



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
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July 21, 2015

Issuance of Final Rule on Loans in Areas Having Special Flood Hazards

Summary: The FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, and the Farm Credit Administration approved the issuance of a joint final rule to amend their respective regulations regarding loans in special flood hazard areas. The final rule amends the FDIC's flood insurance regulation, at Part 339 of Title 12 of the Code of Federal Regulations, to incorporate and implement certain provisions in the Biggert-Waters Flood Insurance Reform Act of 2012 (BW Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) regarding detached structures, force placement of flood insurance, and escrowing of flood insurance premiums and fees.

The escrow and notice requirements become effective on January 1, 2016. The detached structures exemption became effective upon enactment of the HFIAA on March 21, 2014. The force-placed flood insurance provisions became effective upon enactment of the BW Act on July 6, 2012.

Statement of Applicability to Institutions Under \$1 Billion in Total Assets: This Financial Institution Letter applies to all FDIC-supervised financial institutions.

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Chief Compliance Officer
Chief Lending Office

Related Topics:
Homeowner Flood Insurance Affordability Act of 2014
Biggert-Waters Flood Insurance Reform Act of 2012
Flood Disaster Protection Act of 1973

Attachment:
[Joint Final Rule](#)

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Highlights:

- **Escrow:** The final rule requires institutions to escrow premiums and fees for flood insurance required by Part 339 for certain designated loans that are made, increased, extended, or renewed on or after January 1, 2016. It requires lenders to offer and make available to consumers the option to escrow premiums and fees for certain loans outstanding as of January 1, 2016. The final rule also implements exemptions to the escrow requirement provided under the HFIAA.
- **Detached Structures:** The final rule includes the exemption to the general mandatory flood insurance purchase requirement for any 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. The final rule also clarifies what is considered "a structure that is part of a residential property," "detached," and "serves as a residence."
- **Force-Placed Insurance:** The final rule includes the statutory clarification that an institution or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also provides that under certain circumstances, an institution or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower to cover any period of overlap in coverage.

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The FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, and the Farm Credit Administration approved the issuance of a joint final rule to amend their respective regulations regarding loans in special flood hazard areas.

The final rule amends the FDIC's flood insurance regulation at Part 339 of Title 12 of the Code of Federal Regulations to incorporate and put into effect certain provisions in the Biggert-Waters Flood Insurance Reform Act of 2012 (BW Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA).

The final rule covers three key provisions:

- Escrow of flood insurance premiums and fees;
- Detached structures exemption to the mandatory flood insurance purchase requirement; and
- Force-placed flood insurance.

Escrow

The final rule requires institutions or servicers acting on their behalf to escrow premiums and fees for flood insurance required by Part 339 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. In addition, the final rule provides an exemption for smaller institutions. An institution qualifies for the exemption if it has total assets of less than \$1 billion as of July 6, 2012, (the date of the BW Act's enactment); it was not required by Federal or State law to escrow taxes or insurance for the term of the loan; and it did not have a policy of requiring escrow of taxes or insurance. Transition rules are provided for institutions that have a change in asset size and no longer qualify for the small-lender exception.

The final rule also implements the following additional exceptions from the escrow requirement:

1. Loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided;
2. Loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met;
3. Loans that are extensions of credit primarily for a business, commercial, or agricultural purpose;
4. Home equity lines of credit;

5. Nonperforming loans (a loan 90 or more days past due that remains nonperforming until permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full); and
6. Loans with terms not longer than 12 months.

In addition, the final rule implements the requirement that institutions that are not exempt from the escrow requirement must offer and make available to borrowers the option to escrow flood insurance premiums and fees for loans that are not subject to the mandatory escrow requirement and are outstanding as of January 1, 2016. Institutions have been given until June 30, 2016, to mail or deliver information to borrowers about the option to escrow. The final rule also requires institutions that no longer qualify for the small-lender exception to offer and make available to borrowers the option to escrow flood insurance premiums and fees.

Detached Structures

The final rule incorporates the new detached structures exemption to the mandatory flood insurance purchase requirement into Part 339. This exemption applies to 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. The final rule also clarifies what is considered "a structure that is part of a residential property," "detached," and "serve as a residence." Specifically, the final rule clarifies that:

1. "a structure that is part of a residential property" is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes;
2. a structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure; and
3. "serve as a residence" is based upon the institution's good faith determination that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

The detached structures exemption became effective upon enactment of the HFIAA on March 21, 2014.

Force-Placed Insurance

The final rule incorporates the statutory force-placement provisions into Part 339. These changes clarify that an institution or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also provides that under certain circumstances an institution or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower for any period of overlap in coverage. Finally, the final rule describes the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

Separately, the final rule provides a revised appendix with sample forms that address the new notice requirements.

The force-placed flood insurance provisions became effective upon enactment of the BW Act on July 6, 2012.

Links

[Joint Final Rule](#)

[Press Release](#)

[Federal Register Notice](#)