

Background and Summary

The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA).¹ The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. The NFIP is administered by a department of the Federal Emergency Management Agency (FEMA), the Federal Insurance Administration (FIA). The FDPA requires federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in a SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994² which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised the Federal flood insurance statutes. The purpose of the Reform Act is to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.³ The Reform Act required the federal financial regulatory agencies⁴ to revise their current flood insurance regulations and brought the Farm Credit Administration (FCA) under coverage of the Act. These agencies issued a joint final rule (final rule) on August 29, 1996, (61 FR 45684).

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

Objectives of the FDPA:

- Identifying communities with SFHAS.
- Issuing flood boundary and flood rate maps for flood-prone areas.
- Making flood insurance available through the NFIP "Write Your Own" Program (WYO) which enables the public to purchase NFIP coverage from private companies that have entered into agreements with FIA.
- Assisting communities in adopting flood plain management requirements.

- Administering the insurance program. Licensed property and casualty insurance agents and brokers provide the primary connection between the NFIP and the insured party. Licensed agents sell flood insurance, complete the insured party's application form, report claims and follow-up with the insured for renewals of the policies.

National Flood Insurance Program - The NFIP has two distinct phases, the Emergency Program and the Regular Program.

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

Eligible Structures for Flood Insurance

The NFIP covers improved real property or mobile homes located or to be located in an area identified by FEMA as having special flood hazards. Generally each insurable structure requires a separate insurance policy, although FEMA does provide special consideration for some nonresidential buildings. The following types of structures are eligible for coverage:

- Residential, industrial, commercial, and agricultural buildings that are walled and roofed structures that are principally above ground.
- Buildings under construction where a development loan is made to construct insurable improvements on the land. Insurance can be purchased to keep pace with the new construction.
- Mobile homes that are affixed to a permanent site, including mobile homes that are part of a dealer's inventory and affixed to permanent foundations.
- Condominiums.
- Co-operative buildings.
- Flood insurance coverage is also available for personal property and other insurable contents contained in real property or mobile homes located in SFHAS. The property must be insured in order for the contents to be eligible.

Structures not eligible for flood insurance under the NFIP

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

Flood Insurance Requirements for Lending Institutions

Basic Requirement

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

- The institution makes, increases, extends, or renews any loan(s) (commercial or consumer) secured by improved real estate or a mobile home that is affixed to a permanent foundation ("security property");
- The property securing the loan is located or will be located in an SFHA as identified by FEMA; and
- The community participates in the NFIEP.

In the case of mobile homes, the criteria for coverage turns on whether the mobile home is affixed to a permanent foundation. An institution does not have to obtain a security interest in the underlying real estate in order for the loan to be covered by the final rule.

Institutions are not prohibited from making, increasing, extending, or renewing a *conventional* loan if the community in which the security property is located has been mapped by FEMA but does not participate in the NFIP. However, federal flood insurance is not available in these communities. In addition, it should be noted that government guaranteed or insured loans (secured or unsecured) cannot be made if the community has been mapped by FEMA and does not participate in the NFIP.

Flood insurance requirements apply to loans where a security interest in improved real property is only taken "out of an abundance of caution." Section 102(b)(1) of the FDPA, as amended by the Reform Act,² provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in a special flood hazard area

unless the improved real property is covered by the minimum amount of flood insurance required by statute.

Special Situation - Table Funded Loans

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

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

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

Exemptions to the Purchase Requirement

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

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

Waiting Period

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

- When there is an existing policy and an additional amount of insurance is required in connection with the making, increasing, extension, or renewal of a loan, such as a second mortgage, home equity, or refinancing,
- When an additional amount of insurance is required as a result of a map revision,
- When an additional amount of insurance is being obtained in connection with the renewal of an existing policy, and
- When flood insurance is required as a result of a lender determining that a loan which does not have flood insurance coverage should be protected by insurance (forced placement).

Special Situations - Second Mortgages/Home Equity Loans

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

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

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

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan since the borrower will be drawing down differing amounts on the line at different times. In those instances where there is no policy on the collateral the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. As a matter of administrative convenience to ensure compliance with the requirements, an institution may take the following alternative approaches:

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

Special Situations - Condominium Policies

Effective October 1, 1994, FEMA issued a new condominium master policy called a Residential Condominium Building Association Policy (RCBAP). If the amount of the policy is 80% or more of the replacement value of the building, no co-insurance deductible is required by the policy. An institution can rely on a RCBAP as the required amount of flood insurance to support

the loan if the policy meets the 80% requirement.

The amount of possible coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units. For instance, the maximum amount of coverage on a 50 unit condominium building would be \$12,500,000 (\$250,000 x 50). If the replacement value of the building was \$10,000,000, the condominium association could purchase a policy of \$8,000,000 (or more) and not be required to have a coinsurance payment in the event of a flood. This amount of insurance would meet the requirements of the final rule for any individual unit insurance requirement in the condominium.

Other Special Situations

- *Multiple Structures* Multiple structures that secure a loan located in an SFHA generally must each be covered by flood insurance, even though the value of one structure may be sufficient to cover the loan amount. FEMA does permit borrowers to insure nonresidential buildings using one policy with a schedule separately listing each building. Loans secured by agricultural properties and improvements may be particularly assisted through this practice.

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

Escrow Requirements

An institution must require the escrow of flood insurance premiums for loans secured by "residential improved real estate" if it requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for hazard or fire insurance, or any other fees. Depending on the type of loan, the escrow account for flood insurance premiums may be subject to section 10 of RESPA, 12 U.S.C. 2609,⁶ which generally limits the amount that may be maintained in escrow accounts for consumer mortgage loans, and requires notices containing escrow account statements for those accounts. RESPA escrow requirements apply to "federally related mortgage loans", a category of loans that is narrower in scope than the Reform Act's "residential improved real estate." Therefore, escrow accounts established for federally related mortgage loans must comply with the requirements of section 10 of RESPA. However, an escrow account for "residential improved real estate" that is not also a "federally related mortgage loan" need not comply with section 10 of RESPA, even though the escrow requirements of the Reform Act apply.

The escrow provisions are designed to improve compliance with flood insurance requirements by ensuring that homeowners located in special flood hazard areas obtain and maintain flood insurance for the life of the loan. However, the Reform Act itself does not restrict the flood insurance escrow requirement to consumer mortgage loans. The determinative factor in the coverage of the escrow requirement is not the purpose of the loan, but the purpose of the building -- whether it is used primarily for residential purposes or for other purposes. Because the Reform Act defines "residential improved real estate" as "improved real estate for which the improvement is a residential building", the escrow provisions cover, for example, multi-family

properties containing five or more residential units.

Special situation involving condominium units

In the case of a condominium unit where the association has purchased an RCBAP that meets the 80% requirement of FEMA, the payments made by the borrower to the condominium association for the policy will constitute compliance with the requirements of the final rule for the escrow provisions.

Types of escrow accounts covered

The escrow requirement does not apply if the institution does not require other escrows to be maintained. An escrow arrangement is generally considered voluntary if the policies of the institution do not require the establishment of an escrow account in connection with the particular type of loan, even if permitted by the loan documents. In determining whether an escrow account arrangement is voluntary, it is appropriate to look to the loan policies and practices of the institution, and the contractual agreement underlying the loan. If the loan documentation permits the institution to require an escrow account, and its loan policies normally would require an escrow account for a loan with particular characteristics, an escrow account in connection with such a loan generally would not be considered to be voluntary.

In the preamble to their final rule, the agencies noted that HUD takes the position that voluntary payments for credit life insurance do not constitute escrows for purposes of RESPA.² Therefore, the agencies have also determined that payments for credit life insurance and similar types of contracts should not trigger the escrow of flood insurance premiums.

Standard Flood Hazard Determination Form

When an institution makes, increases, extends, or renews any loan secured by improved real estate or by a mobile home, it must use the standard flood hazard determination form (SFHDF) developed by FEMA³ to determine whether the building or mobile home offered as security property is or will be located in an SFHA in which flood insurance is available under the Act.

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

Decisions as to the applicability of flood insurance may not be based on an institution's unilateral determination of elevations at which floods may occur. Official elevation determinations and, therefore, map revisions or amendments (LOMAs or LOMRS) may only be performed by FEMA.

Flood maps and Standard Flood Hazard Determination forms may be obtained from FEMA by writing to:

Federal Emergency Management Agency
Flood Map Distribution Center
6930 (A-F) San Tomas Road
Baltimore, MD 21227-6227
or calling: 1-800-358-9616 or 1-800-611-6125

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

Reliance on prior determination

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

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

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

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

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

Forced Placement Requirements

The Reform Act does not require an institution to monitor for map changes, and the final rule does not require that determinations be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan the institution or its servicer determines that required flood insurance is deficient, the final rule requires initiation of forced placement procedures.

The Reform Act imposed the requirement on an institution or a servicer acting on its behalf to purchase or "force place" flood insurance for the borrower if the institution or the servicer

determines that coverage is lacking. The final rule, therefore, provides that an institution, or servicer acting on its behalf, upon discovering that security property is not covered by an adequate amount of flood insurance, must, after providing notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, purchase flood insurance in the appropriate amount on the borrower's behalf.

An institution or its servicer continues to be responsible for ensuring that where flood insurance was required at origination, the borrower renews the flood insurance policy and continues to renew it for as long as flood insurance is required for the security property. If a borrower allows a policy to lapse when insurance is required the institution or its servicer is required to commence force placement procedures.⁹

Forced placement should not be necessary at the time an institution makes, increases, extends, or renews a loan, when it is obligated to require that flood insurance be in place prior to closing. Rather, forced placement authority is designed to be used if, over the term of the loan, the institution or its servicer determines that flood insurance coverage on the security property is deficient; that is, whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum stipulated by statute for the particular category of structure securing the loan. The amount that must be force placed is equal to the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit.

There is no required specific form of notice to borrowers for use in connection with the forced placement procedures. An institution or its servicer may choose to send the notice directly or may use the insurance company that issues the forced placement policy to send the notice. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. For information concerning the contents of the notification letters used under the MPPP, lenders and others should consult FEMA's MPPP Notice.¹⁰

Determination Fees

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

- The borrower initiates a transaction (making, increasing, extending, or renewing a loan) that triggers a flood hazard determination;
- There is a revision or updating of floodplain areas or risk zones by FEMA;
- The determination is due to FEMA's publication of a notice that affects the area in which the loan is located; or
- The determination results in the purchase of flood insurance under the forced placement provision.

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

Truth in Lending Act Issues

The Official Staff Commentary to Regulation Z states that a fee for services that will be performed periodically during the loan term is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. This would include the fee for life-of-loan coverage. The fee for the determinations of whether a security property is in a SFHA is excluded from the finance charge. The Commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge.⁴ If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Notice Requirements

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

- A warning that the building or mobile home is or will be located in a SFHA.
- A description of the flood purchase requirements contained in 102(b) of the FDPA, as amended.
- A statement whether flood insurance coverage is available under the NFIP and may also be available from private insurers.
- A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a Federally declared disaster.

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

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

assurances that the developer/seller has given the required notice. The same may be true for a cooperative conversion, where the sponsor of the conversion may be providing the required notice to the purchasers of the cooperative shares. A purchaser of shares in a cooperative may be considered to be a "lessee" rather than a purchaser with respect to the underlying real property.

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

- The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and
- Where applicable, the borrower can purchase flood insurance before completion of the loan transaction.

The preamble to the final rule states that the agencies generally continue to regard ten days as a "reasonable" time interval.

Notice to Servicer

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

Notice to Director of FEMA

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

Record keeping Requirements

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

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

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

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

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

Penalties and Liabilities

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

- Escrow requirements;
- Notice requirements; and
- Forced placement requirements.

If an institution is found to have a pattern or practice of committing violations, the agencies shall assess civil penalties in an amount not to exceed \$350 per violation with a total amount against any one regulated institution not to exceed \$100,000 in any calendar year. Any penalty assessed will be paid into the National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent purchaser of a loan. Liability for penalties expires four years from the time of the occurrence of the violation.

FEMA administers the National Flood Insurance Program through the Federal Insurance Administration located at:

Federal Emergency Management Agency
Federal Insurance Administration
500 C Street, S.W.
Washington, DC 20472

Federal Emergency Management Regional Offices:

Region I

(CT, MA, ME, NH, RI, VT)
442 J.W. McCormack Post Office
and Court House Building
Room 462
Boston, Massachusetts 02109-4595
(617) 223-9540

Region II

(NJ, NY)
26 Federal Plaza, Room 1338
New York, New York 10278-0002
9212) 225-7209

Caribbean Area Office

(Puerto Rico, Virgin Islands)
P.O. Box 70105
San Juan, PR 00936
(809) 729-7624

Region III

(DC, DE, MD, PA, VA, WV)
Liberty Square Building
Second Floor
105 South Seventh Street
Philadelphia, Pennsylvania 19106-3316
(215) 931-5500

Region IV

(AL, FL, GA, KY, MS, NC, SC, TN)
1371 Peachtree Street, N.E.

Region VI

(AR, LA, NM, OK, TX)
Federal Regional Center
800 North Loop 288, Room 206
Denton, Texas 76201-3698
(817) 898-5104

Region VII

(IA, KS, MO, NE)
911 Walnut Street
Room 200
Kansas City, Missouri 64106-2085
(816) 283-7061

Region VIII

(CO, MT, ND, SD, UT, WY)
Denver Federal Center
Building 710A
P.O. Box 25267
Denver, Colorado 80225-0267
(303) 235-4800

Region IX

(AZ, CA, Guam, HI, NV)
Presidio of San Francisco
Building 105
San Francisco, California 94129-1250
(415) 923-7100

Region X

(AK, ID, OR, WA)
Federal Regional Center

Suite 700
Atlanta, Georgia 30309-3108
(404) 853-4200

130 228th Street, S.W.
Bothell, Washington 98021-9796
(206) 481-8800

Region V
(IL, IN, MI, MN, OH, WI)
175 West Jackson Boulevard
Fourth Floor
Chicago, Illinois 60604-2698
(312) 408-5500

NFIP offices are field offices of the Federal insurance Administration's servicing contractor for the National Flood Insurance Program. Although they do not coincide with the areas served by FEMA regional offices, NFIP offices supplement the work of the regional offices.

National Flood Insurance Program Bureau and Statistical Agent Regional Offices:

Region I
(CT, MA, ME, NH, RI, VT)
140 Wood Road
Suite 200
Braintree, Massachusetts 02184
(617) 848-1908

Region VI
(AR, LA, NM, OK, TX)
11931 Wickchester Road
Suite 304
Houston, Texas 77043
(713) 531-5990

Region II
(NJ, NY)
33 Wood Avenue, South
Suite 600 Iselin, New Jersey 08830
(908) 603-3875

Region VII
(IA, KS, MO, NE)
The Courtyards
601 N. Mur-Len
Suite 13-B
Olathe, Kansas 66062
(913) 780-4238

Caribbean Area Office
(Puerto Rico, Virgin Islands)
1407 J.T. Pinero
Capporra Terrace, PR 00921
(809) 782-2733

Region VIII
(CO, MT, ND, SD, UT, WY)
One Monaco Park
6795 E. Tennessee Avenue
Suite 165
Denver, Colorado 80224
(303) 393-1698

Region III
(DC, DE, MD, PA, VA, WV)

Region IX
(AZ, CA, Guam, HI, NV)

1930 East Marlton Pike
Suite T-3
Cherry Hill, NJ 08003
(609) 489-4003

Region IV
(AL, FL, GA, KY, MS, NC, SC, TN)
1532 Dunwoody Village Parkway
Suite 200, Offices B & C
Dunwoody, Georgia 30338
(404) 396-9117

Region V
(IL, IN, MI, MN, OH, WI)
2443 Warrenville Road
Suite 600, Offices 612 & 613
Lisle, Illinois 60532
(708) 955-4550

100 Smith Ranch Road
Suite 301
San Rafael, California 94903
(415) 492-2815

Region X
(AK, ID, OR, WA)
1611 116th Avenue
Suite 116
Bellevue, Washington 98004
(206) 646-4908

FDPA Examination Objectives & Procedures

Objectives

1. To determine whether an institution performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the final rule.
2. To determine if the institution requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located or to be located in a SFHA.
3. To determine if the institution provides the required notices to the borrower, servicer and to the Director of FEMA whenever flood insurance is required as a condition of the loan.
4. To determine if the institution requires flood insurance premiums to be escrowed when flood insurance is required on a residential building and other items are required to be escrowed.
5. To determine if the institution complies with the forced placement provisions if at any time during the term of a loan it determines that flood

insurance on the loan is not sufficient to meet the requirements of the regulation.

6. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

Procedures

The following procedures should be performed, as appropriate:

- By reviewing previous examinations and supervisory correspondence;
- By obtaining and reviewing the institution's policies, procedures and other pertinent information;
- By reviewing the institution's system of internal controls;
- Through discussions with management; and
- By reviewing a sample of loan files.

Coverage and Internal Control

1. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in a special flood hazard area.
2. Verify that the process used accurately identifies special flood hazard areas.
3. For those special flood hazard areas identified, determine if the communities in which they are located participate in the National Flood Insurance Program (NFIP).
4. If the institution provides "table fending" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
5. If the institution purchases servicing rights, review the contractual obligations placed on the institution as servicer by the owner of the loans to ascertain if flood insurance requirements are identified and compliance responsibilities are adequately addressed.
6. If the institution utilizes a third party to service loans, review the contractual obligations between the parties to ascertain that flood

insurance requirements are identified and compliance responsibilities are adequately addressed.

Property Determination Requirements

1. Verify that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF).
2. Verify that the institution only relies on a previous determination if it is not more than seven years old, is recorded on the SFHDF and that it is not in a community that has been remapped.
3. If the institution utilizes a third party to prepare flood zone determinations, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately covered, including the extent of the third party's guarantee of work and the procedures in place to resolve disputes relating to determinations.
4. Verify that the institution retains a copy of the completed SFHDF, in either hard copy or electronic form, for as long as it owns the loan.

Purchase Requirements

1. For loans that require flood insurance, determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan.
2. If the institution makes loans insured or guaranteed by a government agency (SBA, VA or FHA) determine how it complies with the requirement not to make these loans if the security property is in a SFHA within a non-participating community.

Determination Fee Requirements

1. Determine that any fees charged to the borrower by the institution for flood zone determinations (absent some other authority such as contract language) are charged only when a loan:
 - Is made, increased, renewed or extended;
 - Is made in response to a remapping by FEMA; or
 - Results in the purchase of flood insurance under the forced placement provisions.

2. If other authority permits the institution to charge fees for determinations in situations other than the ones listed above, determine if the institution is consistent in this practice.
3. Determine the reasonableness of any fees charged to a borrower for flood determinations by evaluating the method used by the institution to determine the amount of the charge. Consider, for example, the relationship of the fees charged to the cost of services provided.

Notice Requirements

1. Ascertain that written notice is mailed or delivered to the borrower within a reasonable time prior to loan closing.
2. Verify that the notice contains:
 - A warning that the property securing the loan is or will be located in a SFHA;
 - A description of the flood insurance purchase requirements;
 - A statement, where applicable, that flood insurance coverage is available under the NFI,P and may also be available from private insurers, if applicable; and
 - A statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a federally declared disaster, if applicable.
3. If the seller or lessor provided the notice to the purchaser or lessee, verify that the institution obtained satisfactory written assurance that the notice was provided within a reasonable time before the completion of the sale or lease transaction.
4. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
5. If applicable, verify that the institution provided written notice to the servicer of the loan within the prescribed time frames and that the institution retains a record of receipt of the notice for as long as it owns the loan.
6. If the institution transfers servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (Director of FEMA's designee) within prescribed time frames.

Escrow Requirements

1. If the institution's policies or loan documents require the escrow of funds to cover charges such as taxes, premiums for hazard insurance or other fees, verify that the institution requires the escrow of funds for loans secured by residential improved real estate to cover premiums and other charges associated with flood insurance.
2. For loans closed after October 1, 1996, where flood insurance is required and where the loan is subject to RESPA, verify that the institution's escrow procedures comply with Section 10 of RESPA.

Forced Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that it has appropriate policies and procedures in place to exercise its forced placement authority.
2. If the institution is required to force place insurance, verify:
 - That it provides written notice to the borrower that flood insurance is required, and
 - That if the required insurance is not purchased by the borrower within 45 days from the time that the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf.

FDPA

Examination Checklist

The following questions are designed to be used in conjunction with the Examination Procedures to guide the examiner in a comprehensive review of the requirements of the regulation as it is applied to depository institutions.

Coverage

1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in the regulation? If yes, complete the remainder of this checklist.
2. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, does it have procedures to ensure that the requirements of the regulation are followed?

3. If the institution purchases servicing rights to loans covered by the regulation, do the documents between the parties specify the contractual obligations on the institution with respect to flood insurance compliance?
4. If the institution utilizes third parties to service loans covered by the regulation, do the contractual documents between the parties meet the requirements of the regulation?

Property Determination

1. If the institution utilizes a third-party to prepare flood zone determinations, do the contractual documents between the parties:
 - Provide for the third-party's guarantee of work?
 - Contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance, and to address which party will be responsible for penalties incurred for noncompliance?
2. Are the determinations prepared on the Standard Flood Hazard Determination Form developed and authorized by FEMA?
 - If the form is maintained in an electronic format does it contain the elements required by FEMA?
3. Does the institution maintain a record of the Form either in hard copy or electronic form for as long as it owns the loan?
4. Does the institution rely on a prior determination only if it is made on the SFHDF, is no more than seven years old and the community has not been remapped?

Determination Fees

1. Absent some other authority (such as contract language) does the institution charge a fee to the borrower for a flood determination only when:
 - It is made when a loan is made, increased, renewed or extended, or
 - It is made in response to a remapping by FEMA, or
 - It results in the purchase of flood insurance under the forced placement provisions?
2. If the institution has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently?

3. If the institution requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower:
 - Does it either break out the original determination charge from the charge for life-of-loan monitoring or include the full amount of the charge as a finance charge for those loans subject to TUA?
4. Are the fees charged by the institution for making a flood determination reasonable?

Notice Requirements

1. Are borrowers whose security property is located in a Special Flood Hazard Area (SFHA) provided written notice within a reasonable time prior to loan closing?
2. Does the notice contain the following required information?
 - A warning that the building or mobile home is located in a SFHA;
 - A description of the flood insurance requirements;
 - A statement that flood insurance is available under the NFIP and is also available from private insurers; and
 - A statement whether federal disaster relief assistance may be available in the event of damage to a building or mobile home caused by flooding in a Federally-declared disaster.
3. If the institution uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor?
4. Does the institution provide a copy of the borrower notification to the servicer of the loan within the required time frames?
5. Does the institution retain a record of receipt of the notifications provided to the borrower and the servicer for as long as it owns the loan?

Insurance Requirements

1. If an improved property or mobile home is located in a SFHA and flood insurance is required, does the institution have the borrower obtain a policy, with the institution as loss payee, in the correct amount prior to closing?
2. Where multiple properties securing the loan are located in SFHAS, does the institution have sufficient insurance either through a single policy with

a scheduled list of several buildings or multiple policies, to meet the minimum requirements of the regulation? (See narrative for description of minimum requirements)

Escrow Requirements

1. Does the institution have policies requiring escrows for property taxes, hazard insurance or other fees on residential buildings?
 - If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
2. If the institution has no specific policies regarding escrows do its loan documents permit the institution to escrow for the above items?
 - If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
3. On loans closed on or after October 1, 1996, that are subject to RESPA and where flood insurance is required, does the institution comply with the provisions of §10 of RESPA (Section 3500.17 of Regulation X) for those escrows?

Forced Placement Requirements

1. If at any time during the life of the loan, the institution determines that property securing a designated loan lacks adequate flood insurance coverage:
 - Does the institution provide written notice to the borrower stating that the necessary coverage must be obtained within 45 days of the notice or the institution will purchase it on the borrower's behalf?
 - Does the institution purchase the coverage on the borrower's behalf if the borrower does not obtain the required policy within the required time period?

Notice to Director of FEMA

1. Does the institution provide the appropriate notice to the carrier of the insurance policy (the Director of FEMA's designee) regarding the identity of the servicer of a designated loan?
2. If the institution sells or transfers the servicing of designated loans to another party, does it have procedures in place to provide the appropriate notice to the Director's designee within 60 days of the effective date of the transfer of the servicing?

Examiner Comments and Observations:

Footnotes

[Footnote 1](#)

These statutes are codified at 42 U.S.C. 4001-4129. FEMA administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

[Footnote 2](#)

Pub. L. 103-325, tit. V, 108 Stat. 2160, 225-87 (September 23, 1994).

[Footnote 3](#)

H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 195 (1994) (Conference Report).

[Footnote 4](#)

The agencies are the OCC, FDIC, OTS, NCUA and Federal Reserve.

[Footnote 5](#)

See 42 U.S.C. 4012a(b)(1).

[Footnote 6](#) The regulations of the Department of Housing and Urban Development (HUD) implementing section 10 appear at 24 CFR 3500.17 (1995); see also 60 FR 8812 (Feb. 15, 1995), 60 FR 24734 (May 9, 1995), 61 FR 13232 (Mar. 26, 1996) and 61 FR 29238 (June 7, 1996) (revising 3500.17).

[Footnote 7](#)

See 60 FR 24733 (May 9, 1995) (revising 24 CFR 3500.17).

[Footnote 8](#)

See 60 FR 35276 (July 6, 1995) (codified at 44 CFR 65.16 and part 65, app. A).

[Footnote 9](#)

The insurance carrier should notify the institution or its servicer, along with the borrower, when the insurance contract is due for renewal. The insurance carrier also notifies these parties if it has not received the policy renewal.

Footnote 10

10 Notice by FEMA, 60 FR 44881 (August 29, 1995).

Footnote 11

See 12 CFR part 226, supplement 1, comment 4(c)(7)-3.