

Flood Disaster Protection Act



**Independent
Bankers
Association
of Texas**

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Welcome!



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Disclaimer!

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Anyone that says otherwise is itch'in for a fight!

1998 Flood

- Evacuations began. Elm Wood, Glen Cove, Turtle Lane — the neighborhood names and the street names kept coming. Law enforcement officials fanned across the area, urging people to gather their things and leave.
- Before it was all said and done, heavy trucks from the SMI steel plant would rumble in and out of areas, carrying people to safety when no other vehicles could.

1998 Flood

- Initial crest expectations for the Guadalupe River were at 25 feet, but that number climbed throughout the day. When the Seguin Gazette-Enterprise went to press on Saturday night, it was projected at 35 feet. It would crest on Sunday morning at 36.8 feet.

1998 Flood



FDPA Questions From Bankers

Timeframe	Number of Questions
2023	70
2022	145



Interagency Flood FAQs (2022)

- I. Determining the Applicability of Flood Insurance Requirements for Certain Loans
- II. Exemptions from the Mandatory Flood Insurance Purchase Requirements
- III. Private Flood Insurance – Mandatory Acceptance
- IV. Private Flood Insurance – Discretionary Acceptance
- V. Private Flood Insurance – General Compliance
- VI. Standard Flood Hazard Determination Form (SFHDF)
- VII. Flood Insurance Determination Fees
- VIII. Flood Zone Discrepancies
- IX. Notice of Special Flood Hazards and Availability of Federal Disaster Relief
- X. Determining the Appropriate Amount of Flood Insurance Required



Interagency Flood FAQs (2022)

- IX. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA
- X. Requirement to Escrow Flood Insurance Premiums and Fees – General
- XI. Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Small Lender Exception
- XII. Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Loan Exceptions
- XIII. Force Placement of Flood Insurance
- XIV. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights
- XV. Mandatory Civil Money Penalties



1

ELIGIBLE PROPERTIES



Properties Eligible for Flood Insurance Coverage Under Part 339

- Structures eligible for coverage include:
 - Residential, industrial, commercial, and agricultural buildings that are walled and roofed.
- Also eligible for coverage are:
 - Buildings under construction;
 - Mobile homes;
 - Condominiums;
 - Co-operative buildings; and
 - Personal property.



Properties Eligible for Flood Insurance Coverage Under Part 339

Are condominiums and mobile homes covered by the flood insurance regulations?

- Yes, usually.
- FEMA issues a Residential Condominium Building Association Policy to condominium associations to cover the entire complex.
- Section XII of the 2022 Interagency Questions and Answers addresses condominium questions.
- Mobile homes, if permanently affixed to the foundation, are generally subject to the flood insurance requirements.



Properties Eligible for Flood Insurance Coverage Under Part 339

What is Ineligible?

- Unimproved land, bridges, dams and roads
- Mobile homes not affixed to a permanent site by providing over-the-top and frame ties to ground anchor
- Travel trailers and campers
- Converted buses or vans

What about 'Tine Homes?'



Properties Eligible for Flood Insurance Coverage Under Part 339

“One Brick Rule” – If one brick of the building is in a flood zone, all of the building is considered to be in a flood zone.

Non-Participating Communities – If a community does not participate in the NFIP, NFIP insurance is not available and flood insurance is not required.



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Key Requirements of Part 339 (22, 208, 614, 760)



Key Requirements of Part 339

Conducting
Determinations

Securing
Insurance

Force-Placing
Insurance

Providing
Notification

Escrowing
Premiums



3

Conducting Determinations



Conducting Determinations

- Determine if the improved property securing the loan is located in a special flood hazard area. See <https://msc.fema.gov/portal>
- Determination must be made prior to making, increasing, extending, or renewing a loan.
- Determination can be done by either the bank or a third party performing this service on its behalf.



When Is A Bank Required To Get A New Determination?

- Part 339 requires that each time a bank makes, increases, extends, or renews a loan that it must determine whether or not the improved property is in a special flood hazard area.
- An existing flood determination can be relied upon in certain circumstances if the determination is less than seven years old, the flood map and flood status haven't changed, and it was prepared on the standard flood hazard determination form.



When Is A Bank Required To Get A New Determination?

APPLICABILITY 6. If a loan is being restructured or modified, does that constitute a triggering event under the Regulation?

It depends. If a loan modification or restructuring involves recapitalizing into the loan's outstanding principal balance: (1) delinquent payments and other amounts due under the loan and the maturity date of the loan otherwise stays the same, or (2) amounts that were otherwise originally contemplated to be part of the loan pursuant to the contract with the borrower and the maturity date of the loan otherwise stays the same, the Regulation would not apply because the modification or restructuring would not increase, extend, or renew the terms of the loan.

In contrast, if the loan modification or restructuring changes terms of the loan such as by increasing the outstanding principal balance beyond what was contemplated as part of the loan under the contract with the borrower, or by extending the maturity date of the loan, the Regulation would apply because the lender increased or extended the terms of the loan beyond what was originally contemplated to be part of the loan.



Remapping

The area has been remapped; now what?

- If the property is now located in a special flood hazard area, the bank must notify the borrower and start force-placement procedures if borrower does not provide insurance within 45 days of notice.
- If the property has been removed from the special flood hazard area, flood insurance is no longer required.



Risk Rating 2.0

Since the 1970s, rates have been predominantly based on relatively static measurements, emphasizing a property's elevation within a zone on a Flood Insurance Rate Map (FIRM).

The 1970s legacy rating methodology did not incorporate as many flooding variables as Risk Rating 2.0.



Risk Rating 2.0

PHASE I

On Oct. 1, 2021, new policies were subject to the new rating methodology. Also on Oct. 1, any existing policyholders eligible for renewal were able to begin taking advantage of immediate decreases in their premiums.

PHASE II

All remaining policies renewing on or after April 1, 2022, were renewed into the new rating methodology.



Disputes

What are the bank's responsibilities if the borrower disputes the property is in a special flood hazard area?

- There is no flexibility in the flood insurance requirements. If the determination shows the improvements are in a special flood hazard area, flood insurance is required.
- The borrower can pursue a Letter of Map Amendment (LOMA) from FEMA. Until a LOMA is obtained, insurance is required.



FEMA LODR

A Letter of Determination Review has to be jointly requested in writing by a lending institution and the borrower. It must be requested within 45 days of when a lending institution first notifies the borrower that flood insurance must be purchased.

The LODR is used when there is a disagreement between the lender and borrower over which flood zone is correct. It is basically a request that the NFIP settle a disagreement over who is reading the map correctly.

A LODR **does not** revise the flood map used in making the initial determination.



FEMA LOMA

A Letter of Map Amendment determines if the lowest adjacent grade (the lowest ground touching the structure) is at or above the base flood elevation (BFE).

The requester (the borrower) is responsible for providing all of the information needed for FEMA's review of the request, including elevation information certified by a Licensed Land Surveyor or Registered Professional Engineer.



FEMA LOMAR-F

A Letter of Map Revision – Based on Fill determines if the lowest adjacent grade of the structure is at or above the BFE. The participating community must also determine that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding."

As with LOMA requests, the requester is responsible for providing all supporting information, including elevation information certified by a Licensed Land Surveyor or Registered Professional Engineer.



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Providing Notification



Providing Notification

Written borrower notification is required if the property improvements are located in a special flood hazard area.

Notice must be sent to the borrower prior to making, increasing, extending, or renewing a loan.



Providing Notification

Notice must include specific information:

- Warning that the improvements are located in a special flood hazard area;
- Description of the flood insurance purchase requirements;
- Statement whether or not flood insurance is available;
- Statement about the availability of federal disaster relief assistance; and • Statement encouraging borrowers to compare terms in NFIP and private policies.

Customer acknowledgement of receipt of the notice.

Notice of escrow requirement.



Providing Notification

Multiple Borrowers - The lender need only provide the notice to any one of the borrower in a transaction.

Timing – The lender shall provide the notice to the borrower within a reasonable time before the completion (origination) of the transaction and to the servicer as promptly as practicable after the lender provides notice to the borrower and in any event no later than the time the lender provides other similar notices to the servicer concerning hazard insurance and taxes. Ten days is considered reasonable.

Record of Receipt – The lender shall retain a record of the receipt of the notices by the borrower and servicer for the period of time the lender owns the loan.



Providing Notification

NOTICE 2. When should a lender provide the Notice of Special Flood Hazards to the borrower? How does this requirement apply in situations regarding mobile homes where the lender may not know where the home is to be located until just prior to, or sometimes after, the time of loan closing?

As required by the Regulation, a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction.⁷⁰ What constitutes “reasonable” notice will necessarily vary according to the circumstances of particular transactions. A lender should bear in mind, however, that a borrower should receive timely notice to ensure that (1) the borrower has the opportunity to become aware of the borrower’s responsibilities under the Act; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. The Agencies generally regard 10 calendar days as a “reasonable” time interval.

If a lender determines that a mobile home securing a designated loan will be located in an SFHA just prior to closing, the lender may need to delay the closing until the Notice of Special Flood Hazards has been provided in accordance with the Regulation.



Providing Notification

NOTICE 2. When should a lender provide the Notice of Special Flood Hazards to the borrower? How does this requirement apply in situations regarding mobile homes where the lender may not know where the home is to be located until just prior to, or sometimes after, the time of loan closing? (cont.)

In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such “home only” transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and a force placement notice must be given to the borrower under those provisions.⁷¹ If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force-place the insurance.⁷²



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Securing Insurance



Securing Insurance - Amount

Exemptions to Insurance Requirements – The requirement to purchase flood insurance does not apply with respect to an origination with a principal balance of \$5,000 or less **and** a repayment term of 1 year or less.

Abundance of Caution – No exemption!

Deductibles – A lender may allow a borrower to use the maximum deductible to reduce the cost of flood insurance.



Securing Insurance - Amount

AMOUNT 9. Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?

Yes. However, it may not be a sound business practice for a lender, as a matter of policy, to always allow the borrower to use the maximum deductible. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.⁸⁸



Securing Insurance - Amount

APPLICABILITY 2. Some borrowers have buildings with limited utility or value and, in many cases, the borrower would not replace them if lost in a flood. Must a lender require flood insurance for such buildings?

Lenders must require flood insurance on a building or mobile home when those structures are part of the property securing the loan and are located in an SFHA in a participating community.⁵ However, flood insurance is not required on a structure that is part of a residential property but is detached from the primary residential structure of such property and does not serve as a residence.⁶ If the limited utility or value structure does not qualify for the detached structure exemption, a lender may consider “carving out” the building from the security it takes on the loan to avoid having to require flood insurance on the structure. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether and how it would be able to market and sell the property securing its loan in the event of foreclosure. See also Q&A Exemptions 1.



Securing Insurance - Amount

Compare three values:

- (1) The maximum amount of insurance available under the NFIP,
- (2) the insurable value of the property, and
- (3) the principal loan amount(s) outstanding. The lesser of the three is the minimum required amount of coverage.



Securing Insurance - Amount

There are maximum limits available through the NFIP (Option #1 on previous slide) as currently authorized by Congress. In essence, you cannot sell more than this coverage through the NFIP or a WYO company.

- Currently, in Regular Program communities, the maximum limit for all one- to four-family residential buildings is \$250,000, and contents coverage is limited to \$100,000.
- The maximum coverage limit for non-condominium residential buildings with five or more units (classified as Other Residential) is \$500,000 with a contents maximum limit of \$100,000.
- For Non-Residential Business and Other Non-Residential buildings, the maximums are \$500,000 each for building and contents.



Securing Insurance

- Proof of adequate insurance coverage must be obtained prior to closing.
- An adequate amount of insurance must be in place for the term of the loan.
- Loan may require only building insurance or it may require both building and contents insurance.



Securing Insurance - Amount

First Lien Home Example –

	Example 1	Example 2
Loan Amount	\$100,000	\$200,000
Insurable Value	\$150,000	\$150,000
Maximum Available Insurance	\$250,000	\$250,000
Minimum Required Flood Insurance Coverage	\$100,000	\$150,000



Securing Insurance - Amount

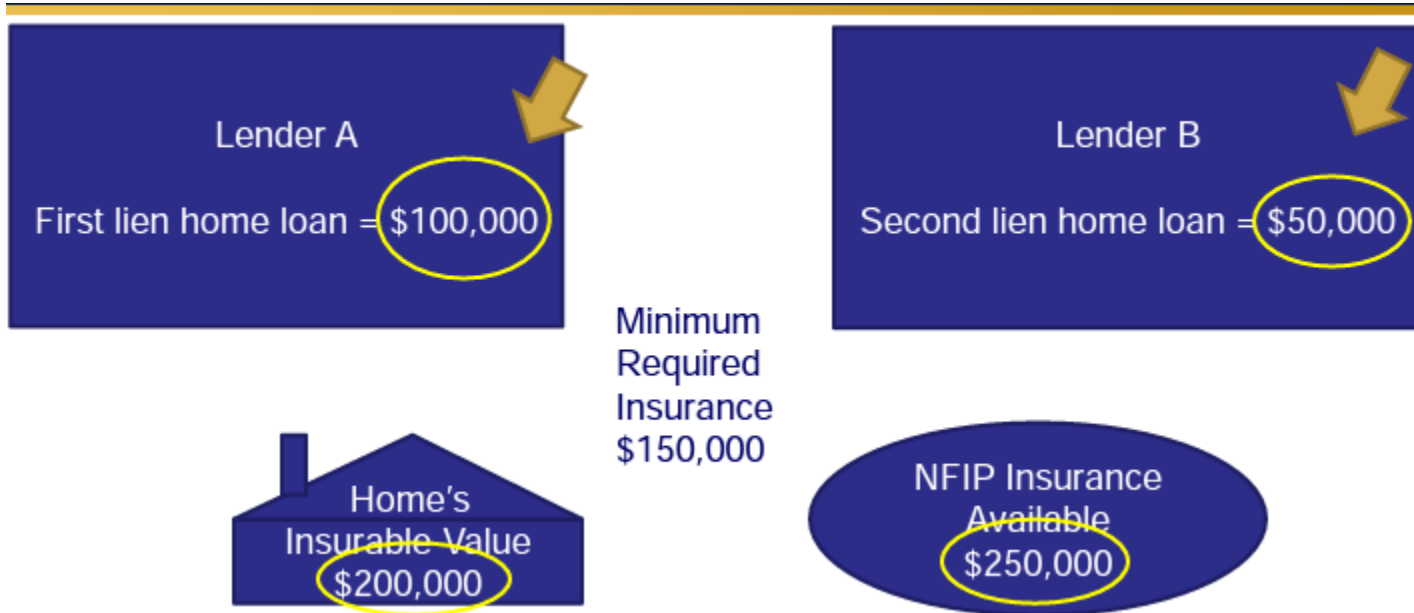
Commercial Building Example –

Loan Amount	\$1,000,000
Insurable Value	\$1,000,000
Maximum Available Insurance	\$500,000
Minimum Required Flood Insurance Coverage	\$500,000



Securing Insurance - Amount

Subordinate Lien Example –



Securing Insurance - Amount

How does a bank determine appropriate coverage for multiple buildings?

- ▶ The calculation is the same as for a single building; however, the bank must spread the coverage among all of the buildings in the special flood hazard area. Each building must have some coverage.



Securing Insurance - Amount



Securing Insurance - Amount

Commercial Bldg and Home –

Structure	(A) Insurable Value	(B) Max NFIP Available	(C) <u>Lesser of</u> A and B
Single-Family	\$200,000	\$250,000	\$200,000
Commercial #1	\$1,000,000	\$500,000	\$500,000
Commercial #2	\$300,000	\$500,000	\$300,000
Aggregate of Maximum Building Coverage			\$1,000,000
Loan Amount			\$2,000,000
<u>Lesser of Aggregate Coverage and Loan Amount</u>			\$1,000,000



Detached Structures Exemption

- Flood insurance not required for any structure that is a part of a residential property but is detached from the primary residential structure and does not serve as a residence.
- Exemption became effective on March 21, 2014.
- Lender may require flood insurance on a detached structure, even though the statute doesn't require it, to protect the lender's and borrower's collateral securing the loan.



Detached Structures Exemption

What does it mean for a structure to be “part of a residential property” and to be “detached”?

- Residential Property: A property that is used primarily for personal, family or household purposes, and not used primarily for agricultural, commercial, industrial or other business purposes.
- Detached: A structure is “detached” from the primary residential structure if it is not joined by **any** structural connection to the residential structure.



Detached Structures Exemption

How to determine when a structure “does not serve as a residence”:

- Structure could serve as a residence if it includes sleeping, bathroom or kitchen facilities, **but not all three facilities are necessary.**
- Lender should focus on the structure’s intended use.
- Lender must make good faith determination as to whether detached structure serves as a residence.



Detached Structures Exemption

EXEMPTIONS 3. Is a flood hazard determination required even where the secured property may contain detached structures for which coverage is not required under the Regulation?

Yes, as required under the Regulation, a flood hazard determination is needed to determine whether a building or mobile home securing a loan is or will be located in an SFHA where flood insurance is available under the Act. In order to determine whether the exemption for non-residential detached structures that are part of a residential property may apply, a flood hazard determination must be conducted first, without regard to whether there may be any detached structures that could be exempt.³²



Detached Structures Exemption

EXEMPTIONS 4. If a borrower currently has a flood insurance policy on a detached structure that is part of residential property and the detached structure does not serve as a residence, may the lender or its servicer cancel its requirement to carry flood insurance on that structure?

Yes. If a borrower has a flood insurance policy on a detached structure that is part of a residential property and does not serve as a residence, the lender is no longer mandated by the Act to require flood insurance on that structure.³³ The lender may allow the borrower to cancel the policy. If warranted as a matter of safety and soundness, the lender may continue to require flood insurance coverage on the detached structure.



Detached Structures Exemption

EXEMPTIONS 5. In the event that a triggering event has occurred, is the lender required to review the intended use of each detached structure?

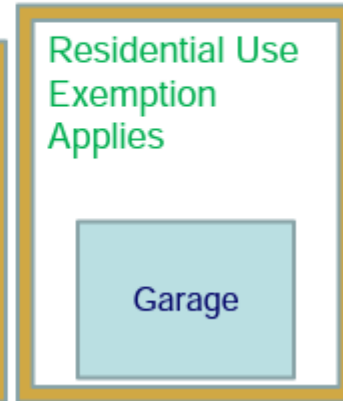
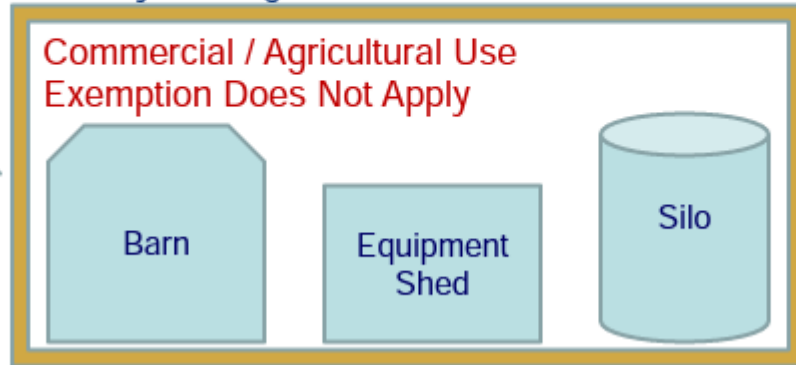
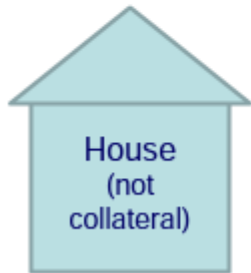
Yes, a lender must examine the status of a detached structure upon a qualifying triggering event to determine whether the detached structure exemption still applies.³⁴ See Applicability 13. There is no duty to monitor the status of a detached structure following the lender's initial determination unless a triggering event occurs. However, regardless of the absence of a duty to monitor the status of a detached structure in the Regulation, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.



Detached Structures Exemption

Does a lender need to take a security interest in the primary residential structure for detached structures to be eligible for the exemption?

- No, but the lender needs to evaluate the uses of detached structures to determine if they are eligible.



Securing Insurance - Amount

- **How does a bank determine insurable value?**
 - A reasonable, consistent valuation method should be used, such as an appraisal based on the cost value (not market value), a construction-cost calculation, or the insurable value from a hazard insurance policy.
 - Other reasonable valuation methods can be used as long as they can be supported.



Securing Insurance - Amount

FEMA benefits are paid based on property type.

Primary Residence:

Benefits paid based on replacement cost value (RCV).

All Other Structures:

Benefits paid based on actual cash value (ACV).

Formula: $ACV = RCV - Depreciation$



Securing Insurance - Amount

When is contents insurance required?

Contents insurance is required when:

1. Contents are taken as collateral; **AND**
2. The bank also takes the building where the contents are located as collateral; **AND**
3. The building is located in a special flood hazard area.



Securing Insurance - Amount

Chef Goodcook loan examples

Example 1: Collateral = GBSA
(no flood insurance required)

Example 2: Collateral = Mortgage on building in SFHA
(flood insurance required on building only, not the contents)

Example 3: Collateral = GBSA and Mortgage on building in SFHA and contents are in the building
(flood insurance required on building and contents)

GBSA = General Business Security Agreement

SFHA = Special Flood Hazard Area



Securing Insurance - Proof

- **How can a bank prove that flood insurance coverage is in place?**
 - For a new policy, proof of insurance consists of a copy of the written application and the method of premium payment, for example, a copy of the check.
 - For an existing policy, proof of insurance consists of the declarations page which includes the policy number and certain information about the insurance company or agent.



Accepting Private Flood Insurance

- Biggert-Waters Act requires lenders to accept private flood insurance policies as satisfaction of the mandatory purchase requirement if the coverage provided by the private policy satisfies the standards specified in the Act, subject to the implementing rule.



Accepting Private Flood Insurance

(7) Private flood insurance defined In this subsection, the term “private flood insurance” means an insurance policy that— (A) is issued by an insurance company that is— (i) licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or (ii) in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located; (B) provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer; (C) includes— (i) a requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to— (I) the insured; and (II) the regulated lending institution or Federal agency lender; (ii) information about the availability of flood insurance coverage under the national flood insurance program; (iii) a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the national flood insurance program; and (iv) a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and (D) contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the national flood insurance program.



Accepting Private Flood Insurance

- The final rule includes the “compliance aid” provision designed to facilitate lenders' determination as to whether a flood insurance policy meets the definition of “private flood insurance,” and therefore must be accepted under the “mandatory acceptance” provision. The “compliance aid” in the final rule is now in the form of an assurance clause statement.
- Specifically, a lender may determine that a policy meets the definition of “private flood insurance” without further review of the policy if the following statement is included within the policy or as an endorsement to the policy:
- "This policy meets the definition of private flood insurance contained in 42 U.S.C. Section 4012a(b)(7) and the corresponding regulation."



Accepting Private Flood Insurance

- If the private policy provided does not include the ‘compliance aide’ then the lender must still accept the policy if the policy meets the definition of “private flood insurance.”



Accepting Private Flood Insurance

MANDATORY 1. May a lender decide to only accept private flood insurance policies under the mandatory acceptance provision of the Regulation?

Yes. A lender is only required to accept flood insurance policies issued by a private insurer that meet the definition of “private flood insurance” under the Regulation, as long as the policy meets the amount of insurance required under the Regulation. A lender is not required to accept flood insurance policies that only meet the criteria set forth in the discretionary acceptance or mutual aid provision of the Regulation.



Accepting Private Flood Insurance

MANDATORY 2. If a lender has a policy not to originate a mortgage in non-participating communities or coastal barrier regions where the NFIP is not available, do the private flood insurance requirements under the Regulation require a lender to change its policy?

The Regulation does not require that a lender originate a loan that does not meet the lender's underwriting criteria. The flood insurance purchase requirement only applies to loans secured by structures located or to be located in an SFHA in which flood insurance is available under the Act.³⁹ The flood insurance purchase requirement does not apply within nonparticipating communities, where NFIP insurance is not available under the Act. See Q&A Applicability 1. Therefore, the lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance requirements under the Regulation.



Accepting Private Flood Insurance

MANDATORY 3. Did the Agencies intend the compliance aid statement to act as a conformity clause that would make a private policy conform to the definition of “private flood insurance”?

No. The Agencies did not intend the compliance aid statement to act as a conformity clause. Rather, the compliance aid statement is intended to facilitate the ability of lenders, as well as consumers, to recognize policies that meet the definition of “private flood insurance” and promote the consistent acceptance of policies that meet this definition. The compliance aid statement is intended to leverage the expertise of insurers to assist lenders in satisfying the “private flood insurance” definition of the Regulation.



Accepting Private Flood Insurance

MANDATORY 4. Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid statement? Conversely, may a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid statement?

If a flood insurance policy issued by a private insurer includes the compliance aid statement, the lender may choose to rely upon the statement and would not need to review the policy further to determine if the policy meets the definition of “private flood insurance.” However, the lender is not required to accept this policy based upon inclusion of the compliance aid statement alone and may choose to make its own determination about whether the policy meets the definition of “private flood insurance” or whether the policy is acceptable under the discretionary acceptance or mutual aid criteria.⁴⁰



Accepting Private Flood Insurance

MANDATORY 4. Is a lender required to accept a flood insurance policy issued by a private insurer that includes the compliance aid statement? Conversely, may a lender reject a flood insurance policy issued by a private insurer solely because it does not contain the compliance aid statement? (Cont.)

If a flood insurance policy issued by a private insurer does not include the compliance aid statement, the lender may not reject the policy solely because it does not include this statement.

The lender is not relieved from the requirement to accept a policy that meets the definition of “private flood insurance,” as long as the policy meets the amount of insurance required under the Regulation.⁴¹ Further, the lender may determine the policy is acceptable under the discretionary acceptance or mutual aid criteria.



Accepting Private Flood Insurance

MANDATORY 5. If a flood insurance policy issued by a private insurer includes the compliance aid statement, does a lender need to conduct an additional review of the policy for compliance with the mandatory acceptance provision of the Regulation?

No, under the mandatory acceptance provision of the Regulation, if a policy or an endorsement to the policy contains the compliance aid statement, further review is not necessary in order for the lender to determine that a policy meets the definition of “private flood insurance.”⁴² It is important to note that, in order for the lender to rely on the compliance aid statement without further review of the policy, the language of the compliance aid statement must be stated in the policy, or as an endorsement to the policy, as set forth in the Regulation.⁴³



Accepting Private Flood Insurance

MANDATORY 5. If a flood insurance policy issued by a private insurer includes the compliance aid statement, does a lender need to conduct an additional review of the policy for compliance with the mandatory acceptance provision of the Regulation? (Cont.)

If the language is different from the compliance aid statement set forth in the Regulation, the lender cannot rely on the protections of the compliance aid statement in the Regulation and should review the policy to determine if it meets the definition of “private flood insurance.” However, a policy containing the compliance aid statement need not be rejected if there are stylistic differences, such as formatting, font, and punctuation that do not change the substantive meaning of the clause, from the compliance aid statement included in the Regulation. See also Q&A Mandatory 6.



Accepting Private Flood Insurance

MANDATORY 6. Under the Regulation, what additional reviews does a lender need to conduct if the flood insurance policy issued by a private insurer includes the compliance aid statement?

Although a lender may rely on the compliance aid statement to determine that a flood insurance policy meets the definition of “private flood insurance” in the Regulation, the lender must also ensure that the amount of insurance is at least equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the Act.⁴⁴ See also Q&A Mandatory 5.



Accepting Private Flood Insurance

MANDATORY 7. If a flood insurance policy issued by a private issuer does not include a compliance aid statement, can a lender use the criteria under the discretionary acceptance provision to decide whether to accept the policy without first checking to see if the policy meets the criteria under the mandatory acceptance provision?

Yes, the lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision.⁴⁵ However, if the policy does not meet the discretionary acceptance criteria, the lender will still need to determine whether it must accept the policy under the mandatory acceptance criteria.⁴⁶

Note that if the lender accepts a policy under the discretionary acceptance provision, the Regulation requires the lender to document that the policy provides sufficient protection of the loan.⁴⁷ See also Q&A Discretionary 2.



Accepting Private Flood Insurance

MANDATORY 8. If a lender only receives a declarations page without receiving a copy of the policy, and the declarations page includes the compliance aid statement, may the lender accept the policy?

If the compliance aid statement is included on the declarations page, a lender may determine the policy meets the definition of “private flood insurance” without further review. However, a lender also must ensure that the policy meets the amount of insurance required under the Regulation. See Q&A Mandatory 6.



Accepting Private Flood Insurance

MANDATORY 9. May a lender accept a private flood insurance policy that includes a compliance aid statement, but also includes a disclaimer explaining that the “insurer is not licensed in the State or jurisdiction in which the property is located,” which suggests that the policy is issued by a surplus lines insurer?

Even if the policy includes a statement indicating that the insurer is not licensed in the State or jurisdiction in which the property is located, suggesting that the policy is issued by a surplus lines insurer, but contains a compliance aid statement, lenders may accept the policy as long as the policy complies with the Regulation and applicable State laws. See Q&A Private Flood Compliance 10.



Accepting Private Flood Insurance

PRIVATE FLOOD COMPLIANCE 1. What is the maximum deductible a flood insurance policy issued by a private insurer can have for residential or commercial properties located in an SFHA?

PRIVATE FLOOD COMPLIANCE 2. May a lender require that the deductible of any flood insurance policy issued by a private insurer be lower than the maximum deductible for an SFIP?

PRIVATE FLOOD COMPLIANCE 3. If a lender utilizes a third party to review flood insurance policies, would it be permissible for a lender to charge the borrower a fee for this review?



Accepting Private Flood Insurance

PRIVATE FLOOD COMPLIANCE 4. If the policy is not available prior to closing, what can the lender rely on to make sure the policy meets the private flood insurance requirements of the Regulation?

PRIVATE FLOOD COMPLIANCE 5. Under existing force placement requirements, a declarations page is sufficient to evidence a borrower's purchase of a flood insurance policy. Does the declarations page have sufficient information for a lender to determine whether the policy complies with the private flood insurance requirements of the Regulation?

PRIVATE FLOOD COMPLIANCE 6. May a lender accept a multiple-peril policy issued by a private insurer to satisfy the mandatory purchase of flood insurance requirement?



Accepting Private Flood Insurance

PRIVATE FLOOD COMPLIANCE 7. How do the private flood insurance requirements of the Regulation, especially the compliance aid statement, work in conjunction with the requirements from secondary market investors (for example, the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac))?

PRIVATE FLOOD COMPLIANCE 8. When servicing a loan covered by flood insurance pursuant to the Act and the Regulation, which requirements must a servicer follow in evaluating the acceptance of a flood insurance policy issued by a private insurer?

PRIVATE FLOOD COMPLIANCE 9. How can a lender determine: (i) whether an insurer is licensed or admitted in a particular State, (ii) or whether a surplus lines or nonadmitted alien insurer is permitted to issue an insurance policy in a particular State?



Accepting Private Flood Insurance

PRIVATE FLOOD COMPLIANCE 10. May lenders accept policies issued by private insurers that are surplus lines insurers for noncommercial properties?

PRIVATE FLOOD COMPLIANCE 11. When must a lender review a flood insurance policy issued by a private insurer under the private flood insurance requirements of the Regulation?



Insurance

Additional Insurance Coverage – A lender is permitted to require more coverage than required by the regulations. That is an issue for the contract. **More but not less!**

UDAAP – A lender can not require more coverage than would be paid out in the event of a loss.



Contents

OTHER SECURITY INTERESTS 10. Is flood insurance required if the lender takes a security interest in contents located in a building in an SFHA securing the loan but does not perfect the security interest?

Yes, flood insurance is required. The language in the loan agreement or security instrument determines whether the contents are taken as security for the loan. If the lender takes a security interest in contents located in a building in an SFHA securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected.¹¹²



Notes

OTHER SECURITY INTERESTS 11. If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?

No. A designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act.113 In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.



Construction

CONSTRUCTION 4. When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?

Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan.⁹³ The NFIP provides that lenders may comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA by requiring borrowers to have a flood insurance policy in place at the time of loan origination.



Construction

Such a policy is issued based upon the construction designs and intended use of the building. A borrower should obtain a provisional rating (available only if certain criteria are met) to enable the placement of coverage prior to receipt of the Elevation Certificate (EC). In accordance with the NFIP requirement, it is expected that an EC will be secured and a full-risk rating completed within 60 days of the policy effective date. Failure to obtain the EC could result in reduced coverage limits at the time of a loss. (See NFIP Flood Insurance Manual).



Construction

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either after a foundation slab has been poured and/or an Elevation Certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed. However, in order to comply with the Regulation,⁹⁴ the lender must require the borrower to have flood insurance for the security property in place before the lender disburses funds to pay for building construction (except for funds to be used to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials).



Construction

If the lender elects this approach and does not require the borrower to obtain flood insurance at loan origination, then it should have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower in light of the NFIP 30-day waiting period requirement. (See NFIP Flood Insurance Manual). See also Q&A Construction 5.



Construction

CONSTRUCTION 5. Does the NFIP 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?

Yes. A 30-day waiting period will apply if a lender allows a borrower to delay the purchase of flood insurance in connection with a construction loan after making, increasing, renewing, or extending the loan. A borrower must apply for flood insurance on or before the closing date of a loan transaction for the NFIP 30-day waiting period to be waived. See NFIP Flood Insurance Manual. See also Q&A Construction 4.



Construction

CONSTRUCTION 6. If a lender allows a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an Elevation Certificate has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled and roofed, when must the lender begin escrowing flood insurance premiums and fees?

If the lender allows a borrower to defer the purchase of flood insurance until either the foundation slab has been poured and/or an Elevation Certificate has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled and roofed, a lender must escrow flood insurance premiums and fees at the time of purchase of the flood insurance, unless one of the escrow exceptions applies.⁹⁵



6

Escrow



Escrowing Premiums

- Lenders must escrow premiums and fees for flood insurance for any designated loans secured by residential improved real estate or a mobile home that are made, increased, extended, or renewed on or after January 1, 2016.



Escrowing Exemption

Small Lender Exemption:

- Lender has total assets of less than \$1 billion;
- On or before July 6, 2012, it was not required under Federal or State law to deposit taxes, insurance premiums, fees or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate; and
- It did not have a policy of consistently and uniformly requiring escrow of taxes, fees or insurance premiums for any loans secured by residential improved real estate or a mobile home.



Escrowing Exemption

Additional exemptions:

- Subordinate liens;
- Part of a condominium, cooperative, or other project development;
- Extensions of credit primarily for a business, commercial, or agricultural purpose;
- HELOCs;
- Nonperforming loans; and
- Loans with terms not longer than 12 months.

If a bank determines that a loan no longer qualifies for one of these additional exemptions, the bank must begin escrowing as soon as reasonably practical.



Escrowing Exemption

When must a bank begin escrowing if it no longer qualifies as a small lender?

A bank must escrow flood insurance premiums and fees for any loans made, increased, extended, or renewed on or after July 1 of the succeeding calendar year after it has a change in status.

Example:

Lender C qualifies for the small lender exemption at the beginning of 2021. That lender has assets of \$1.3 billion on December 31, 2021, and \$1.4 billion on December 31, 2022. Lender C will be required to escrow flood insurance premiums and fees for any loans made, increased, extended, or renewed on or after July 1, 2023.



Escrowing Exemption

A bank that no longer qualifies for the small lender exemption must also provide notice of the option to escrow by September 30th of the first calendar year in which it has a change in status.

It must begin escrowing as soon as reasonably practicable after receiving the borrower's request to escrow.

Example: Lender C qualifies for the small lender exemption at the beginning of 2021. That lender has assets of \$1.3 billion on December 31, 2021, and \$1.4 billion on December 31, 2022. Lender C must provide notices of the option to escrow by September 30, 2023.



Escrowing Exemption

If a bank meets the other requirements, is it still eligible for the small lender exemption if:

It offers escrows at the request of the borrower? = **Yes**

It collects escrow funds at closing at the request of a third party and then transfers the escrow funds to the third party servicing the loan? = **Yes**

It collects escrow funds at closing and services the loan? = **No**



7

Force-Placing Insurance



Force-Placing Insurance

- Bank is required to force-place flood insurance if insurance is not maintained in an adequate amount for the term of the loan.
- Force-placement procedures should begin when the deficiency is discovered and starts with borrower notification.



Force-Placing Insurance

- Bank must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under Section 339.3, for the remaining term of the loan.
- Bank must purchase the insurance on the borrower's behalf, at the borrower's expense, if the borrower hasn't done so within 45 days of notification.



Force-Placing Insurance

- Lenders or servicers can force-place insurance effective as of the date of lapse or inadequacy. Premiums and fees can be collected when the insurance is placed.
- Lender is required, within 30 days of receipt of proof of coverage from the borrower, to terminate force-placed insurance and refund premiums and fees paid by borrower for any period where insurance coverage overlapped.



Force-Placing Insurance

Can a bank send the 45-day notice about force-placing insurance prior to the policy's expiration date?

No. However, some banks choose to send a courtesy notice to customers prior to expiration as a reminder.



Force-Placing Insurance

May a lender commence a force-placed insurance policy on the day the previous policy expires, or must the new policy begin the day after?

If the previous policy expires at midnight at the end of Day 1, the lender's new force-placed policy should not begin to provide coverage until just after midnight at the beginning of Day 2. If the lender did force place on Day 1 and the policy provided overlapping coverage, the lender could not charge and collect premiums and fees from the borrower for the period of overlapping coverage on Day 1.



Force-Placing Insurance

FORCE PLACEMENT 2. When must a lender provide the force placement notice to the borrower?

The Regulation requires the lender, or its servicer, to send notice to the borrower upon making a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation. The Agencies expect that such notice will be provided to the borrower at the time of determination of no or insufficient coverage. If there is a brief delay in providing the notice, the Agencies will expect the lender or servicer to provide a reasonable explanation for the delay. For example, there may be brief delays due to various lender processes, including but not limited to, batch processing and manual exception processing.



Force-Placing Insurance

FORCE PLACEMENT 3. May a servicer force place on behalf of a lender?

Yes. Assuming the statutory prerequisites for force placement are met, and subject to the servicing contract between the lender and its servicer, the Act authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.146



Force-Placing Insurance

FORCE PLACEMENT 4. May a lender satisfy its notice requirement by sending the force placement notice to the borrower prior to the expiration of the flood insurance policy?

No. The Act specifically provides that the lender or servicer for a loan must send a notice upon its determination that the collateral property securing the loan is either not covered by flood insurance or is covered by flood insurance in an amount less than the amount required.¹⁴⁷ Although a lender may send notice prior to the expiration date of the flood insurance policy as a courtesy, the lender or servicer is still required to send notice upon determining that the flood insurance policy actually has lapsed or is insufficient in meeting the statutory requirement. The lender may purchase insurance on the borrower's behalf beginning on the date of the lapse.¹⁴⁸



Force-Placing Insurance

FORCE PLACEMENT 5. When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within 45 days after notification?

The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification.¹⁴⁹ If the borrower fails to obtain flood insurance and the lender does not force place flood insurance by the end of the force placement notification period, the Agencies will expect the lender to provide a reasonable explanation for the brief delay, for example, that a lender uses batch processing to purchase force-placed flood insurance policies.

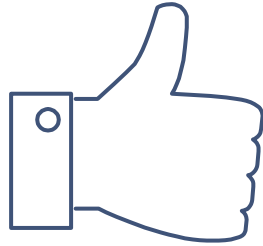


Force-Placing Insurance

FORCE PLACEMENT 6. Once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage and sends the borrower a force placement notice, may a lender make a subsequent determination in connection with the initial notification period that the designated loan has no or insufficient coverage and send another force placement notice, effectively providing more than 45 days for the borrower to obtain sufficient coverage?

No. The Act and Regulation state that once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after that notice, the lender must purchase coverage on the borrower's behalf.¹⁵⁰ For example, if in response to a force placement notice, the borrower obtains flood insurance that is insufficient in amount, there is no extension of the time period by which the lender must force place flood insurance.





THANKS!

Any questions?
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