Flood Rules

Community Bankers for Compliance School

LENDING

2016

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Section 1: Recent Changes in Flood Insurance Law

Introduction – Biggert-Waters

The Biggert-Waters Flood Insurance Reform Act was passed and signed into law in 2012. The following are some of the changes made by this law in 2012. Many of the changes made by the law are now regulation, and will be discussed later in the manual. However, there are other changes not codified in regulation. These are discussed below.

Effective Date(s)

Certain provisions of the Biggert-Waters Flood Insurance Reform Act have specific effective dates. Unless there was a specific date, the section was effective on July 6, 2012.

Extension of National Flood Insurance Program – Financing

Among other provisions, Biggert-Waters re-authorized the National Flood Insurance Program (NFIP) through 2017. Previously, the NFIP was operating under stopgap extensions. There were 18 between 2008 and 2012, including two absolute shut downs of the program for several weeks.

Elimination of Subsidized Rates

Effective October 6, 2012 flood insurance was no longer available at subsidized rates, for:

- business properties;
- residential properties that are not the owners' primary residence;
- properties that have incurred substantial damage exceeding 50 percent of the fair market value of the property on or after July 6, 2012;
- properties that have a substantial improvement exceeding 30 percent of the fair market value of the properties on or after July 6, 2012;
- properties that have severe repetitive losses (as defined by the Biggert-Waters Act for single-family properties and by Federal Emergency Management Agency (FEMA) regulation for multi-family properties);
- properties that have incurred flood-related damage in which the cumulative payments equaled or exceeded the fair market value of the property; or
- prospective policyholders who refuse to accept offers of mitigation assistance from FEMA (including an offer to relocate) following a major disaster or in connection with a repetitive or severe repetitive loss property.

Premium increases for policies losing subsidies were phased in with increases capped at 25 percent per year until premiums equal the actuarial cost of the insurance. This has resulted in huge increases, and at this writing, Congress is working to reduce the size of the premium increases.

Multifamily Properties

Multifamily structures (5 or more residences), are treated as commercial properties, and are eligible for flood insurance based on the commercial coverage amount for commercial properties, which is currently $500,000. There is no limit on the ability of individuals residing these properties to obtain insurance for the contents and personal articles located in such residences.

Enforcement

The new law increases the civil monetary penalties for flood violations from $385 per violation to $2,000. There also is no longer a penalty cap.

Payment of Condominium Claims

Condominium owners who purchase flood insurance separate from an RCBAP may not be denied payment for any damage to or loss of property based solely, or in any part, on the flood insurance coverage of the condominium association or others on the overall property owned by the condominium association.

Technical Mapping Advisory Council § 100215

Biggert-Waters required the establishment of a council to be known as the Technical Mapping Advisory Council (in this section referred to as the "Council").

National Flood Mapping Program

The Administrator, in coordination with the Technical Mapping Advisory Council established under section 100215, shall establish an ongoing program under which the Administrator shall review, update, and maintain National Flood Insurance Program rate maps in accordance with this section.

Scope of Appeals § 100217

The sole grounds for appeal of flood maps shall be the possession of knowledge or information indicating that:

(1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or

(2) the designation of an identified special flood hazard area is scientifically or technically incorrect.

Scientific Resolution Panel § 100218

The Administrator shall make available an independent review panel, to be known as the Scientific Resolution Panel, to any community—

(A) that has—

(i) filed a timely map appeal in accordance with section 1363;

(ii) completed 60 days of consultation with the Federal Emergency Management Agency on the appeal; and

(iii) not allowed more than 120 days, or such longer period as may be provided by the Administrator by waiver, to pass since the end of the appeal period; or

(B) that has received an unsatisfactory ruling under the map revision process established pursuant to section 1360(f).

Insurance Disclosure

Biggert-Waters amended the Home Buying information Booklet required by Section 5(b) of RESPA (now "Know Before You Owe") to require a borrowers to receive an explanation of flood insurance and 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 notice will explain:

(i) flood insurance is available from private insurance companies that issue standard flood insurance policies on behalf of the national flood insurance program or directly from the national flood insurance program;

(ii) flood insurance that provides the same level of coverage as a standard flood insurance policy may be available from a private insurance company that issues policies on behalf of the company; and that

(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 national flood insurance program 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.

Privatization

Not later than 18 months after the date of enactment of this Act, the Administrator and the Comptroller General of the United States shall each—

(1) conduct a separate study to assess a broad range of options, methods, and strategies for privatizing the National Flood Insurance Program; and

(2) submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate with recommendations for the best manner to accomplish the privatization.

Private Flood Insurance

Lenders, including Fannie Mae and Freddie Mac will be required to accept private insurance policies that meet the requirements for federal flood insurance. Civil monetary penalties may be imposed for a failure to accept a private insurance policy.

Mapping Error Reimbursement

This section provides for reimbursement of up to $250,000 for expenses incurred in connection with the services of surveyors, engineers, or similar services, but not including legal services, when successfully appealing a FEMA mapping error.

Additional Changes - Homeowners Flood Insurance Affordability Act of 2014

Late in March 2014, President Barack Obama signed into law bipartisan legislation to protect homeowners from significant increases in flood insurance premiums. The legislation was quickly signed into law to help ensure that sharp rate hikes will not make flood insurance unaffordable for many policyholders who built to code and followed the law every step of the way.

This law essentially rescinded some major provisions of Biggert-Waters, at least in the area of flood insurance premiums.

The Homeowner Flood Insurance Affordability Act will help prevent sharp flood insurance rate hikes while maintaining the goal of actuarial soundness of the National Flood Insurance Program. There are remaining concerns with the impact of higher premiums on commercial properties, which will continue to face rate hikes under the Biggert-Waters Flood Insurance Reform Act of 2012.

Among its provisions, the law:

- reinstates grandfathered status for covered properties,
- creates an annual individual property rate cap (18 percent) to prevent year-over-year rate increases for homeowners,
- repeals the home-sale and new-policy rate-increase triggers,

The costs of the law are offset by a $25 annual fee on NFIP policy holders for primary residential properties and a $250 annual fee for policies on second homes and businesses.

The National Flood Insurance Program

Section 2: Background and History

Background

According to www.floodsmart.gov, the National Flood Insurance Program's (NFIP) official Web site:

- In a high-risk area, your home is more than twice as likely to be damaged by flood as by fire.
- Nearly 20 percent of the NFIP's claims come from moderate-to-low risk areas.
- The average annual U.S. flood losses from 2002-2011 were more than $2.9 billion.
- Since 1978, the NFIP has paid over $36.9 billion for flood insurance claims and related costs (as of 12/31/10).
- Most homeowners insurance does not cover flood damage.

Yet, how many times has a customer willingly accepted that they have to purchase fire insurance but balked at purchasing flood insurance?

Flooding has long been the costliest and most devastating disaster in the United States. For decades, the national response to flood disasters was generally limited to constructing flood-control systems such as dams, levees, seawalls, and the like, and providing disaster relief to flood victims.

This approach did not reduce losses, nor did it discourage unwise development. In addition, building techniques to reduce flood damage were often overlooked. To compound the problem, the public generally could not buy flood coverage from insurance companies which were largely unwilling to underwrite and bear the risk of flood because of its catastrophic nature.

In the face of mounting flood losses and escalating costs of disaster relief to the general taxpayers, the U.S. Congress created the National Flood Insurance Program (NFIP). The intent of Congress was to reduce future flood damage through community floodplain management ordinances, and provide protection for property owners against potential losses through a federal insurance mechanism that requires a premium to be paid for the protection.

The NFIP was administered by the U.S. Department of Housing and Urban Development (HUD) from 1968 to 1979. When the Federal Emergency Management Agency (FEMA) was established in 1979, it was transferred to this agency. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

Key Legislation

Over time, the following have been enacted to assist the federal government to combat the rising costs of responding to flood disasters. Each will be briefly discussed in the remainder of this section.

- The National Flood Insurance Act of 1968 (established the NFIP)
- The Flood Disaster Protection Act of 1973 (introduced the mandatory purchase provisions)

- The National Flood Insurance Reform Act of 1994 (strengthened the mandatory purchase provisions of the 1973 Act)
- The Flood Insurance Reform Act of 2004 (Focused on severe repetitive loss properties and miscellaneous topics that did not affect the requirement to purchase flood insurance.)
- The Biggert-Waters Flood Insurance Reform Act of 2012 (extended the National Flood Insurance Program (NFIP) for five years and made certain other reforms to the NFIP)
- Homeowner Flood Insurance Affordability Act of 2014

FDIC Regulatory Text Concerning Authority, Purpose, Scope

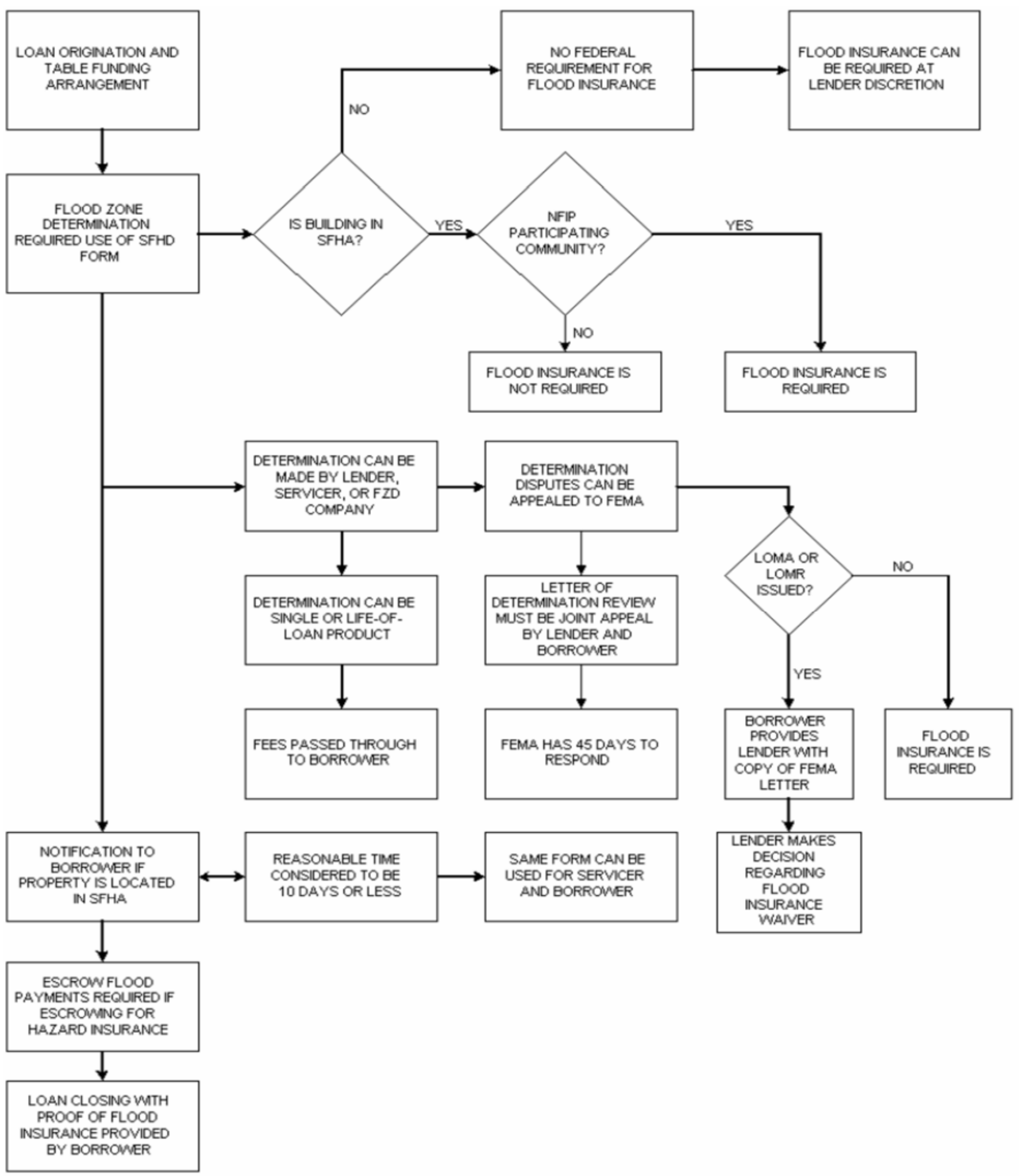
§ 339.1 Authority, purpose, and scope.

(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. 130 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) 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.

MANDATORY PURCHASE AT LOAN ORIGINATION
(Making, increasing, renewing, or extending a loan)



2007 Federal Emergency Management Agency (FEMA) Mandatory Purchase of Flood Insurance Guidelines

In September 2007 FEMA issued a comprehensive document titled *National Flood Insurance Program Mandatory Purchase of Flood Insurance Guidelines* (*2007 Guidelines*) to provide guidance to the federally regulated lending industry for implementing the mandatory purchase provisions of the National Flood Insurance Reform Act of 1994 and other key legislation that governs the National Flood Insurance Program (NFIP). The material in this section of our manual is based on the FEMA document. The *2007 Guidelines* booklet clarifies some of the complex issues that have arisen since the 1999 edition and incorporates industry best practices and lessons learned for implementing statutory requirements.

Highlights of the 2007 Guidelines

The guidelines:

- Discuss the legislative history of the NFIP and describe the federally regulated lending agencies and the types of lending institutions they each supervise. Incorporate a flowchart illustrating mandatory purchase process at loan origination (Section A)
- Include links to information about the NFIP and levees and clarifies processing information for Letters of Map Change. (Section B)
- Explain options for purchasing coverage for buildings in the course of construction and specify that there is no 30-day waiting period for this coverage. (Section C)
- Include the Program change that effective October 1, 2007, the Declarations Page of each Residential Condominium Building Association Policy (RCBAP) issued or renewed must show the building's Replacement Cost Value (RCV) and the number of units within that building. (Section D)
- Recommend 100 percent RCV for RCBAP coverage. The Guidelines clarify application of coinsurance penalties and loss assessments and updates deductible information for Government-Sponsored Enterprises. (Section D)
- Incorporate a flowchart describing tripwires during the life of loan and expand the discussion of regulatory penalties. (Section E)
- Update language referencing NFIP history and legal citations. (Appendix 1)
- Provide an updated version of the federally regulated agency lender regulations. (Appendix 2)
- Include the most current Standard Flood Hazard Determination Form (Appendix 3) that expired October 31, 2008. A copy of this form and its instructions are in Section 5 of this manual.
- Provide two separate Sample Notices of Special Flood Hazard and Availability of Federal Disaster Relief Assistance, one for participating communities and one for nonparticipating communities. (Appendix 4)
- Provide contact information for federally regulated lending agencies, GSEs, and flood-related resources. (Appendix 5)

- Expand the waiting period discussion to correspond with the NFIP Flood Insurance Manual (Appendix 6)
- Update the Mortgage Portfolio Protection Program information. (Appendix 7)
- Update the Glossary for consistency with the Flood Insurance Manual. (GLS)
- Expand the Index. (IND)

FEMA Rescinds the Mandatory Purchase Guidelines

On February 4, 2013, FEMA posted an announcement to its website rescinding the Mandatory Purchase of Flood Insurance Guidelines. The entire announcement reads as follows:

> "In accordance with FEMA Directive 112-12, any policy document older than three years from the date of issuance must be reviewed for accuracy and updated or rescinded if information is found to be out of date. The current version of the Guidelines contains outdated information and guidance that has been made obsolete by the new legislation, "The Biggert-Waters Flood Insurance Reform Act of 2012".
>
> Therefore, FEMA has decided the best course of action, to prevent confusion on the part of our stakeholders, is to rescind the Guidelines. Lenders should consult their respective regulatory agency for information regarding compliance with the mandatory purchase requirements.
>
> FEMA will continue to provide assistance on NFIP-related questions regarding underwriting, rating, and claims processing. Inquiries should be directed to Jeffrey Woodward, Senior Lender Compliance Officer, Industry and Public Relations Branch, at 202-212-2183."
>
> FEMA's announcement can be found at: www.fema.gov/library/viewRecord.do?id=2954

The Result

As a result of this action, there has been much confusion, and until the federal regulators resolve these issues, the confusion will continue. There was a change to the individual prudential regulator's regulation, which reduced the confusion, and those changes are included within this manual.

Interagency Questions and Answers

Throughout this manual, we will reference this document as "2009 FAQ".

In July of 2009 the regulators issued revised "Interagency Questions and Answers Regarding Flood Insurance." These questions and answers have been placed throughout the manual to assist you in understanding the material.

As the questions and answers appear in a different order than we have used to construct this manual, the questions and answers will not be in order. However, we have retained the correct question numbers should you need them for any reason.

In October of 2011, the regulators released guidance and proposed revisions to the “2009 FAQs”. The following is the summary section of the *Federal Register* notice:

> The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) are finalizing two new questions and answers, one relating to insurable value and one relating to force placement, and withdrawing one question and answer regarding insurable value. The two final questions and answers supplement the “Interagency Questions and Answers Regarding Flood Insurance” (Interagency Questions and Answers), which were published on July 21, 2009 (74 FR 35914). Based on comments received, the Agencies also have significantly revised two questions and answers regarding force placement of flood insurance that were initially proposed on July 21, 2009, and are proposing revision to a previously finalized question and answer. These three revised questions and answers are being proposed for comment.

The effective date of the finalized questions and answers was October 17, 2011.

We have incorporated this new guidance and proposed revisions, where appropriate, throughout this manual.

Section 3: Consequences of Flood Events

Regulatory Penalties

Under the 1994 Reform Act, Congress for the first time directed the agencies to impose civil money penalties for noncompliance with the mandatory purchase requirements.

The law requires penalties related to covered loans on which a lender fails to:

- Place insurance,
- Escrow flood insurance premium on applicable loans,
- Provide notice requirements pertaining to designated loans, or
- Force place the insurance in such a way that constitutes a "pattern or practice of committing violations" giving rise to an assessable event (42 U.S.C. § 4012a(f) and (g)). Similar provisions exist with respect to GSEs.

The per-violation amounts of civil penalties are adjusted by statute for inflation on a periodic basis. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), Federal agencies must evaluate and adjust the penalty amount at least once every 4 years. The current penalty per violation is $2,000 with no annual cap.

Penalties assessed are deposited in the National Flood Mitigation Fund created by the 1994 Reform Act.

Other remedial sanctions consist of unsatisfactory bank ratings, memoranda of understanding, and ultimately, cease and desist orders being issued against lending institutions found to have a pattern or practice of committing violations.

2009 FAQ:

81. Which violations of the Act can result in a mandatory civil money penalty?

Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulation triggers a mandatory civil money penalty:

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- Force placement of flood insurance (42 U.S.C. 4012a(e));
- Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations "shall be assessed a civil penalty" by its Federal supervisor in an amount not to exceed $350 per violation, with a ceiling per institution of $100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). Each Agency adjusts these limits pursuant to the Federal Civil

Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note.[1] Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

82. What constitutes a "pattern or practice" of violations for which civil money penalties must be imposed under the Act?

Answer: The Act does not define "pattern or practice." The Agencies make a determination of whether a pattern or practice exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

- Whether the conduct resulted from a common cause or source within the financial institution's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);
- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

1 Please refer to 12 CFR 19.240(a) (OCC); 12 CFR 263.65(b)(10) (Board); 12 CFR 308.132(c)(xvi) (FDIC); 12 CFR 509.103(c) (OTS); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001(a) (NCUA) for the Agencies' current civil penalty limits.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

Civil Liability

In legal actions where aggrieved borrowers have instituted actions against lenders for failure to obtain flood insurance coverage, the courts have stated that the mandatory purchase and notice statutes are designed for regulatory purposes to strengthen the NFIP.

The court rulings have concluded that the statute and lender regulations are not intended to make "incidental beneficiaries" of aggrieved borrowers who find themselves without NFIP coverage on flood-damaged structures located in an SFHA. In the past, the courts have ruled that the mandatory purchase statute does not grant borrowers any "implied private cause of action" that might enable them to automatically recover funds on the basis of a lender's failure to comply with the Flood Disaster Protection Act of 1973. Courts have agreed with the lenders that the intent of the law is to promote sound land use management and lessen the payments made from the Federal Treasury for disaster assistance, as well as to protect the lenders themselves.

Section 4: Definitions
(2007 Guidelines Unless Otherwise Indicated)

100-Year Flood

A flood that has a one percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to the 100-year flood. These high-risk zones are also known as Special Flood Hazard Areas (SFHAs). Over the life of a 30-year mortgage, there is a 26 percent chance that a building in an SFHA will experience such a flood.

500-Year Flood

A flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding. These areas include flood Zones B, C, and X, where one-to four-unit buildings are eligible for the Preferred Risk Policy. A 500-year flood would be deeper than a 100 year flood and would cover a greater area.

Act (Prudential Regulator Regulation)

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

Actual Cash Value (ACV)

The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

Administrator of FEMA (Prudential Regulator Regulation)

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

Base Flood

A flood having a one-percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE)

The elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year.

Blanket Insurance

A single amount of insurance applying to more than one building and/or its contents. Blanket coverage is not permitted under the NFIP.

Building (Eligible Building)

- A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or
- A manufactured home (a "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

"Building" does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle, except as described above.

Building (Prudential Regulator Regulation)

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

Building in the Course of Construction

A walled and roofed building that is principally above ground and affixed to a permanent site. It does not include building materials or supplies intended for use in construction, alteration, or repair unless such materials or supplies are within an enclosed building on the premises.

Coinsurance

A penalty imposed on the loss payment unless the amount of insurance carried on the damaged building is at least 80 percent of its replacement cost or the maximum amount of insurance available for that building under the NFIP, whichever is less. Coinsurance applies only to building coverage under the Residential Condominium Building Association Policy.

Community

A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community (Prudential Regulator Regulation)

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.

Community Number

A six-digit designation identifying each NFIP community. The first two numbers are the state code. The next four are the FEMA-assigned community number. An alphabetical suffix is added to a community number to identify revisions in the Flood Insurance Rate Map for that community.

Compendium of Flood Map Changes

A document published every six months by the Administrator of FEMA that includes separately in its entirety all changes and revisions to Flood Insurance Rate Map panels and all Letters of Map Amendment and Letters of Map Revision for which notice was published in the *Federal Register* or otherwise provided during the preceding six months. The Administrator makes these compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the NFIP, and at cost to all other parties.

Conforming Loan

A mortgage loan that meets all the requirements (size, type, and age) to be eligible for purchase or securitization by a Government-Sponsored Enterprise for Housing.

Deductible

The portion of an insured loss to be borne by the insured before the insured is entitled to recovery from the insurer. The NFIP applies the deductible separately to the building and contents portion of a loss covered by the Standard Flood Insurance Policy. In the NFIP Regular Program, the standard deductible is $500 except for Pre-FIRM risks in Special Flood Hazard Areas, which have a $1,000 standard deductible. Other deductible amounts are available, and special deductibles apply to the expense of contents and manufactured (mobile) home removal. In the Emergency Program, the standard deductible is $1,000 for all risks. (Refer to the Rating and Condominiums sections of the NFIP Flood Insurance Manual for more information about deductibles.)

Deductible Buyback

The option whereby, for an additional premium, policyholders who wish to reduce their deductibles from the standard deductibles of $1,000 per building loss and per contents loss for Pre-FIRM risks in Special Flood Hazard Areas may purchase separate $500 deductibles for building and contents coverages.

Designated Loan

A loan secured by a building or manufactured (mobile) home located or to be located in a Special Flood Hazard Area, where flood insurance is available under the 1968 Act.

Determination Review

An appeal process performed by FEMA to resolve disputes posed by borrowers and lenders/servicers concerning properties found to be in Special Flood Hazard Areas. A fee is charged, and the request must be signed jointly by the lender or servicer and borrower. Elevation data is not considered. The requester receives a Letter of Determination Review stating whether the structure was found to be inside or outside an SFHA.

Director

The usage of the term “Director” refers to the Director of the Federal Emergency Management Agency.

Elevated Building

A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundation walls are not an acceptable means of elevating buildings in V and VE Zones.

Elevation Certificate

A certified statement that verifies a building’s elevation and certain other construction characteristics needed to rate the building for flood insurance under the NFIP. The information required and the risks subject to these requirements are described in the “Special Certifications” section of the *NFIP Flood Insurance Manual*.

Emergency Program

The initial phase of a community’s participation in the NFIP. During this phase, only limited amounts of insurance are available under the Act.

Escrow Requirement

A mandate placed on federally regulated lending institutions by the National Flood Insurance Reform Act of 1994 to escrow for flood insurance premiums under specified circumstances.

Evidence of Insurance

Copies of the Flood Insurance Application, premium payment, and Declarations Page that, when submitted to the lender, constitute proof of flood insurance purchase. The NFIP does not recognize binders or certificates of insurance.

Federal Agency Lenders

The Small Business Administration, the Federal Housing Administration, the agencies within the U.S. Department of Agriculture—Rural Development, and the Department of Veterans Affairs, all of which are subject to the mandatory purchase requirement in the 1994 Reform Act. These agencies were covered by the 1973 Act purchase requirements.

Federal Emergency Management Agency (FEMA)

The federal agency under which the NFIP is administered. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

Federally Regulated Lending Institutions

Any banks, savings and loan associations, credit unions, farm credit banks, Federal land bank associations, production credit associations, or similar institutions subject to the supervision of a Federal entity for lending regulation, such as the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Administration.

Flood

A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is the policyholder's property) from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source; or
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood Hazard Boundary Map (FHBM)

The official map of a community issued by FEMA where the boundaries of the flood, mudflow, and related erosion areas having special hazards have been designated.

Flood Insurance Rate Map (FIRM)

The official map of a community on which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community. NFIP regular program communities have FIRMs.

Flood Zone

One of the lettered geographical areas shown on FEMA Flood Hazard Boundary Maps and Flood Insurance Rate Maps to indicate risk, severity, or type of flooding.

- Zones that begin with the letters A and V are areas of high flood risk, or Special Flood Hazard Areas, where the purchase of flood insurance as a condition for granting a designated loan is required.
- Zones B, C, D, and X are areas of low to moderate flood risk, where the purchase of flood insurance as a condition for granting a designated loan is not required but should be encouraged by lenders. Historically, about one-quarter of all NFIP claims have originated in these areas.

Improved Real Estate

Property on which a building is located. Under the NFIP, this means a walled and roofed building or a building in the course of construction that qualifies for insurance coverage.

Letter of Determination Review (LODR)

FEMA's ruling on the determination made by a lender or third party that a borrower's building is in a Special Flood Hazard Area (SFHA). A LODR deals only with the location of a building relative to the SFHA boundary shown on the Flood Insurance Rate Map.

Letter of Map Amendment (LOMA)

An amendment to the currently effective FEMA map which establishes that a property is not located in a Special Flood Hazard Area. A LOMA is issued only by FEMA.

Letter of Map Change (LOMC)

Any of several FEMA-issued letters that effect a change to a Flood Insurance Rate Map or to the flood zone and rating status of an insured building. LOMCs include the Letter of Map Amendment, the Letter of Map Revision, and the Letter of Map Revision Based on Fill.

Letter of Map Change Subscription Service

A service through which the FEMA Map Service Center sells regular updates of all LOMAs and LOMRs.

Letter of Map Revision (LOMR)

An official amendment to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F)

An official amendment to the currently effective FEMA map. It is issued by FEMA and provides FEMA's determination concerning whether a building has been elevated on fill above the Base Flood Elevation and excluded from the Special Flood Hazard Area.

Mandatory Purchase

A provision of the Flood Disaster Protection Act of 1973, whereby individuals, businesses, and others buying, building, or improving property located or to be located in identified areas of special flood hazards within NFIP participating communities are required to purchase flood insurance as a prerequisite for receiving any type of direct or indirect Federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

Manufactured (Mobile) Home

A structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation. "Manufactured (mobile) home" does not include recreational vehicles.

Map Amendment

A change to an effective FEMA map that results in the exclusion from the Special Flood Hazard Area (SFHA) of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first FEMA map that showed the structure or parcel to be within the SFHA).

Map Panel Number

Four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised.

Map Revision

A change in the Flood Hazard Boundary Map or Flood Insurance Rate Map for a community which reflects revised zone, base flood, or other information.

Mobile Home (Prudential Regulator Regulation)

(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 does not include a recreational vehicle. For purposes of this part, the term means a mobile home on a permanent foundation. The term includes a manufactured home as that term is used in the NFIP.

Mortgage Portfolio Protection Program (MPPP)

A program designed to help lending institutions maintain compliance with the Flood Disaster Protection Act of 1973, as amended. Policies written under the MPPP can be placed only through a Write Your Own company. These WYO companies are private industry carriers participating in the NFIP. They are given this name because they write and service federally backed Standard Flood Insurance Policies (SFIPs) under their own names.

NFIP (Prudential Regulator Regulation)

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

Non-Participating Community

A community in which the sale of flood insurance under the NFIP is not authorized because the community chooses not to participate in the Program.

Non-Residential Buildings

A category of buildings, insurable by the NFIP under the General Property Form, that includes, but is not limited to:

- small business concerns
- churches
- schools
- farm buildings (including grain bins and silos)
- pool houses
- clubhouses
- recreational buildings
- mercantile structures

- agricultural and industrial structures
- warehouses
- hotels and motels with normal room rentals for less than six months' duration
- nursing homes

See also Other Residential Buildings.

Other Residential Buildings

A category of buildings, insurable by the NFIP under the General Property Form, that includes, but is not limited to:

- hotels and motels where the normal occupancy of a guest is six months or more
- tourist homes and rooming houses that have more than four roomers
- residential buildings (excluding hotels and motels with normal room rentals for less than six months' duration) containing more than four dwelling units.

See also Non-Residential Buildings.

Participating Community

A community for which FEMA has authorized the sale of flood insurance under the NFIP.

Post-FIRM Building

A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

Pre-FIRM Building

A building for which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial Flood Insurance Rate Map (FIRM).

Private Flood Insurance (Biggert-Waters, 2012)

The term means an insurance policy that:

(A) 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 property, is 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;

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

(C) includes -

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

(I) the insured; and

(II)the regulated lending institution or Federal agency lender;

(ii) information about the availability of flood insurance coverage under the national flood insurance program;

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

(iv) a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and

(D) contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the national flood insurance program.

Real Estate Settlement Procedures Act (RESPA) of 1974

A federal law that prescribes rules concerning payment and disclosure of settlement service charges. Under implementing Regulation Z, the Department of Housing and Urban Development included as a "settlement service" the provision of services involving hazard, flood, or other casualty insurance.

Recreational Vehicle

A vehicle that is (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections, (3) designed to be self-propelled or permanently towable by a light-duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use including, but not limited to, travel trailers, trailers on wheels, park trailers, and other similar vehicles.

Regular Program

The final phase of a community's participation in the NFIP. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

Regular Program Community

A community wherein a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

Remapping

Scheduled revisions of community flood maps to take into consideration natural changes within the floodplain and regulatory floodways and to allow for changes as a result of land use and development, land contour changes, and new information gained from advanced technology. Every six months, FEMA publishes the results of its remapping efforts in a compendium of flood map changes in the *Federal Register*.

Repetitive Loss Structure

An NFIP-insured structure that has had at least two paid flood losses of more than $1,000 each in any 10-year period since 1978.

In 2012, Biggert-Waters refined this definition to mean the following:

(1) Single-Family Properties - In the case of a property consisting of 1 to 4 residences, such term means a property that:

(A) is covered under a contract for flood insurance made available under this title; and

(B) has incurred flood-related damage:

(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

(2) Multifamily Properties - In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.".

Replacement Cost Value (RCV)

The cost to replace property with the same kind of material and construction without deduction for depreciation.

Residential Condominium Building Association Policy (RCBAP)

Policy issued to insure a residential condominium building and all units within the building, provided that the building is located in a Regular Program community and at least 75 percent of the total floor area is residential.

Residential Improved Real Estate (Prudential Regulator Regulation)

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

Section 1316

A section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property FEMA finds has been declared by a duly constituted State or local zoning authority or other authorized public body to be in violation of State or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Servicer (Prudential Regulator Regulation)

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.

Small Loan Exception to Coverage Requirements

Any loan having an original principal balance of $5,000 or less and a repayment term of one year or less is exempt from Federal requirements for the mandatory purchase of flood insurance.

Special Flood Hazard Area (SFHA) (Prudential Regulator Regulation)

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.

Standard Flood Hazard Determination Form (SFHDF)

FEMA Form 81-93, which is to be used in either printed, computerized, or electronic form by all companies performing flood zone determinations. A completed SFHDF is required in most loan files and is the primary “product” of flood zone determination companies.

Table Funding (Prudential Regulator Regulation)

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.

Tripwire

An action that alerts lenders and servicers to comply with flood insurance purchase requirements in the case of the making, increasing, extending, or renewing of a loan, or the transfer of a loan to a government-sponsored enterprise for housing.

Write Your Own (WYO) Program

A cooperative undertaking of the insurance industry and FEMA begun in October 1983. The WYO Program operates within the context of the NFIP and involves private insurance carriers that issue and service NFIP policies under their own names.

WYO Vendor

An organization employed by certain Write Your Own (WYO) carriers to conduct support operations to procure, produce, and handle NFIP claims on behalf of the insurer.

Section 5: National Flood Insurance Program Overview

Introduction

The mandatory purchase provisions of the National Flood Insurance Reform Act of 1994 and other key legislation governs the National Flood Insurance Program (NFIP). The mandatory purchase law directed the Federal agency lender regulators and Government-Sponsored Enterprises (GSEs) to develop and adopt regulations requiring lenders subject to their jurisdiction not to make, increase, renew, or extend any loan on applicable property unless flood insurance is purchased and maintained to protect that property securing loans in high flood risk areas.

Implementation of the mandatory flood insurance purchase requirements is the responsibility of the various Federal agencies that oversee lenders. Each Federal lending regulator and GSE has the responsibility to issue its own regulations to implement the statutory requirements.

The authority of FEMA is limited to administering the NFIP, which enables property owners in participating communities to purchase federally backed flood insurance. FEMA does not have statutory responsibility for enforcing the mandate to purchase flood insurance.

The essential part of the compliance provision is contained in 42 U.S.C. §4012a(b), which addresses three kinds of lenders:

- Federally Regulated Lenders
- Government-Sponsored Enterprises (GSEs) for Housing
- Federal Agency Lenders

The law focuses on compliance with the mandatory purchase requirement as the responsibility of federally regulated private lenders and GSEs that purchase loans in the secondary market. These entities must ensure that a building or manufactured (mobile) home and any applicable personal property securing a loan in an SFHA are covered by adequate flood insurance for the term of the loan.

Although the intent of the law is to require borrowers to purchase flood insurance, the requirements are directed to federally regulated and federally insured lenders and to secondary-market entities involved in mortgage loan transactions.

The 1994 Reform Act's mandatory purchase requirement applies to all federally related loans outstanding on or after the date of the legislation's enactment, September 23, 1994. Each instance of making, increasing, extending, or renewing a "designated loan"—a loan secured by a building or manufactured (mobile) home located or to be located in an SFHA, where flood insurance is available under the 1968 Act—serves as a tripwire of sorts for compliance with the mandatory flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes compliance by lenders increasingly more likely, as borrowers obtain new loans on existing buildings or refinance existing loans. At each tripwire in the mortgage process, the lender or servicer must ensure that flood insurance is purchased and maintained.

Insurance Requirements

Insurance Required at Loan Closing

A designated loan must have flood insurance as a condition of closing. If a borrower will not voluntarily obtain coverage, the lender must deny the loan. A lender cannot accept a borrower's assurance that he or she will obtain coverage in the future or grant the lender indemnity while he or she seeks coverage. Closing a designated loan without coverage in place constitutes a violation of the regulation.

Life-of-Loan Insurance Coverage

A key clarification of the 1994 Reform Act is that flood insurance must be obtained and maintained during the term of the loan. Regulated lending institutions and GSEs are responsible for providing notice of and requiring flood insurance coverage for the term of the loan on buildings located or to be located in any SFHA in participating communities. Flood insurance will be required even if the SFHA designation is first identified after settlement, but during the term of the loan. This requirement is designed to combat coverage lapses allowed to occur by individuals who believe they will not be flooded, and therefore discontinue payment of flood insurance premiums during the term of the loan.

Lender Responsibilities

The statutory requirements apply when improved real property (that is, a building) or manufactured (mobile) home is taken as security for a loan. A lender's responsibilities include the following actions:

- Determine whether the building or manufactured (mobile) home offered as security for a loan is, or will be, located in an SFHA;
- Document the determination of flood hazard status, whether the building is in a low-to-moderate flood risk area or in an SFHA, on the current Standard Flood Hazard Determination Form (SFHDF);
- Provide notice to the borrower if collateral is, or will be, in an SFHA per the appropriate sample Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance, the two versions of which are shown in Appendix 4 of the *2007 Guidelines*;
- Require that adequate flood insurance is obtained for buildings in SFHAs;
- Require the escrow of flood insurance premiums if escrow is required for other items, such as hazard insurance and taxes;
- During the term of the loan, ensure that flood insurance is maintained or obtained if the lender becomes aware that the building involved subsequently becomes part of an SFHA; and
- Force place flood insurance if the borrower allows the policy to lapse or if insurance is inadequate.

Mandatory Purchase vs. Potential Flooding

While the mandatory purchase requirement applies only to buildings located in SFHAs of participating communities, NFIP flood insurance is available and highly encouraged in low-to-moderate flood risk areas of NFIP participating communities. This is especially significant because, historically, about 25 percent of the NFIP claims paid have actually been outside of SFHAs.

Lenders and property owners may wish to exercise additional caution and consider flood insurance in areas subject to flooding due to storm water, in areas where the NFIP has used approximate methods to map SFHAs, or in remote locations where no SFHAs have been designated by FEMA.

A requirement for flood insurance on secured property that is not subject to the mandatory purchase requirement is a matter of contract between the lender and borrower.

Some buildings in a participating community may be ineligible for Federal flood insurance because of statutory restrictions or NFIP underwriting rules. (For future reference, see pages 20-22 of the *2007 Guidelines* for a discussion of the lack of availability of Federal flood insurance in such instances.)

FDIC Regulatory Text Concerning Mandatory Purchase

§ 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.

FDIC Regulatory Text Regarding Exemptions

§ 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.

2009 FAQ:

2. **What is a lender's responsibility if a particular building or mobile home that secures a loan, due to a map change, is no longer located within an SFHA?**

   Answer: The lender is no longer obligated to require mandatory flood insurance; however, the borrower can elect to convert the existing NFIP policy to a Preferred Risk Policy. For risk management purposes, the lender may, by contract, continue to require flood insurance coverage.

18. **What are the exemptions from coverage?**

   Answer: There are only two exemptions from the purchase requirements. The first applies to State owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.

Operation of the National Flood Insurance Program

FEMA conducts Flood Insurance Studies throughout the United States, in cooperation with community officials, to determine the location of high flood risk areas, called Special Flood Hazard Areas (SFHAs), in each community. On the basis of these studies, FEMA notifies each community of its SFHAs and issues Flood Insurance Rate Maps (FIRMs) for communities.

To participate in the NFIP, a community enters into an agreement with FEMA. Under this agreement, the community adopts and enforces ordinances designed to reduce the risk of flood damage to buildings in that community. These ordinances restrict development and limit imprudent building within SFHAs, identified on the FIRMs as Zones A or V. In exchange, NFIP flood insurance becomes available for most residential and commercial buildings in the community. Flood insurance also is available in low-to-moderate flood risk areas identified on the

FIRMs as Zones B, C, or X, although not mandated by law. Historically, about one-quarter of all NFIP flood claims have been paid in these low risk areas.

Flood Zone Designations

The community's floodplain management ordinances must require building permits for all development within the SFHA. New and substantially improved residential buildings must be constructed with the lowest floor at or above the Base Flood Elevation (BFE), if the BFE is shown on the FIRM. Nonresidential buildings can be either elevated or flood proofed (made watertight) to the BFE. Participating communities that fail to adequately enforce their floodplain management ordinances may be placed on probation if they do not take corrective actions within a specified time.

NFIP policyholders in that community will be notified that probation is pending and that their flood insurance policies may become subject to a premium surcharge. If a community fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, which would terminate its status as a participating community. In that event, NFIP policies would not be renewed for property owners in that community, no new policies would be issued, and Federal disaster assistance would be limited. Most suspended communities quickly enforce the ordinances and become participating again.

The official FIRM for a Regular Program community delineates the SFHAs and the applicable flood insurance risk zones. SFHAs are those areas within the floodplain that have a 1 percent chance of being flooded in any given year (base flood). Over a 30-year period (the life of most residential mortgages), there is at least a 26 percent chance that a building within an identified SFHA will be flooded. SFHAs are represented on FIRMs by darkly shaded areas designated with the letter A or V.

FEMA generally performs engineering studies to determine the delineation of SFHAs. SFHAs are defined as Zones A, AO, A1-A30, AE, AR, AR/AO, AR/A1-A30, AR/AE, AR/AH, AR/A99, A99, AH, VO, V1-V30, VE, and V. These zones are highly susceptible to flooding; V-lettered zones are also subject to wave action.

Older FIRMs show numbered A Zones (e.g., A1, A2, A30) and numbered V Zones (e.g., V1, V2, V30). On newer FIRMs, Zone AE represents former Zones A1-A30, and Zone VE represents former Zones V1-V30. As with other SFHAs, buildings located in the temporarily designated flood restoration zone (Zone AR) are subject to the mandatory purchase requirement.

Older maps use Zones B and C to represent areas of moderate and low flood risk. Newer maps have replaced these designations with Zone X (shaded) and Zone X (unshaded), respectively. Areas for which FEMA has made no flood hazard evaluation, but for which flooding is considered possible, are designated as Zone D. Although these areas typically were undeveloped and sparsely populated when designated as Zone D, lenders should be aware that any new development in such areas may have increased the possibility of property damage from flooding.

On the East Coast and Gulf Coast, and along the Great Lakes, the FIRM might also show Coastal Barrier Resources System (CBRS) areas; the availability of Federal flood insurance is limited in CBRS areas.

Some Communities Lack Flood Zone Maps

Certain communities with no SFHAs indicated do not have published maps, and the entire area is considered to be in Zone X (unshaded). Although these areas may not be subject to the base flood, local drainage problems may cause building damage in some areas.

If a lender extends a loan in an unmapped participating community and has reason to believe there is a possibility of flood loss to the secured building, then safety and soundness dictate that flood insurance coverage should be in place.

For buildings located outside the SFHAs, the statutory requirements do not obligate lenders to impose the mandatory flood insurance purchase requirement. However, a mortgage lender is free to require a borrower to carry flood insurance, even if the building serving as security for a loan is located outside an SFHA.

Flood insurance is available and encouraged for all eligible buildings in participating communities, whether inside or outside an SFHA.

The Importance of a Building's Location

The statutory requirement to purchase flood insurance applies only when a loan is extended on improved real property (i.e., a building or manufactured [mobile] home) that is located or will be located in an SFHA in a participating community.

Even though a portion of real property on which a building is located may lie within an SFHA, the purchase and notice requirements do not apply unless the building itself, or some part of the building, is in the SFHA. However, even if that part of the building within the SFHA is not subject to coverage (e.g., a deck), the entire building is considered to be in the SFHA.

Lenders, on their own initiative, may require the purchase of flood insurance even if a building is located outside an SFHA. A decision to require coverage under such circumstances is not compelled by the statute, but is founded on the contractual relationship between the parties. Lenders have the prerogative to require flood insurance to protect their investments, provided that they have reserved that option in their mortgage loan document.

Section 42 of U.S.C. § 4012a sets the ultimate responsibility to place flood insurance on the applicable lender, yet allows for limited reliance on third parties to the extent that the information they provide is guaranteed. The lender, servicer, or a third-party vendor may conduct the determination of a building's location.

Under any alternative, the lender, using such evidence as is reasonable, must take the responsibility for making determinations and redeterminations. A financial institution cannot rely on the statements of a borrower that the structure in question is either inside or outside an SFHA.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent that "such person guarantees the accuracy of the information."

In many instances, community officials, insurance company personnel, insurance agents, real estate agents, surveyors, or appraisers may be helpful and knowledgeable resources. However, to the extent that such parties cannot or will not grant guarantees, reliance upon the information they provide cannot be used for exculpatory purposes if the lender is confronted with a regulatory violation or a civil claim for damages.

Regardless of how the determination is reached, the nondelegable obligation of the determination remains the responsibility of the lender.

A lender may rely on a previous determination, not more than seven years old, when increasing, extending, renewing, or purchasing a loan, but only when the previous determination was recorded on an SFHDF. This rule does not apply when a new loan is made, or if a map revision causes a building to be located within an SFHA, or if a map change occurs after the date of the previous determination.

Buildings Ineligible for NFIP Coverage

Most buildings are eligible for coverage under the NFIP, but there are exceptions. For example, a building (or boathouse) built completely over water cannot be insured if the building (or boathouse) was newly constructed or substantially improved on or after October 1, 1982.

The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete, current list of coverages and exclusions may be found in the Standard Flood Insurance Policy (available online at: http://www.fema.gov/business/nfip/sfip.shtm).

For certain categories of properties located in participating communities, flood insurance coverage may be restricted. This includes manufactured (mobile) homes that do not meet NFIP insurability requirements. In special situations, Congress or FEMA has chosen to deny eligibility for flood insurance, and treats the buildings similarly to those in nonparticipating communities. Therefore, the mandatory purchase requirement does not apply. Lenders should consider requiring private flood insurance for these types of risks.

In accordance with Section 1316 (42 U.S.C. § 4023) of the National Flood Insurance Act of 1968, a conventional loan may be made when the building is located in an SFHA of a participating community but is not eligible for Federal flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Nevertheless, compliance with the provision for notifying the borrower that the building is in an SFHA is especially important. Because of violations relating to protection against flooding, buildings that come under the provisions of Section 1316 usually will be highly susceptible to flood damages, and are a far greater risk to the lender than buildings compliant with floodplain management ordinances.

2009 FAQ:

25. What are a lender's requirements under the Regulation for a loan secured by multiple buildings located throughout a large geographic area where some of the buildings are located in an SFHA in which flood insurance is available and other

buildings are not? What if the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP and others do not?

Answer: A lender is required to make a determination as to whether the improved real property securing the loan is in an SFHA. If secured improved real estate is located in an SFHA, but not in a participating community, no flood insurance is required, although a lender can require the purchase of flood insurance (from a private insurer) as a matter of safety and soundness.

Conversely, where secured improved real estate is located in a participating community but not in an SFHA, no insurance is required. A lender must provide appropriate notice and require the purchase of flood insurance for designated loans located in an SFHA in a participating community.

Section 6: Special Flood Hazard Determination Form

Introduction

The 1994 reforms to flood legislation required the development of a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether a building or mobile home is located in an area identified as a special flood hazard and in an area in which national flood insurance is available. The flood regulations require that covered lenders shall use the Standard Flood Hazard Determination (SFHD) form as developed by the Director of FEMA when determining whether a building or mobile home offered as collateral security for a loan is or will be located in a Special Flood Hazard Area (SFHA) in which flood insurance is available under the Act.

Should collateral pledged as security on a loan be located in a SFHA, the lender is also required to provide an appropriate notice to the borrower indicating whether flood insurance is available.

This portion of the manual explores the SFHD form and the flood notice, as well as any additional notices that may be required in connection with a covered loan.

FDIC Regulatory Text Regarding the SFHDF

§ 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 website at 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.

Standard Flood Hazard Determination Form

The Standard Flood Hazard Determination Form (SFHDF) is used to comply with Section 303 (a) of Title V of the National Flood Insurance Reform Act of 1994 (NFIRA). The SFHDF is used by federally regulated lending institutions when making, increasing, extending, renewing or purchasing a loan for the purpose of determining whether flood insurance is required and available. The form may also be used by insurance agents, property owner, realtors and community officials for flood insurance related activities and flood zone documentation.

This for most recently updated, and is included in this Manual.

The SFHD form contains sections which detail information relating to the lender, collateral, flood map information, flood insurance availability, and information about the preparer of the SFHD.

Using Third Parties to Prepare SFHD Forms

The Act sets the ultimate responsibility to place flood insurance on the lender, yet allows for limited reliance on third parties to the extent that the information they provide is guaranteed. Therefore, the lender, servicer, or a third-party vendor may conduct the determination of a building's location. Regardless of the alternative chosen, the lender must take the responsibility for making determinations and redeterminations. Under no circumstances should a financial institution rely on the statements of a borrower that the structure in question is either inside or outside an SFHA. The Act provides appropriate channels to resolve disputes by a borrower when the location of collateral in or out of a SFHA is in question.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent that "such person guarantees the accuracy of the information."

Some third-party flood zone determination companies also provide a form of life-of-loan service that monitors the flood hazard status of the secured structure for the term of the loan. Third-party life-of-loan service is designed to discover a change in flood hazard status, thereby minimizing the administrative burden for the lender or servicer. The law does not require a lender to subscribe to a tracking service that provides life-of-loan monitoring.

Given the unique skill base required to accurately read and interpret flood maps, many lenders today rely on the use of third-party service providers to prepare SFHD forms. In many lenders' shops, this necessary skill base extends beyond the resources available within the bank. These third parties can offer these skills at a reasonable cost and most often back up their preparations with a compliance guarantee.

In addition, for the lender's and borrower's protection, the third parties typically offer a "life-of-loan" service to be purchased at the time of the initial preparation of the SFHD form. This life-of-loan service, if purchased by the lender, will serve to inform the lender of any changes to the flood map affecting the property pledged security. This service provides a peace of mind to the lender and borrower to receive a notification if the collateral is subsequently affected by either becoming considered as located in a SFHA or a remapping that removes the collateral from a SFHA, thereby eliminating the need for the borrower to maintain flood insurance. This life-of-loan service is not mandated by the Act.

Elements of the SFHD Form

The following pages contain the "old" and "new" SFHD forms. The instructions for the "new" form is included on the following pages.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

STANDARD FLOOD HAZARD DETERMINATION FORM (SFHDF)

OMB Control No. 1660-0040
Expires: 10/31/18

SECTION I - LOAN INFORMATION

1. LENDER/SERVICER NAME AND ADDRESS

2. COLLATERAL DESCRIPTION (Building/Mobile Home/Property) (See instructions for more information.)

3. LENDER/SERVICER ID #

4. LOAN IDENTIFIER

5. AMOUNT OF FLOOD INSURANCE REQUIRED

SECTION II

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name
2. County(ies)
3. State
4. NFIP Community Number

B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")

2. NFIP Map Panel Effective / Revised Date

3. Is there a Letter of Map Change (LOMC)?

- ◯ NO
- ◯ YES (If yes, and LOMC date/no. is available, enter date and case no. below).

Date Case No.

4. Flood Zone

5. No NFIP Map

C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply.)

1. ☐ Federal Flood Insurance is available (community participates in the NFIP). ☐ Regular Program ☐ Emergency Program of NFIP

2. ☐ Federal Flood Insurance is not available (community does not participate in the NFIP).

3. ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood Insurance may not be available.

CBRA/OPA Designation Date: ____________________

D. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? ☐ YES ☐ NO

If yes, flood insurance is required by the Flood Disaster Protection Act of 1973.
If no, flood insurance is not required by the Flood Disaster Protection Act of 1973. Please note, the risk of flooding in this area is only reduced, not removed.

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building /mobile home on the NFIP map.

E. COMMENTS (Optional)

F. PREPARER'S INFORMATION

NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender)

DATE OF DETERMINATION

FEMA Form 086-0-32 (06/16)

SFHDF - Form Page 1 of 1

Department of Homeland Security

Federal Emergency Management Agency

Standard Flood Hazard Determination Form (SFHDF)

OMB Control No. 1660-0040 Expires: 10/31/18

Paperwork Burden Disclosure Notice

Public reporting burden for this form is estimated to average 20 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting the form. This collection of information is mandatory. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC, 20472, Paperwork Reduction Project (OMB Collection1660-0040). NOTE: DO NOT SEND YOUR COMPLETED FORM TO THIS ADDRESS.

Instructions

Section 1

1. ***Lender/Servicer Name and Address:*** Enter lender name and address.
2. ***Collateral Description:*** Preparer should coordinate with user to ensure the collateral is sufficiently identified. Suggested forms of collateral identification include, but are not limited to, property address, parcel or lot number and longitude/latitude. If needed, additional information may be attached to this form.
3. ***Lender/Servicer ID No:*** Optional. Preparer should coordinate with user to ensure the lender is sufficiently identified on the form. The lender name and address (Box 1. above) may be sufficient.
4. ***Loan Identifier:*** Optional. May be used by lenders to conform with their individual Method of Identifying Loans.
5. ***Amount of Flood Insurance Required:*** Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. A lender retains the prerogative to require flood insurance in excess of the minimum federal requirements not by the direction of FEMA. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the insured value of the building/mobile home/personal property.

Section 2

A. **National Flood Insurance Program (NFIP) Community Jurisdiction**

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

B. NFIP Data Affecting Building/Mobile Home

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

1. NFIP Map Number or Community-Panel Number. Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075F). Some older maps will have a 9-digit number (Example: 12345601A). Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none."
2. NFIP Map Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93) This will be the latest of all dates shown on the map.
3. Is there a Letter of Map Change (LOMC)? This field can remain blank if no Letter of Map Change (LOMC) (these include the Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) or similar FEMA Map Letter(s)) applies to the subject property. If there

is a LOMC, list the date and number. Information on the LOMC is available from the following sources:

* The community's official copy of its NFIP map(s) should have a copy of all subsequently-issued FEMA Letters attached.

* For a LOMC issued on or after October 1, 1994. Information is available on FEMA's website at http://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping/compendium-flood-map-changes

* The FEMA Map Service Center website is https://msc.fema.gov/portal

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

C. Federal Flood Insurance Availability. This is a review of community eligibility; it does not address individual building related eligibility,that is reviewed in the insurance process.

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

Federal flood insurance is prohibited in areas designated by the Coastal Barrier Resources Act to be in a Coastal Barrier Resources Area (CBRA) and Otherwise Protected Areas (OPA) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. Information about the Coastal Barrier Resources System (CBRS) may be obtained by visiting the U.S. Fish and Wildlife Service's website at http://www.fws.gov/CBRA/index.html

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

E. Comments. Optional Comment. Preparer may add additional comments/pages/data as needed.

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

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

Multiple Buildings. For guidance regarding multiple buildings, please contact your regulator, servicer, lender or other entity as applicable.

Guarantees Regarding Information. Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

Form Availability. The form is available at http://www.fema.gov/plan/prevent/fhm/frm_form.shtm). Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website. See the resource record, for usability purposes. The URL is http://www.fema.gov/media-library/assets/documents/225?id=1394

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

For Lending Related Guidance Regarding This Form. Implementation of the mandatory flood insurance purchase requirements of the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 94, as amended, is the responsibility of the various Federal agencies that regulate lenders. Please contact your regulator or lender to determine their requirements.

Reliance on the SFHDF

The lender must take the responsibility for making flood zone determinations. The 1994 Reform Act states that the lender may provide for the acquisition or determination of flood hazard information to be made by a person other than the lender only to the extent that such person guarantees the accuracy of the information.

A previous determination may not be reused when making a new loan. If the loan is not new, (i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan) the determination can be reused if:

- It is less than 7 years old; and
- No new or revised FIRM or FHBM has been issued in the interim; and
- It was initially recorded on the SFHDF.

If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a secondary lien position, and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred.

Once a new map has been issued, a lender must use that map as a guide, and a new determination is required.

A separate SFHDF is required for buildings on adjacent properties. However, if a single property contains multiple buildings, a listing of buildings on the parcel can be attached to the SFHDF.

Only one building may be insured under one NFIP policy. Each building securing a loan must be covered by a separate policy.

The form need not be kept in the loan file, but a lender is expected to be able to retrieve the record within a reasonable time period upon being requested by its federal supervisory agency. Lenders are neither required to provide, nor prohibited from providing, the WYO insurer, insurance agent, or the borrower with a copy of the form.

Lenders and servicers cannot accept self-certification or assurance from the mortgagor-borrower that the building is not in an SFHA. If the lender wishes to change its original determination of the building's location based on information submitted by the mortgagor, the lender/servicer must conclude that its original determination was in error and make any change on the basis of its review of that new information.

The ultimate responsibility for making such determinations about a building's flood zone location rests with the mortgagee, not the mortgagor. Contested determinations are subject to the FEMA review process.

2009 FAQ:

65. Does the SFHDF replace the borrower notification form?

Answer: No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act. The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform them about flood insurance requirements and the availability of Federal disaster relief assistance.

66. May a lender provide the SFHDF to the borrower?

Answer: Yes. While not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

67. May the SFHDF be used in electronic format?

Answer: Yes. In the final rule adopting the SFHDF, FEMA stated: "If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form." It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

68. May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?

Answer: It depends. Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing, or purchasing a loan secured by a building or a mobile home. Under the Act, the "making" of a loan is not listed as a permissible event that permits a lender to rely on a previous determination.

When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made.

Fees for Determining Location[2]

Anyone (person or financial institution) who makes a loan secured by improved real estate or a mobile home, or any servicer for such a loan, may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area that has special flood hazards if the following conditions are met:

- The borrower may be charged the fee if the determination
- Is made as a result of the making, increasing, extending, or renewing of a loan that is initiated by the borrower or
- Is made as a result of a revision or updating of the floodplain areas and flood risk zones or publication of a notice or compendia of such that affects the area in which the improved real estate or mobile home securing the loan is located or
- Is required by FEMA or
- Results in the forced placement of insurance coverage by a lender.
- The purchaser or transferee of a loan may be charged the fee in the case of sale or transfer of the loan.

Retention

A lender shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time it owns the loan.

FDIC Regulatory Text Concerning Determination Fees

§ 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:

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2 Adapted from 42 USC Chapter 50, National Flood Insurance, Section 4012a(h).

(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.

2009 FAQ:

69. When can lenders or servicers charge the borrower a fee for making a determination?

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination is prompted by FEMA's publication of notices or compendia that affect the area in which the security property is located; or
- When the determination results in force placement of insurance.

Loan or other contractual documents between the parties may also permit the imposition of fees.

70. May charges made for life-of-loan reviews by flood determination firms be passed along to the borrower?

Answer: Yes. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan. The fee charged for the service at loan closing is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to

Question 69 occur. Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because the life-of loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.

Section 7: Flood Notice

Introduction

When a lender 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.

FDIC Regulatory Text Concerning Flood Notice

§ 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 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.

(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.

2009 FAQ:

73. **Does the notice have to be provided to each borrower for a real estate related loan?**

    Answer: No. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided. The notice must be provided to a borrower when the lender determines that the property securing the loan is or will be located in an SFHA.

74. **Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?**

    Answer: When it is not reasonably feasible to give notice before the completion of the transaction, the notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home will be located in an SFHA. Whenever time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time. In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such "home only" transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions.

    However, as indicated in the preamble to the Regulation, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

75. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

76. What will constitute appropriate form of notice to the servicer?

Answer: Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

77. In the case of a servicer affiliated with the lender, is it necessary to provide the notice?
Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

78. How long does the lender have to maintain the record of receipt by the borrower of the notice?
Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

79. Can a lender rely on a previous notice if it is less than seven years old, and it is the same property, same borrower, and same lender?
Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to provide the notice to the borrower. Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

80. Is use of the sample form of notice mandatory?
Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A of the Regulation or in Appendix 4 of FEMA's *Mandatory Purchase of Flood Insurance Guidelines* is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

2016 Version

Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

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 a

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.

Section 8: Notice of Servicer's Identity

Notice Requirement

When a 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 director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The director 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 director of FEMA's designee.

Transfer of Servicing Rights

The bank shall notify the director of FEMA (or the director'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 director 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) shall transfer to the transferee servicer.

A sample of this notice also appears at the end of this section.

FDIC Regulatory Text Concerning Notice of Servicer's Identity

§ 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.

2009 FAQ:

44. How do the flood insurance requirements under the Regulation apply to regulated lenders under the following scenarios involving loan servicing?

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

Answer: The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee. Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a nonregulated party, the regulated lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position, as described in the preamble to the Regulation that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2: A nonregulated lender originates a designated loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The nonregulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The nonregulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a regulated lender makes, increases, extends, or renews a designated loan. A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the regulated lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.

Where a regulated lender purchases only the servicing rights to a loan originated by a nonregulated lender, the regulated lender is obligated only to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.

45. When a regulated lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee?

Answer: FEMA stated in a June 4, 1996, letter that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the regulated lender's force placement of a policy) will constitute notice to FEMA when the regulated lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the regulated lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.

46. Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?

Answer: Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

- Borrower's full name;
- Flood insurance policy number;
- Property address (including city and State);
- Name of lender or servicer making notification;
- Name and address of new servicer; and
- Name and telephone number of contact person at new servicer.

47. Can delivery of the notice be made electronically, including batch transmissions?

Answer: Yes. The Regulation specifically permits transmission by electronic means. A timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

48. If the loan and its servicing rights are sold by the regulated lender, is the regulated lender required to provide notice to the Director or the Director's designee?

Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

49. Is a regulated lender required to provide notice when the servicer, not the regulated lender, sells or transfers the servicing rights to another servicer?

Answer: No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer. The obligation of the regulated lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, a financial institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to a mortgage company. The financial institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the Director's designee. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the financial institution, is responsible for notifying the Director's designee of the identity of the new servicer.

50. In the event of a merger or acquisition of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?

Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

Sample Form - Notification of Change of Servicer

The National Flood Insurance Reform Act (NFIRA) requires federally regulated lending institutions and Federal agency lenders to report changes of Servicer. Section 1364 of the National Flood Insurance Act of 1968, as amended by Section 527 of NFIRA, provides in paragraph (b)(1) that:

"Each Federal entity . . . shall by regulation require lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any changes in the servicer of the loan, not later than 60 days after the effective date of such change."

The Federal Emergency Management Agency is requesting that all notices be sent to the Write Your Own company (insurance carrier issuing flood policy) or agent of record to endorse the flood policy to change the mortgagee or servicer.

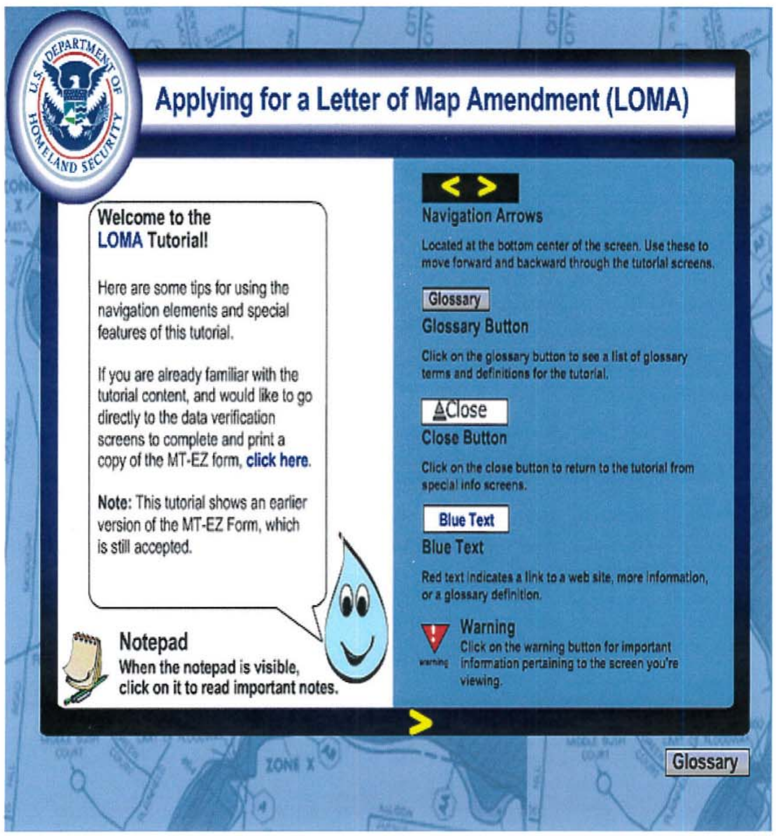
In order to expedite the processing, please submit the following information to the insurance company:

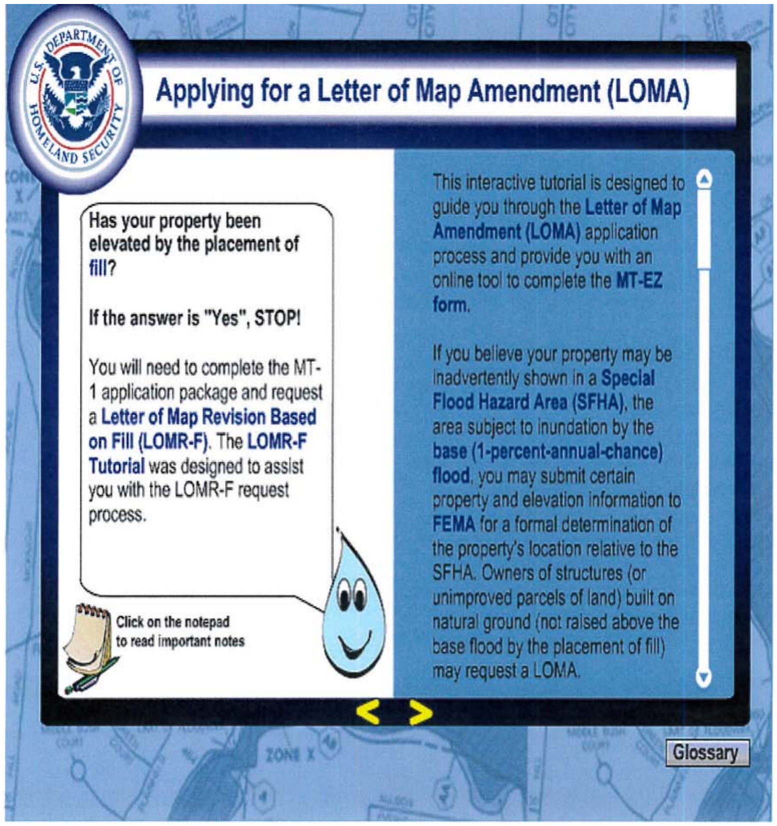
- Borrower's Full Name
- Flood Insurance Policy Number
- Property Address (including city/state)
- Name of Bank or Servicer Reporting the Change
- Name/Telephone Number of Contact Person
- Name and Address of New Mortgagee or Servicer
- Name and Address of New Contact Person

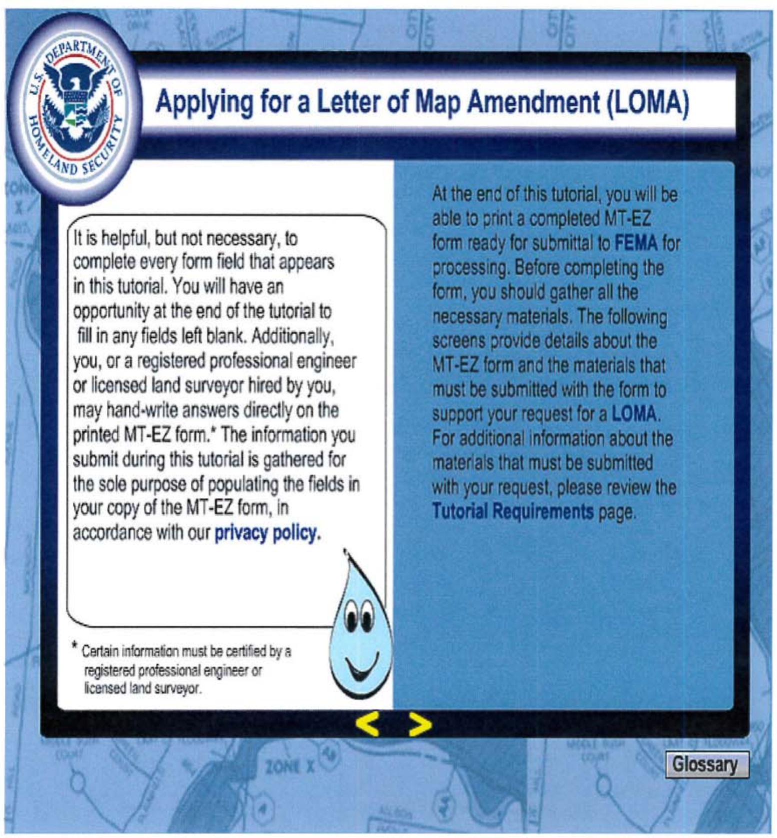
FEMA Tutorials

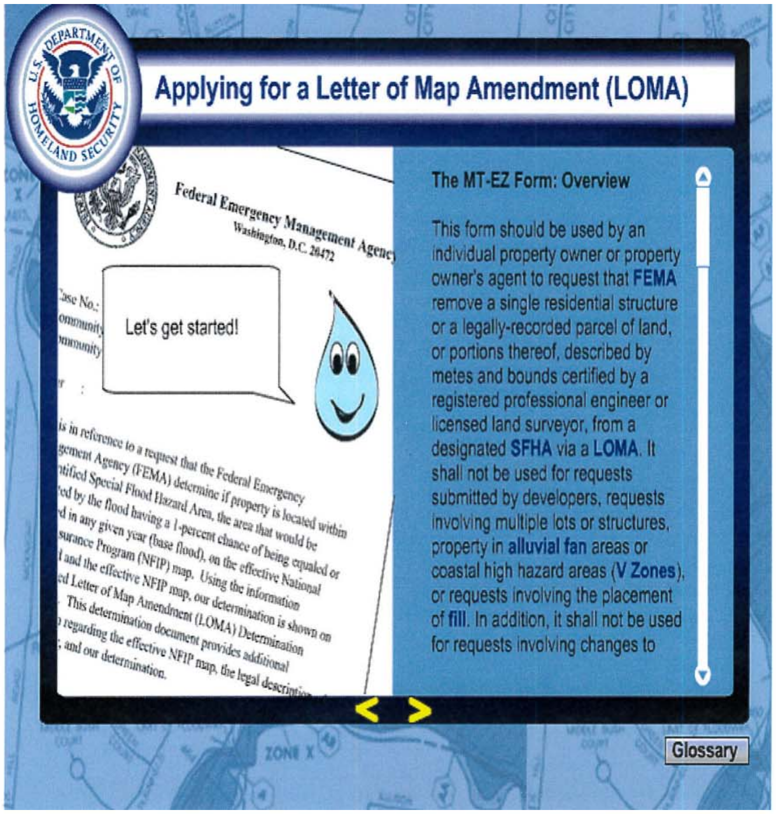
FEMA has revamped the information required for LOMAs and LOMRs. We have chosen to provide one of the tutorials (for LOMAs) as an example, beginning on the next page. The LOMA tutorial, as well as other worthwhile tutorials, including LOMR_F can be located at:

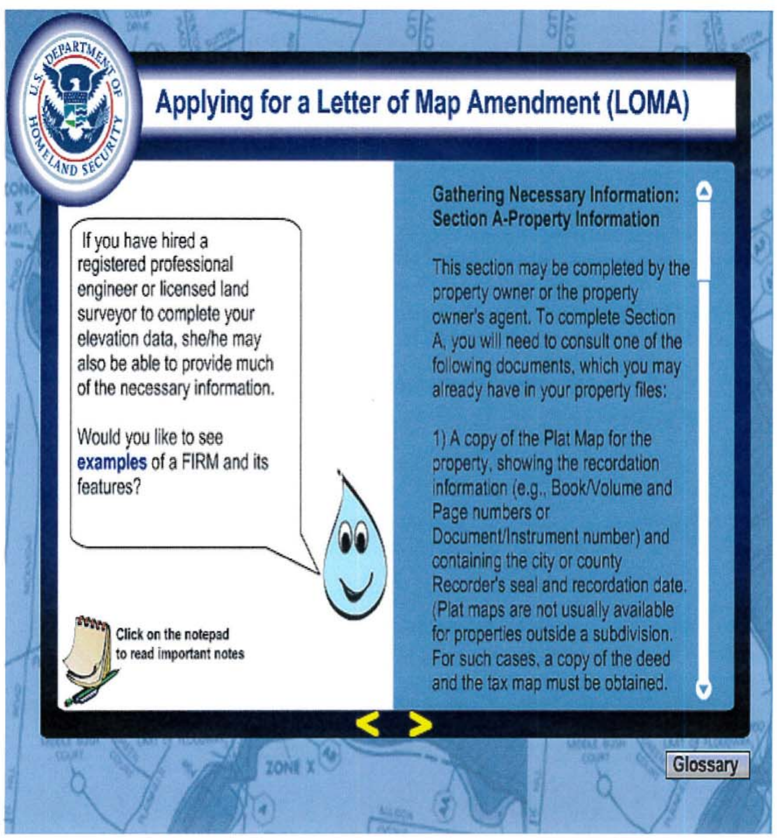
http://www.floodmaps.fema.gov/tutorials/ot_loma.swf

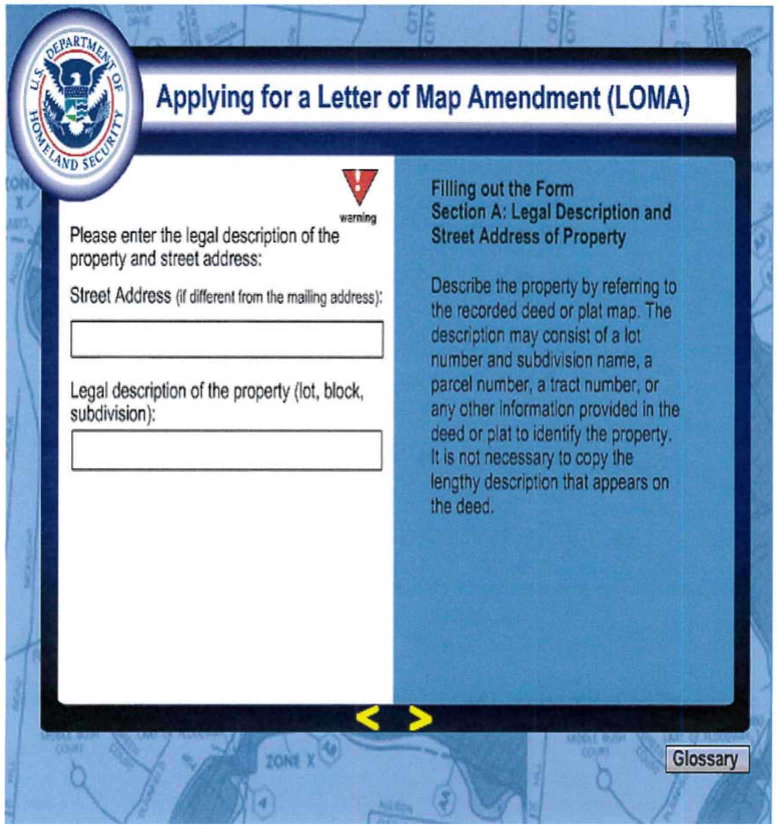


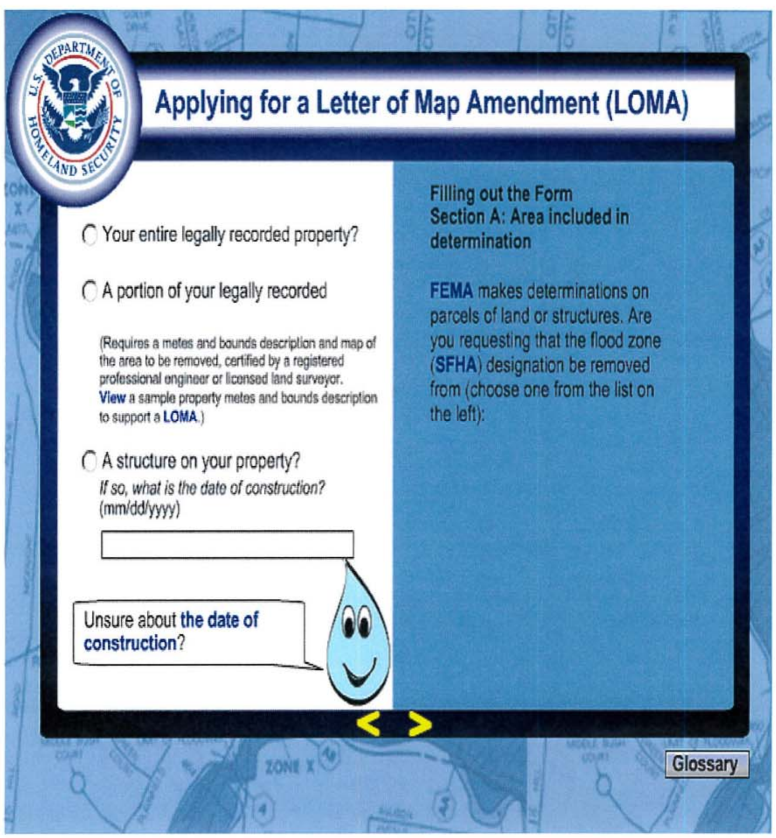

Applying for a Letter of Map Amendment (LOMA)
Has your property been elevated by the placement of fill?
If the answer is "Yes", STOP!
You will need to complete the MT-1 application package and request a Letter of Map Revision Based on Fill (LOMR-F). The LOMR-F Tutorial was designed to assist you with the LOMR-F request process.
Click on the notepad to read important notes
This interactive tutorial is designed to guide you through the Letter of Map Amendment (LOMA) application process and provide you with an online tool to complete the MT-EZ form.
If you believe your property may be inadvertently shown in a Special Flood Hazard Area (SFHA), the area subject to inundation by the base (1-percent-annual-chance) flood, you may submit certain property and elevation information to FEMA for a formal determination of the property's location relative to the SFHA. Owners of structures (or unimproved parcels of land) built on natural ground (not raised above the base flood by the placement of fill) may request a LOMA.
Glossary

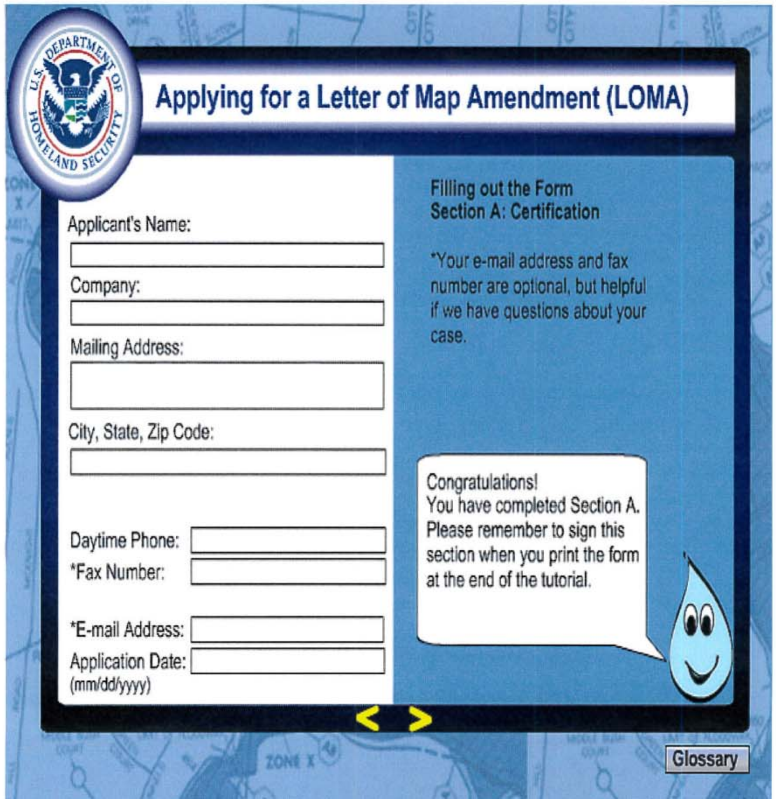

Applying for a Letter of Map Amendment (LOMA)
It is helpful, but not necessary, to complete every form field that appears in this tutorial. You will have an opportunity at the end of the tutorial to fill in any fields left blank. Additionally, you, or a registered professional engineer or licensed land surveyor hired by you, may hand-write answers directly on the printed MT-EZ form.* The information you submit during this tutorial is gathered for the sole purpose of populating the fields in your copy of the MT-EZ form, in accordance with our privacy policy.
* Certain information must be certified by a registered professional engineer or licensed land surveyor.
At the end of this tutorial, you will be able to print a completed MT-EZ form ready for submittal to FEMA for processing. Before completing the form, you should gather all the necessary materials. The following screens provide details about the MT-EZ form and the materials that must be submitted with the form to support your request for a LOMA. For additional information about the materials that must be submitted with your request, please review the Tutorial Requirements page.
Glossary

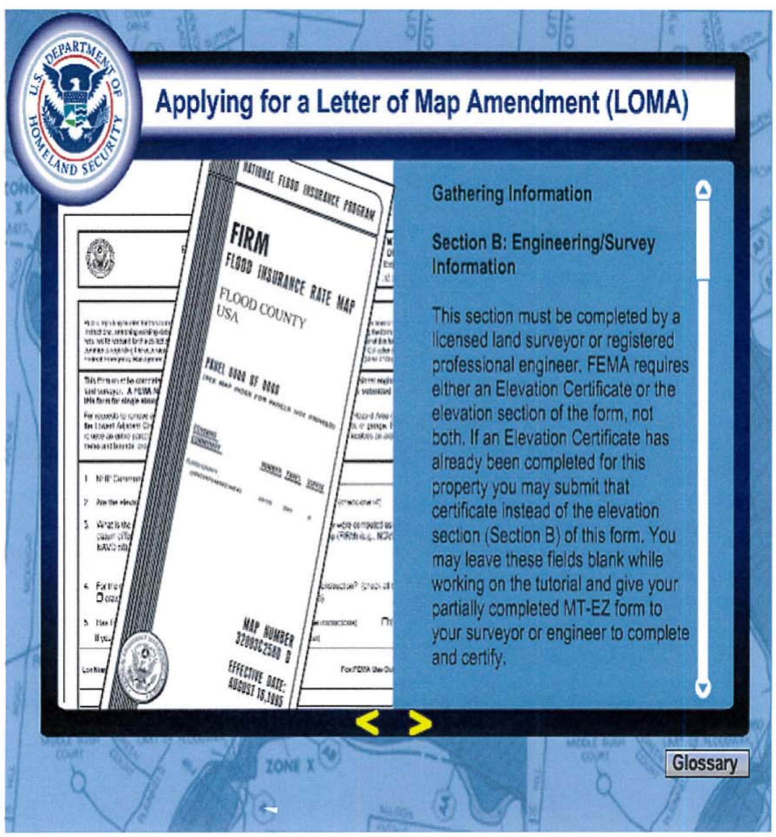

Applying for a Letter of Map Amendment (LOMA)
Federal Emergency Management Agency
Washington, D.C. 20472
Let's get started!
The MT-EZ Form: Overview
This form should be used by an individual property owner or property owner's agent to request that FEMA remove a single residential structure or a legally-recorded parcel of land, or portions thereof, described by metes and bounds certified by a registered professional engineer or licensed land surveyor, from a designated SFHA via a LOMA. It shall not be used for requests submitted by developers, requests involving multiple lots or structures, property in alluvial fan areas or coastal high hazard areas (V Zones), or requests involving the placement of fill. In addition, it shall not be used for requests involving changes to
Glossary

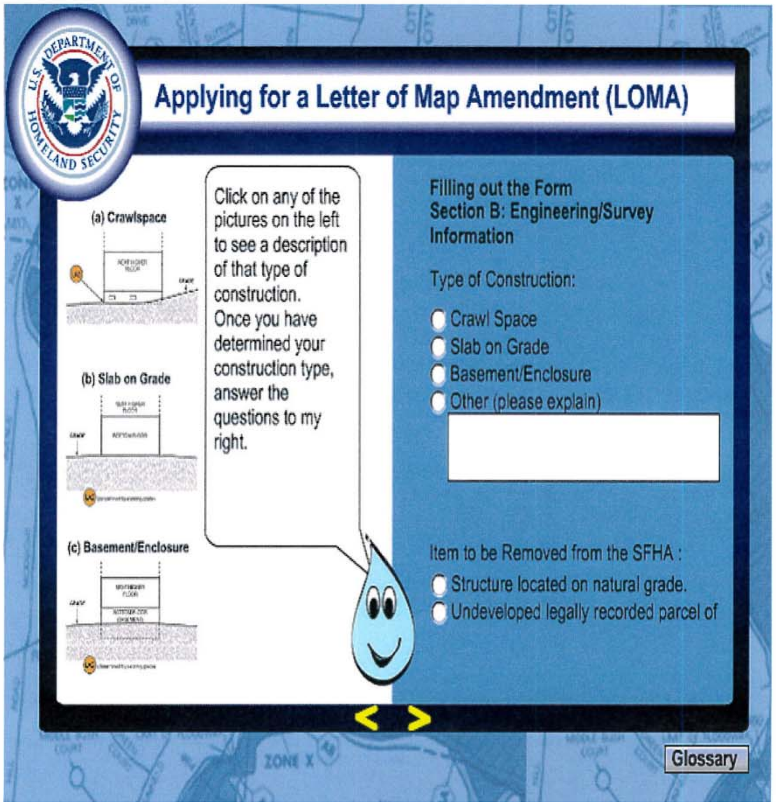

Applying for a Letter of Map Amendment (LOMA)
If you have hired a registered professional engineer or licensed land surveyor to complete your elevation data, she/he may also be able to provide much of the necessary information.
Would you like to see examples of a FIRM and its features?
Click on the notepad to read important notes
Gathering Necessary Information: Section A-Property Information
This section may be completed by the property owner or the property owner's agent. To complete Section A, you will need to consult one of the following documents, which you may already have in your property files:
1) A copy of the Plat Map for the property, showing the recordation information (e.g., Book/Volume and Page numbers or Document/Instrument number) and containing the city or county Recorder's seal and recordation date. (Plat maps are not usually available for properties outside a subdivision. For such cases, a copy of the deed and the tax map must be obtained.
Glossary

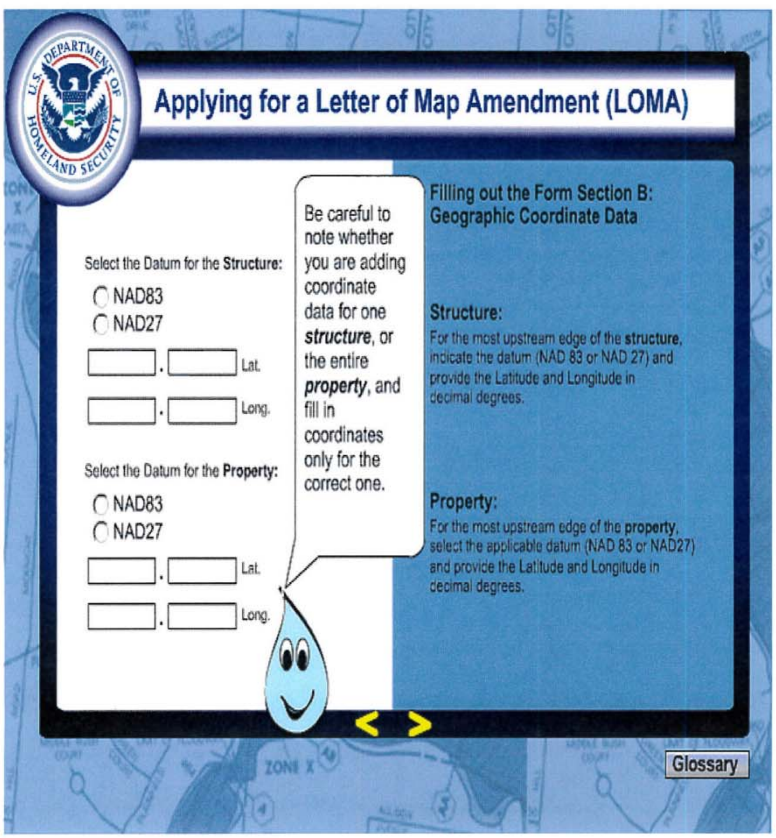

Applying for a Letter of Map Amendment (LOMA)
warning
Please enter the legal description of the property and street address:
Street Address (if different from the mailing address):
Legal description of the property (lot, block, subdivision):
Filling out the Form
Section A: Legal Description and Street Address of Property
Describe the property by referring to the recorded deed or plat map. The description may consist of a lot number and subdivision name, a parcel number, a tract number, or any other information provided in the deed or plat to identify the property. It is not necessary to copy the lengthy description that appears on the deed.
Glossary

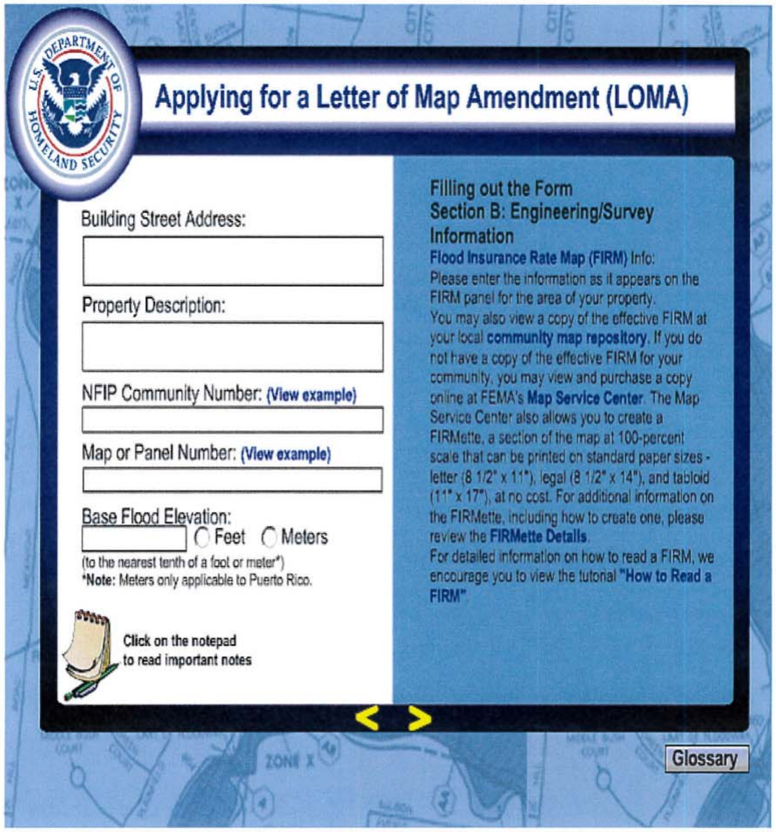

Applying for a Letter of Map Amendment (LOMA)
Your entire legally recorded property?
A portion of your legally recorded
(Requires a metes and bounds description and map of the area to be removed, certified by a registered professional engineer or licensed land surveyor. View a sample property metes and bounds description to support a LOMA.)
A structure on your property?
If so, what is the date of construction? (mm/dd/yyyy)
Unsure about the date of construction?
Filling out the Form
Section A: Area included in determination
FEMA makes determinations on parcels of land or structures. Are you requesting that the flood zone (SFHA) designation be removed from (choose one from the list on the left):
Glossary

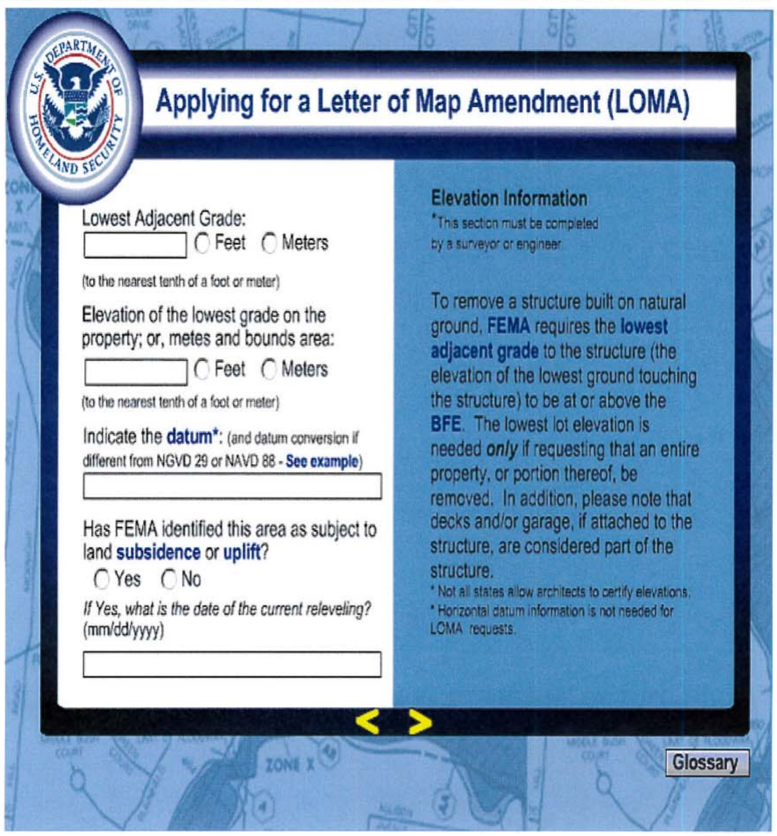

Applying for a Letter of Map Amendment (LOMA)
Applicant's Name:
Company:
Mailing Address:
City, State, Zip Code:
Daytime Phone:
*Fax Number:
*E-mail Address:
Application Date: (mm/dd/yyyy)
Filling out the Form
Section A: Certification
*Your e-mail address and fax number are optional, but helpful if we have questions about your case.
Congratulations! You have completed Section A. Please remember to sign this section when you print the form at the end of the tutorial.
Glossary

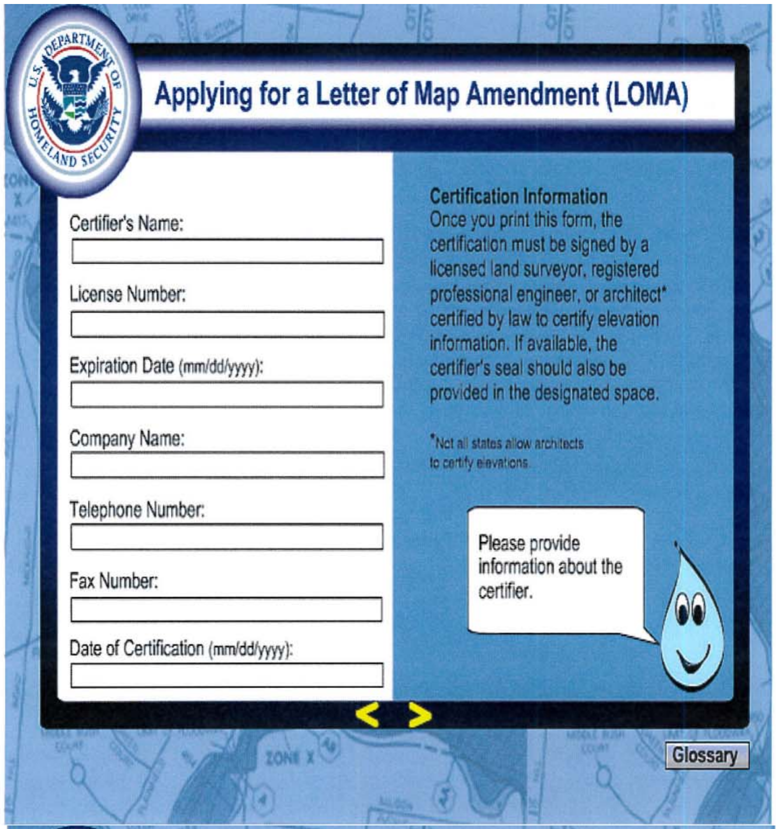

Applying for a Letter of Map Amendment (LOMA)
FIRM
FLOOD INSURANCE RATE MAP
Gathering Information
Section B: Engineering/Survey Information
This section must be completed by a licensed land surveyor or registered professional engineer. FEMA requires either an Elevation Certificate or the elevation section of the form, not both. If an Elevation Certificate has already been completed for this property you may submit that certificate instead of the elevation section (Section B) of this form. You may leave these fields blank while working on the tutorial and give your partially completed MT-EZ form to your surveyor or engineer to complete and certify.
Glossary


Applying for a Letter of Map Amendment (LOMA)
(a) Crawlspace
(b) Slab on Grade
(c) Basement/Enclosure
Click on any of the pictures on the left to see a description of that type of construction. Once you have determined your construction type, answer the questions to my right.
Filling out the Form
Section B: Engineering/Survey Information
Type of Construction:
Crawl Space
Slab on Grade
Basement/Enclosure
Other (please explain)
Item to be Removed from the SFHA :
Structure located on natural grade.
Undeveloped legally recorded parcel of
Glossary

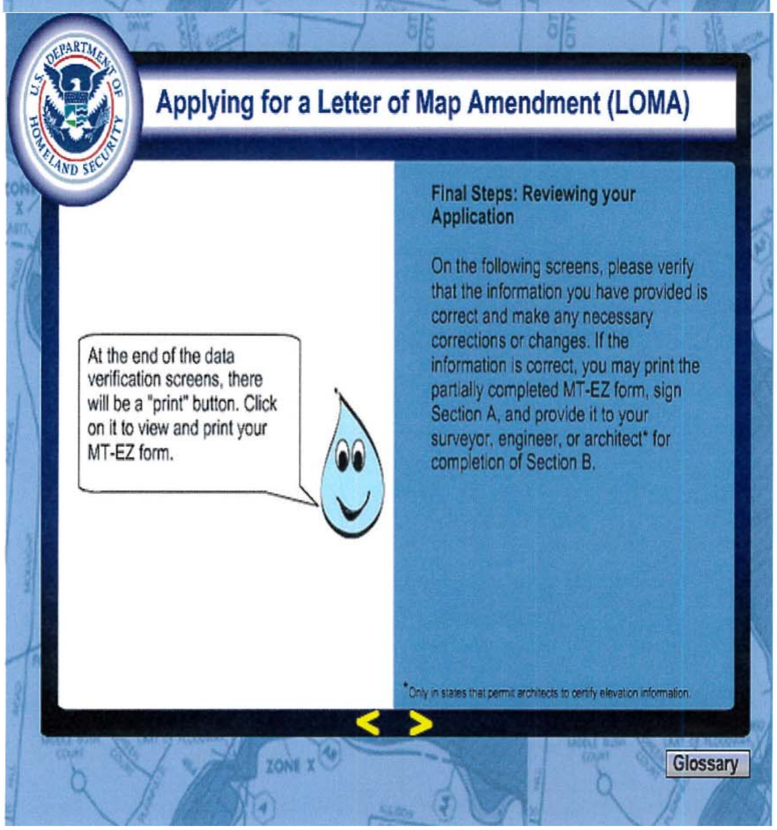

Applying for a Letter of Map Amendment (LOMA)
Select the Datum for the Structure:
NAD83
NAD27
Lat.
Long.
Select the Datum for the Property:
NAD83
NAD27
Lat.
Long.
Be careful to note whether you are adding coordinate data for one structure, or the entire property, and fill in coordinates only for the correct one.
Filling out the Form Section B: Geographic Coordinate Data
Structure:
For the most upstream edge of the structure, indicate the datum (NAD 83 or NAD 27) and provide the Latitude and Longitude in decimal degrees.
Property:
For the most upstream edge of the property, select the applicable datum (NAD 83 or NAD27) and provide the Latitude and Longitude in decimal degrees.
Glossary


Applying for a Letter of Map Amendment (LOMA)
Building Street Address:
Property Description:
NFIP Community Number: (View example)
Map or Panel Number: (View example)
Base Flood Elevation:
Feet Meters
(to the nearest tenth of a foot or meter*)
*Note: Meters only applicable to Puerto Rico.
Click on the notepad to read important notes
Filling out the Form
Section B: Engineering/Survey Information
Flood Insurance Rate Map (FIRM) Info:
Please enter the information as it appears on the FIRM panel for the area of your property.
You may also view a copy of the effective FIRM at your local community map repository. If you do not have a copy of the effective FIRM for your community, you may view and purchase a copy online at FEMA's Map Service Center. The Map Service Center also allows you to create a FIRMette, a section of the map at 100-percent scale that can be printed on standard paper sizes - letter (8 1/2" x 11"), legal (8 1/2" x 14"), and tabloid (11" x 17"), at no cost. For additional information on the FIRMette, including how to create one, please review the FIRMette Details.
For detailed information on how to read a FIRM, we encourage you to view the tutorial "How to Read a FIRM".
Glossary


Applying for a Letter of Map Amendment (LOMA)
Lowest Adjacent Grade:
Feet Meters
(to the nearest tenth of a foot or meter)
Elevation of the lowest grade on the property; or, metes and bounds area:
Feet Meters
(to the nearest tenth of a foot or meter)
Indicate the datum*: (and datum conversion if different from NGVD 29 or NAVD 88 - See example)
Has FEMA identified this area as subject to land subsidence or uplift?
Yes No
If Yes, what is the date of the current releveling? (mm/dd/yyyy)
Elevation Information
*This section must be completed by a surveyor or engineer
To remove a structure built on natural ground, FEMA requires the lowest adjacent grade to the structure (the elevation of the lowest ground touching the structure) to be at or above the BFE. The lowest lot elevation is needed only if requesting that an entire property, or portion thereof, be removed. In addition, please note that decks and/or garage, if attached to the structure, are considered part of the structure.
* Not all states allow architects to certify elevations.
* Horizontal datum information is not needed for LOMA requests.
Glossary

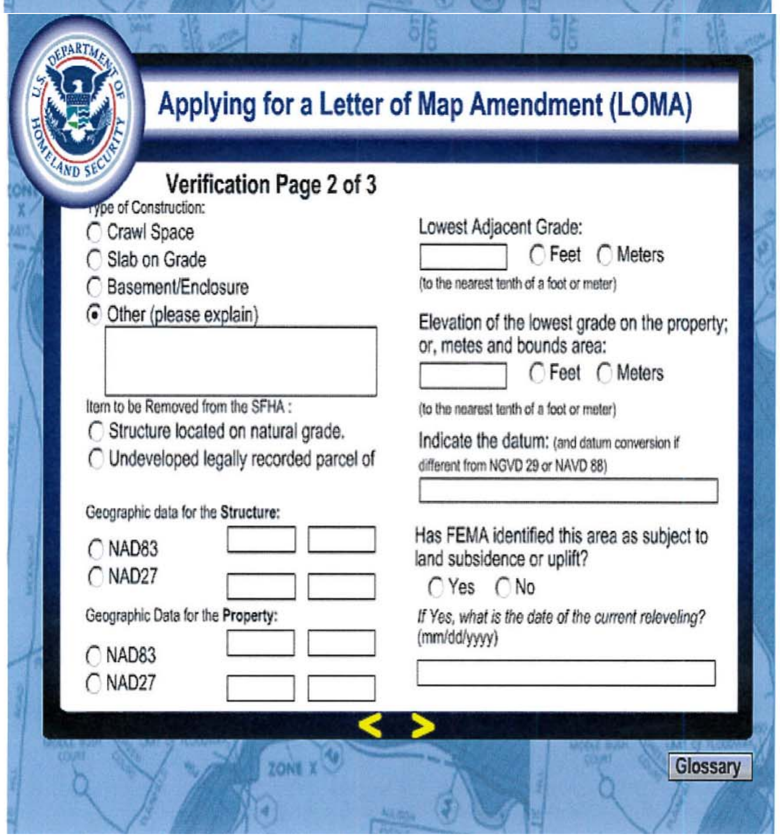


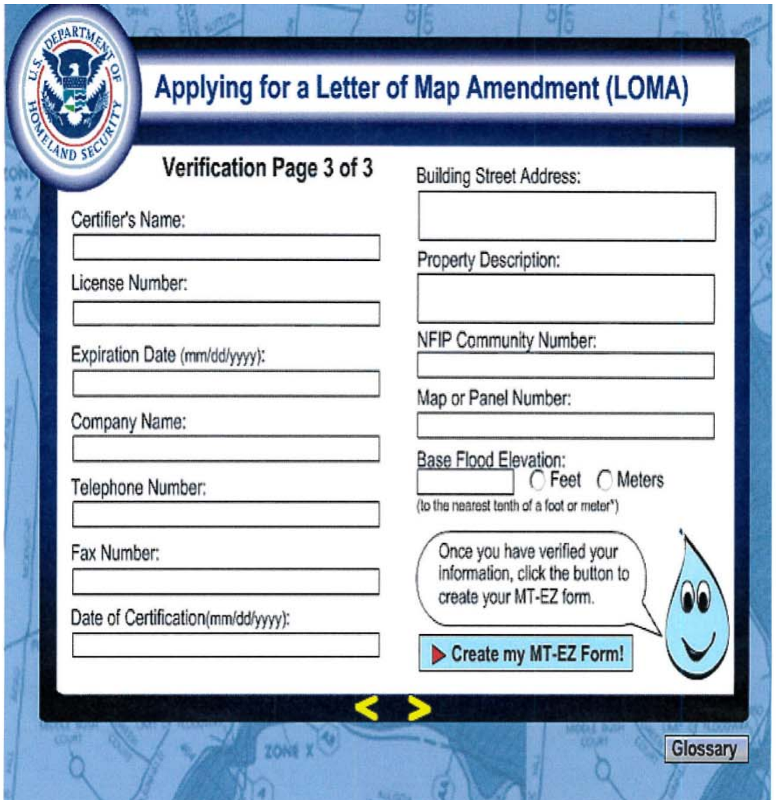
Applying for a Letter of Map Amendment (LOMA)
Certifier's Name:
License Number:
Expiration Date (mm/dd/yyyy):
Company Name:
Telephone Number:
Fax Number:
Date of Certification (mm/dd/yyyy):
Certification Information
Once you print this form, the certification must be signed by a licensed land surveyor, registered professional engineer, or architect* certified by law to certify elevation information. If available, the certifier's seal should also be provided in the designated space.
*Not all states allow architects to certify elevations
Please provide information about the certifier.
Glossary

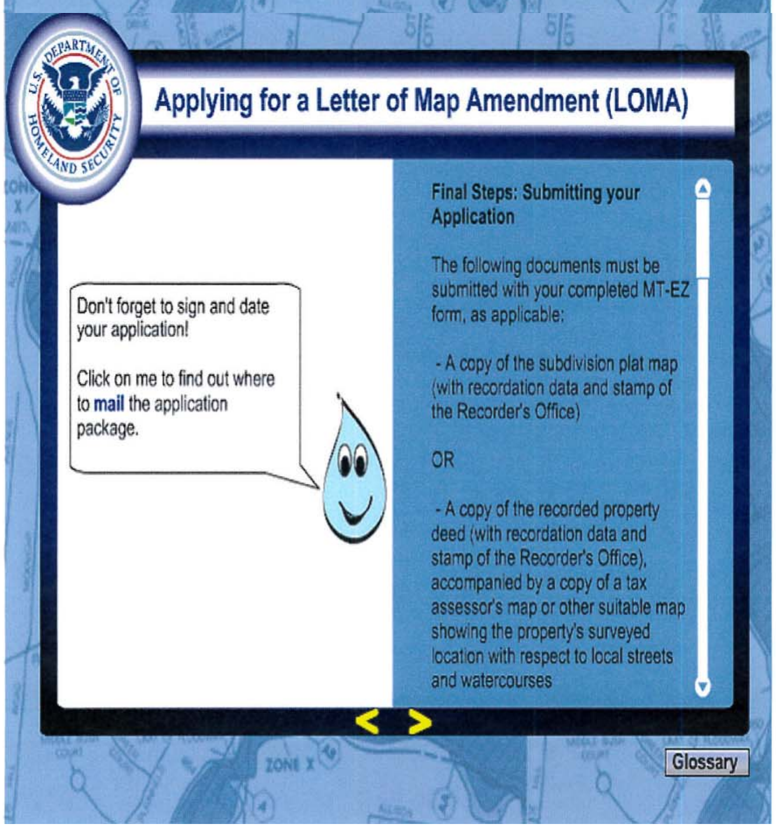


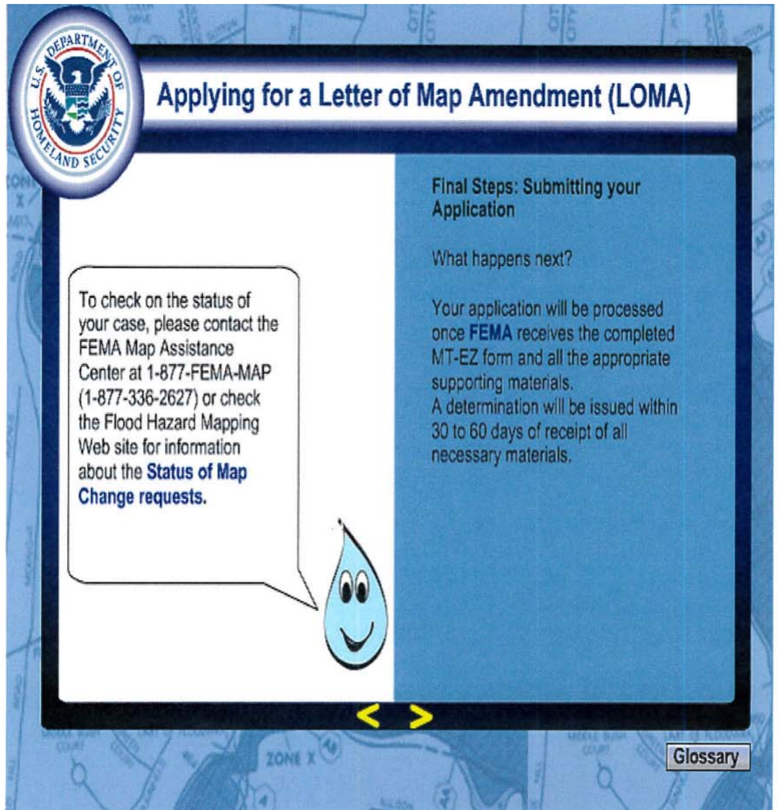
Applying for a Letter of Map Amendment (LOMA)
At the end of the data verification screens, there will be a "print" button. Click on it to view and print your MT-EZ form.
Final Steps: Reviewing your Application
On the following screens, please verify that the information you have provided is correct and make any necessary corrections or changes. If the information is correct, you may print the partially completed MT-EZ form, sign Section A, and provide it to your surveyor, engineer, or architect* for completion of Section B.
*Only in states that permit architects to certify elevation information.
Glossary

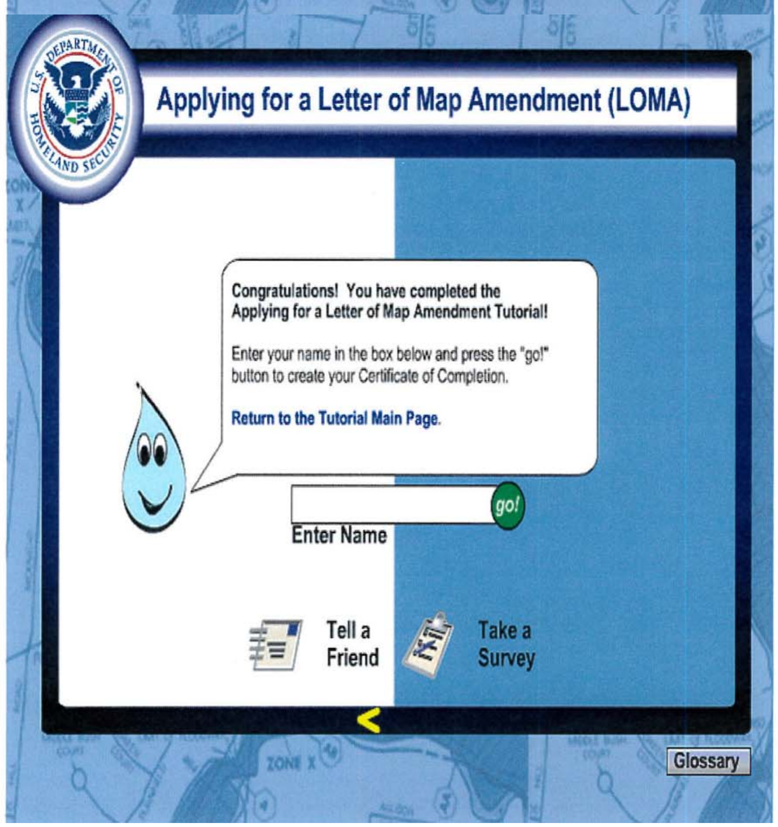

Applying for a Letter of Map Amendment (LOMA)
Verification Page 1 of 3
Applicant's Name:
Company:
Mailing Address:
City, State, Zip Code:
Daytime Phone:
Fax Number:
E-mail Address:
Application Date:
(mm/dd/yyyy)
Street Address:
Legal description of the property
(lot, block, subdivision):
Your entire legally recorded property?
A portion of your legally recorded
A structure on your property?
If so, what is the date of construction?
(mm/dd/yyyy)
Glossary


Applying for a Letter of Map Amendment (LOMA)
Verification Page 2 of 3
Type of Construction:
Crawl Space
Slab on Grade
Basement/Enclosure
Other (please explain)
Item to be Removed from the SFHA :
Structure located on natural grade.
Undeveloped legally recorded parcel of
Geographic data for the Structure:
NAD83
NAD27
Geographic Data for the Property:
NAD83
NAD27
Lowest Adjacent Grade:
Feet
Meters
(to the nearest tenth of a foot or meter)
Elevation of the lowest grade on the property; or, metes and bounds area:
Feet
Meters
(to the nearest tenth of a foot or meter)
Indicate the datum: (and datum conversion if different from NGVD 29 or NAVD 88)
Has FEMA identified this area as subject to land subsidence or uplift?
Yes
No
If Yes, what is the date of the current releveling?
(mm/dd/yyyy)
Glossary


Applying for a Letter of Map Amendment (LOMA)
Verification Page 3 of 3
Certifier's Name:
License Number:
Expiration Date (mm/dd/yyyy):
Company Name:
Telephone Number:
Fax Number:
Date of Certification(mm/dd/yyyy):
Building Street Address:
Property Description:
NFIP Community Number:
Map or Panel Number:
Base Flood Elevation:
Feet Meters
(to the nearest tenth of a foot or meter*)
Once you have verified your information, click the button to create your MT-EZ form.
Create my MT-EZ Form!
Glossary


Applying for a Letter of Map Amendment (LOMA)
Don't forget to sign and date your application!
Click on me to find out where to mail the application package.
Final Steps: Submitting your Application
The following documents must be submitted with your completed MT-EZ form, as applicable:
- A copy of the subdivision plat map (with recordation data and stamp of the Recorder's Office)
OR
- A copy of the recorded property deed (with recordation data and stamp of the Recorder's Office), accompanied by a copy of a tax assessor's map or other suitable map showing the property's surveyed location with respect to local streets and watercourses
Glossary


Applying for a Letter of Map Amendment (LOMA)
Final Steps: Submitting your Application
What happens next?
Your application will be processed once FEMA receives the completed MT-EZ form and all the appropriate supporting materials.
A determination will be issued within 30 to 60 days of receipt of all necessary materials.
To check on the status of your case, please contact the FEMA Map Assistance Center at 1-877-FEMA-MAP (1-877-336-2627) or check the Flood Hazard Mapping Web site for information about the Status of Map Change requests.
Glossary


Applying for a Letter of Map Amendment (LOMA)
Congratulations! You have completed the Applying for a Letter of Map Amendment Tutorial!
Enter your name in the box below and press the "go!" button to create your Certificate of Completion.
Return to the Tutorial Main Page.
go!
Enter Name
Tell a Friend
Take a Survey
Glossary

Section 10: Flood Insurance Purchase Requirements

General Insurance Purchase Requirement

A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan are 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 replacement value. A 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.

2009 FAQ:

42. **If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?**

    Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

43. **If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?**

    Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA, owned by that third party is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.

Flood Insurance Purchase and Compliance Requirements

Federal Financial Assistance

Federal officers and agencies are prohibited from approving any financial assistance for acquisition or construction purposes for use in any area:

1. That has been identified as a special flood hazard area, and
2. In which the sale of flood insurance has been made available
3. Unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance

a. In an amount at least equal to its development or project cost (less estimated land cost) or

b. To the maximum limit of coverage made available with respect to the particular type of property, whichever is less.

If the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance applies during the life of the property, regardless of transfer of ownership of such property.

Keep in mind that "financial assistance for acquisition or construction purposes" is any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. It includes the purchase or subsidization of mortgages or mortgage loans and excludes assistance resulting from the Disaster Relief and Emergency Assistance Act other than assistance under the Act in connection with a flood.

Government-Sponsored Enterprises

Government-Sponsored Enterprises (GSEs) for Housing include the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). These entities are federally chartered corporations whose sole business is to support residential housing by providing a secondary market for mortgages. GSEs are required to implement procedures reasonably designed to ensure that designated loans have flood insurance at the time of origination and at any time during the term of the loan. Under the guidelines of Fannie Mae and Freddie Mac, servicers of loans sold to those agencies are required to assume responsibility for compliance with the mandatory flood insurance requirements.

As secondary market agencies, GSEs have no direct contact or dealings with borrowers, but do have the ultimate exposure on the loan. Consequently, the GSE guidelines are designed to ensure that any "covered loan" they buy has flood insurance for the life of the loan. Freddie Mac and Fannie Mae now require lenders and servicers to keep flood insurance up to date, monitor publication of all future map and community changes, and impose or relieve the mandatory purchase requirement during the term of the loan.

If your bank sells loans to or service loans for Fannie Mae or Freddie Mac, you should consult the most current Selling and Servicing Guides and Announcements (if applicable) for the most recent flood insurance requirements. Lenders who have additional questions regarding flood insurance requirements may contact their Customer Account Manager, Servicing Consultant, or Portfolio Manager.

Nonparticipating Communities[3]

In 1977, the Flood Disaster Protection Act was amended to allow lenders to make conventional loans located in special flood hazard areas, if they were located in nonparticipating communities and as long as the proper notifications (described in the following section) have been provided. A conventional loan is a loan by a private lender, as distinguished from a loan by a Federal government agency that is not secured, insured, or guaranteed by a Federal government agency. Such a loan, even when made by a lender that is regulated by or has its deposits insured by a Federal financial regulatory agency, remains a conventional loan because the loan itself is not secured, insured, or guaranteed by a Federal government agency.

2009 FAQ:

1. **Does the Regulation apply to a loan where the building or mobile home securing such loan is located in a community that does not participate in the National Flood Insurance Program (NFIP)?**

   Answer: Yes. The Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA. If the building or mobile home is determined to be located in an SFHA, a lender is required to notify the borrower. In this case, a lender, generally, may make a conventional loan without requiring flood insurance, if it chooses to do so. However, a lender may not make a government-guaranteed or insured loan, such as a Small Business Administration, Veterans Administration, or Federal Housing Administration loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP. See 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would be an unacceptable risk.

3 Adapted from "Federal Emergency Management Agency," *Federal Register,* Vol. 54, No.133, Thursday, July 13, 1989, p. 29673.

FDIC Regulatory Text Concerning Mandatory Purchase

§ 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.

Coverage Requirements and Limits

The maximum limits of flood insurance coverage available under the NFIP appear below:

Building Coverage	Emergency Program Availability	Maximum Amount Available
Single family and 2-4 family dwelling	$ 35,000	$250,000
Other residential	$100,000	$250,000
Small business & Multi-Family	$100,000	$500,000
Churches and other nonresidential properties	$100,000	$500,000
Contents coverage (per unit)		
Residential	$ 10,000	$100,000
Small business	$100,000	$500,000
Churches and other properties	$100,000	$500,000

Special limits apply in Alaska, Hawaii, Guam, and the Virgin Islands. For details, and future changes to NFIP coverage limits, refer to page RATE 1 in the NFIP Flood Insurance Manual at:

www.fema.gov/business/nfip/manual.shtm

Acceptable proof of coverage may be a copy of the Flood Insurance Application and premium payment, or a copy of the Declarations Page. The NFIP does not recognize binders or certificates of insurance.

2009 FAQ:

11. **What are examples of residential buildings?**

    Answer: Residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental nonresidential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building, or 50 percent for single-family dwellings.

12. **What are examples of nonresidential buildings?**

    Answer: Nonresidential buildings include those used for small businesses, churches, schools, farm activities (including grain bins and silos), pool houses, clubhouses, recreation, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than six months' duration, nursing homes, and mixed-use buildings with less than 75 percent residential square footage.

Land and Land Values Not Insurable

The statutory requirements apply to improved real property, or land with a building on it, including a manufactured (mobile) home. Raw land is not insurable under the NFIP. The building must be insurable under NFIP requirements in order to qualify for coverage.

Acquisition and development loans are not subject to the regulation because they do not meet the definition of a designated loan as defined by the 1994 Reform Act. Therefore, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any building (structure) on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement.

Calculating Coverage

To meet compliance requirements, the amount of flood insurance is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the particular type of structure; or
  - The "insurable value" of the structure, which is the same as 100 percent replacement cost value (RCV). (Unlike the practice in other lines of property insurance, building RCVs under the NFIP do not include market values or the value of the land.)

The following "Flood Insurance Calculator" may be used to guide you in calculating the required amount of flood insurance.

Flood Insurance Calculator

Use this form to calculate the amount of flood insurance that is needed when a loan is secured by a building(s) or manufactured / mobile home, including condominiums, located in a special flood hazard area (SFHA).

Note: The NFIP states that each building must have its own separate flood insurance policy and that only one policy may be issued per building. Evidence of flood insurance is required upon or before loan closing. This form does not include contents coverage.

Residential or Non-Residential Building (Not Including Condominiums)

Lesser of:

A) Enter the Outstanding Principal Balance of the new loan — Line 1 $____________
Enter any superior liens on the building (current balances) — Line 2 + $____________
Enter the total of Lines 1 and 2: — Line A = $____________

B) Maximum Available thru NFIP is the Lesser of:

a. Enter the maximum limit available — Line 3 $____________
($250,000 per residential building X Number of Building or
$500,000 per non-residential building X Number of Buildings)

b. Enter the full insurable value for each building — Line 4 $____________
(do not include land value)

Enter the lesser of Line 3 and 4 — Line B = $____________

Enter the lesser of Lines A and B — $____________

This is the amount of insurance that is required.

Insurance Calculation for Residential Condominiums

Lesser of:

A) Enter the Outstanding Principal Balance of the new loan — Line 1 $____________

Enter any superior liens on the building (current balances) — Line 2 + $____________

Enter the total of Lines 1 and 2: — Line A = $____________

B) Maximum Available thru NFIP is the Lesser of:

a. Enter the maximum limit available — Line 3 $____________
($250,000 per residential condominium unit)

b. Enter the "insurable value" allocated to the Residential condominium unit** (replacement cost value of the condominium building ÷ number of units in the building) — Line 4 $____________

Enter the lesser of Line 3 and 4 — Line B = $__________

Enter the lesser of Lines A and B — Line C $____________

This is the amount of insurance that is required.

***the insurance agent is required to provide the replacement cost value of the condominium building and the number of units in the building on the declaration page of the RCBAP.*

Enter the number of units in the condominium building Line 5 ____________

Enter the total dollar amount of the flood policy (RCBAP) Line 6 $____________

Divide Line 6 by Line 5 and enter the amount: Line D $____________
(this is the flood coverage currently in place per unit)

Enter the amount from Line C: Line E $____________
(this is the flood coverage required)

Subtract Line D from Line E: (Line D – Line E) Line F $____________

If Line F is a positive number, sufficient flood insurance coverage is in place.

If Line F is a negative number, that is the amount of additional flood insurance that is required to be purchased.

Borrower(s): ____ Loan #: ____________________

Address of Property: ____

____

Date Completed: ________________________ Completed By: _________________________

To protect collateral interests, a lender should consider whether its collateral is adequately insured against flood damage. A sound flood insurance risk management approach follows the insurance industry practice of insuring buildings to full RCV. Such a risk management strategy meets or exceeds the minimal compliance requirements and is the easiest approach for lenders to implement. Security interests in SFHAs should be protected with flood insurance to the full insurable value, to the extent possible under the NFIP.

The maximum amount of flood insurance coverage available under the NFIP is the lesser of the insurable value of the building or the maximum amount of coverage available for that type of property under the NFIP. This is especially significant in cases where the loan exceeds the value of the insurable building(s). Where the outstanding principal balance of the loan exceeds the insurable value of the building, the insurance amount must be the insurable value of the building rather than the outstanding principal balance of the loan.

Although the statute requires the lender's interest to be protected by flood insurance, a lender may need to consider other factors, such as Fannie Mae's and Freddie Mac's requirements, in determining the amount of insurance required. Depending on the practice of the mortgagee, the policy may not be sufficient to protect the full equity amount held in the property by the mortgagor in the event of a loss. If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the cost of repairing the building. By insuring buildings to the full RCV, the lender and borrower are both better protected. For multiple buildings, the lender must ensure that a separate flood insurance policy is provided for each building requiring coverage. The NFIP allows one policy per building.

2009 FAQ:

8. **The Regulation states that the amount of flood insurance required "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." What is meant by the "maximum limit of coverage available for the particular type of property under the Act"?**

   Answer: "The maximum limit of coverage available for the particular type of property under the Act" depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available. For single-family and two-to-four family dwellings and other residential buildings located in a participating community under the regular program, the maximum cap is $250,000. For nonresidential structures located in a participating community under the regular program, the maximum cap is $500,000. (In participating communities that are under the emergency program phase, the caps are $35,000 for single-family and two-to-four family dwellings and other residential structures, and $100,000 for nonresidential structures).

   In addition to the maximum caps under the NFIP, the Regulation also provides that "flood insurance coverage under the Act 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," which is commonly referred to as the "insurable value" of a structure. The NFIP does not insure land; therefore, land values should not be included in the calculation.

An NFIP policy will not cover an amount exceeding the "insurable value" of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

2011 FAQ:

9. What is the "insurable value" of a building?

Answer: The insurable value of a building is the same as the overall value of a property minus the land on which the property is located. FEMA's Mandatory Purchase of Flood Insurance Guidelines state that the insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building, which is defined as "[t] he cost to replace property with the same kind of material and construction without deduction for depreciation."[8] FEMA's guidelines, however, also provide that lenders should avoid creating a situation in which the insured pays for more coverage than the NFIP would pay in the event of a loss.[9] Strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV.[10] However, in cases involving nonresidential properties, and even some residential properties, where the insurance loss payout would normally be based on actual cash value, which is RCV less physical depreciation,[11] insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured. This allows the lender to assist the borrower in avoiding situations in which the insured pays for

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8 FEMA, Mandatory Purchase of Flood Insurance Guidelines, at GLS 10.

9 FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 27.

10 A single-family dwelling, including a single-family unit in a building under a condominium form of ownership, used as the insured's primary residence is covered under the NFIP's Dwelling Policy and, upon loss, payment is settled at RCV if the dwelling is insured for at least the lesser of 80 percent of the dwelling's full RCV or the maximum limit of coverage under the NFIP. Losses on other residential properties are settled at actual cash value. *See* FEMA, *Flood Insurance Manual,* at POL 3–20. Residential condominium buildings are covered under the NFIP's Residential Condominium Building Association Policy (RCBAP). Losses on residential condominium buildings are settled at RCV, unless subject to a coinsurance penalty, which applies when the building coverage is less than the lesser of 80 percent of full RCV or the maximum limit of coverage under the NFIP. *See id.* at POL 43–60.

11 FEMA, Mandatory Purchase of Flood Insurance Guidelines, at GLS 1.

coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

10. [Reserved]

Answer: [Reserved]

13. How much insurance is required on a building located in an SFHA in a participating community?

Answer: The amount of insurance required by the Act and Regulation is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
- The maximum limit available for the type of structure; or
- The "insurable value" of the structure.

Example: (Calculating insurance required on a nonresidential building):
Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

- Outstanding loan principal is $300,000.
- Maximum amount of insurance available under the NFIP:
- Maximum limit available for type of structure is $500,000 per building (nonresidential building).
- Insurable value of the equipment shed is $30,000.

The minimum amount of insurance required by the Regulation for the equipment shed is $30,000.

14. Is flood insurance required for each building when the real estate security contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?

Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together. The total amount of required flood insurance is the lesser of:

- The outstanding principal balance of the loan(s); or

- The maximum amount of insurance available under the NFIP, which is the lesser of:
- The maximum limit available for the type of structures; or
- The "insurable value" of the structures.

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must have some coverage.

Example: Lender makes a loan in the principal amount of $150,000 secured by five nonresidential buildings, only three of which are located in SFHAs within participating communities.

- Outstanding loan principal is $150,000.
- Maximum amount of insurance available under the NFIP.
  - o Maximum limit available for the type of structure is $500,000 per building (nonresidential buildings); or
  - o Insurable value (for each nonresidential building for which insurance is required, which is $100,000, or $300,000 total).

Amount of insurance required for the three buildings is $150,000. This amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

16. Can a lender require more flood insurance than the minimum required by the Regulation?

Answer: Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. The borrower or lender may have to seek such coverage outside the NFIP. Each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. However, lenders should avoid creating situations where a building is "over-insured."

Land Acquisition and Development Loans

The NFIP does not insure land, and the law does not address mortgages secured by land alone. Acquisition and development loans are not subject to the regulation because they do not meet the definition of a designated loan as defined by the 1994 Reform Act.

Therefore, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any building (structure) on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement.

Low-Value Building on High-Value Land

Lenders are sometimes confronted with a situation where a building is located on land whose value alone would be sufficient to secure the loan without regard to the value of the building. However, the lender cannot waive the flood insurance requirement, even though the value of the land would provide more than adequate security for the amount of the loan. If the land has a building on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest.

The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required flood insurance coverage is the least of the:

- principal balance of the loan(s),
- insurable value of the building, or
- maximum coverage available under the NFIP.

The NFIP policy does not provide coverage for losses in excess of the value of the insurable building.

The question of limits on relatively low value buildings can be an issue, especially in agricultural areas where the buildings are included as part of the loan collateral. The law does not differentiate agriculture from other areas of lending, and no exception by regulated lenders can be made without legislative action.

2009 FAQ:

15. **If the insurable value of a building or mobile home, located in an SFHA in which flood insurance is available under the Act, securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?**

    Answer: No. The Regulation provides that the amount of flood 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 a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the building or mobile home is located. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the insurable value of the improvements.

24. Some borrowers have buildings with limited utility or value and, in many cases, the borrower would not replace them if lost in a flood. Is a lender required to mandate flood insurance for such buildings?

Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA and in a participating community.

The lender may consider "carving out" buildings from the security it takes on the loan. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether it would be able to market the property securing its loan in the event of foreclosure. Additionally, the lender should consider any local zoning issues or other issues that would affect its collateral.

Buildings in the Course of Construction

If a building to be constructed in an SFHA will become eligible for coverage when completed, flood insurance may be purchased to provide coverage during the construction period. Therefore, when a development or interim loan is made for construction of insurable improvements on land, flood insurance coverage can be purchased, even though construction has not begun.

While the NFIP statutes require flood insurance at loan closing, they do not specifically address the subject of buildings in the course of construction. For that reason, each regulatory agency or lender must determine at what point in the construction process coverage is required.

One option for implementing the mandatory flood insurance coverage is to require the purchase of the policy at the time that the development loan is made, in an amount adequate to meet the mandatory purchase requirement.

Another option would be for the lender to require flood insurance at the time of a specified drawdown of the loan for actual construction of the building (see Appendix 6, B.9 of the *2007 Guidelines*). This would require the lender to monitor the loan more closely to determine when actual construction begins.

A policy obtained under either option would not be subject to the standard 30-day waiting period. The policy would be effective at the time of the flood insurance application and presentment of premium.

Material to be used on a building in the course of construction, but is yet to be walled and roofed, is eligible for flood insurance, subject to certain underwriting restrictions. Materials or supplies intended for use in such construction, alteration, or repair are insurable if they are contained within an enclosed building on the premises or adjacent to the premises. The NFIP, to the extent possible, conforms its practices with those of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place.

Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE).

Additionally, for a condominium building in the course of construction to be eligible under the RCBAP form, the building must be owned by a condominium association.

2009 FAQ:

19. Is a loan secured only by land that is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s) a designated loan that requires flood insurance?

Answer: No. A designated loan is defined as a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act. Any loan secured only by land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

20. Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?

Answer: Yes. Therefore, a lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act. If so, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination that mandatory flood insurance is required. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

21. Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?

Answer: Yes. FEMA's *Flood Insurance Manual*, under general rules, states:

Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises.

FEMA, *Flood Insurance Manual* at p. GR 4 (FEMA's *Flood Insurance Manual* is updated every six months). The definition section of the *Flood Insurance Manual* defines "start of construction" in the case of new construction as "either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation." FEMA, *Flood Insurance Manual*, at p. DEF 9. While an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

22. When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?

Answer: Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an elevation certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed.[4] However, the lender must require the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

23. Does the 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?

Answer: No. The NFIP will rely on an insurance agent's representation on the application for flood insurance that the purchase of insurance has been properly deferred unless there is a loss during the first 30 days of the policy period. In that case, the NFIP will require documentation of the loan transaction, such as settlement papers, before adjusting the loss.

Manufactured (Mobile) Homes

To be eligible for coverage under the NFIP, a manufactured (mobile) home/travel trailer must be on a permanent foundation and meet specific anchoring requirements for its location.

A manufactured (mobile) home is a structure built on a permanent chassis, transported to its

4 FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 30.

site in one or more sections, and affixed to a permanent foundation. The term Manufactured (mobile) homes in the Guidelines does not include recreational vehicles.

Under the NFIP, a travel trailer can be considered a building only if it is without wheels, built on a chassis and affixed to a permanent foundation, and regulated under the community's floodplain management and building ordinances or laws. The statutory requirements apply to a loan securing mobile homes that are, or will be, located in an SFHA. NFIP coverage is available only with respect to a building or mobile home and not the land on which the building or mobile home sits. A chattel mortgage on a mobile home will trigger the mandatory purchase requirements.

In instances where the location of the mobile home has not been established by the time of closing, the bank should notify the borrower that flood insurance must be obtained if the mobile home will eventually be located in an SFHA, in a participating community, and must be permanently affixed to a foundation to be eligible for coverage under the NFIP.

In order to make this determination, the bank should require borrowers to provide notice to the bank when the mobile home is permanently anchored. A flood determination must then be made by the bank, and if the mobile home is located in an SFHA, the bank must notify the borrower that flood insurance must be purchased within 45 days of notice.

Although the Real Estate Settlement Procedures Act (RESPA) does not require escrowing on a loan where land is not part of the security, the scope of the 1994 Reform Act includes escrowing on a designated loan secured by a mobile home. Section 10 of RESPA, which pertains to the escrow rules, applies only to mobile homes that are also secured by the real estate upon which they are situated; however, the 1994 Reform Act is broader in scope.

A mobile home lender is required to escrow even if the loan is on the mobile home only. A substantial number of mobile homes have the peril of flood included under a private contract of insurance. A lender should review the private flood insurance coverage in light of the mandatory purchase requirement and FEMA criteria (see pages 57-58 of the *2007 Guidelines*).

Personal Property

Flood insurance coverage for contents is not required by law unless personal property, in addition to a building, secures the loan. Because residential mortgages rarely include personal possessions as part of the loan security, lenders are not required to compel borrowers to purchase contents coverage, as this is not a designated loan.

When a commercial loan on a building includes inventory and other trade or business movable property as security for a loan, that property must be covered by a separate policy under the General Property form.

On the other hand, flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. However, the Guidelines note that obtaining contents coverage for personal property or inventory located in high flood risk areas is prudent, even when not mandated by law.

2009 FAQ:

38. If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?

Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is a loan secured by a building or mobile home located or to be located in an SFHA, "unless the building or mobile home and any personal property securing such loan" is covered by flood insurance for the term of the loan. In this example, the collateral is not the type that could secure a designated loan because it does not include a building or mobile home; rather, the collateral is the inventory alone.

39. Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?

Answer: Yes. Flood insurance is required for the building located in the SFHA and any contents stored in that building.

Example: Lender A makes a loan for $200,000 that is secured by a warehouse with an insurable value of $150,000 and inventory in the warehouse worth $100,000. The Act and Regulation require that flood insurance coverage be obtained for the lesser of the outstanding principal balance of the loan or the maximum amount of flood insurance that is available under the NFIP. The maximum amount of insurance that is available for both building and contents is $500,000 for each category. In this situation, Federal flood insurance requirements could be satisfied by placing $150,000 worth of flood insurance coverage on the warehouse, thus insuring it to its insurable value, and $50,000 worth of contents flood insurance coverage on the inventory, thus providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $200,000.

40. If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?

Answer: No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

41. Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an "abundance of caution"?

Answer: Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

Underinsured Buildings

The 1994 Reform Act repealed Title 42 U.S.C. § 4013(b)(6), which contained a statutory limit for coverage required to be purchased. The Act requires coverage that is "in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available." Therefore, to meet minimum compliance requirements, lenders must see to it that flood insurance coverage on a building is at least the lowest of the following:

- The maximum amount of NFIP flood insurance coverage available; or
- The outstanding principal balance of the loan(s); or
- The insurable value (Replacement Cost Value - RCV) of the building.

Lenders should consider whether minimum required coverage amounts will be adequate to protect their interests and those of their borrowers. Borrowers should be urged to seek assistance from their agents regarding their flood insurance needs. To the extent allowed by the maximum limits available under the NFIP, flood insurance coverage amounts should include the cost of the foundation and correspond to the coverage amounts provided by homeowners insurance, which typically are purchased at the level of insurance to value.

To address the underinsurance deficiency, § 4012a(e) of the 1994 Reform Act specifies a lender's notification and placement requirements for a building that is covered by less flood insurance than required by the Act. When a lender (or a servicer acting on the lender's behalf) discovers that a building used as security is covered by an inadequate amount of flood insurance, it must first provide notice and opportunity for the borrower to obtain the required amount of flood insurance. If the borrower fails to purchase insurance, the lender then must purchase flood insurance in the appropriate amount on the borrower's behalf. The statute designates the same steps to be followed in the event additional insurance is required as when no insurance exists.

2009 FAQ:

71. **What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?**

    Answer: A lender should only be concerned about a discrepancy on the Standard Flood Hazard Determination Form (the SFHDF) and the one on the flood insurance policy if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D, or X). In other words, a lender need not be concerned about subcategory differences between flood zones on these two documents. Once in possession of a copy of the flood insurance policy, a lender should systematically compare the flood zone designation on the policy with the zone shown on the SFHDF. If the flood insurance policy shows a lower risk zone than the SFHDF, then lender should investigate. As noted in FEMA's *Mandatory Purchase of Flood Insurance Guidelines*, Federal law sets the ultimate responsibility to place flood insurance on the lender, with limited reliance permitted on third parties to the extent that the information that those third parties provide is guaranteed.

    A lender should first determine whether the difference results from the application of the NFIP's "Grandfather Rule." This rule provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located. The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable rating for particular pieces of improved property. A discrepancy resulting from application of the NFIP's Grandfather Rule is reasonable and acceptable, but the lender should substantiate these findings.

    A lender should also determine whether a difference in flood zone designations is the result of a mistake. To do so, a lender should facilitate communication between itself or the third-party service provider that performed the flood hazard determination for the lender. If it appears that the discrepancy is the result of a mistake, a lender should recheck its determination. If there still appears to be a discrepancy after this step has been taken, a lender and borrower may jointly request that FEMA review the determination to confirm or review the accuracy of the original determination performed by a lender or on the lender's behalf. However, FEMA will only conduct this review if the request is submitted within 45 days of the date the lender notified the borrower that a building or manufactured home is in an SFHA and flood insurance is required.

If, despite these efforts, the discrepancy is not resolved, or in the course of attempting to resolve a discrepancy, a borrower or an insurance company or its agent is uncooperative in assisting a lender in this attempt, the lender should notify the insurance agent about the insurer's duty pursuant to FEMA's letter of April 16, 2008 (W– 08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also notify the insurance company itself. The lender should substantiate these communications in its loan file.

72. Can a lender be found in violation of the requirements of the Regulation if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

Answer: As noted in question and answer 71 above, lenders should have a process in place to identify and resolve flood zone discrepancies. A lender is in the best position to coordinate between the various parties involved in a mortgage loan transaction to resolve any flood zone discrepancy. If a lender is able to substantiate in its loan file a bona fide effort to resolve a discrepancy, either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy, for example, by contacting FEMA to review the determination, no violation will be cited. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio due to a lack of effort on the lender's part to resolve such discrepancies, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

Home Equity and Second Mortgages

Flood insurance is required on designated home equity or second mortgage loans made by regulated lenders if the loans are secured by a building or a manufactured (mobile) home/travel trailer, regardless of the lien priority. The location of the secured property home equity or second mortgage, governs whether flood coverage is required.

Even though home equity and second mortgage loans are subordinate to a primary loan, the terms of the mandatory purchase law apply with equal force.

The standard 30-day waiting period does not apply on home equity loans and second mortgages. Coverage is effective at the time of application and presentment of premium.

Subject to the limit on insurance available and the requirement cap, a home equity lender must protect its interests by having coverage in place at the time the loan is extended. The lender must make a determination about the flood insurance requirement when the application for the loan is made.

If the first mortgagee otherwise complied with the mandatory purchase requirements and no remapping has occurred, then no new determination is needed for the second mortgage or home equity loan.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan because the borrower will be drawing down differing amounts on the line of credit at different times. In those instances where there is no policy on the collateral, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. Drawing against an approved line of credit does not require further determinations to be made.

A lender may take the following alternative approaches:

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

If a secondary lienholder determines that a first mortgagee has neglected to obtain flood insurance coverage, the secondary lienholder must be assured that coverage is purchased on the entire outstanding loan amount in order to comply with the statutory requirements, as well as to protect its priority as to insurance proceeds. Similarly, if the first mortgage has insufficient coverage, the borrower must cure this deficiency by purchasing additional coverage sufficient to protect all outstanding loans. If not, the loan should not be made.

Because only one NFIP policy can be issued on a building, no matter how many loans exist, a secondary lienholder must verify that any required escrow of premium is being undertaken by the primary lienholder. Accordingly, the lienholder must coordinate coverage through its borrower and the insurance agent of record. A home equity and secondary lienholder's interest is accomplished by endorsement to the policy.

2009 FAQ:

34. **Is a home equity loan considered a designated loan that requires flood insurance?**

    Answer: Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.

35. **Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?**

    Answer: No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations. However, a request made for an increase in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (See response to question 68 in Section XIII. Required use of Standard Flood Hazard Determination Form.)

36. When a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

Answer: The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to the existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

A junior lienholder should work with the senior lienholder, the borrower, or with both of these parties, to determine how much flood insurance is needed to cover improved real estate collateral. A junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

Junior lienholders also have the option of pulling a borrower's credit report and using the information from that document to establish how much flood insurance is necessary upon increasing, extending or renewing a junior lien, thus protecting the interests of the junior lienholder, the senior lienholders, and the borrower. In the limited situation where a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the lender may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance relating to the senior lien was adequate at the time) continues to be sufficient.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage, which the borrower satisfied by obtaining an NFIP policy. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require additional flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000) through an NFIP policy, then its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on improved real estate with a fair market value of $150,000. The insurable value of the residential building on the improved real estate is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $70,000 loss payment towards the insurable value of $90,000.

37. If a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

Answer: It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary, when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be "making" a new loan. In either situation, the lender will need to determine whether the amount of insurance in force is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the junior lien loan), the insurable value, or the maximum amount of coverage available on the improved real estate. This will hold true whether the subordinate lien loan is a home equity loan or some other type of junior lien loan.

Section 12: Miscellaneous Flood Insurance Issues

Deductibles

The standard deductible is different for different situations, both the minimum and maximums. Under current law, residential deductibles can be as high as $10,000. Deductibles are applied separately to buildings and again to contents.

Deductibles of $10,000 to $50,000 are available for nonresidential buildings.

Optional deductibles are not available for Preferred Risk Policies. Standard practice in the financial industry is for the lender to dictate the amount of the deductible according to the authority found in the loan document hazard clause. A modification in the deductible can be accomplished at renewal or by endorsement mid-term with the lender's written request.

Lenders may exercise their business judgment prerogative by requiring only the standard deductible to be carried as a safeguard in protecting their interest in the improved real estate. The GSE secondary market members designate what they consider as the proper deductible.

Minimum Deductibles

If a policy covers loss of,	Then the minimum deductible...	
or physical damage to, a structure in an amount...	For a pre-FIRM property is...	For a post-FIRM property is...
≤ $100,000	$1,500	$1,000
> $100,000	$2,000	$1,250

2009 FAQ:

17. **Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?**

    Answer: Yes. However, it is not a sound business practice for a lender to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.

Expiration/Renewal Notice

The 1994 Reform Act and the SFIP both require the Administrator of FEMA (regarding NFIP Direct business) and the Administrator's designee (i.e., a WYO carrier on WYO policies) to send a notice of the date of expiration of the policy contract. This expiration/renewal notice must be sent by first-class mail, not less than 45 days prior to expiration, to the last known address of the insured, any known mortgagees, servicer, and the owner of the property. FEMA interprets the term "owner of the property" as used in the statute to mean the party insuring the risk. An expiration/renewal notice is also mailed to the insurance producer. The law does not require proof of receipt of the notice. The statutory notice provisions are in addition to any applicable terms and conditions provided in the SFIP, as well as any obligation found in the mortgage or lending document between the borrower and lender.

Under the provisions of the SFIP, the WYO insurer and the NFIP Servicing Agent also must notify the lender, or servicer acting on behalf of the lender, along with the borrower, when the insurance contract is due for renewal.

The Possibility of Different Coverage Requirements

Because the 1973 Act sets only the minimum coverages, each federal agency has the right to require higher limits as deemed appropriate. For example, the Small Business Administration (SBA) requires flood insurance up to the value of a property or the maximum amount of insurance that can be purchased, whichever is less, regardless of the amount of the loan. The Federal National Mortgage Association (FNMA), on the other hand, requires the amount of flood insurance to be equal to the lesser of 100 percent of the insurable value of the facilities or the maximum coverage available.

Instead of establishing minimum amounts of coverage to comply with the federal agencies' requirements, it is suggested that the lender establish its own guidelines as they apply to the local needs of the community and the lender.

Effective Date of Policies

In general, coverage under a new contract for flood insurance and any modifications to coverage under an existing flood insurance contract become effective upon the expiration of the 30 calendar-day period beginning on the date that all obligations for such coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed. The intent of this mandatory waiting period was to prevent the purchase of flood insurance at times of imminent flood loss.

Exceptions to this 30-day waiting period include the initial purchase of flood insurance coverage when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan or the initial purchase of flood insurance coverage within 12 months after a revision or updating of floodplain areas or flood risk zones.

Where the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan, coverage becomes effective at the time of the loan closing, provided that:

- The written request for the coverage is received by the NFIP,
- The flood insurance policy is applied for, and

- The payment of the premium is presented at or prior to the loan closing.

In cases where the initial purchase of flood insurance coverage occurs within 12 months after a revision or updating of floodplain areas or flood risk zones, the effective date and time of any initial flood insurance coverage is 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of the premium. For example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 2.

Assignment of Policy

There is a 30-day waiting period before coverage can go into effect when an NFIP policy is assigned from a seller to a buyer where the buyer does not obtain a mortgage. If the buyer obtains a mortgage, the waiting period does not apply.

Section 13: Force Placement

Introduction

If a 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, 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, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

A sample notice appears at the end of this section.

Force placement applies to any borrower of a designated loan, commercial or residential, whether or not escrow of expenses is required. On any type of force placed policy, a lender should keep evidence of the determination that the loan is in an SFHA, including information concerning the FIRM panel and method by which the determination was made.

Home equity and second mortgage loans also are included under the requirement. A secondary lienholder that force places coverage only to the extent of its loan will not protect its interest if a first mortgagee claims priority to any insurance proceeds.

Force placement by a second mortgagee will require coordination with the first mortgagee, as well as with the insurance producer and insurer on the first mortgage, if one exists.

The 1994 Reform Act requires a lender to carry out the force placement as a matter of law, independent of the contractual provisions of the loan. Force placement is not limited to those situations provided for under the mandatory purchase law. The standard Fannie Mae and Freddie Mac documents provide that the lender may obtain the force-placed insurance at the borrower's expense.

The amount of insurance coverage must be at least the lowest of the outstanding principal balance of the loan(s), the insurable value of the structure, or the maximum limit available under the NFIP. If the lender opts to protect only its security in the loan (loan balance), the insurance proceeds may be inadequate. Force placement of flood insurance is intended only as a last resort, and on mortgages whose mortgagors have failed to respond to the notifications required by law.

The 1994 Reform Act provides that a lender must inform its borrowers that they have a free choice of an insurer from whom to purchase coverage. That free-choice purchase option also applies to a lender when dealing with force-placed coverage. If, within 45 days from the initial notice, a borrower fails to comply by voluntarily obtaining coverage, a lender or servicer must obtain either:

- A Mortgage Portfolio Protection Program (MPPP) policy through a WYO insurer; or
- An SFIP through either a WYO insurer or the NFIP Servicing Agent; or
- Non-NFIP flood coverage from a private industry insurer if such coverage is available.

FDIC Regulatory Text Concerning Force Placement of Flood Insurance

§ 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.

2011 FAQ:

57. **What is the requirement for the force placement of flood insurance under the Act and Regulation?**

    Answer: [Reserved]

2009 FAQ:

58. Can a servicer force place on behalf of a lender?

Answer: Yes. Assuming the statutory prerequisites for force placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

59. When force placement occurs, what is the amount of insurance required to be placed?

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (See Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation and also Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA.)

60. When should a lender send the force-placement notice to the borrower?

Answer: [Reserved]

2011 FAQ:

61. When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within the 45-day notice period?

Answer: The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay, for example, where a lender uses batch processing to purchase force-placed flood insurance policies.

62. When may a lender or its servicer charge a borrower for the cost of insurance that covers collateral during the 45-day notice period?

Answer: [Reserved]

Follow Up

National flood insurance is written on an annual basis. Thus, the bank is required to ensure that the customer maintains the insurance for the duration of the loan. This means annual verification is required. Failure to require and verify the insurance could lead to the bank's being sued for noncompliance with the law and therefore being liable for any losses suffered by the customer in a flood.

Secondary Market Loans[5]

The Flood Insurance Administration guidelines dated 1978 have noted that the Act directs the lender to require flood insurance not only for the origination of mortgage loans, but also for the purchase of mortgage loan portfolios in the secondary market and participations thereof. Thus, under this view, purchased mortgage loans secured by improved property in a special flood hazard area must be covered by flood insurance, where applicable, unless the original loan was made pursuant to a formal loan commitment issued prior to March 2, 1974. It could then be construed that the secondary lender could be held in violation of the Act and liable for flood damages, if no flood insurance was required when it should have been.

The Federal financial institutions regulatory agencies have taken a different view. They have interpreted the Act to apply only to the origination of mortgage loans and not to the purchase of mortgage loans in the secondary market. It appears that much of this interpretation rests with the fact that the standards for secondary market loans have generally followed those of Federal agencies, such as GNMA, FNMA, and FHLMC, which require the originating lender to acquire flood insurance when applicable. Yet, if the lender determines that flood insurance should have been required and was not included in the original mortgage sold to the lender, the lender must seek such coverage. The path for remedy depends upon the agreement with the mortgage seller/servicer and the original mortgage documents obligating the borrower. Generally, the lender will bypass the seller/servicer and require the insurance directly with the borrower upon discovery of the error. This can be done on the basis of discussions the Flood Insurance Administration has had with federal instrumentalities. It is their view that, if the loan agreement is specific in requiring hazard insurance, then this provision, coupled with the regulatory obligation upon the lender to require the borrower to purchase flood insurance, gives the lender ample authority to require the borrower to purchase flood insurance, even at a date subsequent to the date on which the loan was initiated. Further, if the borrower refuses to purchase the flood insurance, FEMA has noted that the lender is justified in purchasing the insurance and charging the borrower.

In the event that the discovery of the error in securing flood insurance follows a flood disaster, the lender will most likely seek restitution from the seller/servicer through legal action.

5 Adapted from "Federal Emergency Management Agency," *Federal Register,* Vol. 54, No.133, Thursday, July 13, 1989, pp. 29682-29683

Sample Force Placement Notice

NOTICE OF FLOOD INSURANCE REQUIREMENT

Dear Customer:

Our records indicated that the property securing your loan is located in a Special Flood Hazard Area (SFHA) and that flood insurance is required to be maintained on the property for the entire term of the loan. As of this date, we have not received evidence that a current flood insurance policy is in place.

If you have already purchased flood insurance, please forward to us a copy of the policy or the application form along with a paid receipt.

The flood insurance policy submitted must contain flood coverage for at least the current amount of your loan or the maximum amount available from the National Flood Insurance Program (NFIP).

We must receive your evidence of flood insurance within the next 45 days or it will be necessary for us to obtain a flood insurance policy protecting our interest in the property.

If we are forced to obtain flood insurance on your behalf, the amount we will purchase and cost is shown below:

Amount of Insurance	Deductible	Annual Premium
$XX,XXX	$X,XXX	$XXX.XX

Please be aware that flood insurance we obtain may be more expensive than a policy you could obtain on your own and will provide coverage for only the physical damage to the building due to flood and will not include other coverage, such as contents and personal liability.

Regards,

Lender

Section 14: Condominiums, Cooperatives and Timeshares

Introduction

The mandatory purchase of flood insurance requirements apply with equal force to condominium, cooperative, and timeshare units. Placing and monitoring coverage on units within multi-unit buildings presents special circumstances to lenders and merits particular care. The statutory requirements can be explained through a review of how the various National Flood Insurance Program (NFIP) policies correspond to the forms of ownership as follows:

- The Residential Condominium Building Association Policy was designed for eligible residential condominium associations and timeshares that are of the fee or real estate ownership type, in Regular Program Communities.
- The General Property Form policy applies to residential cooperatives and timeshares that are non-fee interest and residential condominium buildings not eligible for the Residential Condominium Building Association Policy. The General Property Form policy also applies to nonresidential condominiums and unit owners.
- The Dwelling Form policy may be issued on an individual residential unit.

For eligibility requirements and limits available on the various coverages under these policies, refer to the Condominiums section of the NFIP Flood Insurance Manual, or consult property insurance professionals for assistance.

2009 FAQ:

26. **Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?**

    Answer: Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

Residential Condominium Building Association Policy (RCBAP)

The RCBAP is the policy specifically designed for condominium associations to insure residential condominium buildings. Under the RCBAP, the association is able to manage flood insurance needs and by-law requirements without relying on the actions of the unit owners.

Although the statutory requirements apply with equal force to condominium unit owners and their lenders, the practice of the lending industry, as followed under the RCBAP, is to defer to the association to ensure compliance. A key feature of the condominium insurance format is the separate ownership and mortgaging of individual units, yet the insuring of the building as a whole with a policy issued to the association only. It should be noted that lenders are still responsible to meet their compliance requirements under the law.

A unit owner's mortgage lender has no direct interest in an RCBAP and is not to be listed as an additional named insured on the policy declaration page.

The 30-day waiting period applies to the RCBAP, unless the condominium association is purchasing flood insurance required by the association's mortgage company.

Because the RCBAP provides flood insurance protection for both the building elements within the unit and the common building elements, the security interests of individual unit owner mortgagees should be protected, so long as coverage amounts reflect insurance to value, as with other forms of property insurance. Although unit owners have a shared interest in the common areas of the condominium building, as well as in their own unit, unit owners are unable to individually protect such common areas. Therefore, the RCBAP, insured to its full replacement cost value (RCV) to the extent possible under the NFIP, is the correct way to insure a residential condominium building against flood loss.

2009 FAQ:

27. What is an NFIP Residential Condominium Building Association Policy (RCBAP)?

Answer: The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

Insurance Requirements

The flood insurance amount required by statute for an applicable loan on a condominium unit must be at minimum the lowest of, but may exceed, the following:

- The outstanding balance of the loan(s); or
- The insurable value (replacement cost value) of the unit; or
- The maximum amount of insurance available under the NFIP for the type of property.

Once the minimum amount required to fulfill the statutory requirement is identified from the above example, it is compared to the portion of the RCBAP limit attributable to the unit. If the unit's portion of the RCBAP equals or exceeds the minimum amount required by law, the loan is compliant, but not necessarily adequately insured against flood loss. If the unit's portion of the RCBAP is less than the minimum amount required by statute, the association should be asked to increase its limits. If the association refuses, the unit owner may purchase flood insurance under the Dwelling Form for the difference, if acceptable to the lender. Meeting the compliance requirement via this combination of coverages (RCBAP and Dwelling Form) does not fill gaps in coverage nor ensure that the security is adequately protected against flood loss.

If there is no RCBAP, the unit owner can meet the minimum statutory requirement by purchasing a Dwelling Form policy at least equaling the minimum required amount, if acceptable to the lender.

2009 FAQ:

28. What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?

Answer: To comply with the Regulation, the lender must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
- The maximum limit available for the residential condominium unit; or
- The "insurable value" allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.

Effective October 1, 2007, FEMA required agents to provide on the declaration page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the replacement cost value and number of units on the RCBAP declaration page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage.

Assuming that the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or

- Obtain a dwelling policy if there is no RCBAP, as explained in question and answer 29, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in question and answer 30.

  Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
- Maximum limit available for the residential condominium unit is $250,000; or
- Insurable value of the unit based on 100 percent of the building's replacement cost value ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000)).

The guidance in this question and answer will apply to any loan that is made, increased, extended, or renewed after the effective date of this revised guidance. This revised guidance will not apply to any loans made prior to the effective date of this guidance until a trigger event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new trigger event, loans made prior to the effective date of this new guidance will be considered compliant if they complied with the Agencies' previous guidance, which stated that an RCBAP that provided 80 percent RCV coverage was sufficient.

Evidence of Compliance

As a condition of making, increasing, extending, or renewing a loan on the residential condominium unit and as frequently as required, a mortgagee must obtain a copy of the:

- RCBAP documenting the amount of insurance, ideally insured to RCV, or at least the unit's portion equaling the statutory requirement; or
- RCBAP and Dwelling Form (or application and paid receipt) jointly equaling at least the minimum statutorily required amount of insurance; or
- Dwelling Form equaling the minimum amount required to meet statutory requirements.

The Declarations Page of each RCBAP issued or renewed must show the building's replacement cost value and the number of units within that building.

While any of these insurance methods might meet the statutory requirements, an RCBAP not insured to full value and/or a Dwelling Form policy could expose the lender and borrower to unknown risk.

FEMA suggests the following simple way to address both compliance requirements and flood insurance needs for safety and soundness of collateral interests. Lenders may apply a risk management strategy, as a condition to granting loans secured by condominium units in high-flood-risk areas, by requiring that condominium buildings be insured under the RCBAP to their full RCV or the maximum amount available, whichever is less. The compliance requirement is then equaled or exceeded with no additional calculation necessary.

Coverage

The entire residential condominium building is covered under the RCBAP, including both common building elements and individually owned building elements within the units, improvements within the units, and personal property owned in common if contents coverage is carried. The RCBAP does not protect the individual owner from loss to personal property owned exclusively by the unit owner.

The NFIP prohibits duplication of NFIP policies on the same risk. As described below, both an association and a unit owner may obtain NFIP coverage, but the unit owner's coverage is proscribed in that it is in excess of the association policy. The combined coverage of the RCBAP and the unit owner Dwelling Form policy cannot exceed the statutory limits or insurable value, whichever is less. The RCBAP is primary in relation to the unit owner's policy.

2009 FAQ:

29. What action must a lender take if there is no RCBAP coverage?

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 28.

A dwelling policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP coverage. When coverage by an RCBAP is inadequate, the dwelling policy may provide individual unit owners with supplemental building coverage to the RCBAP. The RCBAP and the dwelling policy are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Example: The lender makes a loan in the principal amount of $175,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:

- Maximum limit available for the residential condominium unit is $250,000; or
- Insurable value of the unit based on 100 percent of the building's replacement cost value ($10 million ÷ □50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of at least $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

30. What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (see question and answer 28). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (see question and answer 29).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or $160,000 per unit).

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate dwelling policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

The risk arises because the individual unit owner's dwelling policy may contain claim limitations that prevent the dwelling policy from covering the individual unit owner's share of the coinsurance penalty, which is triggered when the amount of insurance under the RCBAP is less than 80 percent of the building's replacement cost value at the time of loss. In addition, following a major flood loss, the insured unit owner may have to rely upon the condominium associations and other unit owners' financial ability to make the necessary repairs to common elements in the building, such as electricity, heating, plumbing, and elevators. It is incumbent on the lender to understand these limitations.

31. What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (see question and answer 28). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (see questions and answers 29 and 30). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

Policy Limits

The maximum amount of building coverage that can be purchased on a high-rise or low-rise condominium under the RCBAP is the replacement cost value of the building or the total number of units in the condominium building multiplied by $250,000, whichever is less. The maximum coverage limit under the NFIP for contents is $100,000 or the Actual Cash Value (ACV) of the contents, whichever is less.

Valuation

FEMA encourages lenders to seek the assistance of insurance agents and companies to determine the replacement cost value of residential condominium buildings, including the foundations. Any building at risk of flooding should be protected to the same degree as it is for fire and wind perils, to the extent possible under the NFIP policy limits, which are established by Congress.

Coinsurance Provision

Under the RCBAP, associations have an incentive to purchase and maintain coverage in an amount equal to the cost of replacing the building and its foundation, to the extent possible under the NFIP limits. FEMA encourages condominium associations to insure their building to 100 percent of the full replacement cost value, because construction costs continue to increase while the RCBAP limits do not automatically increase over time. At the time of loss, the amount of insurance should represent at least 80 percent or more of the replacement cost or the maximum amount of coverage available under the NFIP, in order to avoid the coinsurance penalty. The 80 percent referenced here is an insurance tool that may apply at the time of loss; it is not a compliance tool.

If the 80 percent threshold is met, the NFIP will pay compensable partial losses up to the limits of the policy minus any deductible. When an association carries limits to full replacement cost value, the unit owner does not need to obtain supplemental building coverage to offset a potential assessment in a total loss situation. The RCBAP's policy limits exclusively, and no additional separate policy limits (such as the unit owner's coverage), can apply to avoid the coinsurance penalty. For example, a Dwelling Form policy limit does not increase the RCBAP limit and would not avoid the coinsurance penalty.

Coverage under the RCBAP is on an RCV basis so that no deduction for depreciation is taken for building elements at loss settlement. However, condominium associations are encouraged to insure their buildings to full replacement cost value, or to the maximum available limit of $250,000 per unit multiplied by the number of units, whichever is less.

Example of RCBAP Coinsurance Penalty

- Building RCV at time of loss $12,500,000
- 80 percent of RCV at time of loss $10,000,000
- Actual amount of insurance carried $ 6,000,000
- Amount of loss $ 6,000,000
- Loss settlement (before deductible) $ 3,600,000

The amount of insurance carried ($6,000,000) represents only 60 percent of the 80 percent required amount ($10,000,000) that avoids the coinsurance penalty. A shortage of $2,400,000 therefore results, which represents the coinsurance penalty.

RCBAP Loss Settlement Formula

$$\frac{\$6{,}000{,}000 \text{ (ins. amt.) X } \$6{,}000{,}000 \text{ (loss)}}{\$10{,}000{,}000 \text{ (80 percent of RCV at time of loss)}} = \$3{,}600{,}000$$

Example of Adequate Amount of Insurance, Avoiding RCBAP Coinsurance Penalty

Building RCV at policy purchase	$11,000,000
80 percent of RCV at policy purchase	$ 8,800,000
Amt. insurance purchased (RCV)	$11,000,000
Building RCV at time of loss	$12,500,000
80 percent of RCV at time of loss	$10,000,000
Amount of loss	$ 6,000,000
Loss settlement (before deductible)	$ 6,000,000

In the preceding example, insurance was purchased to the full RCV of the building at $11,000,000. At the time of loss, the RCV of the building had risen to $12,500,000.

Because the actual amount of insurance is within 20 percent of the replacement value of the building, there is no coinsurance penalty. Purchasing insurance to full RCV, rather than to 80 percent of the replacement cost, should go a long way toward protecting the insurable interests of the lender, the association, and the unit owner.

2009 FAQ:

32. How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?

Answer: In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a coinsurance penalty, is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

- A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.
- B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.
- C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (Inadequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $180,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: $180,000 ÷ $200,000 = .90 (90% of what should be carried to avoid coinsurance penalty)

Step B: $150,000 X .90 = $135,000

Step C: $135,000 - 500 = $134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500). Unit owners' dwelling policies will not cover any assessment that may be imposed to cover the costs of repair that are not covered by the RCBAP.

Example 2: (Adequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $200,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: $200,000 ÷ $200,000 = 1.00 (100% of what should be carried to avoid co-insurance penalty)

Step B: $150,000 X 1.00 = $150,000

Step C: $150,000 - $500 = $149,500

In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty. The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

33. What are the major factors involved with the individual unit owner's dwelling policy's coverage limitations with respect to the condominium association's RCBAP coverage?

Answer: The following examples demonstrate how the unit owner's dwelling policy may cover in certain loss situations:

Example 1: (RCBAP insured to at least 80 percent of building replacement cost).

- If the unit owner purchases building coverage under the dwelling policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the dwelling policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost allocated to that unit.
- The loss assessment coverage under the dwelling policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the dwelling policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: (RCBAP insured to less than 80 percent of building replacement cost).

- If the unit owner purchases building coverage under the dwelling policy and there is an RCBAP that was insured to less than 80 percent of the building replacement cost value at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its co-insurance penalty.
- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building replacement cost value at the time of loss before the loss assessment coverage under the dwelling policy becomes available. Under the dwelling policy, covered repairs to the unit, if applicable, would have priority in payment over loss assessments against the unit owner.

Example 3: (No RCBAP),

- If the unit owner purchases building coverage under the dwelling policy and there is no RCBAP, the dwelling policy covers assessments against unit owners for damages to common areas up to the dwelling policy limit.
- However, if there is damage to the building elements of the unit as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the dwelling policy.

Dwelling Form Policy

Unit Owner's Building Coverage

A unit owner can acquire supplemental building coverage to the RCBAP by purchasing building coverage for the unit under a Dwelling Form that is written in excess of the association policy. The policies are coordinated such that the Dwelling Form policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured or to assessments. The Dwelling Form does not extend the RCBAP limits, nor does it enable the association to fill gaps in coverage.

Combined loss payments under the RCBAP and Dwelling Form, including assessment coverage, cannot exceed the insurable value or maximum NFIP limits for building coverage. Assessment coverage applies, up to the building coverage limits of the Dwelling Form policy purchased, when there is no association policy (RCBAP). Assessment coverage under the Dwelling Form applies when there is an RCBAP, but only to that part of the loss that exceeds 80 percent of the building replacement cost value.

Unit Owner's Personal Property Coverage

Personal property owned by individual unit owners must be insured under an individual unit owner's Dwelling Form policy. With the exception of the noncondominium timeshare unit owner, unit owners may apply up to 10 percent of their personal property coverage limit to flood damage to improvements made at the unit owner's expense. However, this 10 percent of the contents coverage limit does not apply if the association's General Property Form policy maximum limit of $250,000 has been reached and/or if the improvements in the unit are covered by an RCBAP or a private flood insurance policy. Additionally, use of the personal property coverage limit is at the discretion of the unit owner and reduces the contents limit.

Loss Assessment Coverage

The following examples demonstrate how the unit owner's Dwelling Form policy will respond in certain loss situations.

Example A—No RCBAP:

- If the unit owner purchases building coverage under the Dwelling Form and there is no RCBAP, the Dwelling Form policy responds to assessments against unit owners for damages to common areas up to the Dwelling Form policy limit.
- However, if there is damage to the building elements of the unit as well, the building coverage limit under the Dwelling Form policy may not be exceeded by the combined settlement of unit building damages, which would apply first, and the loss assessment.

Example B—RCBAP insured to at least 80 percent of building replacement cost:

- If the unit owner purchases building coverage under the Dwelling Form and if there is an RCBAP covering at least 80 percent of the building RCV, the loss assessment coverage under the Dwelling Form policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost.

- The loss assessment coverage under the Dwelling Form policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the Dwelling Form policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted.

Note that coverage combinations cannot exceed the total limit of $250,000 per unit.

Example C—RCBAP insured to less than 80 percent of building replacement cost:

- If the unit owner purchases building coverage under the Dwelling Form and there is an RCBAP that was insured to less than 80 percent of the building RCV at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its coinsurance penalty.

Loss assessment is available only to cover the building damages in excess of the 80 percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building RCV at the time of loss before the loss assessment becomes available. Covered repairs to the unit, if applicable, would have priority over loss assessments under the Dwelling Form.

General Property Form Policy

Nonresidential

To purchase coverage under the NFIP on a nonresidential condominium building, a condominium association must use the General Property Form. Both building and contents coverages are available separately, with building and contents limits up to $500,000 each per nonresidential building. The nonresidential unit owner also may purchase contents coverage using this policy.

A Dwelling Form policy is not available to the nonresidential unit owner. In addition, a condominium association must use the General Property Form to purchase coverage on a residential condominium building not eligible for the RCBAP or when the building is located in an Emergency Program community.

Cooperative Associations

Because cooperatives are not in the condominium form of ownership, they cannot be insured under the RCBAP. Residential or nonresidential cooperative buildings must be insured by the association or corporation under the General Property Form. A unit owner in a cooperative building does not receive a real estate interest in a unit, but rather a share of stock in a corporation with the right to occupy a particular unit. The entity that owns the cooperative building, not the various unit members, is the named insured.

Cooperative buildings where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. Such residential building owners can insure the building under the General Property Form for a maximum building coverage limit of $250,000 in a Regular Program community.

Timeshares

Timeshare buildings basically fall into two categories: those where a real estate ownership interest has been conveyed and those where just the right to the use of a unit has been conveyed.

Timeshare buildings in the condominium form of ownership (fee or real estate) are eligible for coverage under the RCBAP.

These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums, including the requirement that 75 percent of the area of the building be used for residential purposes.

Timeshare buildings not in the condominium form of ownership where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. They can be insured by the owner of the building under the General Property Form for a maximum building coverage amount of $250,000 in a Regular Program community.

Homeowners Associations

Individually titled town homes and single family buildings, whose owners belong to a noncondominium homeowners association, can be insured by the individual owners under the Dwelling Form and not by the homeowners association. The homeowners association may purchase coverage for a building it may own, such as a clubhouse, under the General Property Form.

Secondary Market for Condominiums

In their selling guides for purchase of mortgages on condominium units, Fannie Mae and Freddie Mac specifically address the requirement of property coverage. These Government-Sponsored Enterprises recognize flood coverage carried by the association as complying with the mandatory purchase requirements.

Fannie Mae

Fannie Mae, which purchases loans on the secondary market that are secured by condominiums located in high-flood-risk areas, may have specific requirements. As of the printing of the *2007 Guidelines*, Fannie Mae would accept building coverage provided under a Dwelling Form policy to supplement inadequate coverage carried by an association. If a condominium association declines to carry any flood insurance coverage, then each unit owner may purchase an individual policy to comply with Fannie Mae's requirements.

As of the printing of this manual, Fannie Mae accepted flood insurance deductibles up to the maximum deductible available under the NFIP, which for residential condominium buildings is $25,000. The Selling and Servicing Guides and Announcements may be accessed through the Web site at http://www.efanniemae.com.

Freddie Mac

As of the printing of this manual, Freddie Mac requirements specified the following.

For condominium units (other than detached unit projects) in which all or part of the building is in an SFHA, the association must maintain building coverage on the building for at least the lower of:

- The building's replacement cost; or
- $250,000 multiplied by the number of residential units in the building.

The association must maintain contents coverage on the building for the lower of:

- The actual cash value of the contents in the building that are owned in common by the association members; or
- The maximum amount of contents coverage sold by the NFIP for a condominium building.

If the association does not maintain the required coverage, then the unit owner must maintain building coverage on the unit in an amount at least equal to the amount required on a one- to four-unit property.

Freddie Mac states that the deductible of the condominium association's coverage may not exceed the maximum deductible amount currently allowed under the NFIP for condominium association building coverage.

The deductible for association building contents may not exceed the maximum deductible amount currently allowed under the NFIP for association building contents.

Section 15: Implementation of Key Provisions

This section is taken directly from Section E, "Implementation of Key Provisions" of the *2007 Guidelines*. The purpose is to describe how certain key provisions of the 1994 Reform Act are to be implemented within the industry.

Trip Wires

Loan Activity

The making, increasing, extending, or renewing of a loan is a "tripwire" for compliance with the mandatory flood insurance purchase requirements. This tripwire occurs most frequently upon loan origination, e.g., when a lender knows or has reason to know whether the mandatory purchase requirements apply. Another tripwire occurs in any situation that alerts a lender or servicer to a change in circumstances, (e.g., a known map change, or the receipt of a notice to pay the premium to avoid policy expiration.)

If a borrower executes a note on improved real estate as collateral for a personal loan, and the lender does not perfect a security interest or mortgage in the building itself, the loan is not a designated loan and, therefore, is not subject to the mandatory purchase requirement.

2009 FAQ:

5. **Does the Regulation apply to loans that are being restructured or modified?**

   Answer: It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.

Loan Transfer or Purchase

The transfer or purchase of a loan among regulated lenders or servicers does not constitute the making of a loan, so it does not trigger the mandatory purchase requirement.

It is the lending regulators' position that deeming a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and purchaser of loans sold in the secondary market. As a condition of purchase, a loan purchaser may require the seller to determine whether the building securing the loan is in a high flood risk area, also known as a Special Flood Hazard Area (SFHA). The practice of requiring a seller to make a representation as to compliance with the mandatory purchase requirements also provides additional protection to a loan purchaser. This representation is particularly important when the loans are in communities that have SFHAs.

However, the Government-Sponsored Enterprises (GSEs) do require flood insurance coverage on any loan located in an SFHA and transferred to or purchased by them. Both Fannie Mae and Freddie Mac require their respective sellers and servicers to be in full compliance with the flood insurance statutes. Fannie Mae's flood insurance requirements can be viewed in the Single-Family Selling/Servicing Guides and Lender Announcements available through their website at http://www.efanniemae.com.

Freddie Mac has similar requirements for lenders in Chapter 58 of the Single-Family Seller/Servicer Guide at: http://www.allregs.com/fhlmc.

Freddie Mac considers its purchase of a loan as a tripwire, while Fannie Mae's guide requires compliance with the mandatory purchase requirements at the time of loan origination. Consequently, an originator or intermediate holder of a loan will be constrained in passing on a loan that does not meet the criteria of the GSE sales guides. An entity not directly covered by the statutory requirements, such as a mortgage banker, will be indirectly required to satisfy the statutory flood insurance requirements if it or any subsequent party attempts to sell mortgage loans to Fannie Mae or Freddie Mac. An unregulated mortgage bank that extends a designated loan without flood insurance will be unable to pass that loan on to the GSE market.

In addition, although a conventional loan may be extended in a community that does not participate in the National Flood Insurance Program (NFIP), a lender may find that it cannot pass the loan on to Fannie Mae or Freddie Mac. The GSEs have restated they will not buy mortgages secured by properties in nonparticipating communities if they are located in an SFHA.

However, they will accept loans in nonparticipating communities that have not been mapped. The quality control measures instituted by the GSEs set the standard for the industry, even for transactions to private investors who are outside the GSE market. When any loan is sold and servicing is transferred to the new servicer, notice of the identity of the new servicer must be provided to the Federal Emergency Management Agency's (FEMA) designee, which is the insurance company listed on the policy.

2009 FAQ:

3. **Does a lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, from another lender trigger any requirements under the Regulation?**

   Answer: No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation, generally, are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories.

   However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Regulation.

Portfolio Review

A look-back or retroactive loan portfolio review, as well as a review made on a prospective basis, which may disclose uninsured risks, is encouraged but not required by the law. The statutory requirements contain no express or implied language that obligates a regulated lender to review its portfolio of existing loans. Under GSE criteria, a lender or servicer is required to monitor loans sold to the GSE.

The 1994 Reform Act requires lenders and servicers to develop policies and procedures to ensure that flood insurance coverage is obtained before a loan can be granted, when a determination has been made that a building securing a loan is located in an SFHA. The lender or servicer also must ensure that a policy does not lapse after it has been placed at loan origination. If the policy lapses and the borrower refuses to purchase flood insurance within 45 days of the required notice, the lender must force place coverage.

A mortgagee or servicer must require the purchase of flood insurance at any time during the term of the loan when the lender determines that the building or manufactured (mobile) home is located in an SFHA. This position is intended to ensure that buildings located in SFHAs are covered by flood insurance, regardless of whether the area is designated as an SFHA by the Administrator of FEMA before or after the loan is originated. For example, when a community or area is remapped by FEMA, buildings that were not located in an SFHA at the time the mortgage was made may later be identified to be in an SFHA. A lender is notified of remapping through publication in the *Federal Register* of map change information pertaining to an individual community, or through a compendium that lists all changes during a specific time period. FEMA offers a subscription service (for a fee) that provides information on map changes. FEMA also makes map change information available online at http://msc.fema.gov. Some flood zone determination companies provide the service of monitoring map changes that influence the status of loans.

Apart from the requirements mandated on the origination of a loan, a regulated lender need only review and take action on any part of its existing portfolio, (i.e., "look forward," for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage.) However, scheduled periodic reviews that track the need for flood insurance on loan portfolios are encouraged. The 1994 Reform Act does require lenders to check the status of security property for loans when triggered by the statutory tripwires. However, the Reform Act did not add remappings to the list of statutory tripwires. Neither the Reform Act nor the agencies' regulations require lenders to monitor for map changes.

The GSE sales guides go beyond the statutory requirements by directing lenders to continually monitor map changes and changes in community status under the NFIP.

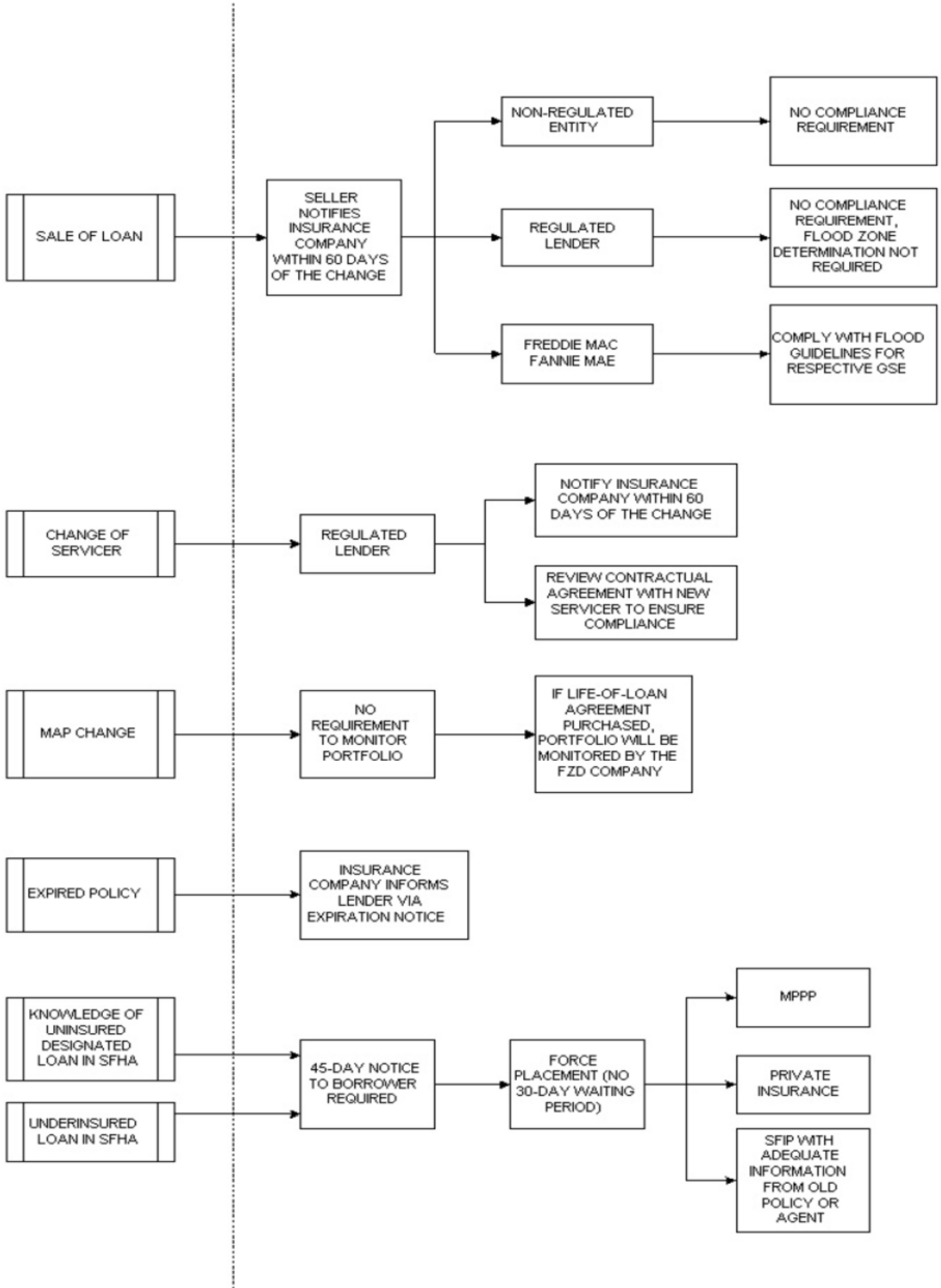
A visual illustration from the *2007 Guidelines* appears on the next page.

2009 FAQ:

7. **Is a lender required to perform a review of its, or of its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?**

   Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a regulated lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

TRIPWIRES DURING LIFE OF LOAN



Safety and Soundness

Federal lending regulators view adequate flood insurance coverage as an important factor in measuring the safety and soundness of a lending institution that extends loans in SFHAs. The existence of flood insurance is a component of prudent underwriting and protects the lender's ongoing interest in its collateral. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. The Federal regulators encourage lenders to evaluate and modify their flood insurance programs as needed to comport with both the mandatory purchase requirements and the principles of safe and sound banking that may be unique to a particular lender.

A lender's flood insurance needs vary widely depending on lending concentrations within the geographic areas it serves. For example, a high prevalence of loans in an SFHA requires particular vigilance. Institutions that are significantly exposed to the risks for which flood insurance is designed to compensate should determine the adequacy of flood insurance coverage by conducting periodic reviews, or reviews triggered by remapping of areas represented in their loan portfolio. Accordingly, a map change in a community that contains a significant number of loans in an SFHA merits a heightened analysis. The same principle applies to a regulated lender's purchase or transfer of existing loans in a community containing a special flood hazard.

In non-participating communities, lenders should have procedures in place to ensure that loans on properties in SFHAs where flood insurance is not available do not constitute a large portion of the institution's loan portfolio.

Table Funding

The regulations generally follow the Real Estate Settlement Procedures Act definition in which table funding is defined as 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. The typical table funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds, and thus is subject to the mandatory purchase requirements.

Table funding is a mechanism used in the "wholesale" mortgage lending industry for utilizing mortgage brokers in the production of mortgage loans. The brokers who originate the loans are independent contractors not subject to Federal regulatory supervision.

In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer.

The funding party provides the original funding "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. Wholesale lenders provide the funds for loan closings and acquire the resulting loans, which they sell into the secondary market. Mortgage brokers receive compensation for surrendering the servicing income stream.

Under the regulations, lenders who provide table funding to close loans originated by mortgage brokers or manufactured (mobile) home dealers, such as described above, are deemed to be making, not purchasing, loans for purposes of the mandatory flood insurance requirements. Consequently, mortgage brokers are not obligated to comply with the 1994 Reform Act in these types of transactions. However, if any mortgage brokers are involved in the processing and underwriting of the application, the lender should contractually delegate to them the responsibility to comply with the various notice, form, and purchase requirements of the Flood Disaster Protection Act of 1973, thereby eliminating any duplication of flood determinations and borrower notices.

2009 FAQ:

6. **Are table funded loans treated as new loan originations?**

   Answer: Yes. Table funding, as defined under HUD's Real Estate Settlement Procedure Act (RESPA) rule, 24 CFR 3500.2, is a settlement at which a loan is funded by a contemporaneous advance of loan funds and the assignment of the loan to the person advancing the funds. A loan made through a table funding process is treated as though the party advancing the funds has originated the loan. The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

Impact on Servicers

The 1994 Reform Act addresses the role of servicers by sanctioning NFIP-related activities conducted on behalf of regulated lenders.

A servicer, as broadly defined in the 1994 Reform Act (42 U.S.C. §4003(a)(11) and §4121(a)(11)) may be a regulated lender or a private entity assisting a lender as an independent contractor. The provisions of the 1994 Reform Act apply to all banking institutions' subsidiaries and service corporations. If a servicer is a subsidiary of a regulated lender, it is included under the purview of the 1994 Reform Act. As discussed in Section C of these guidelines, the activities that apply to servicers include escrow, force placement, and zone determination, as well as the submission and receipt of notices. A servicer is directly involved in NFIP activities as a recipient of notices such as a copy of the borrower's Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance from the lender and the expiration/renewal notice from the insurer.

The regulations that address a servicer's activities treat loan servicers as acting on behalf of regulated lending institutions. Under the regulations, loan servicers are to be held answerable for their actions to the lender by means of contract. A lender thus may fulfill its duties under the 1994 Reform Act by imposing its responsibilities on the servicer under a loan service agreement.

Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will fulfill Federal insurance requirements for escrow, force placement, flood hazard determinations, and the various notices, with conditions for recourse. The Federal regulations state that where deficiencies are found in existing loan servicing contracts, lenders should revise these agreements to provide for the loan servicer to fulfill Federal flood insurance requirements. It would also be prudent to monitor the activity of servicing agents.

The mandatory purchase provisions do not apply directly to loan originators that are not banking institutions or to servicers that are not acting on behalf of a banking institution. However, these non-bank originators and servicers must see to it that loans they sell or service for a GSE meet the requirements of the 1994 Reform Act. Non-bank (e.g., mortgage broker), nonconforming loan lenders who do not originate for GSEs do not come under the authority of the 1994 Reform Act.

2009 FAQ:

4. **How do the Agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication or participation?**

   Answer: As with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of Act or Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

   Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would all be subject to the requirements of Act or Regulation. Federal flood insurance requirements would also apply to those situations where such a group of lenders decides to extend, renew or increase a loan. Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.

Private Flood Insurance

As part of the notification procedure in making a loan, lenders must inform prospective borrowers of the availability of coverage from private insurers as well as from the NFIP. Federal regulatory entities may require gap/blanket insurance, which is not available from the NFIP, through a private insurer. However, FEMA recognizes the limited availability of flood insurance from the private insurance market. A lender must consider the suitability of private flood insurance policies only when the mandatory purchase requirement applies. If NFIP coverage is not available in a particular community, or if the risk is otherwise not eligible for NFIP coverage, e.g., in a non-participating community or a Coastal Barrier Resources Act area, private flood insurance may be an alternative. A lender has more discretion in selecting private flood coverage when NFIP coverage is not available.

When private flood coverage is being considered in lieu of an NFIP policy, a lender should understand and comply with FEMA's criteria (described below) for selection of the private insurer and the form of coverage.

A private flood insurance policy that meets all six of the FEMA criteria described below conforms to the mandatory flood insurance purchase requirements of the 1994 Reform Act. To the extent that the private policy differs from the NFIP Standard Flood Insurance Policy (SFIP), available on the FEMA website at: http://www.fema.gov/business/nfip/sfip.shtm, the differences should be carefully examined before the policy is accepted as sufficient protection under the law.

Licensure

The insurer must be licensed, admitted, or otherwise approved to do business in the jurisdiction where the building is located, by the insurance regulator of that jurisdiction, except as indicated in the paragraph. below.

Surplus Lines Recognition (Non-Residential Commercial)

In the case of non-residential commercial property insurance issued under a policy of difference in conditions, multiple perils, all risk, or other blanket coverage, the insurer should be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the jurisdiction where the building is located.

Requirement of 45-Day Cancellation/Non-Renewal Notice

The private flood insurance policy should include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. The policy should also state that, to be effective, such notice must be mailed to both the insured and the lender or Federal agency lender, and must include information about the availability of flood insurance coverage under the NFIP. The policy should be as restrictive in its cancellation provisions as the SFIP.

Breadth of Policy Coverage

The policy must guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least as broad as the coverage under the SFIP.

2009 FAQ:

63. May a lender rely on a private insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance?

Answer: It depends. A private insurance policy may be an adequate substitute for NFIP insurance if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines*. Similarly, a private insurance policy may be used to supplement NFIP insurance for designated loans where the property is underinsured if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines*. FEMA states that, to the extent that a private policy differs from the NFIP Standard Flood Insurance Policy, the differences should be carefully examined before the policy is accepted as sufficient protection under the law. FEMA also states that the suitability of private policies need only be considered when the mandatory purchase requirement applies.

64. When may a lender rely on a private insurance policy that does not meet the criteria set forth by FEMA?

Answer: A lender may rely on a private insurance policy that does not meet the criteria set forth by FEMA only in limited circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies that do not meet the criteria set forth by FEMA, such as private insurance policies providing portfolio wide blanket coverage, may be useful protection for the lender for a gap in coverage in the period of time before a force placed policy takes effect. However, the lender must still force place adequate coverage in a timely manner, as required, and may not rely on a private insurance policy that does not meet the criteria set forth by FEMA on an ongoing basis.

Strength of Mortgage Interest Clause

Lenders must ensure that a mortgage interest clause similar to that contained in the General Conditions section of the SFIP is contained in the policy.

Legal Recourse

The policy must contain a provision that the insured must file suit within 1 year after the date of written denial of all or part of the claim.

Section 16: Flood Insurance Escrow Requirement

Introduction

The Agencies now require a regulated lending institution, or a servicer acting on behalf of a regulated lending institution, to escrow all premiums and fees for required flood insurance, unless the loan or the lending institution qualifies for one of the statutory exceptions. The Agencies adopted a final rule (quoted below) that will implement the escrow requirement of the FDPA, as amended.

The escrow requirement applies to any loan secured by residential improved real estate or a mobile home that hits a MIRE on or after January 1, 2016. Any loan which experiences a triggering event (MIRE) on or after that date will be subject to these requirements. Therefore, it is possible that some loans which are not subject to a flood insurance escrow may become subject to an escrow after January 1, 2016. A map change is not a triggering event. Therefore, lenders would not be required to escrow flood insurance premiums and fees based solely on that change.

Loan-Related Exceptions

There are several exceptions to the general escrow requirement. These exceptions include:

- loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided;
- 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;
- loans that are secured by residential improved real estate or a mobile home that is used as collateral for a business purpose;
- home equity lines of credit;
- nonperforming loans; and
- loans with terms not longer than 12 months.

These exceptions are in addition to the small lender exception applicable to banks that have total assets of less than $1 billion.

There is no duty for a bank or servicer 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, 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.

The law excepts 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:

- meets the mandatory flood insurance purchase requirement;
- is provided by the condominium association, cooperative, homeowners association or other applicable group; and
- the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense.

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 regulated lending institution must escrow the premiums and fees for the supplemental policy unless the small lender exception applies.

There is also a statutory exception from the escrow requirement for home equity lines of credit (HELOCs).

The underlying law also includes an exception from the escrow requirement for nonperforming loans (90 days past due). The Agencies believe further clarification is required regarding this exception. The Agencies adopted language that is adapted from the FCA's regulations on categorizing assets 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 is for a loan that has a term of not to exceed 12 months. 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.

If a bank, 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 experiences a MIRE on or after January 1, 2016, that an exception does not apply, then the lender or its servicer must require the escrow of all flood insurance premiums and fees as soon as reasonably practicable. If the loan is subject to RESPA, all pertinent RESPA rules and disclosures will apply.

Small Lender Exception

In addition to the exceptions to the escrow requirement discussed above, the statutes contain an exception for certain small lenders. The FDPA, as amended, states that, except as provided by State law, banks that have total assets of less than $1 billion are excepted from the escrow requirement if, on or before July 6, 2012, the institution:

- 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

- 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 Biggert-Waters does not specify a point in time to measure the asset size of an institution to determine whether it 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. There is no current statutory authority to adjust the asset size for inflation.

When a bank exceeds the $1 billion asset-size threshold, the bank will have six months to make all appropriate changes for its new status. A bank 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.

Based on the Agencies' regulation, a regulated lending institution could technically reclaim small lender status. 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.

Notice

A bank, or a servicer acting on its behalf, must 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. The purpose of the notice ensures that borrowers are informed about the requirement to escrow premiums and fees for mandatory flood insurance.

This notice is included in the 2016 and following version of the Notice of Special Flood Hazards. This would help minimize the burden to banks providing this notice and ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance. A bank or its servicer must require the escrow of all flood insurance premiums and fees if the lender, or a servicer 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.

Option to Escrow

HFIAA requires banks 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 January 1, 2016. The initial distribution of this notice must be completed by June 30, 2016.

The option to escrow does not apply to loans or lenders that are exempted from the general escrow requirement. If a loan already includes flood escrow, there would be no need for a notice to these customers.

Banks that no longer qualify for the small lender exception must 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.

To facilitate compliance, the Agencies proposed a model clause for this notice in Appendix B. Appendix B is located at the end of this section.

FDIC Regulatory Text Concerning Escrow Requirements

§ 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.

(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.

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]