

Regulation H

Flood Insurance

Background

The Board's Regulation H (Membership of State Banking Institutions in the Federal Reserve System) implements the flood insurance provisions of the National Flood Insurance Act of 1968 for state member banks. This legislation made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in a special flood hazard area if their community participates in the National Flood Insurance Program. The Flood Disaster Protection Act of 1973 directed the Board and other federal financial regulatory agencies to adopt rules requiring regulated lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan if the property was located in, or was to be located in, a special flood hazard area in a participating community.¹

The National Flood Insurance Reform Act of 1994 (Reform Act; Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the federal flood insurance statutes.² The reforms were aimed at increasing compliance with flood insurance requirements, increasing participation in the National Flood Insurance Program (and thereby providing additional income to the National Flood Insurance Fund), and decreasing the financial burden of flooding on the federal government, taxpayers, and flood victims.³

The Reform Act required the federal financial regulatory agencies to revise their existing flood insurance regulations and brought the Farm Credit Administration under the act. Because none of the flood-related laws provide rule-writing authority solely to one financial regulator, in August 1996 the agencies jointly issued a final rule (61 FR 45684) that incorporated the changes to the agencies' flood regulations.

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, the Federal

Housing Administration, and the Department of Veterans Affairs.

The objectives of the Flood Disaster Protection Act (FDPA) include

- Providing flood insurance to owners of improved real estate located in special flood hazard areas (SFHAs) of communities participating in the National Flood Insurance Program (NFIP)
- Requiring communities to enact measures designed to reduce or avoid future flood losses as a condition for making federally subsidized flood insurance available
- Requiring federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located, or to be located, in an SFHA of a community participating in the NFIP unless the property securing the loan is covered by flood insurance
- Prohibiting federal agencies, such as the Federal Housing Administration, the Small Business Administration, and the Department of Veterans Affairs, from subsidizing, insuring, or guaranteeing any loan if the property securing the loan is in an SFHA of a community not participating in the NFIP

The National Flood Insurance Program is administered by the Federal Emergency Management Agency (FEMA).⁴ Its responsibilities include

- 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, which enables the public to purchase NFIP coverage from private companies that have entered into agreements with the Federal Insurance Administration
- Assisting communities in adopting floodplain-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.)

1. The two acts are codified at 42 USC 4001–4129. The regulatory agencies are the OCC, FDIC, OTS, NCUA, and the Federal Reserve.

2. Pub. L. 103-325, tit. V, 108 Stat. 2160, 2255–87 (September 23, 1994).

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

4. FEMA regulations implementing the NFIP appear at 44 CFR 59–77.

Requirements for Lending Institutions

Basic Requirements

A lending institution must require flood insurance for the term of a loan when all three of the following factors are present:

- The institution makes, increases, extends, or renews a loan (commercial or consumer) secured by improved real estate or a mobile home that is affixed to a permanent foundation,
- The loan is secured by property located in a special flood hazard area as identified by FEMA, and
- The community participates in the NFIP. (Information on whether a community participates in the NFIP can be obtained from FEMA's web site, www.fema.gov.)

In the case of mobile homes, the criteria for coverage relate to 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.

Institutions are not prohibited from making, increasing, extending, or renewing a conventional loan in an SFHA 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. Moreover, institutions may not make government-guaranteed or government-insured loans if the community has been mapped by FEMA and does not participate in the NFIP.

Flood insurance requirements also apply to loans where a security interest in improved real property is taken only "out of an abundance of caution." Section 102(b)(1) of the FDPA, as amended by the Reform Act, provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute.⁵

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 a loan purchase.

A typical table-funded transaction should be considered a loan that is 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 are considered to be "making" a loan for purposes of the flood insurance requirements.

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

Exemptions from the Purchase Requirement

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

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the director of FEMA (The director will periodically publish a list of state property falling within this exemption.)
- Loans having (1) an original principal balance of \$5,000 or less and (2) an original repayment term of one year or less

A lending institution may not exempt a loan from flood coverage on the basis of its own interpretation of the elevations at which floods may occur. Only FEMA has the authority to revise or amend flood maps and to make flood-level determinations that exempt a loan from the required purchase of flood insurance. As part of its duties, FEMA provides official elevation determinations, makes map revisions or amendments, and issues formal Letters of Map Amendments (LOMAs) and Letters of Map Revisions (LOMRs).

Amount of Flood Insurance Required

The amount of flood insurance required must be at least equal to the lesser of (1) the outstanding principal balance of the loan, (2) the maximum amount available under the NFIP, or (3) the total

5. See 42 USC 4012a(b)(1).

value of the secured property (land and improvements) minus the total value of the land.

Flood insurance is not available, and thus is not required, for the value of any land that serves as security for a loan. As a result, when determining the amount of flood insurance required, an institution should deduct the value of the land from the total value of the secured property (land plus improved real property or mobile home) to estimate an amount for flood coverage. Unless a structure (improved real property or mobile home) located on the land is specifically excluded from serving as security for the loan, flood insurance should be required on all insurable structures located on the secured property, including cases in which the value of the land alone would more than adequately cover the loan amount. In such cases, the lender does not have the option of exempting the borrower from the flood insurance purchase requirements for insurable structures located on the secured property.

Since March 1995, the maximum amounts of coverage for flood policies have been

- \$250,000 for residential property structures and \$100,000 for contents
- \$500,000 for nonresidential structures and \$500,000 for contents

Waiting Period

Flood insurance policies that are not issued in conjunction with a loan origination, refinance, modification, or forced placement have a thirty-day waiting period. The congressional intent behind this waiting period was to prevent the purchase of flood insurance (and any direct loss to the U.S. government, which backs the insurance) in times of imminent loss.

There is no waiting period for policies issued in conjunction with a loan to purchase, refinance, or modify an existing mortgage. Nor is there a waiting period for second mortgages, home equity loans, “forced placements” (see later section), or recommendations by the insurer to increase insurance amounts at renewal.⁶

Initial purchases of flood insurance made in connection with a map revision or an update to floodplain areas of flood zones are also exempted from a waiting period. In these cases, however, the flood insurance purchase must occur within one year of FEMA’s publication of the notice of map revision or updating.

6. FEMA Policy Issuance 5-98, effective October 1, 1998.

Special Situations—Second Mortgages and Home Equity Loans

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

- To inform the agent of the intention to obtain a loan involving a subordinate lien
- To obtain verification of the existence of a flood insurance policy
- 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 identifies the institution as a lien holder.

For loans with approved lines of credit to be used in the future, calculating the amount of insurance for the loan may be difficult, as the borrower will be drawing down differing amounts on the credit line at different times. In those instances in which 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 approaches:

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

Special Situation—Condominium Policies

Condominium associations are able to manage their flood insurance needs and meet their by-law requirements without relying on the actions of the unit owners under a special type of flood insurance policy issued by FEMA—a Residential Condominium Building Association Policy (RCBAP).

A unit owner’s mortgage lender has no direct interest in an RCBAP and should not be named on the policy. However, a unit owner should provide its mortgage lender evidence of the RCBAP by supplying a copy of the declarations page documenting the specific dollar amount of coverage. If

the unit owner's mortgage lender determines that the coverage purchased under the RCBAP is insufficient to meet the mandatory purchase requirements, it should request that the borrower ask the association to carry adequate limits or should require the borrower to purchase a separate policy.

The maximum amount of building coverage that may 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 allowable contents coverage is the actual cash value of the commonly owned contents up to a maximum of \$100,000 per building.

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 other fees. Depending on the type of loan, the escrow account for flood insurance premiums may be subject to section 10 of the Real Estate Settlement Procedures Act (RESPA), (12 USC 2609). This section 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." An escrow account for "residential improved real estate" that is not also a "federally related mortgage loan" must comply with the escrow requirements of the Reform Act but does not need to comply with section 10 of RESPA.

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.

Types of Escrow Accounts Covered

The escrow requirement does not apply if the institution does not require the maintenance of other escrows or 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.

Voluntary payments for credit life insurance do not constitute escrows for purposes of RESPA.⁷ As a result, payments for credit life insurance and similar types of contracts should not trigger the escrow of flood insurance premiums.

Standard Flood Hazard Determination Form

Whenever an institution makes, increases, extends, or renews any loan secured by improved real property or a mobile home, it must use the Standard Flood Hazard Determination Form (SFHDF) developed by FEMA. This form, which may be used in printed or electronic format, helps lenders determine whether the improved real property or mobile home securing the loan is located in a special flood hazard area.

The institution must retain a copy of the completed form, in either hard copy or electronic format, for the period of time it owns the loan. If it uses an electronic format, the institution may alter the format and need not follow the layout of the SFHDF exactly. However, the institution must use the fields and elements listed on the form. A copy of the form is available on FEMA's web site (www.fema.gov).

Reliance on Prior Determination

When determining whether flood insurance is required, an institution may consider the conclusions from a previous flood hazard area determination if both of the following conditions are met:

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

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

An institution may not rely on a previous determination in two situations:

- If FEMA’s map revisions or updates show that the security property is now located in an SFHA
- If the lender contacts FEMA and learns that map revisions or updates affecting the security property have been made since the date of the previous determination

An institution may not 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. Subsequent transactions by the same institution with respect to the same property, such as assumptions, refinancings, and second-lien loans, are to be treated as loan renewals. In those limited circumstances, a new determination is not required, assuming that the other requirements are met.

Forced-Placement Requirements

Although an institution is not required to monitor for map changes, if at any time during the life of the loan the institution or its servicer determines that flood insurance is required or is deficient, the institution must take steps to “force place” the required insurance.

Under the Reform Act, an institution, or a servicer acting on its behalf, must purchase, or force-place, flood insurance for the borrower if the institution or the servicer determines that the security property is not covered by any insurance or by an adequate amount of flood insurance. Before purchasing flood insurance in the appropriate amount on the borrower’s behalf, however, the institution must first provide the borrower with a notice of the deficiency and the opportunity to obtain the correct amount of insurance. If the borrower fails to obtain the insurance within forty-five days of the date of the notice, the institution may force-place the insurance.

As long as an institution owns a loan subject to flood insurance requirements, the institution or its servicer continues to be responsible for ensuring that flood insurance is maintained as required. If a borrower allows a required policy to lapse, the institution or its servicer is required to commence forced-placement procedures.⁸

Forced placement is not a consideration at the time an institution makes, increases, extends, or renews a loan, as a lender is obligated to require that flood insurance be in place prior to closing. Forced-placement authority is designed to be used

when an institution or its servicer, during the course of the loan, determines that flood insurance coverage on the security property is required and is either deficient or missing. 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.

An optional program—the Mortgage Portfolio Protection Program—has been developed by FEMA to assist lenders with the placement of insurance when only limited underwriting information is available. The rates that may be charged for force-placed policies are considerably higher than the rates available for voluntary policies because of the absence of underwriting data.

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 determination is triggered by a borrower-initiated transaction (that is, the lender is making, increasing, extending, or renewing a loan at the borrower’s request).
- The determination reflects FEMA’s revision of maps.
- The determination results in the purchase of flood insurance by the lender under the forced-placement provision.

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 a third party, such as a flood-hazard-determination company.

Truth in Lending Act Issues

The official staff commentary to Regulation Z states that fees associated with real estate mortgage transactions are excluded from the finance charge if they are imposed solely in connection with the initial decision to grant credit.⁹ Thus, the fee for conducting an initial flood-hazard determination is excluded from the finance charge. However, the exclusion does not apply to fees for services to be performed periodically during the term of the loan, regardless of when the fee is collected. Thus, a fee for one or more determinations of the current flood insurance requirements during the loan term is a

8. 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.

9. See 12 CFR 226.4(c)(7)-3 of the official staff commentary.

finance charge, regardless of whether the fee is imposed at closing or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Notice Requirements

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. The notice must be provided whether the security property is located in a participating or a nonparticipating community. The notice must also be provided even if the lender is relying on a prior determination.

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 insurance purchase requirements contained in section 102(b) of the FDPA, as amended
- A statement as to whether flood insurance coverage is available under the NFIP and may also be available from private insurers
- A statement as to 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

An institution may use the sample form contained in appendix A to section 208.25 of Regulation H to comply with the notice requirements. Lenders are free to add information to the form, personalize the form, or change its format if they wish. However, to ensure compliance with the notice requirements, a lender-revised notice must provide the borrower, at a minimum, with the information required by the regulation.

Reliance on Assurances by the Seller or Lessor

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 be used in a situation in which the lender is providing financing through a developer for the purchase of condominium units by multiple borrowers. Because the lender may not deal directly with individual condominium unit purchasers, the lender need not provide notice to each purchaser but may instead rely on the developer or seller's assurances that the developer or seller has given the required notice. The same may be true for a cooperative conversion, in which 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 a "lessee" rather than a purchaser with respect to the underlying real property.

Timing of Notice

Delivery of notice must take place within a "reasonable time" before completion of the transaction. What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. In any case, a borrower should receive notice in time to ensure that he or she has the opportunity to

- Become aware of the borrower's responsibilities under the NFIP and
- Purchase flood insurance before completion of the loan transaction, if applicable.

The Board (and the other agencies) generally continues to regard ten days as a "reasonable" time interval.

Notice to the Servicer

Loan servicers must also be notified of loans secured by properties located in special flood hazard areas. In many cases, however, the servicer's identity is not 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. As a result, notice to the servicer should be given as promptly as practicable after the institution provides notice to the borrower, and no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes. The delivery of a copy of the borrower's notice to the servicer will suffice as notice to the servicer.

Notice to the 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. Notice of the identity of the servicer enables FEMA's designee to provide notice to the servicer forty-five days before expiration of a flood insurance contract.

An institution must also notify the director of FEMA (or its designee) within sixty days of the effective date of the transfer of servicing. The notice may be given electronically or by other means acceptable to FEMA's designee. Although no standard form of notice is required, the informa-

tion should be sufficient to enable the director, or the director's designee, to identify the security property and the loan as well as the new servicer and its address.

Recordkeeping Requirements

An institution must retain

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

No particular form is required for the record of receipt; however, the record should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt 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
- A scanned electronic image of a receipt or other document signed by the borrower

An institution may keep the record of receipt provided by the borrower and the servicer in the

form that best suits the institution's business. Institutions that retain these records electronically must be able to retrieve them within a reasonable time.

Penalties and Liabilities

Civil money penalties may be imposed for violations of the following:

- Flood insurance purchase requirements
- Escrow requirements
- Notice requirements
- Forced-placement requirements

If an institution is found to have a pattern or practice of committing violations, the agencies must assess civil penalties in an amount not to exceed \$385 per violation, with a total amount against any one regulated institution not to exceed \$125,000 in any calendar year. (These amounts are periodically adjusted for inflation. The most recent adjustments occurred in 2004.) Penalties are paid into the National Flood Mitigation Fund. Liability for violations may not be transferred to a subsequent purchaser of a loan. Liability for penalties expires four years from the time of the occurrence of the violation.

Regulation H—Flood Insurance Examination Objectives and Procedures

EXAMINATION 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 regulation
 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 standard flood hazard area (SFHA)
 3. To determine if the institution provides the required notices to the borrower, the servicer, and the director of the Federal Emergency Management Agency (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 whether 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 Regulation H
 6. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified
2. Verify that the process used accurately identifies SFHAs.
 3. For those SFHAs identified, determine if the communities in which they are located participate in the National Flood Insurance Program (NFIP).
 4. If the institution provides “table funding” 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 uses 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.

EXAMINATION PROCEDURES

The examination procedures should be followed, as appropriate, by

- Reviewing previous examinations and supervisory correspondence
- Obtaining copies of and reviewing the institution’s policies, procedures, and other pertinent information
- Reviewing the institution’s system of internal controls
- Discussing issues with management
- 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 an SFHA.

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 relies on a previous determination only if the determination is no more than seven years old and is recorded on the SFHDF and that the property is not in a community that has been remapped.
3. If the institution uses 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 provisions concerning 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 format, 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 (Small Business Administration, Department of Veterans Affairs, or Federal Housing Administration), determine how it complies with the requirement not to make these loans if the security property is in a SFHA within a nonparticipating community.

Determination-Fee Requirements

1. Determine that any fees the institution charges to the borrower for flood-zone determinations are (absent some other authority, such as contract language) charged only when a loan
 - Is made, increased, renewed, or extended
 - Is made in response to a remapping by FEMA
 - 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 in item 1, 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 the 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, if applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers
 - A statement as to whether federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a federally declared disaster
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 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 has 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 the servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (the director of FEMA's designee) within sixty days of the effective date of the transfer of the servicing.

Escrow Requirements

1. If the institution's policies or loan documents require the escrow of funds to cover such charges 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, if flood insurance is required and the loan is subject to the Real Estate Settlement Procedures Act (RESPA), verify that the institution's escrow procedures comply with section 10 of RESPA (section 3500.17 of HUD Regulation X).

Forced-Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the Flood Disaster Protection Act of 1973, 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
 - The institution provides written notice to the borrower that flood insurance is required
 - If the borrower does not purchase the required insurance within forty-five days from the time the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf

Regulation H—Flood Insurance Examination Checklist

Coverage

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| 1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in Regulation H? <ul style="list-style-type: none">• If it does, complete the remainder of this checklist. | Yes | No |
| 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? | Yes | No |
| 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? | Yes | No |
| 4. If the institution uses third parties to service loans covered by the regulation, do the contractual documents between the parties meet the requirements of the regulation? | Yes | No |

Property Determination

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| 1. If the institution uses a third party to prepare flood-zone determinations, do the contractual documents between the parties <ul style="list-style-type: none">• 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 | Yes | No |
| 2. Are the determinations prepared on the Standard Flood Hazard Determination Form (SFHDF) developed and authorized by the Federal Emergency Management Agency (FEMA)? <ul style="list-style-type: none">• If the form is maintained in electronic format, does it contain the elements required by FEMA? | Yes | No |
| 3. Does the institution maintain a record of the SFHDF in either hard copy or electronic format for as long as it owns the loan? | Yes | No |
| 4. Does the institution rely on a prior determination only if it was made on the SFHDF and is no more than seven years old and the community has not been remapped? | Yes | No |

Determination Fees

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|---|-----|----|
| 1. Absent some other authority (such as contract language), does the institution charge a fee to the borrower for a flood determination only when the determination is made or results from <ul style="list-style-type: none">• A loan origination, increase, renewal, or extension• A response to a remapping by FEMA• The purchase of flood insurance under the forced-placement provisions | Yes | No |
| 2. If the institution has other authority to charge fees for determinations in situations other than those noted in item 1, is the practice followed consistently? | Yes | No |

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| 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 the Truth in Lending Act? | Yes | No |
| 4. Are the fees charged by the institution for making a flood determination reasonable? | Yes | No |

Notice Requirements

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|---|-----|----|
| 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? | Yes | No |
| 2. Does the notice contain the following required information? | | |
| • A warning that the building or mobile home is located in a SFHA | Yes | No |
| • A description of the flood insurance requirements | Yes | No |
| • A statement that flood insurance is available under the National Flood Insurance Program and may also be available from private insurers | Yes | No |
| • A statement as to 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 | Yes | No |
| 3. If the institution uses the alternate notice procedures in certain instances as permitted by Regulation H, does it obtain the required satisfactory written assurance from the seller or lessor? | Yes | No |
| 4. Does the institution provide a copy of the borrower notification to the servicer of the loan within the required time frames? | Yes | No |
| 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? | Yes | No |

Insurance Requirements

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| 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? | Yes | No |
| 2. When multiple properties securing the loan are located in SFHAs, does the institution have sufficient insurance, through either a single policy with a scheduled list of several buildings or multiple policies, to meet the minimum requirements of Regulation H? | Yes | No |

Escrow Requirements

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| 1. Does the institution have policies requiring escrows for property taxes, hazard insurance, or other fees on residential buildings? | Yes | No |
| • If it does, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996? | Yes | No |
| 2. If the institution has no specific policies regarding escrows, do its loan documents permit it to escrow for the charges mentioned in item 1? | Yes | No |
| • If they do, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996? | Yes | No |

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| 3. On loans closed on or after October 1, 1996, that are subject to the Real Estate Settlement Procedures Act (RESPA) and when flood insurance is required, does the institution comply with the provisions of section 10 of RESPA (section 3500.17 of HUD Regulation X) for those escrows? | Yes | No |
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Forced-Placement Requirements

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| 1. If at any time during the life of the loan the institution determines that the security property lacks adequate flood insurance coverage, | | |
| • Does the institution provide written notice to the borrower stating that the necessary coverage must be obtained within forty-five days of the notice or the institution will purchase it on the borrower's behalf? | Yes | No |
| • 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? | Yes | No |

Notice to the Director of FEMA

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| 1. Does the institution provide the appropriate notice to the carrier of the insurance policy (who FEMA has designated to receive these notices) regarding the identity of the loan servicer? | Yes | No |
| 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 sixty days of the effective date of the transfer of the servicing? | Yes | No |