option to escrow requirement applies includes a loan that is not subject to the requirement to escrow premiums and fees for flood insurance under section 102(d)(1) of the FDPA in effect on July 5, 2012. Therefore, if

a loan is already escrowing pursuant to section 102(d)(1) of the FDPA in effect on July 5, 2012, it is not an outstanding loan that must be offered an option to escrow.

comply is too long, but that additional time may be warranted. Consequently, the Agencies are amending their proposed rule to require that the option to escrow notice should be provided by June 30, 2016.

Some commenters also requested additional time for providing the option to escrow notice for lenders that lose the small lender exception. The Agencies proposed that the notice be provided by September 30 of the succeeding calendar year following the lender's change in status. Thus, such an institution would have nine months from the time it loses the exception to send the option to escrow notice. The Agencies believe that nine months provides an adequate amount of time for such institutions to identify borrowers of outstanding loans and mail or deliver the notice and are therefore adopting the September 30 compliance date. The Agencies, however, have revised the language of the final rule to clarify that a lender that has had a change in status must provide the notice of the option to escrow by September 30 of the first calendar year in which it has had a change in status.

Second, the Agencies proposed to require a lender or its servicer to begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the lender or servicer receives the borrower's request to escrow. As the Agencies explained in the October 2014 Proposed Rule, this language was derived from similar requirements in Regulation E<sup>59</sup> and Regulation Z,<sup>60</sup> regarding how soon a financial institution or credit card issuer must implement the revocation of an opt-in for overdraft services or an over-the-limit feature of a credit card, respectively.

Several commenters supported the Agencies' proposal, noting that regulated lending institutions have had experience with the "as soon as reasonably practicable" standard under Regulation E and Regulation Z and that no greater specificity in the language is necessary. Some commenters requested further guidance on when lenders must begin escrowing after a borrower's request. Given that the Agencies believe a standard timeline may be difficult to establish for different institutions, and in light of the experience that regulated lending institutions already have with the "as soon as reasonably practicable" concept under Regulation E and Regulation Z, the Agencies are adopting the provision as proposed.

Third, to facilitate compliance, the Agencies proposed a model clause for the notice on the option to escrow in Appendix B. The Agencies' model clause for the option to escrow notice and the comments the Agencies received in connection with this proposal, will be discussed in more detail below in the **SUPPLEMENTARY INFORMATION** to *Appendices A & B*.

#### *Required Use of Standard Flood Hazard Determination Form*

In connection with the detached structures exemption in section 102(c) of the FDPA, made by section 13 of HFIAA, discussed above, the Agencies proposed in the October 2014 Proposed Rule to amend the Agencies' regulations to clarify that a regulated lending institution need not perform a flood hazard determination for any properties or structures that are exempt from the mandatory flood insurance purchase requirement. The Agencies reasoned that because flood insurance is not required on such properties and structures, determining whether such structures are located in an SFHA is unnecessary, and that removing this requirement for such properties and structures would eliminate unnecessary fees charged to borrowers.

Several commenters criticized this proposed amendment. They suggested the Agencies clarify that, although a lender need not perform a flood hazard determination for any properties exempt from the mandatory flood insurance purchase requirement, a lender still may need to obtain a flood hazard determination and charge a fee for the determination even if the property or structure qualifies for the exemption. Two commenters noted that lenders generally are not aware of detached structures until the flood hazard determination lists the number of buildings located on a property or until an appraisal or survey, occurring after the lender has ordered a determination, identifies the detached structures.

The Agencies agree with these commenters that conducting a flood hazard determination may be necessary to ascertain the number of buildings located on the property. In addition, the lender otherwise may not be aware that there is a detached structure until after a flood hazard determination is ordered. Therefore, conducting a flood hazard determination remains necessary to ensure compliance with the flood insurance requirements. Accordingly, the final rule does not include the proposed exception to the flood hazard determination requirement for properties and structures exempt from

the mandatory flood insurance purchase requirement.

Finally, the October 2013 Proposed Rule proposed technical amendments in this section to change the reference to the head of FEMA from "Director" to "Administrator" and to update how a lending institution may obtain the standard flood hazard insurance form by directing the institution to FEMA's Web site. No comments were received on this aspect of the proposal. The Agencies therefore adopt the change in title of the head of FEMA from "Director" to "Administrator" and the addition of the Web site reference as proposed.

#### *Force Placement of Flood Insurance*

Pursuant to section 102(e) of the FDPA, as amended by section 100244 of Biggert-Waters, the Agencies proposed to amend their rules for the force placement of flood insurance.<sup>61</sup> The October 2013 Proposed Rule sought to implement section 100244 of Biggert-Waters by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate that a borrower has flood insurance coverage.

#### *Notice and Purchase of Coverage*

Under current regulations, if a regulated lending institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the FDPA, then the regulated lending institution or its servicer must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under the mandatory purchase requirement, for the remaining term of the designated loan. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the regulated lending institution or its servicer must purchase flood insurance on behalf of

<sup>61</sup> The Agencies note that section 1463(a) of the Dodd-Frank Act sets forth requirements relating to the force placement of hazard insurance. The CFPB has excluded flood insurance required under the FDPA from the force placement requirements in its rule implementing this provision. 12 CFR 1024.37(a).

<sup>59</sup> See 12 CFR 1005.17(f).

<sup>60</sup> See 12 CFR 1026.56(i).

the borrower. The regulated lending institution or servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Pursuant to section 102(e) of the FDPA, as amended by section 100244 of Biggert-Waters, the Agencies proposed to amend their regulations to provide that the regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the borrower's flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Agencies' understanding is that the date on which the flood insurance coverage lapses is the expiration date provided by the policy. The October 2013 Proposed Rule solicited comment on whether the Agencies' interpretation of the term "lapsed" is consistent with the insurance industry's use of the term and whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.

A number of commenters, including trade associations and lenders, generally supported the proposed amendment allowing regulated lending institutions to charge borrowers for the cost of premiums and fees incurred for coverage beginning on the date of lapse or insufficient coverage. These commenters noted that this amendment would make it clear that force-placed insurance resulting from expired or lapsed policies should be dated to the date of expiration to ensure continuous flood coverage. Some trade association commenters supported the Agencies' approach as consistent with Congressional intent and long-standing industry practice adopted to ensure continuous coverage as required by the FDPA.

A number of commenters agreed with the Agencies' interpretation that the date of lapse is the expiration date provided in the borrower's flood insurance policy and asserted this definition is consistent with industry usage. Other commenters, however, disagreed with the Agencies' interpretation, with one trade association suggesting the regulations should clearly state that a lapse is any period in which flood insurance coverage is not continuously maintained that protects the interest of the named insured. Another commenter objected by noting that the term is an insurance term of art and means more than the date coverage expires. This commenter further stated that the term "lapse" can mean more than just the expiration date of coverage depending on an insurer's business practices. Lastly, an insurance

association commenter suggested defining a "lapse" to occur when a policy has been not renewed for some reason or has been cancelled for non-payment, and therefore it would be more appropriate to use "non-renewed or cancelled" rather than "expiration date" as provided in the October 2013 Proposed Rule.

The Agencies understand that flood insurance policies under the NFIP will often provide policyholders with a "grace period" of typically 30 days following the expiration date to pay the renewal premiums and fees to restore the policy and ensure continuous coverage. However, the Agencies also understand that any flood insurance coverage provided by the NFIP policy during the grace period would cover only the lender's interest. The borrower's interest would be covered during the grace period only if the borrower pays the renewal premium within the grace period.<sup>62</sup> Because there may be a lack of continuous flood coverage protecting the borrower's interest during this "grace period," the Agencies consider the policy to have lapsed as of the expiration date provided by the policy. The Agencies also consider policies that are cancelled for any reason as having lapsed as of the date of cancellation because the borrower's interests are no longer covered by the policy. Therefore, the Agencies have amended their interpretation from the original proposal to provide that the date on which the flood insurance coverage lapsed is the expiration date provided by the policy or the date the flood insurance policy is cancelled.

The Agencies also received several comments requesting general clarification on the 45-day notice requirement. Some commenters sought clarification on whether a regulated lending institution, or a servicer acting on its behalf, can send the 45-day notice of force placement to the borrower prior to the actual expiration of the current policy so that the institution is prepared to renew on the date it expires or whether the institution must wait until policy expiration to send the notice. The Agencies note that, to ensure that adequate flood insurance coverage is maintained throughout the term of the loan and to comply with the Federal flood statutes, a regulated lending institution or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property. The regulated lending institution or its

servicer must send this 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 FDPA specifically provides that the lender or servicer for a loan must send a notice upon its determination that the collateral property securing the loan is either not covered by flood insurance or is covered by such insurance in an amount less than the amount required.<sup>63</sup> In accordance with this statutory requirement, the final rule clarifies that the required 45-day notice must be sent following the date of lapse or insufficient coverage of the borrower's policy.

The Agencies also received suggestions on alternative force placement notification processes. A few commenters recommended the Agencies add a second 15-day reminder,<sup>64</sup> as required for force-placed hazard insurance under the CFPB's rule, to simplify compliance for loan servicers subject to RESPA's Regulation X. Some commenters, including trade association commenters, recommended the Agencies issue guidance that would authorize a lender to follow a notification process similar to FEMA's Mortgage Portfolio Protection Program (MPPP).<sup>65</sup> The Agencies are aware of these alternative notification processes and appreciate the benefits of additional notices. The Agencies note that a regulated lending institution or its servicer, at its discretion, may send one or more additional notices prior to the expiration date as a courtesy to assist the borrower. However, in order to comply with this section, the regulated lending institution or its servicer still would be required to send the mandated 45-day notice following the lapse of the borrower's policy.

<sup>63</sup> See 42 U.S.C. 4012a(e).

<sup>64</sup> Under Regulation X, the CFPB requires a servicer to send two written notices before a servicer can assess a force placement charge on a borrower: (1) A notice at least 45 days before assessment of a charge, and (2) a notice at least 30 days after the initial notice and at least 15 days before assessment of a force placement charge. 12 CFR 1024.37(c)-(d).

<sup>65</sup> MPPP requires three notification letters to be sent to the borrower: (1) 45 Days prior to expiration or upon determination, (2) 30 days following the first notification letter, and (3) after the end of 45 day notification period along with the flood insurance policy declarations page. 44 CFR 62.23.

<sup>62</sup> National Flood Insurance Program, Flood Insurance Manual at REN 2-3 (Apr. 1, 2015).

With respect to the notification regarding the renewal of a force-placed flood insurance policy, some industry commenters requested additional guidance. One commenter stated that the Agencies should do more to reduce the need for force-placed flood insurance, and suggested that the Agencies coordinate with the CFPB to mitigate gaps in the regulations pertaining to flood insurance policies. The Agencies may provide guidance in the future regarding notification in connection with the renewal of a force-placed flood insurance policy.

Additionally, several commenters sought clarification on the date on which a regulated lending institution or its servicer may force-place flood insurance. Some commenters inquired as to whether the appropriate date is when the lender or servicer discovers the insufficient coverage or after the expiration of the 45-day notice period. Other commenters also asserted a 45-day waiting period creates liability for the institution and is contrary to the intent of the Federal flood statutes to ensure continuous insurance coverage. The Agencies agree with the commenters who suggested that the regulation provide that lenders or servicers may purchase force-placed insurance immediately after the borrower's original policy lapses. Biggert-Waters clarifies that a regulated lending institution or its servicer has the statutory authority to charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. Therefore, Biggert-Waters permits a lender or servicer to force place insurance immediately after the borrower's policy has lapsed or did not provide sufficient coverage. The Agencies' interpretation seeks to ensure that the protections provided by flood coverage for both the borrower and lender will be continuous. Based on the Federal flood statutes, the final rule clarifies that a regulated lending institution, or a servicer acting on its behalf, 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.

Some commenters, however, objected to the October 2013 Proposed Rule by asserting that the proposed rule allowing for fees and charges of a force-placed policy beginning on the date the borrower's policy lapsed would be in conflict with Federal law that currently requires a 30-day waiting period on all NFIP policies, except for policies written in connection with new loans,

and other, limited circumstances.<sup>66</sup> The Agencies understand that most force-placed policies are private flood insurance policies rather than policies written under the MPPP administered by FEMA. It is also the Agencies understanding that private force-placed flood insurance policies generally do not have a 30-day waiting period and would allow a regulated lending institution, or a servicer acting on its behalf, to force place flood insurance effective immediately.

In addition to requesting clarification on when a regulated lending institution or servicer can force place flood insurance, numerous commenters also sought clarification on the date on which a regulated lending institution or its servicer may charge for force-placed insurance. One commenter asked whether a regulated lending institution can force place flood insurance at the expiration of the current policy, but not charge the customer until the end of the 45-day notice period. The Agencies note that Biggert-Waters and the final regulations provide that a regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage. As discussed above, the Agencies interpret this provision to mean that a regulated lending institution or its 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, the institution can charge the borrower for the force-placed insurance.<sup>67</sup> However, if the borrower obtains a flood insurance policy that overlaps with the force-placed policy, the lender or servicer must refund any premiums paid by the borrower for this overlap period. For example, if a borrower has not renewed a flood insurance policy that expires on June 30, a lender or servicer must provide the 45-day notice to the borrower and may force place a flood insurance policy as early as July 1. The lender or 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 lender or

servicer had not force placed insurance by August 14 (the end of 45-day period), the lender or servicer 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 lender or servicer, then the lender or servicer would be required to refund any premiums paid by the borrower for the force-placed insurance coverage between July 1 and July 15. As a practical matter, lenders or servicers 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.

Finally, the Agencies received several comments regarding retroactive billing. One commenter suggested a regulated lending institution or its servicer should not be permitted to charge the borrower for lapsed coverage if the institution or servicer fails to identify a lapse within 60 days. Another commenter asserted it is unreasonable to allow an institution to delay sending notices in order to charge retroactively a borrower for a lengthy period of force-placed flood insurance coverage. Additionally, several commenters requested the Agencies to define clearly the date back to which a lender may charge force-placed flood insurance premiums and suggested this date to be when a lender discovers that flood insurance coverage "did not provide a sufficient coverage amount." The plain language of the statute provides that the lender or servicer may charge for premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. Further, when the lending institution determines there is a coverage lapse or insufficient coverage, the FDPA requires the institution to send a notice to the borrower. The Agencies also observe that, for purposes of safety and soundness, regulated lending institutions should ensure continuous coverage of flood insurance for the building or mobile home and any personal property securing a designated loan.

Additionally, the Agencies interpret Biggert-Waters to permit a regulated lending institution to force place a flood insurance policy purchased on behalf of a borrower that is effective the day after

<sup>66</sup> Section 1306(c) of the NFIA, 42 U.S.C. 4013(c), as amended by the Act. See FEMA WYO Bulletin W-13017, issued March 29, 2013 and effective October 1, 2013.

<sup>67</sup> Under Regulation X, the CFPB requires a servicer to wait 45 days before a servicer can assess a force placement charge on a borrower. 12 CFR 1024.37(c)-(d).

expiration of a borrower's original insurance policy to ensure continuous coverage. Such a practice will ensure that institutions complete the force placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution. If an institution, despite its monitoring efforts, discovers a policy with insufficient coverage, for example due to a re-mapping, the institution may charge back to the date of insufficient coverage provided the institution 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, an institution 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.

#### Termination of Force-Placed Insurance

As provided in section 102(e)(3) of the FDPA, which was added by section 100244 of Biggert-Waters, the Agencies proposed that within 30 days of receipt by a regulated lending institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to: (i) Notify the insurer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer and (ii) refund to the borrower all premiums paid by the borrower for any insurance purchased by the regulated lending institution or its servicer under this section for any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the regulated lending institution or its servicer were each in effect (overlap period), and any related fees charged to the borrower.

The Agencies realize that, although regulated lending institutions and servicers can request that a force-placed insurance policy be terminated, it is the insurer that actually cancels the policy. The October 2013 Proposed Rule, therefore, clarified that the statutory language in section 102(e)(3) of the FDPA, as amended by section 100244 of Biggert-Waters, requires the institution only to notify the insurer to terminate the force-placed policy. The institution also must fully refund to the borrower the premiums and fees for the overlap period within the 30-day period required by the statute.

Although some commenters generally supported the proposed termination and

refund requirements, a few commenters objected. One commenter suggested that the Agencies withdraw this requirement for existing loans and allow a substantial period for compliance prospectively. Another commenter asserted this requirement would mean a lender is "stuck with" a portion of the premium for the force-placed insurance that was purchased only because the borrower did not satisfy an obligation of the mortgage agreement to purchase flood insurance. The Agencies understand lenders' concerns regarding the termination and refund provisions. However, Biggert-Waters specifically requires the refund of force-placed insurance premiums for any overlap period and does not provide an exception to the requirement for outstanding loans.

Other commenters sought further clarifications on the proposed requirements. One commenter, for example, presented a scenario in which an existing policy expires on September 1 and then on September 16, the lender force places coverage retroactive to the date of lapse (September 1) after having previously sent a force placement notice. On September 17, the borrower provides proof of policy purchased that day but which is subject to a 30-day waiting period prior to becoming effective. This commenter inquired whether the lender must terminate a force-placed policy and refund premiums and fees at the expiration of the 30-day waiting period or upon receipt by the lender of confirmation of borrower obtained flood insurance coverage. The Agencies note that Biggert-Waters requires a lender or servicer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer and to refund to the borrower all premiums or fees paid by the borrower for any overlap period. Because the borrower's policy is subject to a 30-day waiting period, it would not be "in effect" until the waiting period has expired. The lender's force-placed policy provides the only flood insurance coverage on the property during that waiting period. Provided the force-placed insurance policy is terminated upon the expiration of the 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.

Another commenter suggested the Agencies clarify that the lender's refund obligation is subject to the insurer's refund of the premium. The Agencies note that Biggert-Waters does not impose such a condition precedent upon the lender's refund.

A commenter urged the Agencies to adopt a limit on how far back a regulated lending institution may be required to refund overlapping flood insurance to encourage borrowers to be diligent in reviewing notices and prompt in notifying the lender or servicer. The Agencies understand the difficulties in refunding premiums for force-placed insurance for extensive overlap periods due to the borrower not notifying the lender promptly. Nonetheless, the Agencies note that Biggert-Waters makes clear that a lender is required to refund any premiums and fees a borrower has paid for which the borrower provides sufficient documentation of overlapping coverage. Accordingly, Biggert-Waters does not provide a limitation on the time period for which a borrower can submit documentation of overlapping coverage. However, the Agencies believe that a borrower receiving force placement notices and faced with the burden of associated fees and premiums would be motivated to provide prompt notification to the lender of the borrower's own policy rather than be required to pay the additional fees and premiums during any period of overlapping coverage. Based on a review of the comments, the Agencies are adopting the termination and refund provision as proposed.

In addition, the Agencies note that section 102(e)(3) of the FDPA, as amended, and the Agencies' final regulations, do not specify a party from which a regulated lending institution must receive confirmation of a borrower's existing flood insurance coverage. Therefore, regulated lending institutions may receive the confirmation from either the borrower or a third party, such as an insurance agent or insurer with whom the institution has direct contact.

#### Sufficiency of Demonstration

Pursuant to section 102(e)(4) of the FDPA, as amended by section 100244 of Biggert-Waters, the October 2013 Proposed Rule provided that, for purposes of confirming a borrower's existing flood insurance coverage, a regulated lending institution or its servicer must accept from the borrower 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 its agent. A few commenters expressed general support for the proposed regulations as important protections that will simplify the verification process between lenders and flood insurance providers and result in greater transparency.



Numerous commenters requested further clarifications while others expressed concerns with implementation of the proposed rules.

Among the clarifications requested, several trade associations asked what constitutes a “sufficient demonstration” for purposes of confirming a borrower’s existing flood insurance coverage. Another commenter suggested the Agencies clarify that sufficient evidence of insurance coverage must include items specified in FEMA Bulletin W-13013.<sup>68</sup> This commenter also suggested inclusion of the policy term effective dates, the current flood coverage amount, limitations and exclusions, the mortgagee’s identity, and, if the coverage is provided by a private flood policy, some documentation that the policy satisfies either the Biggert-Waters definition of private flood insurance or the mandatory purchase requirement. A large lender commenter requested that the Agencies clarify that, in addition to the minimum required information, the declarations page must contain the correct amount, dates, and other information to fulfill the mandatory purchase requirements. This commenter also recommended that a copy of the policy be provided to the lender or servicer and that the lender or servicer have 45 days to check for compliance with any required private flood insurance criteria as conditions for terminating the force-placed insurance based on a borrower’s private policy.

As provided by the October 2013 Proposed Rule, sufficient documentation consists of 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 its agent. This information is all that is required under Biggert-Waters for an insurance policy declarations page to be considered sufficient evidence of a borrower’s flood insurance coverage, and the Agencies decline to require additional information.

<sup>68</sup> FEMA Bulletin W-13013, issued March 19, 2013, reiterates that the NFIP rules and regulations do not allow the use of temporary declarations pages as evidence of insurance. The Bulletin refers to the General Rules section of the Flood Insurance Manual which provides rules regarding acceptable forms of evidence of insurance:

A copy of the Flood Insurance Application and premium payment, or a copy of the declarations page, is sufficient evidence of proof of purchase for new policies. The NFIP does not recognize binders. However, for informational purposes only, the NFIP recognizes certificates or evidences of flood insurance, and similar forms, provided for renewal policies if the following information is included: The policy form/type, term, and number; insured’s name and mailing address; property location; current and rated flood risk zone; grandfathering status; mortgagee name and address; coverage limits; deductibles; and annual premium.

Another area of concern identified by commenters is that the requirement to accept the declarations page as sufficient demonstration may cause lenders to accept a private flood insurance policy based on the declarations page, only to later determine that the policy is unacceptable. As the Agencies discussed in the October 2013 Proposed Rule, a lender is responsible for making all necessary inquiries into the adequacy of the borrower’s insurance policy to ensure that the policy complies with the mandatory purchase requirement. If the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request that the borrower obtain an adequate flood insurance policy.

Several commenters expressed concerns about the premature cancellation of a force-placed policy resulting in its replacement by another force-placed policy when the regulated lending institution determines that adequate insurance was not in place by the borrower. These commenters suggested that the Agencies clarify that a regulated lending institution or servicer is not required to cancel the force-placed policy until it has completed any necessary inquiries and receives valid evidence of compliant flood insurance coverage.

The Agencies understand the commenters’ concerns with regard to premature cancellation of a force-placed policy and the administrative burden of terminating such a policy and refunding any paid premiums to the borrower. Consistent with Biggert-Waters, the final rule provides regulated lending institutions and servicers with 30 days from the receipt of the borrower’s confirmation of existing flood insurance to conduct all necessary inquiries regarding whether the borrower’s flood insurance policy satisfies the minimum mandatory purchase requirement.<sup>69</sup> The Agencies note that 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.

Finally, several commenters asserted that regulated lending institutions and servicers should have the discretion to accept other documents that may also demonstrate a borrower has adequate flood insurance coverage. The Agencies clarify that although a declarations page

is the one option that a lender must accept, there are circumstances in which a lender 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 Agencies note that the final rule establishes the only information that a lender or servicer may require as sufficient demonstration of flood insurance coverage; however, if other information is submitted, then the institution may accept it. The Agencies, therefore, adopt the provision as proposed in the October 2013 Proposed Rule.

#### Other Comments

In addition to the solicited comments, the Agencies received comments addressing force-placed insurance in general that are not specific to the October 2013 Proposed Rule. A few consumer associations urged the Agencies to adopt additional provisions to reduce the incidence of force-placed insurance and prevent kickbacks and other practices that unreasonably inflate the cost of force-placed insurance and encourage excessive use. These commenters encouraged the Agencies to require that force-placed insurance be reasonably priced, prohibit the purchase from an insurer affiliated with the servicer, and place limits on how much voluntary flood coverage the lender or servicer may require or force place. The Agencies observe that Biggert-Waters does not address these issues. However, the Agencies remind regulated institutions that their force placement practices should be consistent with all applicable laws, regulations, and safe and sound banking practices.

These consumer associations also requested that the Agencies require regulated lending institutions or servicers to advance insurance premiums rather than letting a borrower’s policy lapse for nonpayment. These commenters urged that institutions and servicers must exhaust all options to keep homeowners’ existing flood insurance policies in place before force placing insurance. The Agencies note, however, that the Federal flood statutes do not contain provisions similar to those relied upon by the CFPB in its mortgage servicing rule, which require a servicer to advance funds to a borrower’s escrow account for the purpose of paying for a borrower’s hazard insurance (unless the servicer has a reasonable basis to believe that a borrower’s hazard insurance has been canceled or not renewed for

<sup>69</sup> See 42 U.S.C. 4012(a)(e)(3).

reasons other than nonpayment).<sup>70</sup> Although the final rule does not require a regulated lending institution to advance premiums, the Agencies note that nothing prohibits an institution from doing so to benefit the consumer.

A commenter requested that the Agencies clarify the applicability of the force placement provisions to re-mapping scenarios. The Agencies reiterate that if at any time during the life of the loan, a regulated lending institution or its servicer determines flood insurance is absent or insufficient, including following a map change, the regulated lending institution or its servicer must initiate force placement procedures by notifying the borrower of the mandatory purchase requirement and providing the borrower an opportunity to obtain the necessary amount of coverage. If the borrower fails to purchase the required amount of insurance within 45 days after the lender provides notice, the institution or servicer must force place flood insurance on the borrower's behalf.

Finally, the Agencies received comments from a number of different organizations discussing the escrowing of force-placed insurance premiums and fees. The Agencies addressed these comments above in the **SUPPLEMENTARY INFORMATION** related to \_\_\_\_\_.

Escrow Requirement

\_\_\_\_\_. *Determination Fees*

As discussed in the **SUPPLEMENTARY INFORMATION** related to \_\_\_\_\_, *Authority, purpose, and scope*, the Agencies are adopting the change in title of the head of FEMA from "Director" to "Administrator" as proposed.

\_\_\_\_\_. *Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance*

Section 100239 of Biggert-Waters added a new section 102(b)(6) to the

FDPA (42 U.S.C. 4012a(b)(6)), which requires regulated lending institutions to disclose to a borrower that: (i) Flood insurance is available from private insurance companies that issue SFIPs on behalf of the NFIP or directly from the NFIP; (ii) flood insurance that provides the same level of coverage as an SFIP under the NFIP may be available from a private insurance company that issues policies on behalf of the company; and (iii) 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 to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

Furthermore, section 100239(b) of Biggert-Waters amended section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)) to require that the disclosures in section 102(b)(6) of the FDPA be provided in the Notice of Special Flood Hazards. Therefore, the final rule provides that the disclosures set forth in section 102(b)(6) of the FDPA be included in the Notice of Special Flood Hazards. The Agencies also proposed model language for the disclosure in the sample form of notice contained in Appendix A, as discussed further below.

In order to reduce the compliance burden of amending the Notice of Special Flood Hazards, the Agencies are implementing these changes to the regulation effective January 1, 2016. This effective date coincides with the January 1, 2016 effective date set forth in HFIAA that is applicable to the escrow provisions, which also affect Appendix A.

\_\_\_\_\_. *Notice of Servicer's Identity*

As discussed in the **SUPPLEMENTARY INFORMATION** related to \_\_\_\_\_, *Authority, purpose, and scope*, the Agencies are adopting the change in title of the head of FEMA from "Director" to "Administrator" as proposed.

*Appendices A & B*

Appendix A

As discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to \_\_\_\_\_, *Escrow requirement* above, the Agencies proposed in the October 2014 Proposed Rule that regulated lending institutions must mail or deliver a written notice informing borrowers about the requirement to escrow premiums and

fees for required flood insurance. To facilitate compliance with the proposed notice requirement, the Agencies proposed model language that could be included, if applicable, in the Notice of Special Flood Hazards as set forth in the sample form of notice contained in Appendix A.

Commenters were supportive of the Agencies proposing model language and that the notice be included in or with the Notice of Special Flood Hazards. However, the Agencies received comments with recommendations for improving the model language, which the Agencies are including in this final rule. In particular, these suggestions are meant to clarify that borrowers "may" be required to escrow flood insurance premiums and fees to take into account instances when the notice might be provided to a borrower of a loan excepted from the escrow requirement.

One municipal government commenter suggested that the Agencies also include an explanation of the term "escrow." The Agencies are concerned that such an explanation could complicate the notice, because the concept of escrow is not unique to flood insurance. Additionally, escrow is already explained in the RESPA Special Information Booklet that is provided to consumers applying for Federally related mortgages.<sup>71</sup> As a result, the Agencies decline to require additional language to explain the term "escrow" in the Notice of Special Flood Hazards.

Furthermore, in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to \_\_\_\_\_, *Exemptions* above, the Agencies discussed a comment suggesting that the language required by section 13(b) of HFIAA to be contained in the RESPA Special Information Booklet also be included in the Notice of Special Flood Hazards. The commenter noted that some borrowers might not receive the RESPA Special Information Booklet. The Agencies believe that this is a concise disclosure that would be helpful to provide in the Notice of Special Flood Hazards without detracting from all the other disclosures required in the notice. Therefore, the Agencies are amending the Notice of Special Flood Hazards to include the language that is required to be included in the RESPA Special Information Booklet by section 13(b) of HFIAA.

Moreover, as noted above, the October 2013 Proposed Rule amended the sample form of notice contained in Appendix A to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of

<sup>70</sup>The CFPB's rule requires a servicer to advance funds to a borrower's escrow account and to disburse such funds in a timely manner to pay the premium charge on a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges). Thus, even if a borrower were delinquent by more than 31 days, a servicer would be required under the CFPB's rule to advance funds to continue the borrower's hazard insurance policy. In promulgating this rule, the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. See 78 FR 10696, 10714 (Feb. 14, 2013) and 12 CFR 1024.17(k)(5). The Agencies note that the Federal flood statutes do not contain a provision similar to the provision relied upon by the CFPB to require a servicer to advance funds to a borrower's escrow account.

<sup>71</sup>12 U.S.C. 2604(b)(9).

Biggert-Waters, regarding the availability of private flood insurance coverage. The proposed additions to the sample form closely tracked the statutory language. The Agencies also proposed in the October 2013 Proposed Rule to revise the language relating to the coverage limit to more accurately reflect what is actually covered under the Federal flood statutes. Specifically, the October 2013 Proposed Rule amended the language to state that flood insurance coverage is available only on the building or mobile home and any personal property that secures the loan and not the land itself. In addition, the October 2013 Proposed Rule provided other technical amendments to the sample form of notice contained in Appendix A to change the references to the head of FEMA from “Director” to “Administrator.” The Agencies are adopting these changes set forth in the October 2013 Proposed Rule with one minor word change from “ask” to “contact” in the sample form language on the availability of private flood insurance coverage.

Finally, the changes to Appendix A are effective on January 1, 2016. Consistent with HFIAA, the provision requiring the escrow notice to be included on or with the Notice of Special Flood Hazards does not take effect until January 1, 2016. Therefore, the Agencies are making all the changes related to Appendix A effective at once, on January 1, 2016, in order to reduce the compliance burden on regulated lending institutions associated with amending the Notice of Special Flood Hazards.

#### Appendix B

As discussed above in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to \_\_\_\_\_, *Escrow requirement*, the final rule requires lenders to provide a notice of the option to escrow to borrowers of loans outstanding as of January 1, 2016, or July 1 of the succeeding calendar year after a lender no longer qualifies for the small lender exception, as applicable. In the October 2014 Proposed Rule, the Agencies proposed an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B to facilitate compliance with this proposed requirement.

In the October 2014 Proposed Rule, the Agencies proposed that the notice would not need to be provided in conjunction with any other disclosure or need to be segregated from other information provided to the borrower. A consumer group commenter suggested that the notice be conspicuous and segregated from any other

correspondence. Although the Agencies believe that the notice should be readily apparent to the borrower to increase the likelihood of a borrower reading it, the Agencies decline to impose any specific requirement that the notice be conspicuous or segregated from other information. The Agencies believe that, as all of the information contained in the notice may be important to the borrower, no one particular part of the notice should be singled out. Under the final rule, regulated lending institutions 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 proposed deadline, such as a periodic statement.

A financial institution commenter inquired whether a lender may add additional language to the sample clause set forth in Appendix B. The Agencies note that the sample clause provides suggested language and that this would not preclude a regulated lending institution from inserting additional language that it believes would help a borrower better understand his or her options regarding the escrow of flood insurance premiums and fees. The commenter also recommended minor language and format changes to the sample clause, which the Agencies are adopting, among other changes to the language to improve readability.

Consistent with HFIAA, the escrow provisions requiring the option to escrow notice will not be effective until January 1, 2016. Consequently, Appendix B will not be effective until that date.

#### Appendix C

The Agencies are not adopting the notice proposed as Appendix C in the October 2013 Proposed Rule because the notice is no longer applicable, based on the changes to the escrow requirements enacted in HFIAA.

### VI. Regulatory Analysis

#### *Regulatory Flexibility Act*

*OCC:* Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.<sup>72</sup> Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. The OCC has concluded that the final rule

does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,106 small entities—339 Federal savings associations, 748 national banks, and 19 trust companies (collectively, small banks).<sup>73</sup> To determine the number of banks that may be affected by the rule, we determined the number of banks that self-identified by reporting mortgage servicing assets or other activity associated with one-to-four family residential mortgage loans in the Q4 2014 Call Report or were identified by OCC examiners as a Home Mortgage Disclosure Act (HMDA) filer or bank that originates mortgage loans. We identified 1,162 such banks of which there are approximately 796 small banks that the rule could impact.<sup>74</sup> Thus, we assume the rule impacts a substantial number of small banks.

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank is approximately \$6 thousand in 2015. Using this cost estimate, we believe the final rule will not have a significant economic impact on any small banks.

Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

*Board:* The RFA requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The Board

<sup>73</sup> We base our estimate of the number of small entities on the Small Business Association's (SBA) size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank as a small entity. We use December 31, 2014, to determine size because a “financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the SBA's *Table of Size Standards*.

<sup>74</sup> For purposes of determining if the rule could impact a substantial number of small entities, we assume that all small banks have a policy in place to require the escrow of taxes and insurance.

<sup>72</sup> See 5 U.S.C. 601 *et seq.*

is adopting revisions to Regulation H to implement certain provisions of Biggert-Waters and HFIAA over which the Agencies, including the Board, have jurisdiction. Consistent with HFIAA, the final rule exempts any structure that is a part of residential property but is detached from the primary residential structure of such property and does not serve as a residence from the mandatory flood insurance purchase requirement.

The final rule also implements the provisions in the FDPA, as amended by the Biggert-Waters Act and HFIAA, requiring a regulated lending institution (or its servicer) to escrow the premiums and fees for required flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for exceptions set forth in the statute, including an exception for certain small lenders with assets less than \$1 billion.

Furthermore, the final rule implements the requirement in HFIAA that regulated lending institutions offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. The final rule also extends the requirement to offer and make available an option to escrow to a borrower when a regulated lending institution no longer qualifies for the exception for small lenders.

Finally, the final rule adopts revisions to the force placement provisions consistent with Biggert-Waters to clarify that a regulated lending institution or its servicer may charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also provides that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to terminate any force-placed insurance purchased by the regulated lending institution, and refund to the borrower all premiums paid by the borrower for lender-placed coverage for any period during which the borrower's flood insurance coverage and the lender-placed coverage overlapped.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board did not receive any comments on the initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* All State member banks that are subject to Regulation H would be subject to the proposed rule. As of March 31, 2015, there were 850 State member banks. Under regulations

issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of \$550 million or less are considered small entities. Of the 850 State member banks subject to Regulation H, approximately 632 State member banks would be considered small entities by the SBA.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule would provide an exemption from a requirement for certain detached structures, but would also impose new compliance requirements with the final escrow provisions. With respect to the final rule exempting certain detached structures from the mandatory flood insurance purchase requirement, the Board believes the rules will not have a significant impact on small entities. First, not all designated loans are secured by detached structures that are eligible for the exemption. The final rule will have no impact with respect to such loans. Second, for designated loans that are secured by detached structures eligible for the exemption, lenders, including small lenders, may choose to continue requiring flood insurance on such structures as they currently do even though the FDPA does not mandate it, as discussed above in the **SUPPLEMENTARY INFORMATION**. As a result, the final rule would not have any impact in such instances. If a lender does choose to exempt detached structures that secure a designated loan from the mandatory flood insurance purchase requirement, the Board expects that the impact would be minimal because these types of structures typically constitute a smaller portion of the collateral securing designated loans.

Furthermore, as discussed in detail above in the **SUPPLEMENTARY INFORMATION**, regulated lending institutions with total assets less than \$1 billion would generally be excepted from the proposed rules implementing the escrow provisions of HFIAA. Therefore, the final escrow provisions generally would not affect small entities.

The Biggert-Waters force placement provisions went into effect upon enactment of Biggert-Waters on July 6, 2012. As a result, the final rules implementing the Biggert-Waters force placement provisions should not have any impact on small entities who already were required to comply with the provisions as of July 6, 2012. Even prior to Biggert-Waters' passage, regulated lending institutions, including those that are considered small entities, should have had mechanisms in place to refund premiums and fees to

borrowers for any period of overlap between a force-placed policy and a borrower's policy. Consequently, the force placement provisions, which set forth procedures for terminating force-placed insurance and refunding premiums and fees to the borrower, nevertheless, should have minimal impact on regulated lending institutions.

5. *Significant alternatives to the final revisions.* The Board has not identified any significant alternatives that would reduce the regulatory burden associated with this final rule on small entities.

*FDIC:* The FDIC is finalizing revisions to FDIC part 339 to account for certain changes to the FDPA, as amended by Biggert-Waters and HFIAA, that require lenders to escrow flood insurance premiums and fees to promote continuous flood insurance coverage for property securing designated loans, and to also terminate force-placed insurance and refund premiums and fees paid by a borrower for any period of overlapping insurance coverage.

The RFA requires an agency to prepare an analysis that describes the potential impact of a proposed rule on small entities and include it in a notice of proposed rulemaking, making it available for public comment. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of less than or equal to \$550 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

As of June 4, 2015, there were approximately 3,390 small FDIC-supervised banks, which include 3,103 State nonmember banks and 240 State-chartered savings banks, and 47 savings associations. The FDPA, as amended by Biggert-Waters, provides that generally a depository institution with assets of less than \$1 billion is not required to comply with the escrow requirement. As a result, due to this statutory exclusion, the escrow requirement cannot have a significant economic impact on a substantial number of small entities.

Additionally, Biggert-Waters includes reimbursement provisions related to force placement of flood insurance. The provisions set out the circumstances under which a regulated lending institution must terminate force-placed insurance and refund to the borrower all premiums and fees paid by the borrower for lender-placed coverage for any period during which the borrower's

flood insurance coverage and the lender-placed coverage overlapped. Biggert-Waters' force placement provisions already went into effect upon passage of the Act on July 6, 2012. As a result, the final rule incorporating the Biggert-Waters force placement provisions should not have any impact on small entities that were required to comply with the provisions as of July 6, 2012. For these reasons, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities that it supervises.

*FCA:* Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

*NCUA:* The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>75</sup> For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.<sup>76</sup> As of December 31, 2014, there are 4,129 small, federally insured credit unions, and only about 1,850 of these credit unions have real estate loans. This final rule implements certain changes to the FDPA, as amended by Biggert-Waters and HFIAA.

The final rule requires a credit union or servicer to escrow the premiums and fees for required flood insurance for any loans secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The final rule also implements additional exceptions from the escrow requirements, as amended by HFIAA. One of these exceptions allows for credit unions with total assets less than \$1 billion to be generally excluded from the escrow requirements. Due to this statutory exception, the escrow provisions of the final rule will not significantly affect a substantial number of small credit unions.

In addition, the final rule adopts revisions to the force placement provisions to clarify that a credit union

or its servicer may charge a borrower for the cost of flood insurance coverage from the date the borrower's coverage lapsed or became insufficient. The final rule also provides for the termination of force-placed insurance and the refund of premiums and fees paid by a borrower for any period of overlapping insurance coverage. The force placement provisions in the final rule were effective on July 6, 2012, and credit unions have been enforcing force placement provisions since that time. In addition, credit unions currently have the tools to refund premiums and fees whenever a borrower's policy overlaps a force-placed policy, as required in the final rule. Therefore, the final rule's force placement provisions will not have any significant impact on small credit unions that were required to comply with the provisions as of July 6, 2012.

For these reasons, NCUA finds that this final rule affects relatively few federally insured, small credit unions and the associated cost is minimal. Accordingly, NCUA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) requires certain agencies, including the OCC, to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule.

Overall, we estimate the total costs associated with this final rule will range from approximately \$25.1 million to approximately \$30.8 million in 2015 and from approximately \$13 million to approximately \$16 million in 2016. However, pursuant to section 201 of the UMRA, a regulation does not impose a mandate to the extent it incorporates requirements "specifically set forth in the law." Therefore, we exclude from our UMRA estimate costs specifically related to requirements set forth in Biggert-Waters and HFIAA, such as direct costs associated with establishing escrow accounts. Furthermore, under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost

threshold. Therefore, based on these exclusions, our UMRA cost estimate for the final rule ranges from approximately \$24.4 million to approximately \$26.3 million.

Accordingly, because the OCC has determined that this final rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more, we have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### *Paperwork Reduction Act of 1995*

The OCC, Board, FDIC, and NCUA (the PRA Agencies)<sup>77</sup> have determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as permitted by the PRA, the Board also extends for three years its respective information collection.

The PRA Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The Board's OMB control number is 7100-0280. The FDIC, the OCC, and the NCUA will seek new OMB control numbers.

The OCC, FDIC, and NCUA submitted the information collection requirements to OMB in connection with the proposal. OMB filed a comment pursuant to 5 CFR 1320.11(c) instructing the agencies to examine public comment in response to the proposal and describe in the supporting statement of its next collection (the final rule) any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation and include the draft final rule in its next submission. There were no comments received regarding the collection. The

<sup>77</sup> The FCA has determined that the final rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically exempted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

<sup>75</sup> 5 U.S.C. 603(a).

<sup>76</sup> Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

agencies have resubmitted the collection to OMB in connection with the final rule.

Biggert-Waters required escrow for all new and outstanding loans in an SFHA, unless certain exceptions applied. HFIAA added several new exceptions, and most notably, ties the escrow requirement to a triggering event (the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016). While a regulated lending institution is not required to escrow until a triggering event occurs, such institution is still required to offer and make available the option to escrow for all outstanding designated loans. This requirement is identical to the prior PRA burden in the October 2013 Proposed Rule, which required an escrow notice for all outstanding designated loans. However, there may be fewer notices because of the additional exceptions under HFIAA. The PRA Agencies believe the paperwork burden estimates remain unchanged from the prior PRA burden estimated in the October 2013 Proposed Rule.<sup>78</sup>

This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers. Because the PRA Agencies do not collect any information, no issue of confidentiality arises. The respondents are for-profit and non-profit financial institutions, including small businesses.

Entities subject to the PRA Agencies' existing flood insurance rules will have to review and revise disclosures that are currently provided to ensure that such disclosures accurately reflect the disclosure requirements in this final rule. Entities subject to the rule may also need to develop new disclosures to meet the rule's timing requirements.

The total estimated burden represents averages for all respondents regulated by the PRA Agencies. The PRA Agencies expect that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

The PRA Agencies estimate that respondents would take, on average, 40 hours to update their systems in order to comply with the disclosure requirements and the one-time escrow notice under the rule. In an effort to minimize the compliance cost and burden, particularly for small entities that do not meet the requirement for the

statutory exception, the rule contains model disclosures in Appendices A and B that may be used to satisfy the requirements.

#### *Burden Estimates*

##### *OCC:*

Number of Respondents: 1,550.

Burden for Existing Recordkeeping Requirements: 21,700 hours.

Burden for Existing Disclosure Requirements: 23,250 hours.

Burden Added by Final Rule: 62,000 hours.

Total Burden for Collection for Final Rule: 106,950 hours.

##### *Board:*

Number of Respondents: 850.

Burden for Existing Recordkeeping Requirements: 14,308 hours.

Burden for Existing Disclosure Requirements: 17,780 hours.

Burden Added by Final Rule: 34,000 hours.

Total Burden for Collection for Final Rule: 66,088 hours.

##### *FDIC:*

Number of Respondents: 4,103.

Burden for Existing Recordkeeping Requirements: 57,442 hours.

Burden for Existing Disclosure Requirements: 71,474 hours.

Burden Added by Final Rule: 164,120 hours.

Total Burden for Collection for Final Rule: 293,036 hours.

##### *NCUA:*

Number of Respondents: 4,033.

Burden for Existing Recordkeeping Requirements: 47,892 hours.

Burden for Existing Disclosure Requirements: 59,824 hours.

Burden Added by Final Rule: 161,320 hours.

Total Burden for Collection for Final Rule: 269,036 hours.

These collections are available to the public at [www.reginfo.gov](http://www.reginfo.gov).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the PRA Agencies' functions; including whether the information has practical utility; (2) the accuracy of the PRA Agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are

encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-ESCROW, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: Mark Tokarski, Acting Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop K1-148, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0280), Washington, DC 20503.

FDIC: You may submit comments, which should refer to "Interagency Flood Insurance, 3064-ESCROW" by any of the following methods:

- Agency Web site: <http://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the FDIC Web site.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Email: [comments@FDIC.gov](mailto:comments@FDIC.gov).

Include "Interagency Flood Insurance, 3064-ESCROW" in the subject line of the message.

- Mail: Gary A. Kuiper, Counsel, or John Popeo, Counsel, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., MB-3007, Washington, DC 20429.

- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/>

<sup>78</sup> OCC's and NCUA's burden estimates have been slightly adjusted from the October 2013 Proposed Rule.

*federal/* including any personal information provided.

NCUA: Jessica Khouri, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOFRA@ncua.gov](mailto:OCIOFRA@ncua.gov).

Additionally, commenters may send a copy of their comments to the OMB desk officer for the PRA Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395-6974; or by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

### List of Subjects

#### 12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

#### 12 CFR Part 172

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

#### 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

#### 12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

#### 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

#### 12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

### Office of the Comptroller of the Currency

#### 12 CFR CHAPTER I

#### Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

■ 1. Effective October 1, 2015, part 22 is revised to read as follows:

### PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

- 22.1 Purpose and scope.
  - 22.2 Definitions.
  - 22.3 Requirement to purchase flood insurance where available.
  - 22.4 Exemptions.
  - 22.5 Escrow requirement.
  - 22.6 Required use of standard flood hazard determination form.
  - 22.7 Force placement of flood insurance.
  - 22.8 Determination fees.
  - 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
  - 22.10 Notice of servicer's identity.
- APPENDIX A TO PART 22—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

**Authority:** 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

#### § 22.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(b) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

#### § 22.2 Definitions.

For purposes of this part:

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *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.

(d) *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.

(e) *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.

(f) *Federal savings association* means, for purposes of this part, a Federal savings association as that term is defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof.

(g) *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.

(h) *National bank* means a national bank or a Federal branch or agency of a foreign bank.

(i) *NFIP* means the National Flood Insurance Program authorized under the Act.

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

(k) *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.

(l) *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.

(m) *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.

#### § 22.3 Requirement to purchase flood insurance where available.

(a) *In general.* A national bank or Federal savings association shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A national bank or Federal savings association that acquires a loan from a mortgage broker or other entity through table funding

shall be considered to be making a loan for the purposes of this part.

#### § 22.4 Exemptions.

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less; or

(c) 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. For purposes of this paragraph (c):

(1) "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;

(2) A structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) "Serve as a residence" shall be based upon the good faith determination of the national bank or Federal savings association that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

#### § 22.5 Escrow requirement.

If a national bank or Federal savings association requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the national bank or Federal savings association shall also require the escrow of all premiums and fees for any flood insurance required under § 22.3. The national bank or Federal savings association, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of

FEMA or other provider of flood insurance that premiums are due, the national bank or Federal savings association, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

#### § 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A national bank or Federal savings association shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A national bank or Federal savings association may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A national bank or Federal savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank or savings association owns the loan.

#### § 22.7 Force placement of flood insurance.

(a) *Notice and purchase of coverage.* If a national bank or Federal savings association, or a servicer acting on behalf of the bank or savings association, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the national bank or Federal savings association, or a servicer acting on its behalf, shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the national bank or Federal savings association, or its servicer, shall purchase insurance on the borrower's behalf. The national bank or Federal savings association, or its servicer, may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood

insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance—(1) Termination and refund.* Within 30 days of receipt by a national bank or Federal savings association, or by a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the national bank or Federal savings association, or its servicer, shall:

(i) Notify the insurance provider to terminate any insurance purchased by the national bank or Federal savings association, or its servicer, under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the national bank or Federal savings association, or by its servicer, under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the national bank or Federal savings association, or its servicer, were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the national bank or Federal savings association, or its servicer, during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a national bank or Federal savings association, or a servicer acting on its behalf, shall accept from the borrower 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.

#### § 22.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;



(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 22.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

#### § 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank or savings association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) 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.

(c) *Timing of notice.* The national bank or Federal savings association shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction,

and to the servicer as promptly as practicable after the bank or savings association provides notice to the borrower and in any event no later than the time the bank or savings association provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The national bank or Federal savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a national bank or Federal savings association may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The national bank or Federal savings association shall retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

(f) *Use of sample form of notice.* A national bank or Federal savings association will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### § 22.10 Notice of servicer's identity.

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the national bank's or Federal savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The national bank or Federal savings association shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60

days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

#### Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

##### 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 Director 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 at least 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 Director 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 overall value of the property securing the loan minus the value of the land on which the property is located.

- 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.

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.

■ 2. Effective January 1, 2016, § 22.5 is revised to read as follows:

#### § 22.5 Escrow requirement.

(a) *In general*—(1) *Applicability*. Except as provided in paragraphs (a)(2) or (c) of this section, a national bank or a Federal savings association, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3(a) for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions*. Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) 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 of § 22.3(a);

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 22.3(a);

(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;

(iv) The loan is a home equity line of credit;

(v) 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; or

(vi) The loan has a term of no longer than 12 months.

(3) *Duration of exception*. If a national bank or Federal savings association, or a servicer acting on its behalf, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the bank or savings association, or the servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account*. The national bank or Federal savings association, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the national bank or Federal savings association, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice*. For any loan for which a national bank or Federal savings association is required to escrow under paragraphs (a)(1) or (c)(2) of this section or may be required to escrow under paragraphs (a)(3) of this section during the term of the loan, the national bank or Federal savings association, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 22.9 informing the borrower that the national bank or Federal savings association 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 to this part.

(c) *Small lender exception*—(1) *Qualification*. Except as may be required under applicable State law, paragraphs (a), (b), and (d) of this section do not apply to a national bank or Federal savings association:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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

(B) 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.

(2) *Change in status*. If a national bank or Federal savings association previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the national bank or Federal savings association must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) *Option to escrow*—(1) *In general*. A national bank or Federal savings association, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 22.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the national bank or Federal savings association has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the national bank or Federal savings association qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The national bank or Federal savings association is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice*. For any loan subject to paragraph (d) of this section, the national bank or Federal savings association, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the national bank or Federal savings association has had a change in

status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, 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, using language similar to the model clause in appendix B.

(3) *Timing.* The national bank or Federal savings association or the servicer acting on its behalf, must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the bank or savings association, or servicer, receives the borrower's request to escrow.

■ 3. Effective January 1, 2016, § 22.9(b) is revised to read as follows:

**§ 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

\* \* \* \* \*

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) 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;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) 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

(6) 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.

\* \* \* \* \*

■ 4. Effective January 1, 2016, Appendix A to Part 22 is revised to read as follows:

**Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

**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.

■ 5. Effective January 1, 2016, Appendix B to Part 22 is added to read as follows:

**APPENDIX B TO PART 22—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]

## PART 172—[REMOVED]

■ 6. Effective October 1, 2015, part 172 is removed.

## Federal Reserve System

### 12 CFR CHAPTER II

#### Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 7. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 8. Effective October 1, 2015, § 208.25 is revised to read as follows:

### § 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose*. The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope*. This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions*. For purposes of this section:

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

(2) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(3) *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.

(4) *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.

(5) *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.

(6) *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 section, 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.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

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

(9) *Servicer* means the person responsible for:

(i) 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

(ii) 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.

(10) *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.

(11) *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.

(c) *Requirement to purchase flood insurance where available*—(1) *In general*. A member bank shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance

coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(2) *Table funded loans*. A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(d) *Exemptions*. The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less; or

(3) 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. For purposes of this paragraph (d)(3):

(i) “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;

(ii) A structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure; and

(iii) “Serve as a residence” shall be based upon the good faith determination of the member bank that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

(e) *Escrow requirement*. If a member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential improved real estate* or a mobile home that is made, increased, extended, or renewed after October 1, 1996, the member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those

accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form*—(1) *Use of form.* A state member bank shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A state member bank may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(2) *Retention of form.* A state member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the state member bank owns the loan.

(g) *Force placement of flood insurance*—(1) *Notice and purchase of coverage.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the member bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(2) *Termination of force-placed insurance*—(i) *Termination and refund.* Within 30 days of receipt by a member bank, or a servicer acting on its behalf, of a confirmation of a borrower's

existing flood insurance coverage, the member bank or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the member bank or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the member bank or its servicer during such period.

(ii) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (g)(2) of this section, a member bank or its servicer shall accept from the borrower 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.

(h) *Determination fees*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(iii) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage by the lender or its

servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) 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;

(ii) 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));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) 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.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has

provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of sample form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) of this section by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity—(1) Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) of this section shall transfer to the transferee servicer.

#### Appendix A to § 208.25—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

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 Director 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 Director 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 overall value of the property securing the loan minus the value of the land on which the property is located.

- 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.

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.

- 9. Effective January 1, 2016, § 208.25 is amended by:
- a. Revising paragraph (e).
- b. Revising paragraph (i)(1).
- c. Revising Appendix A to § 208.25.
- d. Adding Appendix B to § 208.25.

#### § 208.25 Loans in areas having special flood hazards.

\* \* \* \* \*

(e) *Escrow requirement—(1) In general—(i) Applicability.* Except as provided in paragraphs (e)(1)(ii) or (e)(3) of this section, a member bank, or a

servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(ii) *Exceptions.* Paragraph (e)(1)(i) of this section does not apply if:

(A) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(B) 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 of paragraph (c) of this section;

(C) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(1) Meets the requirements of paragraph (c) of this section;

(2) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(3) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(D) The loan is a home equity line of credit;

(E) 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; or

(F) The loan has a term of not longer than 12 months.

(iii) *Duration of exception.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (e)(1)(ii) of this section does not apply, then the bank or its servicer shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real

Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(iv) *Escrow account.* The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(2) *Notice.* For any loan for which a member bank is required to escrow under paragraphs (e)(1) or (e)(3)(ii) of this section or may be required to escrow under paragraph (e)(1)(iii) of this section during the term of the loan, the member bank, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under paragraph (i) of this section informing the borrower that the member 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 to this section.

(3) *Small lender exception—(i) Qualification.* Except as may be required under applicable State law, paragraphs (e)(1), (2), and (4) of this section do not apply to a member bank:

(A) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(B) On or before July 6, 2012: (1) 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

(2) 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.

(ii) *Change in status.* If a member bank previously qualified for the exception in paragraph (e)(3)(i) of this section, but no longer qualifies for the exception because it had assets of \$1

billion or more for two consecutive calendar year ends, the member bank must escrow premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(4) *Option to escrow.* (i) *In general.* A member bank, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under paragraph (c) of this section for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the member bank has had a change in status pursuant to paragraph (e)(3)(ii) of this section, unless:

(A) The loan or the member bank qualifies for an exception from the escrow requirement under paragraphs (e)(1)(ii) or (e)(3) of this section, respectively;

(B) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(C) The member bank is required to escrow flood insurance premiums and fees pursuant to paragraph (e)(1) of this section.

(ii) *Notice.* For any loan subject to paragraph (e)(4)(i) of this section, the member bank, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the member bank has had a change in status pursuant to paragraph (e)(3)(ii) of this section, a notice in writing, or if the borrower agrees, electronically, 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, using language similar to the model clause in appendix B to this section.

(iii) *Timing.* The member bank or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the member bank or servicer receives the borrower's request to escrow.

\* \* \* \* \*

(i) \* \* \*

(1) *Contents of notice.* The written notice must include the following information:

(i) 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;

(ii) 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));

(iii) 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;

(iv) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(v) 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

(vi) 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.

\* \* \* \* \*

**Appendix A to § 208.25—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

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.

### Appendix B to § 208.25—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]

### Federal Deposit Insurance Corporation

#### 12 CFR CHAPTER III

#### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 339 of chapter III of title 12 of the Code of Federal Regulations as follows:

■ 10. Effective October 1, 2015, part 339 is revised to read as follows:

### PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.

339.2 Definitions.

339.3 Requirement to purchase flood insurance where available.

339.4 Exemptions.

339.5 Escrow requirement.

339.6 Required use of standard flood hazard determination form.

339.7 Force placement of flood insurance.

339.8 Determination fees.

339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

339.10 Notice of servicer's identity.

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

### § 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

### § 339.2 Definitions.

As used in this part:

*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.

*FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

*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.

### § 339.3 Requirement to purchase flood insurance where available.

(a) *In general.* An FDIC-supervised institution shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

### § 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption;

(b) Property securing any loan with an original principal balance of \$5,000 or

less and a repayment term of one year or less; or

(c) 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. For purposes of this paragraph (c):

(1) "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;

(2) A structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) "Serve as a residence" shall be based upon the good faith determination of the FDIC-supervised institution that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

### § 339.5 Escrow requirement.

If an FDIC-supervised institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the FDIC-supervised institution shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

### § 339.6 Required use of standard flood hazard determination form.

(a) *Use of form.* An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when

determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

### § 339.7 Force placement of flood insurance.

(a) *Notice and purchase of coverage.* If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance—(1) Termination and refund.* Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer

under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall accept from the borrower 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.

#### **§ 339.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any FDIC-supervised institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

#### **§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) 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.

(c) *Timing of notice.* The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the FDIC-supervised institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a

record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) *Use of sample form of notice.* An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### **§ 339.10 Notice of servicer's identity.**

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

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

##### **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 Director 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 at least 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 Director 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 overall value of the property securing the loan minus the value of the land on which the property is located.

- 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.

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.

■ 11. Effective January 1, 2016, § 339.5 is revised to read as follows:

#### § 339.5 Escrow requirement.

(a) *In general*—(1) *Applicability*. Except as provided in paragraphs (a)(2) or (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under

§ 339.3(a) for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions*. Paragraph (a)(1) of this section does not apply if:

- (i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

- (ii) 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 of § 339.3(a);

- (iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

- (A) Meets the requirements of § 339.3(a);

- (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;

- (iv) The loan is a home equity line of credit;

- (v) 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; or

- (vi) The loan has a term of not longer than 12 months.

(3) *Duration of exception*. If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the FDIC-supervised institution or its servicer shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account*. The FDIC-supervised institution, or a servicer

acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice*. For any loan for which an FDIC-supervised institution is required to escrow under paragraph (a) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 339.9 informing the borrower that the FDIC-supervised institution 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.

(c) *Small lender exception*—(1) *Qualification*. Except as may be required under applicable State law, paragraphs (a), (b) and (d) of this section do not apply to an FDIC-supervised institution:

- (i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

- (ii) On or before July 6, 2012:

- (A) 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

- (B) 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.

(2) *Change in status*. If an FDIC-supervised institution previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must

escrow premiums and fees for flood insurance pursuant to paragraph (a) for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) *Option to escrow*—(1) *In general.* An FDIC-supervised institution, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 339.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the FDIC-supervised institution qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The FDIC-supervised institution is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice.* For any loan subject to paragraph (d) of this section, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, 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, using language similar to the model clause in appendix B to this part.

(3) *Timing.* The FDIC-supervised institution or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the FDIC-supervised institution or servicer receives the borrower's request to escrow.

■ 12. Effective January 1, 2016, § 339.9(b) is revised to read as follows:

**§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

\* \* \* \* \*

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) 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;

(4) 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.

(5) 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

(6) 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.

■ 13. Effective January 1, 2016, Appendix A to Part 339 is revised to read as follows:

**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.

■ 14. Effective January 1, 2016, Appendix B to Part 339 is added to read as follows:

#### 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]

#### Farm Credit Administration

##### 12 CFR CHAPTER VI

##### Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is revised as follows:

#### PART 614—LOAN POLICIES AND OPERATIONS

■ 15. The authority citation for part 614 continues to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5);

sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

■ 16. Effective October 1, 2015, subpart S is revised to read as follows:

#### Subpart S—Flood Insurance Requirements

Sec.

- 614.4920 Purpose, and scope.
  - 614.4925 Definitions.
  - 614.4930 Requirement to purchase flood insurance where available.
  - 614.4932 Exemptions.
  - 614.4935 Escrow requirement.
  - 614.4940 Required use of standard flood hazard determination form.
  - 614.4945 Force placement of flood insurance.
  - 614.4950 Determination fees.
  - 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.
  - 614.4960 Notice of servicer's identity.
- Appendix A to Subpart S of Part 614—  
Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

#### Subpart S—Flood Insurance Requirements

##### § 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

##### § 614.4925 Definitions.

For purposes of this subpart:  
*1968 Act* means the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 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 1968 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 subpart, 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 1968 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.

##### § 614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the 1968 Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through

table funding shall be considered to be making a loan for the purposes of this subpart.

**§ 614.4932 Exemptions.**

The flood insurance requirement prescribed by § 614.4930 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less; or

(c) 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. For purposes of this paragraph (c):

(1) "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;

(2) A structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) "Serve as a residence" shall be based upon the good faith determination of the System institution that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

**§ 614.4935 Escrow requirement.**

If a System institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended or renewed on or after October 4, 1996, the institution shall also require the escrow of all premiums and fees for any flood insurance required under § 614.4930. The institution, or a servicer acting on behalf of the institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of

FEMA or other provider of flood insurance that premiums are due, the institution, or a servicer acting on behalf of the institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

**§ 614.4940 Required use of standard flood hazard determination form.**

(a) *Use of form.* A System institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A System institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the System institution owns the loan.

**§ 614.4945 Force placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a System institution, or a servicer acting on behalf of the System institution, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 614.4930, then the System institution, or a servicer acting on its behalf, shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the System institution, or its servicer, shall purchase insurance on the borrower's behalf. The System institution, or its servicer, may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance—(1) Termination and refund.* Within 30 days of receipt by a System

institution, or by a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the System institution, or its servicer, shall:

(i) Notify the insurance provider to terminate any insurance purchased by the System institution, or its servicer, under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the System institution, or by its servicer, under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the System institution, or its servicer, were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the System institution, or its servicer, during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a System institution, or a servicer acting on its behalf, shall accept from the borrower 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.

**§ 614.4950 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any System institution, or a servicer acting on behalf of the System institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the

loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the System institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) 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.

(c) *Timing of notice.* The System institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the System institution provides notice to the borrower and in any event no later than the time the System institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The System institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a System institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The System institution shall retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

(f) *Use of sample form of notice.* A System institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this subpart within a reasonable time before the completion of the transaction. The notice presented in appendix A to this subpart satisfies the borrower notice requirements of the 1968 Act.

**§ 614.4960 Notice of servicer's identity.**

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the System institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The System institution shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

**Appendix A to Subpart S of Part 614—  
Sample Form of Notice of Special Flood  
Hazards and Availability of Federal  
Disaster Relief Assistance**

**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 Director 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 at least 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 Director 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 overall value of the property securing the loan minus the value of the land on which the property is located.

- 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.

\_\_\_\_\_ 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.

■ 17. Effective January 1, 2016, § 614.4935 is revised to read as follows:

**§ 614.4935 Escrow requirement.**

(a) *In general*—(1) *Applicability*.

Except as provided in paragraph (a)(2) or paragraph (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930 for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions*. Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) 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 of § 614.4930;

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 614.4930;

(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;

(iv) The loan is a home equity line of credit;

(v) 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; or

(vi) The loan has a term of no longer than 12 months.

(3) *Duration of exception*. If a System institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the System institution, or the servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required

under § 614.4930 as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account*. The System institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the System institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice*. For any loan for which a System institution is required to escrow under paragraph (a)(1) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the System institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 614.4955 informing the borrower that the System institution 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 to this subpart.

(c) *Small lender exception*—(1) *Qualification*. Except as may be required under applicable State law, paragraphs (a), (b), and (d) of this section do not apply to a System institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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

(B) 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.

(2) *Change in status*. If a System institution previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the System institution must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) *Option to escrow*—(1) *In general*.

A System institution, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 614.4930 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the System institution has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the System institution qualifies for an exception from the escrow requirement under paragraph (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The System institution is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice*. For any loan subject to paragraph (d) of this section, the System institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the System institution has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, 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, using language similar to the model clause in appendix B to this subpart.

(3) *Timing*. The System institution, or the servicer acting on its behalf, must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the System institution, or servicer, receives the borrower's request to escrow.

■ 18. Effective January 1, 2016, § 614.4955(b) is revised to read as follows:



**§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.**

\* \* \* \* \*

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) 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;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) 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

(6) 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.

\* \* \* \* \*

■ 19. Effective January 1, 2016, Appendix A to Subpart S is revised to read as follows:

**Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

**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.

■ 20. Effective January 1, 2016, Appendix B to Subpart S is added to read as follows:

**Appendix B to Subpart S of Part 614—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]

**National Credit Union Administration  
12 CFR CHAPTER VII**

**Authority and Issuance**

For the reasons set forth in the joint preamble, the NCUA Board amends part 760 of chapter VII of title 12 of the Code of Federal Regulations as follows:

**PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

■ 21. The authority citation for part 760 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 22. Effective October 1, 2015, part 760 is revised to read as follows:

## **PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

Sec.

760.1 Authority, purpose, and scope.

760.2 Definitions.

760.3 Requirement to purchase flood insurance where available.

760.4 Exemptions.

760.5 Escrow requirement.

760.6 Required use of standard flood hazard determination form.

760.7 Force placement of flood insurance.

760.8 Determination fees.

760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

760.10 Notice of servicer's identity.

Appendix A to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

### **§ 760.1 Authority, purpose, and scope.**

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

### **§ 760.2 Definitions.**

As used in this part:

*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.

*Credit union* means a Federal or State-chartered credit union that is insured by

the National Credit Union Share Insurance Fund.

*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.

### **§ 760.3 Requirement to purchase flood insurance where available.**

(a) *In general.* A credit union shall not make, increase, extend, or renew any designated 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. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loan.* A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

### **§ 760.4 Exemptions.**

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less; or

(c) 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. For purposes of this paragraph (c):

(1) “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;

(2) A structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) “Serve as a residence” shall be based upon the good faith determination of the credit union that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

### **§ 760.5 Escrow requirement.**

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after November 1, 1996, the credit union shall also require the escrow of all premiums and fees for any flood insurance required under § 760.3. The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise

subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

**§ 760.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

**§ 760.7 Force placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance—(1) Termination and refund.* Within 30 days of receipt by a credit union, or a servicer acting on behalf of

the credit union, of a confirmation of a borrower's existing flood insurance coverage, the credit union or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the credit union or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a credit union or its servicer shall accept from the borrower 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.

**§ 760.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the

loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) 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.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the credit union provides notice to the borrower and in any event no later than the time the credit union provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower

required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of sample form of notice.* A credit union will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

#### § 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

#### Appendix A to Part 760—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 Director 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 at least 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 Director 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.

- 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 also may be available from private insurers that do not participate in the NFIP.

- 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 overall value of the property securing the loan minus the value of the land on which the property is located.

- 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.

\_\_\_\_\_ 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.

■ 23. Effective January 1, 2016, § 760.5 is revised to read as follows:

#### § 760.5 Escrow requirement.

(a) *In general—(1) Applicability.* Except as provided in paragraphs (a)(2) or (c) of this section, a credit union, or a servicer acting on behalf of the credit union, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) for

any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions.* Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) 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 of § 760.3(a);

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 760.3(a);

(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;

(iv) The loan is a home equity line of credit;

(v) 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; or

(vi) The loan has a term of not longer than 12 months.

(3) *Duration of exception.* If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the credit union or its servicer shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account.* The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood

insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* For any loan for which a credit union is required to escrow under paragraph (a) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the credit union, or a servicer acting on behalf of the credit union, shall mail or deliver a written notice with the notice provided under § 760.9 informing the borrower that the credit union 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.

(c) *Small lender exception—(1) Qualification.* Except as may be required under applicable State law, paragraphs (a), (b) and (d) of this section do not apply to a credit union:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:  
(A) 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

(B) 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.

(2) *Change in status.* If a credit union previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the credit union must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or

after July 1 of the first calendar year of changed status.

(d) *Option to escrow—(1) In general.* A credit union, or a servicer acting on behalf of the credit union, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 760.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the credit union has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The credit union or the loan qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The credit union is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice.* For any loan subject to paragraph (d) of this section, the credit union, or a servicer acting on behalf of the credit union, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the credit union has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, 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, using language similar to the model clause in appendix B to this part.

(3) *Timing.* The credit union or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the credit union or servicer receives the borrower's request to escrow.

■ 24. Effective January 1, 2016, § 760.9(b) is revised to read as follows:

**§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

\* \* \* \* \*

(b) *Contents of notice.* The written notice must include the following information:

(1) 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;

(2) 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));

(3) 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;

(4) 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;

(5) 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

(6) 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.

\* \* \* \* \*

■ 25. Effective January 1, 2016, Appendix A to Part 760 is revised to read as follows:

**Appendix A to Part 760—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.

■ 26. Effective January 1, 2016, Appendix B to Part 760 is added to read as follows:

#### Appendix B to Part 760—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]

Dated: June 16, 2015.

**Thomas J. Curry,**  
*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, June 18, 2015.

**Robert deV. Frierson,**  
*Secretary of the Board.*

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

Dated at Washington, DC, this 16th day of June, 2015.

By order of the Board of the Farm Credit Administration.

**Dale L. Aultman,**  
*Secretary.*

Dated at McLean, VA, this 16th day of June, 2015.

By order of the Board of the National Credit Union Administration.

**Gerard Poliquin,**  
*Secretary of the Board.*

Dated at Alexandria, VA, this 18th day of June, 2015.

[FR Doc. 2015-15956 Filed 7-20-15; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6705-01-P; 7535-01-U**

# ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of April 14, 2016**

[Title 12](#) → [Chapter II](#) → [Subchapter A](#) → Part 215

Title 12: Banks and Banking

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## PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

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### Contents

- [§215.1 Authority, purpose, and scope.](#)
  - [§215.2 Definitions.](#)
  - [§215.3 Extension of credit.](#)
  - [§215.4 General prohibitions.](#)
  - [§215.5 Additional restrictions on loans to executive officers of member banks.](#)
  - [§215.6 Prohibition on knowingly receiving unauthorized extension of credit.](#)
  - [§215.7 Extensions of credit outstanding on March 10, 1979.](#)
  - [§215.8 Records of member banks.](#)
  - [§215.9 Disclosure of credit from member banks to executive officers and principal shareholders.](#)
  - [§215.10 Reporting requirement for credit secured by certain bank stock.](#)
  - [§215.11 Civil penalties.](#)
  - [§215.12 Application to savings associations.](#)
- [Appendix to Part 215—Section 5200 of the Revised Statutes Total Loans and Extensions of Credit](#)
- 

AUTHORITY: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102-242, 105 Stat. 2236 (1991).

SOURCE: Reg. O, 59 FR 8837, Feb. 24, 1994, unless otherwise noted.

[↑ Back to Top](#)

### §215.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to sections 11(a), 22(g), and 22(h) of the Federal Reserve Act (12 U.S.C. 248(a), 375a, and 375b), 12 U.S.C. 1817(k), section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)), section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

(b) *Purpose and scope*—(1) This part governs any extension of credit made by a member bank to an executive officer, director, or principal shareholder of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company.

(2) This part also applies to any extension of credit made by a member bank to a company controlled by such a person, or to a political or campaign committee that benefits or is controlled by such a person.

(3) This part also implements the reporting requirements of 12 U.S.C. 1817(k) concerning extensions of credit by a member bank to its executive officers or principal shareholders (or to the related interests of such persons).

(4) Extensions of credit made to an executive officer, director, or principal shareholder of a bank (or to a related interest of such person) by a correspondent bank also are subject to restrictions set forth in 12 U.S.C. 1972(2).

[Reg. O, 71 FR 71474, Dec. 11, 2006, as amended at 76 FR 56530, Sept. 13, 2011]

[↑ Back to Top](#)

### §215.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company of which a member bank is a subsidiary or any other subsidiary of that company.

(b) *Company* means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include:

(1) An insured depository institution (as defined in 12 U.S.C. 1813); or

(2) A corporation the majority of the shares of which are owned by the United States or by any State.

(c)(1) *Control of a company or bank* means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

(ii) Controls in any manner the election of a majority of the directors of the company or bank; or

(iii) Has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if:

(i) The person is:

(A) An executive officer or director of the company or bank; and

(B) Directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii)(A) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; and

(B) No other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (c)(2) of this section by submitting to the appropriate Federal banking agency (as defined in 12 U.S.C. 1813(q)) written materials that, in the agency's judgment, demonstrate an absence of control.

(d)(1) *Director of a company or bank* means any director of the company or bank, whether or not receiving compensation. An advisory director is not considered a director if the advisory director:

(i) Is not elected by the shareholders of the company or bank;

(ii) Is not authorized to vote on matters before the board of directors; and

(iii) Provides solely general policy advice to the board of directors.

(2) Extensions of credit to a director of an affiliate of a bank are not subject to §§215.4, 215.6, and 215.8 if—

(i) The director of the affiliate is excluded, by resolution of the board of directors or by the bylaws of the bank, from participation in major policymaking functions of the bank, and the director does not actually participate in such functions;

(ii) The affiliate does not control the bank;

(iii) As determined annually, the assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that—

(A) Controls the bank; and

(B) Is not controlled by any other company; and

(iv) The director of the affiliate is not otherwise subject to §§215.4, 215.6, and 215.8.



(3) For purposes of paragraph (d)(2)(i) of this section, a resolution of the board of directors or a corporate bylaw may

- (i) Include the director (by name or by title) in a list of persons excluded from participation in such functions; or
- (ii) Not include the director in a list of persons authorized (by name or by title) to participate in such functions.

(e)(1) *Executive officer* of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not: the officer has an official title; the title designates the officer an assistant; or the officer is serving without salary or other compensation.<sup>1</sup> The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and the officer does not actually participate therein.

<sup>1</sup>The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

(2) Extensions of credit to an executive officer of an affiliate of a bank are not subject to §§215.4, 215.6, and 215.8 if

(i) The executive officer is excluded, by resolution of the board of directors or by the bylaws of the bank, from participation in major policymaking functions of the bank, and the executive officer does not actually participate in such functions;

(ii) The affiliate does not control the bank;

(iii) As determined annually, the assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that—

(A) Controls the bank; and

(B) Is not controlled by any other company; and

(iv) The executive officer of the affiliate is not otherwise subject to §§215.4, 215.6, and 215.8.

(3) For purposes of paragraphs (e)(1) and (e)(2)(i) of this section, a resolution of the board of directors or a corporate bylaw may—

(i) Include the executive officer (by name or by title) in a list of persons excluded from participation in such functions; or

(ii) Not include the executive officer in a list of persons authorized (by name or by title) to participate in such functions.

(f) *Foreign bank* has the meaning given in 12 U.S.C. 3101(7).

(g) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(h) *Insider* means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

(i) *Lending limit*. The lending limit for a member bank is an amount equal to the limit of loans to a single borrower established by section 5200 of the Revised Statutes,<sup>2</sup> 12 U.S.C. 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's unimpaired capital and unimpaired surplus equals:

<sup>2</sup>Where State law establishes a lending limit for a State member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable State laws shall be the lending limit for the State member bank.

(1) The bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of the bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3)

(j) *Member bank* means any banking institution that is a member of the Federal Reserve System, including any subsidiary of a member bank. The term does not include any foreign bank that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 U.S.C. 1813(s)) and regardless of the operation of 12 U.S.C. 1813(h) and 12 U.S.C. 1828(j)(3)(B).

(k) *Pay an overdraft on an account* means to pay an amount upon the order of an account holder in excess of funds on deposit in the account.

(l) *Person* means an individual or a company.

(m)(1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

(n) *Related interest* of a person means:

(1) A company that is controlled by that person; or

(2) A political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(o) *Subsidiary* has the meaning given in 12 U.S.C. 1841(d), but does not include a subsidiary of a member bank.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994, as amended at 60 FR 31054, June 13, 1995; 61 FR 57770, Nov. 8, 1996; 62 FR 13298, Mar. 20, 1997; 71 FR 71474, Dec. 11, 2006]

[↑ Back to Top](#)

### §215.3 Extension of credit.

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes:

(1) A purchase under repurchase agreement of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item, or otherwise;

(3) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in §208.24 of this chapter;

(4) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;

(5) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for:

(i) Accrued interest; or

(ii) Taxes, insurance, or other expenses incidental to the existing indebtedness;

(6) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(7) Any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include:

(1) An advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) A receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in §215.4(e) of this part);

(3) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through:

(i) A merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization; or

(ii) Foreclosure on collateral or similar proceeding for the protection of the bank, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate Federal banking agency for good cause;

(4)(i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith; or

(ii) Any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it;

(5) Indebtedness of \$15,000 or less arising by reason of any general arrangement by which a bank:

(i) Acquires charge or time credit accounts; or

(ii) Makes payments to or on behalf of participants in a bank credit card plan, check credit plan, or similar open-end credit plan, provided:

(A) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement; and

(B) The indebtedness is incurred under terms that are not more favorable than those offered to the general public;

(6) Indebtedness of \$5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in §215.4(e) of this part; or

(7) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, without recourse.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance or extension of credit to the depositing bank.

(d) For purposes of §215.4 of this part, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) *Tangible economic benefit rule*—(1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) of this section if:

(i) The credit is extended on terms that would satisfy the standard set forth in §215.4(a) of this part for extensions of credit to insiders; and

(ii) The proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994; 63 FR 58621, Nov. 2, 1998]

[↑ Back to Top](#)

## §215.4 General prohibitions.

(a) *Terms and creditworthiness*—(1) *In general.* No member bank may extend credit to any insider of the bank or insider of its affiliates unless the extension of credit:

(i) Is made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank; and

(ii) Does not involve more than the normal risk of repayment or present other unfavorable features.

(2) *Exception.* Nothing in this paragraph (a) or paragraph (e)(2)(ii) of this section shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) That is widely available to employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(ii) That does not give preference to any insider of the member bank over other employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of \$25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus, unless:

(i) The extension of credit has been approved in advance by a majority of the entire board of directors of that bank; and

(ii) The interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a member bank extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds \$500,000, except by complying with the requirements of this paragraph (b).

(3) Approval by the board of directors under paragraphs (b)(1) and (b)(2) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of §215.4(a) of this part.

(4) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Individual lending limit.* No member bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in §215.2(i) of this part. This prohibition does not apply to an extension of credit by a member bank to a company of which the member bank is a subsidiary or to any other subsidiary of that company.

(d) *Aggregate lending limit*—(1) *General limit.* A member bank may not extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all such insiders, does not exceed the bank's unimpaired capital and unimpaired surplus (as defined in §215.2(i) of this part).

(2) *Member banks with deposits of less than \$100,000,000.* (i) A member bank with deposits of less than \$100,000,000 may by an annual resolution of its board of directors increase the general limit specified in paragraph (d)(1) of this section to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if:

(A) The board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(B) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(C) The bank meets or exceeds, on a fully-phased in basis, all applicable capital requirements established by the

appropriate Federal banking agency; and

(D) The bank received a satisfactory composite rating in its most recent report of examination.

(ii) If a member bank has adopted a resolution authorizing a higher limit pursuant to paragraph (d)(2)(i) of this section and subsequently fails to meet the requirements of paragraph (d)(2)(i)(C) or (d)(2)(i)(D) of this section, the member bank shall not extend any additional credit (including a renewal of any existing extension of credit) to any insider of the bank or its affiliates unless such extension or renewal is consistent with the general limit in paragraph (d)(1) of this section.

(3) *Exceptions.* (i) The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(A) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(B) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(C) Extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(D) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, provided that:

(1) The financial condition of each maker of such consumer paper is reasonably documented in the bank's files or known to its officers;

(2) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(3) The maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this section apply only to the amounts of such extensions of credit that are secured in the manner described therein.

(e) *Overdrafts.* (1) No member bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates<sup>3</sup> on an account at the bank, unless the payment of funds is made in accordance with:

<sup>3</sup>This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates.

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less, provided:

(i) The account is not overdrawn for more than 5 business days; and

(ii) The member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994, as amended at 61 FR 57770, Nov. 8, 1996; 62 FR 13298, Mar. 20, 1997]

[↑ Back to Top](#)

## §215.5 Additional restrictions on loans to executive officers of member banks.

The following restrictions on extensions of credit by a member bank to any of its executive officers apply in addition to any restrictions on extensions of credit by a member bank to insiders of itself or its affiliates set forth elsewhere in this part. The restrictions of this section apply only to executive officers of the member bank and not to executive officers of its

affiliates.

(a) No member bank may extend credit to any of its executive officers, and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(4) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(4) of this section, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to any executive officer of the bank:

(1) In any amount to finance the education of the executive officer's children;

(2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided:

(i) The extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(ii) In the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this paragraph (c)(2), are included within this category of credit;

(3) In any amount, if the extension of credit is secured in a manner described in §215.4(d)(3)(i)(A) through (d)(3)(i)(C) of this part; and

(4) For any other purpose not specified in paragraphs (c)(1) through (c)(3) of this section, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 per cent of the bank's unimpaired capital and unimpaired surplus or \$25,000, but in no event more than \$100,000.

(d) Any extension of credit by a member bank to any of its executive officers shall be:

(1) Promptly reported to the member bank's board of directors;

(2) In compliance with the requirements of §215.4(a) of this part;

(3) Preceded by the submission of a detailed current financial statement of the executive officer; and

(4) Made subject to the condition in writing that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994; 60 FR 17636, Apr. 7, 1995]

[↑ Back to Top](#)

### **§215.6 Prohibition on knowingly receiving unauthorized extension of credit.**

No executive officer, director, or principal shareholder of a member bank or any of its affiliates shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this part.

[↑ Back to Top](#)

### **§215.7 Extensions of credit outstanding on March 10, 1979.**

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate §215.4(c) of this part, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in §215.4(c) of this part. Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compliance with the lending limit of §215.4(c) of this part by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a State member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

[↑ Back to Top](#)

### **§215.8 Records of member banks.**

(a) *In general.* Each member bank shall maintain records necessary for compliance with the requirements of this part.

(b) *Recordkeeping for insiders of the member bank.* Any recordkeeping method adopted by a member bank shall:

(1) Identify, through an annual survey, all insiders of the bank itself; and

(2) Maintain records of all extensions of credit to insiders of the bank itself, including the amount and terms of each such extension of credit.

(c) *Recordkeeping for insiders of the member bank's affiliates.* Any recordkeeping method adopted by a member bank shall maintain records of extensions of credit to insiders of the member bank's affiliates by:

(1) *Survey method.* (i) Identifying, through an annual survey, each insider of the member bank's affiliates; and

(ii) Maintaining records of the amount and terms of each extension of credit by the member bank to such insiders; or

(2) *Borrower inquiry method.* (i) Requiring as part of each extension of credit that the borrower indicate whether the borrower is an insider of an affiliate of the member bank; and

(ii) Maintaining records that identify the amount and terms of each extension of credit by the member bank to borrowers so identifying themselves.

(3) *Alternative recordkeeping methods for insiders of affiliates.* A member bank may employ a recordkeeping method other than those identified in paragraphs (c)(1) and (c)(2) of this section if the appropriate Federal banking agency determines that the bank's method is at least as effective as the identified methods.

(d) *Special rule for non-commercial lenders.* A member bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by this part as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates.

[↑ Back to Top](#)

### **§215.9 Disclosure of credit from member banks to executive officers and principal shareholders.**

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Principal shareholder of a member bank* means any person other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7), that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, savings and loan holding company or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) *Related interest* means:

(i) Any company controlled by a person; or

(ii) Any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Public disclosure.* (1) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest principal previous quarter of the year, an extension of credit that, when

aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed \$25,000.

(2) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994. Redesignated and amended at 71 FR 71474, Dec. 11, 2006, as amended at 76 FR 56530, Sept. 13, 2011]

[↑ Back to Top](#)

### **§215.10 Reporting requirement for credit secured by certain bank stock.**

Each executive officer or director of a member bank the shares of which are not publicly traded shall report annually to the board of directors of the member bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the member bank.

[Reg. O, 59 FR 8837, Feb. 24, 1994. Redesignated at 71 FR 71474, Dec. 11, 2006]

[↑ Back to Top](#)

### **§215.11 Civil penalties.**

Any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this part (other than §215.9) is subject to civil penalties as specified in section 29 of the Federal Reserve Act (12 U.S.C. 504).

[Reg. O, 71 FR 71475, Dec. 11, 2006]

[↑ Back to Top](#)

### **§215.12 Application to savings associations.**

The requirements of this part apply to savings associations, as defined in 12 CFR 238.2(l) (including any subsidiary of a savings association), in the same manner and to the same extent as if the savings association were a member bank; provided that a savings association's unimpaired capital and unimpaired surplus will be determined under regulatory capital rules applicable to that savings association.

[Reg. O, 76 FR 56530, Sept. 13, 2011]

[↑ Back to Top](#)

## **Appendix to Part 215—Section 5200 of the Revised Statutes Total Loans and Extensions of Credit**

(a)(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitations contained in paragraph (1) of this subsection.

### DEFINITIONS

(b) For the purposes of this section—

(1) The term *loans and extensions of credit* shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of



the person, and to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) The term *person* shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government, or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

#### EXCEPTIONS

(c) The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in paragraph (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d)(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

[48 FR 42806, Sept. 20, 1983]

[↑ Back to Top](#)

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