

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC-2020-0008]

FEDERAL RESERVE SYSTEM

[Docket No. OP-1720]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064-ZA16

FARM CREDIT ADMINISTRATION

RIN 3052-AD42

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133-AF14

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers

Regarding Flood Insurance

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) propose to reorganize, revise, and expand the Interagency Questions and Answers Regarding Flood Insurance and solicit comment on all aspects of the amendments. To help lenders meet their responsibilities under Federal flood insurance law and to increase public understanding of their flood insurance regulations, the Agencies have prepared proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. Significant topics addressed by the proposed revisions include the effect of major amendments to flood insurance laws with regard to the escrow of flood insurance premiums, the detached structure exemption, and force-placement procedures.

DATES: Comments on the proposed questions and answers must be submitted on or before [60 from date of publication in the *Federal Register*].

ADDRESSES: Interested parties are invited to submit written comments to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov Classic or Regulations.gov Beta:*
Regulations.gov Classic: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0008” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov Site*” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC-2020-0008” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

- *E-mail:* regs.comments@occ.treas.gov.

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2020-0008” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice action by any of the following methods:

- *Viewing Comments Electronically – Regulations.gov Classic or Regulations.gov*

Beta:

Regulations.gov Classic: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0008” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC-2020-0008” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for

persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. OP-1720, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *E-mail:* regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue, NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064-ZA16, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Website: <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments.
- Email: comments@fdic.gov. Include RIN 3064-ZA16 in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery / Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All submissions must include the agency name and RIN 3064-ZA16 for this rulemaking. Comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA’s Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at reg-comm@fca.gov.

• *FCA Web site:* <http://www.fca.gov>. Click inside the "I want to ... " field near the top of the page; select "comment on a pending regulation " from the dropdown menu; and click "Go." This takes you to an electronic public comment form.

• *Mail:* David P. Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, click inside the "I want to ... " field near the top of the page; select "find comments on a pending regulation" from the dropdown menu; and click "Go." This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

NCUA: You may submit comments identified by RIN 3133-AF14 by any of the following methods (please send comments by one method only). *Please note that the NCUA is now accepting electronic comments only through the Federal eRulemaking portal, Regulations.gov:*

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Fax:* (703) 518-6319. Use the subject line “[Your name] Comments on Flood Insurance, Interagency Questions & Answers” on the transmission cover sheet.

• *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on the agency's website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments. You may inspect paper copies of comments in the NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6540 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Risk Policy Division, (202) 649-5405; or Sadia A. Chaudhary, Counsel, Chief Counsel's Office, (202) 649-6350, or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452-2705 or Vivian W. Wong, Senior Counsel (202) 452-3667, Division of Consumer and Community Affairs; Daniel Ericson, Senior Counsel (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, (202) 898-6526, nchoudhury@FDIC.gov; or Simin Ho, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898-6907, sho@FDIC.gov.

FCA: Ira D. Marshall, Senior Policy Analyst, Office of Regulatory Policy (703) 883-4379, TTY (703) 883-4056; or Jennifer Cohn, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

NCUA: Sarah Chung, Senior Staff Attorney, Office of General Counsel, (703) 518–6540, or Lou Pham, Senior Credit Specialist, Office of Examination and Insurance, (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Act of 1968 created the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA).¹ The NFIP enables property owners in participating communities to purchase flood insurance if the community has adopted floodplain management ordinances and minimum standards for new and substantially damaged or improved construction. Thus, in participating communities, Federally-backed flood insurance is available for property owners in flood risk areas.

Congress expanded the NFIP by enacting the Flood Disaster Protection Act of 1973 (FDPA).² The FDPA made the purchase of flood insurance mandatory in connection with loans made by Federally-regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a special flood hazard area (SFHA). The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the Federal flood insurance statutes.³ The Reform Act required the OCC, Board, FDIC, Office of Thrift Supervision (OTS), and NCUA to revise their flood insurance regulations, and required the FCA to promulgate a

¹ Pub. L. 90–448, 82 Stat. 572 (1968).

² Pub. L. 93–234, 87 Stat. 975 (1973).

³ Title V of Pub. L. 103-325, 108 Stat. 2255 (1994).

flood insurance regulation for the first time.⁴ The OCC, Board, FDIC, OTS, NCUA, and FCA⁵ fulfilled these requirements by issuing a joint final rule in the summer of 1996.⁶

In connection with the 1996 joint rulemaking process, commenters asked the Agencies to clarify specific issues covering a wide spectrum of the proposed rule's provisions. The Agencies addressed many of these requests in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of the requests, guidance addressing technical compliance issues would be helpful and appropriate. The Federal Financial Institutions Examination Council (FFIEC) fulfilled that objective through the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers).⁷

After notice and comment, the Agencies comprehensively updated the 1997 Interagency Questions and Answers in July 2009 (2009 Interagency Questions and Answers) through significant revision and reorganization. As part of the 2009 effort, the Agencies also proposed five new Q&As for comment relating to insurable value and force placement of flood insurance.⁸ As a result, the 2009 Interagency Questions and Answers included a total of 77 final Q&As, which superseded the 1997 Interagency Questions and Answers.⁹

⁴ Title V of Pub. L. 103-325, 108 Stat. 2255 (1994).

⁵ Throughout this document "the Agencies" includes the OTS with respect to events that occurred prior to July 21, 2011, but does not include OTS with respect to events thereafter. Sections 311 and 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred OTS's functions to other agencies on July 21, 2011. The OTS's supervisory functions relating to Federal savings associations were transferred to the OCC, while those relating to state savings associations were transferred to the FDIC. *See also* 76 FR 39246 (Jul. 6, 2011).

⁶ 61 FR 45684 (August 29, 1996).

⁷ 62 FR 39523 (July 23, 1997). Throughout this document, "Questions and Answers" refers to the Interagency Questions and Answers Regarding Flood Insurance in its entirety; "Q&A" refers to an individual question and answer within the Questions and Answers.

⁸ 74 FR 35914 (July 21, 2009).

⁹ 74 FR 35914 (July 21, 2009).

On October 17, 2011, the Agencies finalized two of the five new proposed Q&As from 2009, one relating to insurable value and one relating to force placement, and withdrew one Q&A regarding insurable value.¹⁰ The two finalized Q&As (2011 Interagency Questions and Answers) supplemented the 2009 Interagency Questions and Answers. As part of the same *Federal Register* notice, based on comments received, the Agencies proposed to significantly revise the remaining two Q&As regarding force placement of flood insurance that were initially proposed in 2009, and proposed revisions to a previously finalized Q&A on force placement for consistency with the re-proposed Q&As. These three revised Q&As were re-proposed for comment in the October 17, 2011, *Federal Register* notice.

Before the Agencies could finalize the three re-proposed Q&As, the Federal flood insurance statutes were amended by two major pieces of legislation, the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act) and the 2014 Homeowner Flood Insurance Affordability Act (HFIAA). The Biggert-Waters Act amended the requirements that the Agencies have authority to implement and enforce.¹¹ Among other things, the Biggert-Waters Act: (1) required the Agencies to issue a rule regarding the escrow of premiums and fees for flood insurance; (2) clarified the requirement to force place insurance; and (3) required the Agencies to issue a rule to direct regulated lending institutions to accept “private flood insurance,” as defined by the Biggert-Waters Act, and to notify borrowers of the availability of private flood insurance.

In October 2013, the Agencies jointly issued proposed rules to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act.¹² In March

¹⁰ 76 FR 64175. The Agencies finalized Q&As 9 (insurable value) and 61 (force placement) and withdrew Q&A 10 (insurable value).

¹¹ Pub. L. 112–141, 126 Stat. 916 (2012).

¹² 78 FR 65108 (Oct. 30, 2013).

2014, the HFIAA was enacted, which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the mandatory flood insurance purchase requirements for certain detached structures.¹³ The Agencies finalized the regulations to implement provisions in the Biggert-Waters Act and HFIAA under the Agencies’ jurisdiction, except for the provisions related to private flood insurance, with a final rule issued in July 2015.¹⁴ In February 2019, the Agencies finalized regulations that implement the private flood insurance related provisions of the Biggert-Waters Act.¹⁵

The Agencies are releasing for public comment proposed revisions and new Interagency Q&As in light of the significant changes to flood insurance requirements pursuant to the Biggert-Waters Act and HFIAA as well as regulations issued to implement these laws. Further, over the years, the lending industry has requested that the Agencies provide additional guidance on flood insurance compliance issues on many occasions, including at conferences and through interagency webinars. Finally, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), certain Agencies are directed to conduct a joint review of their regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or unduly burdensome.¹⁶ As part of the joint review, the Board, FDIC, OCC and

¹³ Pub. L. 113–89, 128 Stat. 1020 (2014).

¹⁴ 80 FR 43216 (July 21, 2015). Subsequently, on November 7, 2016, the Agencies re-proposed the private flood insurance provisions through a joint notice of proposed rulemaking (81 FR 78063).

¹⁵ 84 FR 4953 (Feb. 20, 2019).

¹⁶ Pub. L. 104-208, 110 Stat. 3001 (1996) (codified at 12 U.S.C. 3311). The most recent report to Congress required by EGRPRA was published by the Board, FDIC, OCC, and NCUA under the FFIEC in March 2017. The NCUA, although an FFIEC member, is not a “federal banking agency” within the meaning of EGRPRA and so is not required to participate in the review process. Nevertheless, NCUA elected to participate in the EGRPRA review and conducted its own parallel review of its regulations. The FCA is not subject to EGRPRA; however, it is directed by the Farm Credit System Reform Act of 1996 to conduct a regulatory review (*see* 12 U.S.C. 2252 note) and conducts such review every four years. The CFPB, although an FFIEC member, is not a “federal banking agency” within the meaning of EGRPRA and so is not required to participate in the review process.

NCUA received comments on the Agencies' flood insurance rules. Several commenters asked for more guidance to the industry on flood insurance requirements, particularly with respect to renewal notices for force-placed insurance policies, the required amount of flood insurance, and flood insurance requirements for tenant-owned buildings and detached structures. One commenter specifically requested that the Interagency Flood Questions and Answers be updated. In the FFIEC's EGRPRA Joint Report to Congress, the Board, FDIC, and OCC indicated that they:

“agree with these EGRPRA commenters that additional agency guidance on flood insurance requirements would be helpful to the banking industry and that the Interagency Flood Q&As should be updated to address recent amendments to the flood insurance statutes. In fact, the agencies have begun work on revising the Interagency Flood Q&As to reflect the agencies' recently issued final rules implementing the Biggert-Waters Act and HFIAA requirements and to address other issues that have arisen since the last update in 2011. As part of this revision, the agencies also plan to address many of the flood insurance issues raised by EGRPRA commenters.”¹⁷

Accordingly, the Agencies, in proposing these Interagency Questions and Answers for public comment, are addressing the commitment made in the EGRPRA Joint Report to Congress.

This 2020 proposal to reorganize, revise, and introduce new Interagency Q&As includes the introduction of new Q&As on escrow of flood insurance premiums, force placement of flood insurance, and the detached structures exemption. The Agencies are also proposing to revise and reorganize the existing Q&As into new categories by subject to enhance clarity and understanding for users, and improve efficiencies by making it easier to find information related to technical flood insurance topics. Once finalized, the new Interagency Questions and Answers will supersede the 2009 and the 2011 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies relative to loans in areas having special flood

¹⁷ https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf

hazards. Along with the finalized new Interagency Questions and Answers, the Agencies plan to issue separately for notice and comment another set of proposed Q&As relating to the private flood insurance rule. In the interim, the Agencies have provided information regarding the private flood insurance rule that may serve as a resource in a webinar dated June 18, 2019.¹⁸ In addition to guidance and interpretations issued by the Agencies, lenders should be aware of information related to the NFIP provided by FEMA that may address questions pertaining to NFIP requirements.

Public Comments

The Agencies invite specific public comment on the proposed new and revised Interagency Questions and Answers. If lenders, community groups, or other parties have unanswered questions or comments about the Agencies’ flood insurance regulations, they should submit them to the Agencies. The Agencies will consider including these Q&As in future guidance. Comments are also invited on whether the proposed Q&As are stated clearly and how they might be revised to be easier to read.

Reorganization of Interagency Questions and Answers

For ease of reference and in light of the increased number of subjects covered that address complex issues, the Agencies propose to reorganize the Interagency Questions and Answers to provide a more logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders. The table below sets forth the current categories and the corresponding new, reorganized categories for purposes of comparison:

Table of Contents

	Category from Current Table (from 2009 Q&A)	Reorganized Category
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¹⁸ <https://consumercomplianceoutlook.org/outlook-live/2019/interagency-flood-insurance-regulation-update/>

I.	Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation	Determining the Applicability of Flood Insurance Requirements for Certain Loans [Applicability]
II.	Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation	Exemptions From the Mandatory Flood Insurance Purchase Requirements [Exemptions]
III.	Exemptions From the Mandatory Flood Insurance Requirements	Coverage –NFIP/Private Flood Insurance [Coverage]
IV.	Flood Insurance Requirements for Construction Loans	Required Use of Standard Flood Hazard Determination Form [SFHDF]
V.	Flood Insurance Requirements for Nonresidential Buildings	Flood Insurance Determination Fees [Fees]
VI.	Flood Insurance Requirements for Residential Condominiums	Flood Zone Discrepancies [Zone]
VII.	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA	Notice of Special Flood Hazards and Availability of Federal Disaster Relief [Notice]
VIII.	Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights	Determining the Appropriate Amount of Flood Insurance Required [Amount]
IX.	Escrow Requirements	Flood Insurance Requirements for Construction Loans [Construction]
X.	Force Placement	Flood Insurance Requirements for Residential Condominiums and Co-Ops [Condo and Co-Op]
XI.	Private Flood Insurance	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA [Other Security Interests]
XII.	Required Use of Standard Flood Hazard Determination Form (SFHDF)	Requirement to Escrow Flood Insurance Premiums and Fees – General [Escrow]
XIII.	Flood Determination Fees	Requirement to Escrow Flood Insurance Premiums and Fees – Small Lender Exception [Small Lender Exception]
XIV.	Flood Zone Discrepancies	Requirement to Escrow Flood Insurance Premiums and Fees –

		Loan Exceptions [Loan Exceptions]
XV.	Notice of Special Flood Hazards and Availability of Federal Disaster Relief	Force Placement of Flood Insurance [Force Placement]
XVI.	Mandatory Civil Money Penalties	Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights [Servicing]
XVII.		Mandatory Civil Money Penalties [Penalty]

Moreover, the Agencies also propose a new system of designation for the Q&As. Rather than numbering the Q&As successively through all the categories, each Q&A will be designated by the category to which it belongs and then designated in numerical order for that particular category. For example, Q&As in the first category, *Determining the Applicability of Flood Insurance Requirements for Certain Loans*, would be re-designated as Applicability 1, Applicability 2, etc. This numbering system would enable the Agencies to add or delete Q&As in the future without needing to significantly renumber or reorganize all of the Q&As. The Agencies specifically solicit comment as to the proposed re-designations, whether they would promote ease of reference and whether some other designation system might be more preferable.

For ease of reference, the following terms are used throughout this document: “Act” refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, Biggert-Waters Flood Insurance Reform Act of 2012 and Homeowner Flood Insurance Affordability Act (codified at 42 U.S.C. 4001 *et seq.*). “Regulation” refers to each agency’s current final rule.¹⁹

Section-by-Section Analysis

¹⁹ The Agencies’ rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

Section I. Determining the Applicability of Flood Insurance Requirements for Certain Loans

The heading to proposed section I has been streamlined to provide greater clarity with no intended change in substance or meaning. This new proposed general applicability section would include current Q&As 1-7 relating to residential buildings and, for organizational purposes, would incorporate current section V's Q&As 24 and 25, which address flood insurance requirements for nonresidential buildings. The Agencies propose to re-designate current Q&A 1 as proposed Q&A Applicability 1 with only minor language modifications, with no intended change in substance or meaning. Current Q&A 24 would be re-designated as proposed Q&A Applicability 2 and revised so that the proposed answer depends on whether buildings with limited utility meet the detached structure exemption for purposes of mandating flood insurance for such buildings. Current Q&A 25 would be re-designated as proposed Q&A Applicability 3 and current Q&As 2, 3, 5-7 would be re-designated as proposed Q&As Applicability 4, 5, 6-8, respectively. Current Q&A 4 would be re-designated as proposed Q&A Applicability 9.

The Agencies are proposing revisions to proposed Q&A Applicability 3 to include an example to provide greater clarity and to improve readability, with no intended change in substance or meaning. Proposed Q&A Applicability 4 would be revised from current Q&A 2 to also address a lender's responsibility if a building or mobile home that secures a loan is not located within an SFHA. The proposed answer would be expanded to state that a lender may, at its discretion and subject to applicable State law, require flood insurance for property outside of SFHAs for risk management purposes as a condition of a loan being made. Proposed Q&As Applicability 5, 7, 8, and 9 would have only minor language modifications for greater clarity, with no intended change in substance or meaning. Proposed Q&A Applicability 6 would remain unchanged from current Q&A 5.

Lastly, the Agencies propose to add three new Q&As, Applicability 10, 11, and 12. Proposed new Q&A Applicability 10 would address a lender's obligations when participating in a multi-tranche credit facility, specifically whether a lender is expected to consider any triggering event and any cashless roll of which it becomes aware in any tranche. The proposed answer would provide that a multi-tranche credit facility is analogous to a loan syndication or participation and that the Agencies do not expect a lender participating in one tranche in a multi-tranche credit facility to be responsible for taking action to comply with flood insurance requirements in connection with a triggering event or cashless roll that occurs in a tranche in which the lender does not participate. Furthermore, the proposed answer clarifies that the Agencies expect a lender participating in a multi-tranche credit facility to perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with flood insurance requirements. Proposed new Q&A Applicability 11 would clarify that an automatic extension of a credit facility agreed upon by the borrower and lender in the original loan agreement would not constitute a triggering event for purposes of the federal flood insurance requirements. Proposed new Q&A Applicability 12, which would be based on guidance previously issued by the Agencies,²⁰ would address the applicability of the mandatory purchase requirement during a period of time when coverage under the NFIP is unavailable, such as due to a lapse in authorization or in appropriations. The proposed answer would clarify that during a period when NFIP coverage is not available, lenders may continue to make loans subject to the Regulation without flood insurance coverage, but

²⁰ See Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts, OCC Bulletin 2010-20 (OCC); Informal Guidance on the Lapse of FEMA's Authority to Issue Flood Insurance Contracts, CA Letter 10-3 (Board); Lapse of FEMA Authority to Issue Flood Insurance Policies, FIL-23-2010 (FDIC); Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts, Informational Memorandum June 3, 2010 (FCA), and Guidance on the Lapse of FEMA's Authority to Issue Flood Insurance Contracts, Letter No. 10-CU-08 (NCUA).

must continue to make flood determinations, provide timely, complete and accurate notices to borrowers, and comply with other aspects of the Regulation. Lenders also should evaluate the safety and soundness and legal risks, and prudently manage those risks, during such periods when the NFIP is unavailable.

Section II. Exemptions from the Mandatory Flood Insurance Purchase Requirements

Current section III would be moved to proposed section II and significantly expanded with the addition of six new proposed Q&As pertaining to the exemption from the mandatory flood insurance purchase requirements for certain detached structures created by HFIAA. The heading to proposed section II has been revised to provide greater clarity with no intended change in substance or meaning. Current Q&A 18 would be included in this section, re-designated as proposed Q&A Exemptions 1, and would be revised to include the detached structure exemption in addition to the exemptions for State-owned property, and loans with a principal balance of less than \$5,000 and an original repayment term of one year or less. The revised Q&A also would note that although an exemption may apply, a borrower may still elect to purchase flood insurance or a lender may still require flood insurance as a condition of making the loan for purposes of safety and soundness, depending on its risk analysis.

As stated above, the Agencies propose to add six new Q&As to address the application of the detached structure exemption and related lender obligations. The new proposed Q&As would be designated as Exemptions 2-7. This set of Q&As on the detached structure exemption responds to a request for more guidance related to this exemption in the EGRPRA report. Proposed new Q&A Exemptions 2 would be added to address whether a lender must take a security interest in the primary residential structure for a detached structure to be eligible for the detached structure exemption. The proposed answer would provide that although a lender does

not have to take a security interest in the primary residential structure, it would need to evaluate the uses of the detached structures to confirm each is eligible for the exemption. Proposed new Q&A Exemptions 3 would clarify that a flood hazard determination is required for a detached structure even though flood insurance coverage is not required on such structure because it is used to identify the number and type of structures present on the property. Proposed new Q&A Exemptions 4 would provide that a lender or its servicer may cancel its flood insurance requirement on an eligible detached structure that is currently insured, but that a lender alternatively may want to continue to require flood insurance coverage for detached structures of relatively high value if such coverage would be beneficial to the borrower and the lender. Proposed new Q&A Exemptions 5 would address whether a property being re-mapped into an SFHA triggers a review of the intended use of each detached structure. Specifically, the proposed answer states that although there is no duty to monitor the status of a detached structure following the lender's initial determination, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on properties securing loans in its portfolio.

Proposed new Q&A Exemptions 6 would discuss whether a lender, following a review of its loan portfolio, may determine it would no longer require flood insurance on a detached structure in an SFHA if the structure does not provide contributory value. The Agencies propose to clarify that, while a lender or servicer could initiate such a review, the Regulation does not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on their contributory value, but instead on whether a specific exemption applies. Lastly, proposed new Q&A Exemptions 7 would address whether a building would qualify as a detached structure if it is joined to another building by a stairway or covered walkway. The

proposed answer would provide that for purposes of the detached structure exemption, a structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure.

Section III. Coverage (NFIP/Private Flood Insurance)

For organizational purposes, current section XI would be moved to proposed section III, logically following the discussions of applicability and exemptions from flood insurance requirements. The heading to proposed section III would be expanded to cover the various types of flood insurance policies available to borrowers. Proposed section III would cover questions related to flood insurance policy coverage issues under the NFIP and private flood insurance. Current Q&A 63 would be deleted because it is inconsistent with the Agencies’ final rule implementing the private flood insurance provision of the Biggert-Waters Act.²¹ A new proposed Q&A Coverage 1 would be included to assist lenders in complying with the discretionary acceptance provision and mutual aid societies provision in the Agencies’ final rule implementing the private flood insurance provision of the Biggert-Waters Act. Current Q&A 64, addressing the use of private flood insurance for portfolio-wide coverage, would be re-designated as proposed Coverage 2 and revised given that FEMA withdrew the *Mandatory Purchase of Flood Insurance Guidelines*, which is cross-referenced in current Q&A 64, with no intended change in substance or meaning. Additionally, a new proposed Q&A Coverage 3 would address when mandatory flood insurance is required to be in place.

Specifically, proposed new Coverage 1 would list several factors a lender may consider in determining whether a flood insurance policy issued by a private insurer or mutual aid plan provides sufficient protection of the loan. These factors may include whether: 1) a policy’s

²¹ 84 FR 4953 (Feb. 20, 2019).

deductibles are reasonable based on the borrower's financial condition; 2) the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force placement of flood insurance, if necessary; 3) the terms and conditions of the policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; 4) the flood insurance policy complies with applicable State insurance laws; and 5) the private insurance company has the financial solvency, strength, and ability to satisfy claims. A lender may include its analysis of such factors in documenting its conclusion of sufficient protection of the loan when accepting flood insurance coverage issued by a private insurer or mutual aid society in satisfaction of the mandatory purchase requirement.

Proposed Q&A Coverage 2 would be slightly revised to address when a lender may rely on a private insurance policy providing portfolio-wide coverage. The proposed answer would be revised by removing the reference to criteria set forth by FEMA and including language addressing a lender's reliance on a policy that provides portfolio-wide coverage. Lastly, proposed new Q&A Coverage 3 would explain when mandatory flood insurance on a designated loan needs to be in place during the closing process. The proposed answer would clarify that a lender should use the loan "closing date" to determine the date by which flood insurance should be in place for a designated loan. FEMA deems the "closing date" as the date the ownership of the property transfers to the new owner based on State law. The proposed answer further explains the difference between "wet funding" and "dry funding" States and how it impacts the "closing date" for purposes of flood insurance.

IV. Required Use of Standard Flood Hazard Determination Form (SFHDF)

For organizational purposes, current section XII would be moved to proposed section IV. Accordingly, current Q&As 65-68 would be re-designated as proposed Q&As SFHDF 1-4, respectively, with only minor language modifications and no intended change in substance or meaning.

V. Flood Insurance Determination Fees

For organizational purposes, current section XIII would be moved to proposed section V. Current Q&As 69 and 70 would be re-designated as proposed Q&As Fees 1 and 2 with only minor changes and no intended change in substance or meaning.

VI. Flood Zone Discrepancies

For organizational purposes, current section XIV would be moved to proposed section VI. Current Q&As 71 and 72 would be re-designated as proposed Q&As Zone 1 and 2. The Agencies propose to revise current Q&A 71, re-designated as proposed Q&A Zone 1, to reflect a change in the Agencies' expectations regarding a lender's obligation when there is a discrepancy between the flood determination form and the flood insurance policy. A lender no longer would be required to attempt to resolve the discrepancy, but the lender should consider documenting the discrepancy in the loan file. If the flood determination form indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage and would not otherwise be required to attempt to resolve the discrepancy as previously indicated in current Q&A 71. The Agencies note in the proposed answer that the issue of flood zone discrepancies is an insurance rating issue, not a coverage issue. Proposed Q&A Zone 2 would clarify that a lender is not in violation of the Regulation if there is a discrepancy between the flood zone on the flood determination form and the flood zone on the policy declarations

page. Lastly, proposed new Q&A Zone 3 would explain what a lender should do when a borrower disputes the lender's flood zone determination that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage.

VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

For organizational purposes, current section XV would be moved to proposed section VII. This section would include current Q&As 73-76 and 78-80 and would be re-designated as proposed Q&As Notice 1-7, respectively. Proposed Q&A Notice 1 would have minor language modifications for purposes of clarity with no change in meaning or substance. Proposed Q&A Notice 2 would be amended to conform more closely to the Regulation. As modified, the answer to proposed Q&A Notice 2 would state that a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction, even if the lender only learns where the mobile home will be located just prior to closing and delivery of the Notice of Special Flood Hazards would delay closing. Proposed Q&A Notice 3 would remain unchanged from current Q&A 75. For organizational purposes, current Q&As 76 and 77 would be consolidated, with no substantive changes, into proposed Q&A Notice 4 in this section. Current Q&A 78 would be re-designated as Notice 5 and revised to list examples of what constitutes an acceptable record of receipt. Current Q&As 79 and 80 would be re-designated as Q&As Notice 6 and 7, respectively, and would be revised nonsubstantively to provide additional clarity.

Section VIII. Determining the Appropriate Amount of Flood Insurance Required

The Agencies propose to move current section II to proposed section VIII. The heading to proposed section VIII would be amended for streamlining purposes. Current Q&As 8, 9, and 11-17 would be re-designated as Amount 1, Amount 2, and Amount 3-9 respectively. Proposed

Q&A Amount 1 would discuss NFIP coverage limits more fully to include coverage for condominiums and contents coverage. The proposed answer would provide that for single-family and two-to-four family or individually-owned condominium units insured under the Dwelling Form policy, the maximum limit is \$250,000. For a residential condominium building insured under the Residential Condominium Building Association Policy (RCBAP) form, the maximum amount of insurance available is \$250,000 multiplied by the number of units. For all other buildings insured under the General Property Form, the maximum limit of building coverage available is \$500,000. The maximum limit for contents insured under the Dwelling Form and RCBAP is \$100,000 total (not per unit) and \$500,000 for contents insured under the General Property Form. Proposed Q&A Amount 2, which defines “insurable value,” would be revised to remove references to the rescinded FEMA *Mandatory Purchase of Flood Insurance Guidelines* and to provide greater clarity with no intended change in substance or meaning.

Proposed Q&A Amount 3 would be revised to include more detailed definitions from the NFIP *Flood Insurance Manual* of the terms: single family dwelling, 2-4 family residential building, and other residential building. Proposed Q&A Amount 4 would similarly be revised to provide a more detailed definition of nonresidential building as defined in the NFIP *Flood Insurance Manual*. Proposed Q&As Amount 5-9 would be revised to provide greater clarity with no intended change in substance or meaning.

IX. Flood Insurance Requirements for Construction Loans

Current section IV would be moved to proposed section IX and would include current Q&As 19-23, which would be re-designated as proposed Q&As Construction 1-5, respectively. The Agencies propose minor changes to proposed Q&As Construction 1 and Construction 2 for purposes of clarification. The Agencies would revise proposed Q&A Construction 3 to

accurately cite to the NFIP *Flood Insurance Manual*. Proposed Q&A Construction 4 would address when a lender must require flood insurance in connection with a loan secured by a building in the course of construction and would be revised to incorporate the NFIP's change in policy regarding the 30-day waiting period. In particular, the Agencies propose that if a lender requires a borrower to have flood insurance in place at the time of loan origination, a borrower should obtain a provisional rating based on the construction designs and intended use of the building to enable the placement of coverage prior to receipt of the Elevation Certificate (EC), based on FEMA guidance. The proposed Q&A would state that 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. Under the proposed Q&A, failure to obtain the EC could result in reduced coverage limits at the time of loss. Alternatively, if the lender requires the borrower to have flood insurance in place before the lender disburses funds to pay for building construction, the lender should have adequate controls in place to ensure the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower due to FEMA's removal of the 30-day waiting period waiver. Proposed Q&A Construction 5, addressing the 30-day waiting period in connection with a construction loan, also would be revised to reflect this change. Proposed new Q&A Construction 6 would explain that if a lender allows a borrower to defer the purchase of flood insurance until either the foundation slab has been poured and/or an EC 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, the lender will need to begin escrowing flood insurance premiums and fees at the time of purchase of the flood insurance.

X. Flood Insurance Requirements for Residential Condominiums and Co-Ops

The heading to proposed section X would be expanded to include other multi-family dwellings such as cooperatives. This section would include current Q&As 26-33, which would be re-designated as proposed Q&As Condo and Co-Op 1-8, respectively. Proposed Q&As Condo and Co-Op 1, Condo and Co-Op 2, and Condo and Co-Op 7 would remain generally unchanged. Proposed Q&As Condo and Co-Op 3, 4, 5, 6, and 8 would have minor revisions to provide greater clarity or accurate references with no intended changes in substance or meaning. A new proposed Q&A Condo and Co-Op 9 would be added to proposed section X to address flood insurance requirements for loans secured by a unit in a cooperative building located in an SFHA. The proposed answer provides that a loan to a cooperative unit owner is not a designated loan subject to the Act or Regulation because the unit owner does not own a title to the building but simply the right to occupy a particular unit based on the cooperative ownership structure.

XI. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral (Contents) Located in an SFHA

The heading to section XI would be amended for purposes of clarity. This section would include current Q&As 34, 35 and 36-43, which would be re-designated as Other Security Interests 1, Other Security Interests 2, and Other Security Interests 4-9 and 11-12, respectively. Proposed Q&As Other Security Interests 1, 2, 5, 6, 8, 11, and 12 would remain substantively unchanged. A new proposed Q&A Other Security Interests 3 would be added to address flood insurance coverage requirements for a line of credit secured by improved real property located in an SFHA. The proposed answer would provide alternative approaches depending on when the lender requires flood insurance to be in place. Proposed Q&A Other Security Interests 4 would be amended slightly with no intended changes in substance or meaning. Proposed Q&A Other

Security Interests 7 would be revised to clarify the application of Federal flood insurance requirements when both a building and its contents secure a loan. Proposed Q&A Other Security Interests 9 would be revised to clarify the impact of including language regarding contents taken as security for a loan in the loan agreement. Proposed new Q&A Other Security Interests 10 would indicate that flood insurance is required if the lender takes a security interest in contents regardless of whether that security interest is perfected.

XII. Requirement to Escrow Flood Insurance Premiums and Fees – General

With the passage of HFIAA, the escrow requirements for flood insurance premiums have been significantly revised through the introduction of new escrow requirements that are not dependent on whether other insurance or taxes are escrowed, lender and loan-related exceptions to those requirements, and the requirement for an escrow notice. Accordingly, the Agencies propose to revise the discussion of escrow requirements by designating four sections to address escrow considerations. The first section, proposed section XII, would include Q&As covering the general escrow requirement for flood insurance premiums and fees. The second section, proposed section XIII, would include Q&As related to the small lender exception to flood insurance escrow requirements. Proposed section XIV, the third section, would include Q&As related to loan-related exceptions to the requirement to escrow flood insurance premiums and fees. These sets of Q&As on the escrow of flood insurance premiums and fees respond to a request for more guidance related to the escrow requirement in the EGRPRA report.

Proposed new section XII would contain two Q&As from current section IX and five new proposed Q&As. Specifically, current Q&As 51 and 52 would be included in proposed section XII and re-designated as Escrow 5 and Escrow 1, respectively. Proposed Q&A Escrow 1 would be significantly revised from current Q&A 52 to address the general question of when escrow

accounts for flood insurance premiums and fees must be established. The proposed revised answer would explain that the new escrow requirement applies only upon a triggering event and would not apply if either the small lender exception or any of the loan-related exceptions apply. The proposed revised answer also would address a lender's escrow obligations if the lender no longer qualifies for the small lender exception. Proposed new Q&A Escrow 2 would clarify that a lender must escrow flood insurance premium payments even if it does not escrow for taxes or homeowner's insurance. Proposed new Q&A Escrow 3 would state that a lender must escrow force-placed flood insurance premium payments because there is no exception for force-placed insurance under the Act or Regulation. Proposed new Q&A Escrow 4 would discuss whether flood insurance premium payments must be escrowed when a loan has not experienced a triggering event (a making, increase, renewal, or extension) but the loan has experienced a non-triggering event, such as a loan modification, a FEMA remapping, or the assumption of the loan by a new borrower. The Agencies explain in the proposed answer that, subject to certain exceptions, until a loan experiences a triggering event, the lender is not required to escrow flood insurance premiums and fees unless: (i) a borrower requests the escrow in connection with the requirement that the lender provide an option to escrow for outstanding loans; or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.

The Agencies propose revisions to current Q&A 51, which has been re-designated as proposed Q&A Escrow 5, to reflect updates to clarify that multi-family buildings or mixed-use properties are included in the definition of "residential improved real estate" and therefore are subject to the escrow requirement unless an exception applies. New proposed Q&A Escrow 6 would address the situation in which a junior lienholder determines that the primary lienholder does not have sufficient flood insurance coverage in place and is also not escrowing for flood

insurance. The proposed answer would clarify that if the primary lienholder has not obtained adequate flood insurance, the junior lienholder would need to ensure adequate flood insurance is in place and also would need to escrow for that flood insurance. The proposed answer also would indicate that the escrow requirements would not apply to a junior lien that is a home equity line of credit (HELOC), since HELOCs have a separate escrow exception under the Act and Regulation. New proposed Q&A Escrow 7 addresses whether a lender or its servicer must escrow when real property securing the loan is not located in an SFHA, but the borrower chooses to buy flood insurance, by clarifying that a lender or its servicer is not required to escrow premium payments but may choose to do so. Current Q&As 53 and 54 would be removed because they are no longer applicable.

XIII. Requirement to Escrow Flood Insurance Premiums and Fees – Small Lender Exception

As previously discussed, new section XIII would include seven new proposed Q&As related to the small lender exception to the requirement to escrow flood insurance premiums. New proposed Q&A Small Lender Exception 1 would specify that the \$1 billion threshold for the small lender exception would be based on assets held at the regulated financial institution level and not at the holding company level. New proposed Q&A Small Lender Exception 2 would discuss whether a qualifying lender must escrow flood insurance premiums if it was previously required to escrow only under the Higher-Priced Mortgage Loan (HPML) rules²² or under specific Federal housing programs prior to July 6, 2012. The proposed answer would clarify that the applicability of the first criterion of the small lender exception is dependent on

²² Pursuant to the Dodd-Frank Act, an HPML loan is one where the Annual Percentage Rate exceeds certain specified thresholds with the result that certain consumer protections must be observed, such as the escrow of property taxes and insurance premiums. *See* section 129D of the Truth in Lending Act as amended by section 1461(a) of the Dodd-Frank Act, 15 U.S.C. 1639D. *See also* HPML escrow rules at 12 CFR 226.35(b)(3) (Board) and 12 CFR 1026.35(b) (Bureau of Consumer Financial Protection).

whether the Federal or State law requirement to escrow was for the entire term of the loan. New proposed Q&A Small Lender Exception 3 would address whether a lender would be disqualified from the exemption if it escrowed funds on behalf of a third party. The Agencies' proposed answer would draw a distinction based on whether the lender established an individual escrow account for the loan. Specifically, the proposed answer would provide that if a lender collected escrow funds at closing and servicing of the loan was maintained by the lender, the lender would not qualify for the small lender exception because the lender would have had a policy of consistently and uniformly requiring the deposit of funds in an escrow account by establishing escrow accounts that the lender would service. However, if the lender collected the escrow funds at closing at the behest of a third party and then transferred those funds to the third party servicing that loan, the lender would qualify for the small lender exception under the proposed answer, provided the lender did not establish an individual escrow account and the lender transferred the escrow funds to the third party as soon as reasonably practicable. New proposed Q&A Small Lender Exception 4 would cover whether a lender would be eligible for the exception if it only escrows upon a borrower's request. As noted in the preamble to the 2015 Final Rule, the proposed answer would reiterate that a lender maintaining escrow accounts only on a borrower's request does not constitute a consistent or uniform policy of requiring escrow and therefore a lender could be eligible for the small lender exception if the other requirements are met.

New proposed Q&A Small Lender Exception 5 would discuss whether the option to escrow is required for: (1) all outstanding loans not excepted from the escrow requirement and secured by residential real estate and (2) outstanding loans not secured by buildings located in an SHFA. The proposed answer would clarify that the option to escrow notice requirement only

applies to lenders who have a change in status and no longer qualify for the small lender exception. Such lenders will be required to provide the option to escrow notice by September 30 of the first calendar year in which the lender has had a change in status for all outstanding designated loans secured by residential improved real estate or a mobile home as of July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception. The proposed answer would also clarify that the option to escrow requirement does not apply to loans or lenders that are excepted by the Regulation from the escrow requirement nor does the notice requirement apply to loans not subject to the mandatory flood insurance purchase requirement. New proposed Q&A Small Lender Exception 6 would explain that a lender must send to a borrower a notice of the option to escrow flood insurance premium payments when the borrower has previously waived escrow for flood insurance because it is possible the borrower's circumstances have changed and, if offered another chance to escrow, the borrower may desire to do so. Lastly, new proposed Q&A Small Lender Exception 7 would make clear that lenders who qualify for the small lender exception are not required to provide borrowers with either the escrow notice or the option to escrow notice.

XIV. Requirement to Escrow Flood Insurance Premiums and Fees – Loan Exceptions

New section XIV would include five Q&As regarding the loan-related exceptions to the escrow requirement. Current Q&A 55 would be re-designated as proposed Q&A Loan Exceptions 1 and revised to address whether escrow accounts must be set up for commercial loans secured by residential buildings based on the new loan-related exceptions. Specifically, the proposed answer would clarify that extensions of credit primarily for business, commercial, or agricultural purposes are not subject to the escrow requirement even if such loans are secured by residential improved real estate or a mobile home. New proposed Q&A Loan Exceptions 2

would indicate that construction-permanent loans that have a construction phase before the loan converts into permanent financing do not qualify for the 12-month exception from escrow even if one phase of the loan is for 12 months or less. New proposed Q&A Loan Exceptions 3 would clarify that a subordinate lienholder must begin to escrow as soon as reasonably practicable after it becomes aware that it has moved into the primary lien position on a designated loan subject to the escrow requirement. Current Q&A 56 would be re-designated as proposed Q&A Loan Exceptions 4 and revised to address an escrow account for insured real property covered by an RCBAP. The proposed answer would note that while escrow is not required for property covered by an RCBAP, if the RCBAP coverage is inadequate and the borrower obtains a separate dwelling policy, escrow would be required for such a policy unless an escrow exception applies. Lastly, new proposed Q&A Loan Exceptions 5 would discuss whether there is an exception to the escrow requirement for loans secured by multi-family buildings. The Agencies would make clear in the proposed answer that escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes, even if the loan is secured by residential real estate such as a multi-family building, nor would it apply to a loan secured by a particular unit in a multi-family residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense. Otherwise, under the proposed answer, the escrow requirements generally would apply to loans for units in multi-family residential buildings.

XV. Force Placement of Flood Insurance

For organizational purposes, the Agencies propose to move current section X to proposed section XV. This section would include current Q&As 57-62 and add ten new Q&As. This set

of Q&As responds to a request for more guidance related to force placement of flood insurance from commenters through the EGRPRA process. Current Q&A 57, re-proposed in 2011 but not finalized, would be re-designated as proposed Q&A Force Placement 1 and would discuss the requirements that must be fulfilled before force placement can occur, as well as the notice requirements a lender must follow prior to force placing flood insurance. The Agencies explain in the proposed answer that if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required, then the lender or its servicer 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. The proposed answer further provides that before the lender or service must force place insurance, if the lender or servicer is aware that a borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should inform the borrower an additional amount of insurance is needed in order to comply with the Regulation. Finally, the proposed answer would specify that if the borrower fails to obtain flood insurance within 45 days after notification, then the lender or its servicer must purchase insurance on the borrower's behalf at that time. The proposed answer explains that the lender must force place flood insurance for the full amount required under the Regulation, or if the borrower purchases flood insurance that otherwise satisfies the flood insurance requirements, but in an insufficient amount, the lender would be required to force place only for the "insufficient amount," that is, the difference between the amount the borrower insured and the amount of flood insurance required under the Regulation.

Additionally, while not required under the Act or the Regulation, the Agencies indicate that a lender or its servicer could include in the notice to the borrower the amount of flood insurance needed to satisfy the statutory requirement. By providing this information, the lender or its servicer can help ensure that a borrower obtains the appropriate amount of insurance.

New proposed Q&A Force Placement 2 would clarify that the Regulation requires the lender, or its servicer, to send the borrower the force-placement notice 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.

Current Q&A 58 would be re-designated as proposed Q&A Force Placement 3 and would remain unchanged. Proposed Q&A 60, re-proposed in 2011 but not finalized, would be re-designated as proposed Q&A Force Placement 4 and would discuss whether a lender can satisfy its notice requirement by sending the force-placement notice to the borrower prior to the expiration of the flood insurance policy. The Agencies would specifically state in the proposed answer that a lender or servicer must send a notice upon determining that the collateral property securing the loan is either not covered by flood insurance or the insurance is inadequate. Although the proposed answer provides that a lender may send notice prior to the expiration date as a courtesy, the lender or servicer is still required to send notice upon determining the flood insurance policy has actually lapsed or is determined to be insufficient in order to meet the statutory requirement. Current Q&A 61 would be re-designated as proposed Q&A Force Placement 5 and would contain minor revisions for clarity with no change in meaning or substance. New proposed Force Placement 6 would clarify 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 the original notice, the lender must purchase coverage on the borrower's behalf and may not extend the period for obtaining force-placed coverage by sending another force-placement notice during that time. New proposed Q&A Force Placement 7 would address when a force-placed policy should begin to provide coverage and give an example. Specifically, the proposed answer would state that a lender's new force-placed policy should begin to provide coverage the day after the borrower's existing policy expires. The proposed answer would also state that a lender or its servicer may not require the borrower to pay for double coverage and that the Regulation requires a lender or servicer to refund the borrower for any periods of overlap between the borrower's policy and the force-placed policy.

Current Q&A 59 would be re-designated as proposed Q&A Force Placement 8 and would be significantly revised to discuss more fully the minimum amount of flood insurance coverage that is statutorily required and to illustrate this point through a hypothetical example. Specifically, the proposed answer would illustrate that if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees that will be added to the loan balance.

Current Q&A 62 would be re-designated as proposed Q&A Force Placement 9 and would clarify that a lender or servicer may charge a borrower for the cost of force-placed insurance beginning on the date of lapse or insufficient coverage, and would not have to wait 45 days after providing notification to force place insurance. Lenders that monitor loans secured by property located in an SFHA for continuous coverage of flood insurance help ensure that they complete the force placement of flood insurance in a timely manner and minimize any gaps in coverage

and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. The proposed answer would explain that if a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, it may charge for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf, including premiums and fees incurred for coverage beginning on the date of lapse, if the lender has purchased a policy on the borrower's behalf and that policy was effective as of the date of the insufficient coverage.

The Agencies propose to add new Q&A Force Placement 10 to discuss whether the addition of the amount of force-placed insurance policy premiums and fees to the outstanding balance of a loan would constitute an "increase" that would trigger the applicability of flood insurance regulatory requirements. In the answer to proposed Q&A Force Placement 10, the Agencies discuss three options that the Agencies understand lenders currently use to charge a borrower for force-placed flood insurance and the impact of each option on the amount of coverage. Under the proposed Q&A, the subsequent treatment of the flood insurance premiums and fees would depend on which method the lender chooses. Specifically, the proposed answer provides that if the lender chooses to add the premium and fees to the mortgage balance and the lender's loan contract includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt, such an advancement would be considered part of the loan and not an "increase" in the loan amount, and therefore would not be considered a triggering event. The proposed Q&A continues to explain that if, however, there is no explicit provision permitting such advancement in the loan contract, the addition of the force-placed premiums and fees would be considered an "increase" in the loan amount and would be a triggering event because no advancement of funds was contemplated as part of the loan. If the

premiums and fees are added to an unsecured account or billed directly to the borrower, the proposed Q&A states that these approaches would not result in an increase in the loan balance and therefore would not be considered triggering events.

New proposed Q&A Force Placement 11 would address the sufficiency of evidence of flood insurance in connection with refunding premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance. The proposed answer would provide that as stated in the Regulation, a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance. The proposed answer would state that in that scenario, a lender must accept a policy declarations page that includes the existing flood insurance policy number and the identity of and contact information for, the insurance company or its agent and that the Regulation does not require that the declarations page include any additional information. In addition, the proposed answer would note that in situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does not specify what documentation would be sufficient. The proposed answer also provides that generally, it is appropriate, although not required by the Regulation, for lenders to accept a copy of the flood insurance application and premium payment as evidence of proof of purchase for new policies.

New proposed Q&A Force Placement 12 would reinforce the requirement that a lender is to refund any premiums and fees paid for by the borrower for force-placed insurance for any overlap period within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage without exception. Such refund is required even in situations in which a lender cannot obtain a refund from the insurance company because the borrower did not provide

proof of coverage in a timely manner, or when the insurance company fails to provide the refund within 30 days.

New proposed Q&A Force Placement 13 would explain that a lender can rely on a force-placed insurance policy to satisfy the mandatory purchase requirement for a refinance or loan modification if the borrower does not purchase his or her own policy. Assuming the force-placed policy is in effect and otherwise satisfies the regulatory coverage standards, then that policy may satisfy the mandatory purchase requirement. The Agencies suggest in the proposed answer that lenders could encourage the borrower to purchase his or her own policy, likely at a reduced cost, prior to the loan closing.

In response to an issue raised in the EGRPRA report, new proposed Q&A Force Placement 14 would explain the process for renewal of force-placed coverage by requiring the lender to follow its normal communications practice with its insurance provider to renew the flood insurance policy on the borrower's behalf to ensure that flood insurance coverage remains in place. Under the proposed answer, the lender is not required to send a notice prior to force-placing insurance at the expiration of a force-placed policy. However, the proposed answer provides that the lender or its servicer, at its discretion, may notify the borrower about its plan to renew the force-placed policy.

New proposed Q&A Force Placement 15 would indicate that, although there is no explicit duty to monitor flood insurance coverage over the life of the loan in the Act or Regulation, for purposes of safety and soundness, many lenders obtain "life-of-loan" monitoring. The Agencies believe such a practice could help ensure that lenders complete the force placement of flood insurance in a timely manner upon lapse of a policy, that there is continuous coverage, and that lenders are promptly made aware of flood map changes.

New proposed Q&A Force Placement 16 would address what the Act and Regulation require a lender or its servicer to do if a lender or servicer receives a notice of remapping that states that a property will be remapped into an SFHA as of a future effective date. The proposed answer would clarify that if a lender or its servicer determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the loan is uninsured or underinsured, the lender or servicer must begin the force-placement process. For a loan secured by a property subject to a remapping that was not previously located in an SFHA, such a loan does not become a designated loan until the effective date of the map change. Therefore, when a lender or its servicer receives advance notice of a map change, the effective date of the map change is the date the lender or servicer must determine whether the property is covered by sufficient flood insurance. If the borrower does not purchase a flood insurance policy that begins on the effective date of the map change, the lender or its servicer must send the force-placement notice to the borrower.

XVI. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

The Agencies propose to move current section VIII to proposed section XVI as part of the overall reorganization of the Interagency Questions and Answers. Current Q&As 44 through 50 would be re-designated as proposed Q&As Servicing 1-7, respectively, with minor nonsubstantive modifications to account for the change in the title of the head of FEMA from “Director” to “Administrator” and for purposes of clarity.

XVII. Mandatory Civil Money Penalties

For organizational purposes, the Agencies propose to move current section XVI to proposed section XVII. Current Q&As 81 and 82 would be included in this section and re-

designated as proposed Q&As Penalty 1 and 2, respectively. The changes proposed to the Q&As are for purposes of clarity and accuracy with no intended change in meaning or substance.

The Agencies solicit comments on all aspects of the revised and new proposed Q&As.

The following re-designation table is provided as an aid to assist the public in reviewing the proposed revisions to the 2009 and 2011 Interagency Questions and Answers.

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation Section 1, Question 1 Section 1, Question 2 Section 1, Question 3 Section 1, Question 4 Section 1, Question 5 Section 1, Question 6 Section 1, Question 7	Section I. Determining the Applicability of Flood Insurance Requirements for Certain Loans Section I, Applicability 1 Section I, Applicability 4 Section I, Applicability 5 Section I, Applicability 9 Section I, Applicability 6 Section I, Applicability 7 Section I, Applicability 8
Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation Section II, Question 8 Section II, Question 9 Section II, Question 10 Section II, Question 11 Section II, Question 12 Section II, Question 13 Section II, Question 14 Section II, Question 15 Section II, Question 16 Section II, Question 17	Section VIII. Determining the Appropriate Amount of Flood Insurance Required Section VIII, Amount 1 Section VIII, Amount 2 Deleted Section VIII, Amount 3 Section VIII, Amount 4 Section VIII, Amount 5 Section VIII, Amount 6 Section VIII, Amount 7 Section VIII, Amount 8 Section VIII, Amount 9
Section III. Exemptions from the Mandatory Flood Insurance Requirements Section III, Question 18	Section II. Exemptions from the Mandatory Flood Insurance Purchase Requirements Section II, Exemptions 1

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section IV. Flood Insurance Requirements for Construction Loans Section IV, Question 19 Section IV, Question 20 Section IV, Question 21 Section IV, Question 22 Section IV, Question 23	Section IX. Flood Insurance Requirements for Construction Loans Section IX. Construction 1 Section IX. Construction 2 Section IX. Construction 3 Section IX. Construction 4 Section IX. Construction 5
Section V. Flood Insurance Requirements for Nonresidential Buildings Section V, Question 24 Section V, Question 25	Section I, Applicability 2 Section I, Applicability 3
Section VI. Flood Insurance Requirements for Residential Condominiums Section VI, Question 26 Section VI, Question 27 Section VI, Question 28 Section VI, Question 29 Section VI, Question 30 Section VI, Question 31 Section VI, Question 32 Section VI, Question 33	Section X. Flood Insurance Requirements for Residential Condominiums and Co-Ops Section X, Condo and Co-Op 1 Section X, Condo and Co-Op 2 Section X, Condo and Co-Op 3 Section X, Condo and Co-Op 4 Section X, Condo and Co-Op 5 Section X, Condo and Co-Op 6 Section X, Condo and Co-Op 7 Section X, Condo and Co-Op 8
Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA Section VII, Question 34 Section VII, Question 35 Section VII, Question 36 Section VII, Question 37 Section VII, Question 38 Section VII, Question 39 Section VII, Question 40 Section VII, Question 41 Section VII, Question 42 Section VII, Question 43	Section XI. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA Section XI, Other Security Interests 1 Section XI, Other Security Interests 2 Section XI, Other Security Interests 4 Section XI, Other Security Interests 5 Section XI, Other Security Interests 6 Section XI, Other Security Interests 7 Section XI, Other Security Interests 8 Section XI, Other Security Interests 9 Section XI, Other Security Interests 11 Section XI, Other Security Interests 12
Section VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights Section VII, Question 44 Section VII, Question 45 Section VII, Question 46 Section VII, Question 47 Section VII, Question 48 Section VII, Question 49	Section XVI. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights Section XVI, Servicing 1 Section XVI, Servicing 2 Section XVI, Servicing 3 Section XVI, Servicing 4 Section XVI, Servicing 5 Section XVI, Servicing 6

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section VII, Question 50	Section XVI, Servicing 7
Section IX. Escrow Requirements Section IX, Question 51 Section IX, Question 52 Section IX, Question 53 Section IX, Question 54 Section IX, Question 55 Section IX, Question 56	Section XII-VX. Requirement to Escrow Flood Insurance Premiums and Fees Section XII, Escrow 5 Section XII, Escrow 1 Deleted Deleted Section XIV, Loan Exception 1 Section XIV, Loan Exception 4
Section X. Force Placement Section X, Question 57 Section X, Question 58 Section X, Question 59 Section X, Question 60 Section X, Question 61 Section X, Question 62	Section XV. Force Placement of Flood Insurance Section XV, Force Placement 1 Section XV, Force Placement 3 Section XV, Force Placement 8 Section XV, Force Placement 4 Section XV, Force Placement 5 Section XV, Force Placement 9
Section XI. Private Flood Insurance Section XI, Question 63 Section XI, Question 64	Section III, Coverage – NFIP/Private Flood Insurance Section III, Coverage 1 Section III, Coverage 2
Section XII. Required Use of Standard Flood Hazard Determination Form (SFHDF) Section XII, Question 65 Section XII, Question 66 Section XII, Question 67 Section XII, Question 68	Section IV. Required Use of Standard Flood Hazard Determination Form (SFHDF) Section IV, SFHDF 1 Section IV, SFHDF 2 Section IV, SFHDF 3 Section IV, SFHDF 4
Section XIII. Flood Determination Fees Section XIII, Question 69 Section XIII, Question 70	Section V. Flood Insurance Determination Fees Section V, Fees 1 Section V, Fees 2
Section XIV. Flood Zone Discrepancies Section XIV, Question 71 Section XIV, Question 72	Section VI. Flood Zone Discrepancies Section VI, Zone 1 Section VI, Zone 2
Section XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief Section XV, Question 73 Section XV, Question 74 Section XV, Question 75 Section XV, Question 76 Section XV, Question 77 Section XV, Question 78 Section XV, Question 79	Section VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief Section VII, Notice 1 Section VII, Notice 2 Section VII, Notice 3 Section VII, Notice 4 Section VII, Notice 4 Section VII, Notice 5 Section VII, Notice 6

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section XV, Question 80	Section VII, Notice 7
Section XVI. Mandatory Civil Money Penalties Section XVI, Question 81 Section XVI, Question 82	Section XVII. Mandatory Civil Money Penalties Section XVII, Penalty 1 Section XVII, Penalty 2

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of flood insurance law and regulations. For ease of reference, the following terms are used throughout this document: “Act” refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised. “Regulation” refers to each agency’s current final rule.¹ “Lenders” refers only to regulated lending institutions as defined in the Act.² “Designated loan” means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act. The OCC, Board, FDIC, FCA, and NCUA, (collectively, “the Agencies”) are providing answers to questions pertaining to the following topics:

- I. Determining the Applicability of Flood Insurance Requirements for Certain Loans
- II. Exemptions from the Mandatory Flood Insurance Purchase Requirements
- III. Coverage – NFIP/Private Flood Insurance
- IV. Required Use of Standard Flood Hazard Determination Form (SFHDF)
- V. Flood Insurance Determination Fees
- VI. Flood Zone Discrepancies
- VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief
- VIII. Determining the Appropriate Amount of Flood Insurance Required
- IX. Flood Insurance Requirements for Construction Loans
- X. Flood Insurance Requirements for Residential Condominiums and Co-Ops

¹ The Agencies’ rules are codified at 12 CFR part 22 (OCC), 12 CFR section 208.25 (Board), 12 CFR part 339 (FDIC), 12 CFR part 614, subpart S (FCA) and 12 CFR part 760 (NCUA).

² 42 U.S. Code § 4003 (a)(10).

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

I. DETERMINING THE APPLICABILITY OF FLOOD INSURANCE REQUIREMENTS FOR CERTAIN LOANS

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

Yes, the Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA.³ If the building or mobile home is determined to be located in an SFHA, a lender is required to mail or deliver a written notice to the borrower.⁴ In this case, a lender, generally, may make a conventional loan without requiring flood insurance. However, because Federal agencies such as the Small Business Administration, Veterans Administration, or Federal Housing Administration are prohibited from guaranteeing or insuring a loan secured by a building or mobile home located in an SFHA in a community that does not participate in the

³ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

⁴ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

NFIP, a lender would not be able to make a federally guaranteed or insured loan. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to avoid making a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would pose an unacceptable risk to the lender.

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.

APPLICABILITY 3. What are a lender’s requirements under the Regulation for a loan secured by multiple buildings when some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in different communities and some of the communities participate in the NFIP and others do not?

⁵ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁶ 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

A lender must determine whether any improved real property securing the loan is in an SFHA.⁷ In cases in which the loan is secured by multiple buildings and some of the buildings are located in an SFHA in which flood insurance is available under the Act, but other buildings are not located in an SFHA (or are located in an SFHA, but not in a participating community), a lender is required to obtain flood insurance only on the buildings securing the loan that are located in an SFHA in which flood insurance is available under the Act.⁸ For example, assume a loan is secured by five buildings as follows:

- Buildings 1 and 2 are located in an SFHA and the community participates in the NFIP;
- Building 3 is not located in an SFHA; and
- Buildings 4 and 5 are located in an SFHA, but the communities do not participate in the NFIP.

In this scenario, the lender is required to obtain insurance only on buildings 1 and 2. As a matter of safety and soundness, however, a lender may decide to require the purchase of flood insurance (from a private insurer) on buildings 4 and 5 because these buildings are located in an SFHA.

Further, depending on the risk factors of building 3, the lender may elect to require flood insurance as a matter of safety and soundness, even if the building is not located in an SFHA.

APPLICABILITY 4. What is a lender’s responsibility if a particular building or mobile home that secures a loan is not located within an SFHA, or is no longer located within an SFHA due to a map change?

Although a lender is not obligated to require mandatory flood insurance on a building or mobile home securing a loan that is not located within an SFHA or is no longer located within an SFHA,

⁷ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

⁸ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

a lender may, at its discretion and taking into consideration State law, as appropriate, require flood insurance for property outside of SFHAs for safety and soundness purposes as a condition of a loan being made. Each lender should tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. For loans in which the property is no longer located in an SFHA, the borrower can elect to convert the existing NFIP standard-rated policy to a lower cost NFIP Preferred Risk Policy, if available.

APPLICABILITY 5. Does a lender’s purchase from another lender of a loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act trigger any requirements under the Regulation?

No. A lender’s purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation’s requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation are triggered when a lender makes, increases, extends, or renews a designated loan.⁹ A lender’s purchase of a loan does not fall within any of those categories.

However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the requirements of the Regulation apply, including force placing insurance, if necessary.¹⁰ Depending on the circumstances, the lender may need to conduct due diligence for safety and soundness reasons, which could include determining whether flood insurance on purchased loans is required. Additionally, if the purchasing lender subsequently

⁹ 12 CFR 22.2(e), 22.3(a) (OCC); 12 CFR 208.25(b)(5), 208.25(c)(1) (Board); 12 CFR 339.2, 339.3(a) (FDIC); 12 CFR 614.4925, 614.4930 (FCA); and 12 CFR 760.2, 760.3(a) (NCUA).

¹⁰ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

refinances, extends, increases, or renews a designated loan, it must comply with the Regulation.¹¹

APPLICABILITY 6. Does the Regulation apply to loans that are being restructured or modified?

It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.¹²

APPLICABILITY 7. Are table funded loans treated as new loan originations?

Yes. Table funding, as defined in the Regulation, means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.¹³ A loan made through a table funding process is treated as though the party advancing the funds has originated the loan.¹⁴ The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

APPLICABILITY 8. Is a lender required by the Act or the Regulation to perform a review of its, or of its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?

¹¹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).

¹² 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).

¹³ 12 CFR 22.2(m) (OCC); 12 CFR 208.25(b)(11) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

¹⁴ 12 CFR 22.3(b) (OCC); 12 CFR 208.25(c)(2) (Board); 12 CFR 339.3(b) (FDIC); 12 CFR 614.4930(b) (FCA); and 12 CFR 760.3(b) (NCUA).

No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage.¹⁵ Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

APPLICABILITY 9. Do the mandatory purchase requirements under the Act and Regulation apply when a lender participates in a loan syndication or participation?

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

Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would be making a loan that triggers the requirements of the Act and Regulation.¹⁶ Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan.¹⁷ Although the

¹⁵ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹⁶ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹⁷ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to determine whether the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent for compliance with flood insurance requirements over the term of the loan.

APPLICABILITY 10. Is a lender expected to consider any triggering event or any cashless roll of which it becomes aware in any tranche of a multi-tranche credit facility, regardless of whether the lender participates in the affected tranche?

No. Consistent with Q&A Applicability 9, the Agencies expect that a lender participating in a multi-tranche credit facility will perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with the flood insurance requirements. Even though each lender participating in a tranche in a multi-tranche credit facility remains individually responsible for compliance with the flood insurance requirements relating to structures securing the tranche in which it participates, this obligation can be achieved through the upfront due diligence process when determining the lead lender/administrative agent's ongoing monitoring for compliance with flood insurance requirements.

A multi-tranche credit facility is analogous in many respects to a loan syndication or participation. Q&A Applicability 9 addresses applicability of the mandatory purchase requirements when a lender participates in a loan syndication or participation. Similar to a loan syndication or participation, a multi-tranche credit facility involves one credit agreement that describes and governs all the tranches. In addition, similar to a loan syndication or participation, a multi-tranche credit facility typically has one lead lender that acts as the administrative agent for the credit facility and its tranches. Thus, the Agencies do not expect a lender participating in one tranche in a multi-tranche credit facility to be responsible for taking direct steps to comply with flood insurance requirements in connection with a triggering event (i.e., making, increasing, extending or renewing) or cashless roll that occurs in a tranche in which the lender does not participate.

A multi-tranche commercial credit facility is a loan arrangement containing more than one type of loan or tranche. Each loan within the overall credit facility is made to the same borrower or group of related borrowers, but the loans may have different lenders and different terms and conditions. For example, a credit facility might have one tranche that is a revolving line of credit with a one-year maturity date and one or more additional tranches that are fixed rate loans with different interest rates and different maturity dates. Various lenders may participate in each tranche. Generally, the tranches share the same collateral and there is one credit agreement that describes and governs all the tranches.

Under most multi-tranche credit facility agreements, a triggering event can occur within a particular tranche without any requirement to notify and obtain the consent of the lenders not participating in that tranche. Lenders may also participate in a “cashless roll,” which is an exchange of an existing loan for a new or amended loan without any transfer of cash. A cashless

roll may be used to replace or supplement existing tranches, but not to increase the total amount of committed debt; therefore, this is not considered a triggering event.

APPLICABILITY 11. Does an automatic extension of a credit facility, that was agreed upon by the borrower and the lender at loan origination and memorialized in the loan agreement, constitute a triggering event (i.e., making, increasing, extending or renewing) that would trigger the federal flood insurance requirements?

No. An automatic extension of a credit facility that was agreed upon by the lender and the borrower at loan origination and memorialized in the loan agreement does not constitute a triggering event (i.e., making, increasing, extending or renewing) that would trigger the federal flood insurance requirements, because the automatic extension was agreed to in the original loan contract.

APPLICABILITY 12. What is the applicability of the mandatory purchase requirement during a period of time when coverage under the NFIP is not available?

During a period when coverage under the NFIP is not available, such as due to a lapse in authorization or in appropriations, lenders may continue to make loans subject to the Regulation without requiring flood insurance coverage. However, lenders must continue to make flood determinations,¹⁸ provide timely, complete, and accurate notices to borrowers,¹⁹ and comply with other applicable parts of the Regulation.

In addition, lenders should evaluate safety and soundness and legal risks and prudently manage those risks during a period when coverage under the NFIP is not available. Lenders should take

¹⁸ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

¹⁹ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

appropriate measures or consider possible options in consultation with the borrower to mitigate loss exposures in the event of a flood during such periods. For example,

- Lenders may determine the risk of loss is sufficient to justify a postponement in closing the loan until the NFIP coverage is available again.
- Lenders may require the borrower to obtain private flood insurance if available, as a condition of closing the loan. However, after considering the cost of the private flood policy, a lender or the borrower may decide to postpone closing rather than incur a long-term obligation to address a possible short-term lapse.
- Lenders may make the loan without requiring the borrower to apply for flood insurance and pay the premium while NFIP coverage is unavailable. However, this option poses a number of risks that should be carefully evaluated. Moreover, once NFIP coverage becomes available again, the Agencies expect that flood insurance will be obtained for these loans, including, if necessary, by force placement.²⁰ Before making such loans, lenders should make borrowers aware of the flood insurance requirements and that force-placed insurance is typically more costly than borrower-obtained insurance. Lenders also should have a process to identify these loans to ensure that insurance is promptly purchased when NFIP coverage becomes available subsequent to their closing.

II. EXEMPTIONS FROM THE MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS

EXEMPTIONS 1. What are the exemptions from the mandatory purchase requirement?

²⁰ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

There are only three exemptions from the mandatory requirement to purchase flood insurance on a designated loan. The first applies to State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA.²¹ The second applies if both the original principal balance of the loan is \$5,000 or less, and the original repayment term is one year or less.²² The third applies to any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of the detached structure exemption, a “structure that is a part of 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. In addition, a structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure. Furthermore, whether a structure “does not serve as a residence” is based upon the good faith determination of the lender that the structure is not intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.²³ If one of these exemptions applies, a borrower may still elect to purchase flood insurance. Also, a lender may require flood insurance as a condition of making the loan, as a matter of safety and soundness.

EXEMPTIONS 2. Does a lender have to take a security interest in the primary residential structure for detached structures to be eligible for the detached structure exemption? For example, suppose the house on a farm is not collateral, but all of the outbuildings including the barn, the equipment storage shed, and the silo (which are used for farm production), and a detached garage where the homeowner keeps his car, are taken as collateral. May the lender apply the detached structure exemption to the outbuildings?

²¹ 12 CFR 22.4(a) (OCC); 12 CFR 208.25(d)(1) (Board); 12 CFR 339.4(a) (FDIC); 12 CFR 614.4932(a) (FCA); and 12 CFR 760.4(a) (NCUA).

²² 12 CFR 22.4(b) (OCC); 12 CFR 208.25(d)(2) (Board); 12 CFR 339.4(b) (FDIC); 12 CFR 614.4932(b) (FCA); and 12 CFR 760.4(b) (NCUA).

²³ 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

The lender does not have to take a security interest in the primary residential structure for detached structures to be eligible for the exemption, but the lender needs to evaluate the uses of detached structures to determine if they are eligible.²⁴ The term “a structure that is part of a residential property” in the detached structure exemption applies only to structures for which there is a residential use and not to structures for which there is a commercial, agricultural, or other business use.²⁵ In this example, only the garage is serving a residential use, so it could qualify for the exemption. The barn, equipment storage shed, and silo, which are used for farm production, would not qualify for the exemption.

EXEMPTIONS 3. Do detached structures require a flood hazard determination to be performed even if coverage is not required?

Because a flood hazard determination is often needed to identify the number and types of structures on the property, conducting a flood hazard determination remains necessary for the lender to be able to comply with the flood insurance requirements.²⁶

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

²⁴ 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

²⁵ 12 CFR 22.4(c)(1) (OCC); 12 CFR 208.25(d)(3)(i) (Board); 12 CFR 339.4(c)(1)(FDIC); 12 CFR 614.4932(c)(1) (FCA); and 12 CFR 760.4(c)(1) (NCUA).

²⁶ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

Act to require flood insurance on that structure.²⁷ 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.

EXEMPTIONS 5. If a property is remapped into an SFHA, does that trigger a review of the intended use of each detached structure?

No. A lender must examine the status of a detached structure upon a qualifying triggering event – i.e., making, increasing, extending, or renewing a loan.²⁸ A remapping is not a triggering event. There is no duty to monitor the status of a detached structure following the lender’s initial determination. However, regardless of the absence of such requirement 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. Consistent with existing obligations under the Regulation, if a lender determines at any time that a property has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is uninsured or underinsured, the lender has a duty to inform the borrower of the obligation to obtain or increase insurance coverage and to purchase flood insurance on the borrower’s behalf, as necessary.²⁹

EXEMPTIONS 6. May a lender review current loans in its portfolio as the flood insurance policies renew and determine that it will no longer require flood insurance on a detached structure in an SFHA if the structure does not contribute to the value of the property securing the loan?

²⁷ 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

²⁸ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

²⁹ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

A lender or servicer could initiate such a review; however, the Regulation does not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on whether the detached structure contributes value to the overall residential property securing the loan.³⁰ In the case of any residential property, flood insurance is not required on any structure that is part of such property as long as it is detached from the primary residential structure and does not serve as a residence.³¹ In addition, there are other exemptions that could apply: the exemption for State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA or the exemption for property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.³²

EXEMPTIONS 7. If a loan is secured by a residential property and is joined to another building by a stairway or covered walkway, for purposes of Federal flood insurance requirements, would the other building qualify as a detached structure?

For purposes of the detached structure exemption, a structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure.³³ That is, a structure is “detached” if it stands alone. This definition is consistent with the coverage provision of the NFIP’s Standard Flood Insurance Policy (SFIP) for additions and extensions to the dwelling unit. In this case, the connected structure would not qualify as a detached structure because it is attached to the primary residence.

³⁰ 12 CFR 22.4 (OCC); 12 CFR 208.25(d) (Board); 12 CFR 339.4 (FDIC); 12 CFR 614.4932 (FCA); and 12 CFR 760.4 (NCUA).

³¹ 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

³² 12 CFR 22.4(a) and (b) (OCC); 12 CFR 208.25(d)(1) and (2) (Board); 12 CFR 339.4(a) and (b) (FDIC); 12 CFR 614.4932(a) and (b) (FCA); and 12 CFR 760.4(a) and (b) (NCUA).

³³ 12 CFR 22.4(c)(2) (OCC); 12 CFR 208.25(d)(3)(ii) (Board); 12 CFR 339.4(c)(2) (FDIC); 12 CFR 614.4932(c)(2) (FCA); and 12 CFR 760.4(c)(2) (NCUA).

For purposes of insurance coverage under the NFIP, FEMA provides that if one building is attached to another through a covered breezeway or similar connection, it may be insured as one building under one policy or may be insured separately under two policies. *See* the FEMA NFIP *Flood Insurance Manual* for guidance.

III. COVERAGE – NFIP/PRIVATE FLOOD INSURANCE

COVERAGE 1. What are some factors to consider when determining whether a flood insurance policy issued by a private insurer provides sufficient protection of a loan secured by improved real property located in an SFHA, consistent with general safety and soundness principles?

Some factors, among others, that a lender could consider in determining whether a policy provides sufficient protection of a loan include whether: 1) a policy's deductibles are reasonable based on the borrower's financial condition; 2) the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force placement of flood insurance, if necessary; 3) the terms and conditions of the policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; 4) the flood insurance policy complies with applicable State insurance laws; and 5) the private insurance company has the financial solvency, strength, and ability to satisfy claims.

COVERAGE 2. May a lender rely on a private insurance policy providing portfolio-wide coverage to meet the flood insurance purchase requirement or the force placement requirement under the Regulation?

No. A private insurance policy that provides a lender portfolio-wide coverage may provide protection to the lender in certain circumstances. For example, when a flood insurance policy

has expired and the borrower has failed to renew coverage, private insurance policies providing portfolio-wide coverage may be useful protection for the lender for a gap in coverage in the period of time before a force-placed policy takes effect. However, even if a lender has portfolio-wide coverage to address gaps, the lender must still ensure the flood insurance purchase requirement is satisfied at the time a loan is made, increased, renewed or extended, and the lender must still force place coverage on the borrower's behalf in a timely manner, as required,³⁴ and may not rely on a private insurance policy that provides portfolio-wide coverage as a substitute for a force-placed policy.

COVERAGE 3. When does mandatory flood insurance on a designated loan need to be in place during the closing process?

The Regulation states that a lender cannot “make” a loan secured by a property in an SFHA without adequate flood insurance coverage being in place.³⁵ A lender should use the loan “closing date” to determine the date by which flood insurance must be in place for a designated loan. FEMA deems the “closing date” as the day the ownership of the property transfers to the new owner based on State law.

“Wet funding” and “dry funding,” which varies by State, refer to when a mortgage is considered officially closed. In a “wet” settlement State, the signing of closing documents, funding, and transfer of title occur all on the same day. By contrast, in a “dry” settlement State, documents are signed on one date, but loan funding and/or transfer of title/recording occur on subsequent

³⁴ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

³⁵ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

date(s). Therefore, in “dry” settlement States, the “closing date” is the date of property transfer, regardless of loan signing or funding date.

It is also important to note that the application and premium payment for NFIP flood insurance must be provided at or prior to the closing date since this impacts the FEMA flood insurance effective date and any resulting 30-day waiting period for new policies not made in connection with a triggering event. This application requirement applies for properties located in both dry and wet settlement States. *See NFIP Flood Insurance Manual.*

IV. REQUIRED USE OF STANDARD FLOOD HAZARD DETERMINATION FORM

(SFHDF)

SFHDF 1. Does the SFHDF replace the borrower notification form?

No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act.³⁶ The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform the borrower(s) about flood insurance requirements and the availability of Federal disaster relief assistance.³⁷

SFHDF 2. May a lender provide the SFHDF to the borrower?

³⁶ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6 (FDIC); 12 CFR 614.4940 (FCA); and 12 CFR 760.6 (NCUA).

³⁷ 12 CFR 22.9 (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9 (FDIC); 12 CFR 614.4955 (FCA); and 12 CFR 760.9 (NCUA).

Yes. Although not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so they can better understand their flood risk. The Agencies note that under the FEMA process for a Letter of Determination Review (LODR), a lender would also need to make the determination available to the borrower. FEMA requires that the lender and the borrower request the LODR jointly within 45-days of the notification of the requirement to purchase flood insurance for a fee. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

SFHDF 3. May the SFHDF be used in electronic format?

Yes.³⁸ In the final rule adopting the SFHDF, FEMA stated: “If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form.” It should be noted that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

SFHDF 4. May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?

It depends. The Act (42 U.S.C. 4104b(e)) permits a lender to rely on a previous flood determination using the SFHDF when it increases, extends, renews, or purchases a loan secured by a building or a mobile home. Under the Act, the “making” of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. When the loan

³⁸ 12 CFR 22.6(b) (OCC); 12 CFR 208.25(f)(2) (Board); 12 CFR 339.6(b) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(b) (NCUA).

involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. These loans are extended by the same lender, to the same borrower, and are secured by the same improved real estate, and, therefore, these types of transactions are the functional equivalent of an increase of a loan.

When the loan involves a refinancing or assumption made by a lender different from the one who obtained the original determination, this would constitute the making of a new loan, thereby requiring a new determination.

V. FLOOD INSURANCE DETERMINATION FEES

FEES 1. When can lenders or servicers charge the borrower a fee for making a determination?

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

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination reflects a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination reflects FEMA's publication of a notice or compendium that affects the area in which the security property is located, or FEMA requires a determination as to whether the building securing the loan is located in an SFHA; or
- When the determination results in force placement of insurance.³⁹

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

FEES 2. May charges made for life-of-loan reviews by flood determination firms be passed along to the borrower?

Yes, with limitations noted below. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan (i.e., life-of-loan monitoring). The fee charged for the service at loan closing is a composite fee for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly authorized by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

³⁹ 12 CFR 22.8(b) (OCC); 12 CFR 208.25(h)(2) (Board); 12 CFR 339.8(b) (FDIC); 12 CFR 614.4950(b) (FCA); and 12 CFR 760.8(b) (NCUA).

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the composite determination/life-of-loan monitoring fee may be charged only if the events specified in the answer to Q&A Fees 1 occur.⁴⁰ Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because such life-of loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.⁴¹

VI. FLOOD ZONE DISCREPANCIES

ZONE 1. What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

If a lender receives a policy declarations page that has a flood zone designation that is different from the flood zone shown on the SFHDF, it should consider documenting the discrepancy in the loan file. If the SFHDF indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage in accordance with the Act and Regulation,⁴² but the lender is not otherwise required to resolve a discrepancy between the flood zone designation on the SFHDF and the designation on the flood insurance policy declarations page provided by the borrower. This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed. In addition, the guidance applies to any building that has been rated in accordance with NFIP procedures.

For a policy issued under the NFIP, if a misrating is discovered at the time of loss resulting from an incorrect flood zone, and a policyholder has underpaid the flood insurance premium, a

⁴⁰ 12 CFR 22.8 (OCC); 12 CFR 208.25(h) (Board); 12 CFR 339.8 (FDIC); 12 CFR 614.4950 (FCA); and 12 CFR 760.8 (NCUA).

⁴¹ 12 U.S.C. 2607. *See* 12 CFR 1024.14(c).

⁴² 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

policyholder may keep the contracted coverage limits if an additional premium is paid. Once paid, a revised declarations page will be issued showing the corrected flood zone. The lender will receive a copy of the declarations page and may receive a copy of the underpayment notice. If the borrower does not pay the additional premium, resulting in inadequate coverage, lenders must proceed with force-placement procedures.⁴³ On the other hand, if a policyholder has overpaid the flood insurance premium as a result of a misrating, FEMA may allow a refund of insurance premiums under certain circumstances. *See NFIP Flood Insurance Manual* for specific instructions. Private policies may resolve flood zone discrepancies differently.

ZONE 2. Is a lender in violation of the Regulation if there is discrepancy between the flood zone on the SFHDF and the flood insurance policy declarations page?

No, a lender is not in violation of the Regulation if there is a discrepancy between the flood zone on the SFHDF and the flood zone on the policy declarations page. As provided in Q&A Zone 1, a lender should consider documenting any zone discrepancy in the loan file.

ZONE 3. What should a lender do when the lender's flood zone determination specifies that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, but the borrower disputes that determination?

If a borrower disputes a lender's determination that the building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, the parties involved in making the determination are encouraged to resolve the flood zone discrepancy before contacting FEMA for a final determination. If the flood zone discrepancy cannot be resolved, an appeal may be filed

⁴³ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a)(FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

with FEMA. Depending on the nature of the dispute, FEMA has different options for review, including:

- Letters of Determination Review (LODR), and
- Letters of Map Change (LOMC), which include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Letters of Map Revision Based on Fill (LOMR-F).

Lenders and borrowers should consult FEMA guidance on the appropriate process to follow, any applicable fees, and any deadlines by which the request to review must be made. However, as long as the lender's flood determination specifies that a building securing the loan is located in an SFHA and requires mandatory flood insurance coverage, sufficient coverage must be in place in accordance with the Act and the Regulation until FEMA has determined that the building is not in an SFHA.⁴⁴ As noted in Q&A Zone 1, if there is sufficient insurance coverage in place, lenders are not required to resolve flood zone discrepancies between the flood zone determination form and the flood insurance policy.

VII. NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF

NOTICE 1. Does the Notice of Special Flood Hazards have to be provided to each borrower for a real estate related loan?

⁴⁴ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

No. The Notice of Special Flood Hazards must be provided to one borrower when the lender determines that the property securing the loan is or will be located in an SFHA.⁴⁵ In a transaction involving multiple borrowers, the lender need only provide the Notice of Special Flood Hazards to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the Notice of Special Flood Hazards will be provided.

NOTICE 2. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the requirement to provide the Notice of Special Flood Hazards applied in these situations?

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.⁴⁶ 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.

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

⁴⁵ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

⁴⁶ 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

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.⁴⁷ If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.⁴⁸

NOTICE 3. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.⁴⁹

NOTICE 4. What will constitute appropriate form of notice to the servicer?

Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.⁵⁰

In the case of a servicer affiliated with the lender, the Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither the Act nor the Regulation contains an exception for affiliates.⁵¹

⁴⁷ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

⁴⁸ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

⁴⁹ 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

⁵⁰ 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

⁵¹ 12 U.S.C. 4104a(a)(1); 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

NOTICE 5. How long must the lender maintain the record of receipt by the borrower of the Notice of Special Flood Hazards?

The record of receipt provided by the borrower must be maintained for the period of time that the lender owns the loan.⁵² Examples of a record of receipt include: the borrower's signed acknowledgment of receipt of the Notice of Special Flood Hazards; the borrower's initials on a form that acknowledges receipt; or a certified return receipt if the Notice of Special Flood Hazards was mailed to the borrower. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

NOTICE 6. Can a lender rely on a previous Notice of Special Flood Hazards if it is less than seven years old, and it is the same property, same borrower, and same lender?

The Regulation does not address waiving the requirement to provide the Notice of Special Flood Hazards to the borrower. Although subsequent transactions by the same lender with respect to the same property are the functional equivalent of a renewal and do not require a new determination, the lender must still provide a new Notice of Special Flood Hazards to the borrower.⁵³

NOTICE 7. Is use of the sample form of Notice of Special Flood Hazards mandatory?

⁵² 12 CFR 22.9(d) (OCC); 12 CFR 208.25(i)(3) (Board); 12 CFR 339.9(d) (FDIC); 12 CFR 614.4955(d) (FCA); and 12 CFR 760.9(d) (NCUA).

⁵³ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

Although lenders are required to provide a Notice of Special Flood Hazards to a borrower when they make, increase, extend, or renew a loan secured by an improved structure located in an SFHA,⁵⁴ use of the sample form of Notice of Special Flood Hazards provided in Appendix A of the Regulation is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised Notice of Special Flood Hazards must provide the borrower with at least the minimum information required by the Act and Regulation.⁵⁵ Therefore, lenders should consult the Act and Regulation to determine the information needed.

VIII. DETERMINING THE APPROPRIATE AMOUNT OF FLOOD INSURANCE REQUIRED

AMOUNT 1. The Regulation states that the amount of flood insurance required “must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.” What is meant by the “maximum limit of coverage available for the particular type of property under the Act”?

“The maximum limit of coverage available for the particular type of property under the Act” depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available for buildings located in a participating community under the Regular Program. For single-family and two-to-four family dwellings and individually owned condominium units insured under the Dwelling Form policy, the maximum limit is

⁵⁴ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

⁵⁵ 12 U.S.C. 4104a(a)(3); 12 CFR 22.9(b) (OCC); 12 CFR 208.25(i)(1) (Board); 12 CFR 339.9(b) (FDIC); 12 CFR 614.4955(b) (FCA); and 12 CFR 760.9(b) (NCUA).

\$250,000. For a residential condominium building insured under the Residential Condominium Building Association Policy (RCBAP) form, the maximum amount of insurance available is \$250,000 multiplied by the number of units. For all other buildings insured under the General Property Form, the maximum limit of building coverage available is \$500,000. This includes all non-residential buildings, mixed-use condominium buildings not eligible for coverage under the RCBAP, and other residential buildings of five or more families, such as cooperatives or apartment buildings in the non-condominium form of ownership. (In participating communities that are under the emergency program phase, the maximum limits of insurance are different.) The maximum limit for contents insured under the Dwelling Form and RCBAP is \$100,000 (\$100,000 total, not per unit) and \$500,000 for contents insured under the General Property Form. *See NFIP Flood Insurance Manual.*

In addition to the maximum caps under the NFIP, the Regulation also provides that “flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself,” which is commonly referred to as the “insurable value” of a structure.⁵⁶ The NFIP does not insure land; therefore, land values are not included in the calculation.⁵⁷

An NFIP policy will not cover an amount exceeding the “insurable value” of the structure, so the maximum amount of insurance coverage is the applicable limit available under the NFIP or the insurable value, whichever is less. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts.

⁵⁶ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁵⁷ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).⁵⁸

AMOUNT 2. What is the “insurable value” of a building and how is it used to determine the required amount of flood insurance?

The insurable value of the building may generally be the same as 100 percent Replacement Cost Value (RCV), which is the cost to replace the building with the same kind of material and construction without deduction for depreciation. In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used on a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the

⁵⁸ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

In cases involving certain residential or condominium properties, insurance policies under the NFIP should be written to, and the insurance loss payout usually would be the equivalent of, RCV. However, lenders should avoid a situation in which the insured borrower pays for more coverage than the insured would recover in the event of a loss. Therefore, to strictly link insurable value to RCV is not always practical. In cases involving nonresidential properties, and even some residential properties, the insurance loss payout might be based on actual cash value, which is RCV less physical depreciation. Insurance policies written at RCV for these properties would require an insured to pay for coverage that exceeds the amount the NFIP or private insurer would pay in the event of a loss, and this situation should be avoided. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP or private policy for the type of property being insured. Doing so would allow the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the insured would recover in the event of a loss.

Lenders should be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

AMOUNT 3. What are examples of residential buildings?

A residential building is a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a *single-family*, *2-4 family*, or *other residential building*.

The NFIP provides the following definitions:

A *single family dwelling* is either a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, *or* a single-family residential unit within a 2–4 family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

A *2-4 family residential building* is a residential building, including an apartment building, containing 2–4 residential spaces and in which commercial uses are limited to less than 25 percent of the building's total floor area. This category includes apartment buildings and condominium buildings. This excludes hotels and motels with normal room rentals for less than 6 months.

An *other residential building* is a residential building that is designed for use as a residential space for 5 or more families or a mixed-use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building. This category includes condominium and apartment buildings as well as hotels, motels, tourist homes, and rooming houses where the normal occupancy of a guest is 6 months or more. Additional examples of other residential buildings include dormitories and assisted-living facilities.

For more complete information, refer to the *NFIP Flood Insurance Manual*.

AMOUNT 4. What are examples of nonresidential buildings?

A nonresidential building is one in which the named insured is a commercial enterprise primarily carried out to generate income and the coverage is for:

- A building designed as a non-habitational building;
- A mixed-use building in which the total floor area devoted to residential uses is 50 percent or less of the total floor area within the building if the residential building is a single-family property; *or* 75 percent or less of the total floor area within the building for all other residential properties; *or*
- A building designed for use as office or retail space, wholesale space, hospitality space, or for similar uses.

In addition, the NFIP describes other non-residential buildings as including, but not limited to, churches, schools, farm buildings (including grain bins and silos), garages, pool houses, clubhouses, and recreational buildings.

For more complete information, refer to the NFIP *Flood Insurance Manual*.

AMOUNT 5. How much insurance is required on a building located in an SFHA in a participating community?

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

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
 - The maximum limit available for the type of structure; or
 - The “insurable value” of the structure.⁵⁹

Example: (Calculating insurance required on a nonresidential building):

⁵⁹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

Loan security includes one equipment shed located in an SFHA in a participating community under the Regular Program.

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

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

AMOUNT 6. Is flood insurance required for each building when the real estate security contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?

Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together.⁶⁰ The total amount of required flood insurance is the lesser of:

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

⁶⁰ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must be covered in accordance with the statutory requirement.

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

- Outstanding loan principal is \$150,000.
- Maximum amount of insurance available under the NFIP.
 - Maximum limit available for the type of structure is \$500,000 per building for nonresidential buildings (or \$1.5 million total); or
 - Insurable value (\$100,000 for each nonresidential building for which insurance is required, or \$300,000 total).

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

AMOUNT 7. If the insurable value of a building or mobile home securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?

No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the building or mobile home and any

personal property that secures a loan and not the land itself.⁶¹ Since the NFIP policy does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the improvements.

AMOUNT 8. Can a lender require more flood insurance than the minimum required by the Regulation?

Yes. Lenders are permitted to require more than the minimum amount of flood insurance required by the Regulation, taking into consideration applicable State and Federal law and safe and sound banking practices, as appropriate. However, the borrower or lender may have to seek such coverage outside the NFIP. Although a lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral, it should consider the extent of recovery allowed under the NFIP or a private policy for the type of property being insured to assist the borrower in avoiding paying for coverage that exceeds the amount the insured would recover in the event of a loss.

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

⁶¹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.⁶²

IX. FLOOD INSURANCE REQUIREMENTS FOR CONSTRUCTION LOANS

CONSTRUCTION 1. Is a loan secured only by land, which is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s), a designated loan that requires flood insurance?

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.⁶³ Any loan secured only by land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

CONSTRUCTION 2. Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?

Yes. A lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act.⁶⁴ If the building or mobile home is located or will be located in an SFHA, then the loan is a designated loan and the lender must

⁶² 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁶³ 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

⁶⁴ 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

provide the requisite notice to the borrower prior to loan origination.⁶⁵ The lender must then comply with the mandatory purchase requirement under the Act and Regulation.⁶⁶

CONSTRUCTION 3. Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?

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

The *NFIP Flood Insurance Manual* defines “start of construction” in the case of new construction as “either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation.”

Although an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or

⁶⁵ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

⁶⁶ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

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.⁶⁷ The NFIP rules provide lenders an option to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA by requiring borrowers to have a flood insurance policy in place at the time of loan origination. 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*).

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an EC has been issued or, if the building to be

⁶⁷ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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,⁶⁸ 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 as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials). 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. (*See NFIP Flood Insurance Manual*). (*See also Q&A Construction 5*).

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

Yes. Under the NFIP, a 30-day waiting period applies anytime a lender requires flood insurance not in connection with the making, increasing, renewing or extending of a designated loan.

Therefore, 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. (*NFIP Flood Insurance Manual*). (*See also Q&A Construction 4*).

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?

⁶⁸ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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.⁶⁹

X. FLOOD INSURANCE REQUIREMENTS FOR RESIDENTIAL CONDOMINIUMS AND CO-OPS

CONDO AND CO-OP 1. Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?

Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act.⁷⁰ The mandatory purchase requirements also apply to loans secured by other residential condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

CONDO AND CO-OP 2. What is an NFIP Residential Condominium Building Association Policy (RCBAP)?

The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in

⁶⁹ 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

⁷⁰ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times \$250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

CONDO AND CO-OP 3. What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story residential condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?

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

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
 - The maximum limit available for the residential condominium unit; or
 - The “insurable value” allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.⁷¹

FEMA requires agents to provide on the declarations page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the

⁷¹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA) and 12 CFR 760.3(a) (NCUA).

replacement cost value and number of units on the RCBAP declarations page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender determines that the borrower is underinsured, it must require the purchase of supplemental coverage.⁷² However, coverage under the supplemental policy may be limited depending on other coverage that may be applicable including the RCBAP insuring the condominium building and the terms and conditions of the policy.

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

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times \$250,000, whichever is less; or
- Obtain flood insurance coverage if there is no RCBAP, as explained in proposed Q&A Condo and Co-Op 4, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times \$250,000, whichever is less, as explained in Q&A Condo and Co-Op 5.

⁷² 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA) and 12 CFR 760.3(a) (NCUA).

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

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

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

The requirement discussed in this Q&A applies to any loan that is made, increased, extended, or renewed after October 1, 2007. This requirement does not apply to any loans made prior to October 1, 2007, until a triggering event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new triggering event, loans made prior to October 1, 2007, will be considered compliant if the lender complied with the Agencies' previous guidance that an RCBAP with 80 percent RCV coverage was sufficient. FEMA issued guidance effective October 1, 2007, requiring NFIP insurers to add the RCV of the condominium

building and the number of units to the RCBAP declarations page of all new and renewed policies.

CONDO AND CO-OP 4. What action must a lender take for an individual unit owner/borrower if there is no RCBAP coverage?

If there is no RCBAP on the residential condominium building, then the lender must require the individual unit owner/borrower to obtain coverage in an amount sufficient to meet the requirements outlined in Q&A Condo and Co-Op 3.⁷³

Under the NFIP, a Dwelling Policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP coverage.

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

- Outstanding principal balance of loan is \$175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
 - Maximum limit available for the residential condominium unit is \$250,000; or
 - Insurable value of the unit based on 100 percent of the building's replacement cost value ($\$10 \text{ million} \div 50 = \$200,000$).

⁷³ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

CONDO AND CO-OP 5. What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?

If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*See Q&A Condo and Co-Op 3*). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase supplemental coverage in an amount sufficient to meet the Regulation's flood insurance requirements.⁷⁴ The amount of supplemental coverage required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance purchase requirements (*See Q&A Condo and Co-Op 4*).

Example: Lender makes a loan in the principal amount of \$300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating

⁷⁴ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

community, with a replacement cost value of \$10 million; however, the RCBAP is at 80 percent of replacement cost value (\$8 million or \$160,000 per unit).

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

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

While the individual unit owner's purchase of a separate policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance purchase requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. For example, the NFIP Dwelling Policy provides individual unit owners with supplemental building coverage that is in excess to the RCBAP. The policies are coordinated such that the Dwelling Policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the Dwelling

Policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

CONDO AND CO-OP 6. What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?

If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements.⁷⁵ The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance purchase requirement (*See Q&A Condo and Co-Op 3*). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance policy in an amount sufficient to meet the Regulation's mandatory flood insurance purchase requirement (*See Q&As Condo and Co-Op 4 & 5*). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance on the borrower's behalf.⁷⁶

⁷⁵ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

⁷⁶ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

CONDO AND CO-OP 7. How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?

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

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

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

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

Replacement value of the building: \$250,000.

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

Actual amount of insurance carried: \$180,000.

Amount of the loss: \$150,000.

Deductible: \$ 500.

Step A: $180,000 \div 200,000 = .90$

(90% of what should be carried to avoid coinsurance penalty)

Step B: $150,000 \times .90 = 135,000$

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

The policy will pay no more than \$134,500. The remaining \$15,500 is not covered due to the co-insurance penalty (\$15,000) and application of the deductible (\$500).

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

Replacement value of the building: \$250,000.

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

Actual amount of insurance carried: \$200,000.

Amount of the loss: \$150,000.

Deductible: \$ 500.

Step A: $200,000 \div 200,000 = 1.00$

(100% of what should be carried to avoid coinsurance penalty)

Step B: $150,000 \times 1.00 = 150,000$

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

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

CONDO AND CO-OP 8. What are the major factors involved with the individual unit owner's NFIP Dwelling Policy's coverage limitations with respect to the condominium association's RCBAP coverage?

The following examples demonstrate how the unit owner's NFIP Dwelling Policy may cover in certain loss situations:

Example 1: RCBAP

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

The loss assessment coverage under the Dwelling Policy will not cover the association's policy deductible purchased by the condominium association.

If building elements within units have also been damaged, the Dwelling Policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of \$250,000 per unit.

Example 2: No RCBAP

If the unit owner purchases building coverage under the Dwelling Policy and there is no RCBAP, the Dwelling Policy covers assessments against unit owners for damages to common areas up to the Dwelling Policy limit.

However, if there is damage to the building elements of the unit (e.g., inside the individual unit) as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the Dwelling Policy.

CONDO AND CO-OP 9. What flood insurance requirements apply to a loan secured by a share in a cooperative building that is located in an SFHA?

It is important to recognize the difference between ownership of a condominium and a cooperative. Although an owner of a condominium owns title to real property, a cooperative unit holder holds stock in a corporation with the right to occupy a particular unit, but owns no title to the building. As a result, a loan to a cooperative unit owner, secured by the owner's share in the cooperative, is not a designated loan that is subject to the Act or the Regulation.

Although there is no requirement under the Act or Regulation to purchase flood insurance on the cooperative building if the loan is secured by the unit owner's share in the cooperative, for safety and soundness purposes, residential or nonresidential cooperative buildings may be insured by the association or corporation under the General Property Form. The entity that owns the cooperative building, not the individual unit members, is the named insured.

XI. FLOOD INSURANCE REQUIREMENTS FOR HOME EQUITY LOANS, LINES OF CREDIT, SUBORDINATE LIENS, AND OTHER SECURITY INTERESTS IN COLLATERAL (CONTENTS) LOCATED IN AN SFHA

OTHER SECURITY INTERESTS 1. Is a home equity loan considered a designated loan that requires flood insurance?

Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.⁷⁷

OTHER SECURITY INTERESTS 2. Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?

No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations.⁷⁸ However, a request made for an increase in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* Q&A SFHDF 4).

OTHER SECURITY INTERESTS 3. What is the amount of flood insurance coverage required on a line of credit secured by a residential improved real estate?

A lender may take the following alternative approaches:

- For administrative convenience in complying with the flood insurance requirements, upon origination, a lender may require the purchase of flood insurance for the total

⁷⁷ 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

⁷⁸ 12 CFR 22.2(e) and 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (c)(1) (Board); 12 CFR 339.2 and 339.3(a) (FDIC); 12 CFR 614.4925 and 614.4930(a) (FCA); and 12 CFR 760.2 and 760.3(a) (NCUA).

amount of all loans or the maximum amount of flood insurance coverage available, whichever is less;⁷⁹ or

- A lender may actively review its records throughout the year to determine whether the appropriate amount of flood insurance coverage is maintained, considering the draws made against the line or repayments made to the account. In those instances in which there is no policy on the collateral at time of origination, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. Lenders that choose to actively review the line should inform the borrower that this option may have more risks, such as inadequate flood insurance coverage during the 30-day waiting period for an NFIP flood policy to become effective. Lenders should be prepared to initiate force-placement procedures if at any time the lender determines a lack of adequate flood insurance coverage for a designated line of credit, as required under the Regulation.⁸⁰

OTHER SECURITY INTERESTS 4. When a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently \$250,000 for most residential buildings and \$500,000

⁷⁹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁸⁰ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

for other buildings), or the insurable value of the building or mobile home.⁸¹ The junior lienholder should also have the borrower add the junior lienholder's name as mortgagee/loss payee to the existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

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

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

⁸¹ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

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

Example 3: Lender A made a first mortgage with a principal balance of \$100,000 on improved real estate with a fair market value of \$150,000. The insurable value of the residential building on the improved real estate is \$90,000; however, Lender A improperly required only \$70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B

later takes a second mortgage on the property with a principal balance of \$10,000. Lender B must ensure that flood insurance in the amount of \$90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage (\$10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire \$80,000 loss payment towards the insurable value of \$90,000.

OTHER SECURITY INTERESTS 5. If a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be “making” a new loan.⁸² In either situation, the lender will need to determine whether the amount of insurance in effect is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the junior lien loan), the insurable value, or the maximum amount of coverage available on the improved real estate. This will hold true whether the subordinate lien loan is a home equity loan or some other type of junior lien loan.

⁸² 12 CFR 22.3(a), 22.6(a) (OCC); 12 CFR 208.25(c)(1), 208.25(f)(1) (Board); 12 CFR 339.3(a), 339.6(a) (FDIC); 12 CFR 614.4930(a), 614.4940(a) (FCA); and 12 CFR 760.3(a), 760.6(a) (NCUA).

OTHER SECURITY INTERESTS 6. If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?

No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is, a loan secured by a building or mobile home located or to be located in an SFHA, “unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.”⁸³ In this example, the loan is not a designated loan because it is not secured by a building or mobile home; rather, the collateral is the inventory alone.

OTHER SECURITY INTERESTS 7. Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?

Yes. Flood insurance is required for the building located in the SFHA and any personal property securing the loan.⁸⁴ The method for allocating flood insurance coverage among multiple buildings, as described in Q&A Amount 6, would be the same method for allocating flood insurance coverage among contents and buildings. That is, both contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes so long as some reasonable amount of insurance is allocated to each category.

Example: Lender A makes a loan for \$200,000 that is secured by a warehouse with an insurable value of \$150,000 and inventory in the warehouse worth \$100,000. The Act and Regulation

⁸³ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁸⁴ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

OTHER SECURITY INTERESTS 8. If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?

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

OTHER SECURITY INTERESTS 9. Does the Regulation apply when the lender takes a security interest in improved real estate and contents located in an SFHA only as an “abundance of caution”?

Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate and contents located in an SFHA, then flood insurance is required.⁸⁵

⁸⁵ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

The language in the loan agreement determines whether the contents are taken as security for the loan. If a lender intends to take a security interest in the contents, the loan agreement should include language indicating that the contents are security for the loan. If the lender does not intend to take a security interest in the contents, the loan agreement should not include language to this effect, including language inserted out of an “abundance of caution.”

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 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.⁸⁶

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.⁸⁷ In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

OTHER SECURITY INTERESTS 12. If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in

⁸⁶ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

⁸⁷ 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?

Yes. In this scenario, a loan is made on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA and owned by that third party. Under these circumstances, the security of improved real estate in an SFHA is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.⁸⁸

XII. REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – GENERAL

ESCROW 1. When must escrow accounts be established for flood insurance purposes?

A lender, or a servicer acting on its behalf, must escrow all premiums and fees for any flood insurance required under the mandatory purchase of flood insurance requirement for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The escrow must be payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan, unless the loan or lender is subject to one of the exceptions.⁸⁹

⁸⁸ 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

⁸⁹ 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

A lender is not required to escrow for flood insurance if it qualifies for the small lender exception⁹⁰ or the loan qualifies for one of the following loan-related exceptions⁹¹ in the Regulation:

- A loan that is an extension of credit primarily for business, commercial, or agricultural purposes;
- A loan that is in a subordinate position to a senior lien secured by the same property for which the borrower has obtained adequate flood insurance coverage;
- A loan that is covered by a condominium association, cooperative, homeowners association or other applicable group's adequate flood insurance policy;
- A loan that is a home equity line of credit;
- A loan that is a nonperforming loan that is 90 or more days past due; or
- A loan that has a term not longer than 12 months.

If a lender no longer qualifies for the small lender exception, it must escrow all premiums and fees for any flood insurance required under the mandatory purchase of flood insurance requirement for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after July 1 of the first calendar year in which a lender has a change in status, unless a loan qualifies for another exception.⁹² If a lender, other than a lender that qualifies for the small lender exception, determines at any time during

⁹⁰ 12 CFR 22.5(c) (OCC); 12 CFR 208.25(e)(3) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

⁹¹ 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

⁹² 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC); 12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).

the term of a designated loan secured by residential improved real estate or a mobile home that an exception from the escrow requirement that previously applied to a particular loan no longer applies to the loan, the lender must escrow flood insurance premiums and fees as soon as reasonably practicable.⁹³

ESCROW 2. If a lender does not escrow for taxes or homeowner’s insurance, is it required to escrow for flood insurance under the Regulation? If yes, is the lender obligated to escrow for taxes and other insurance because it escrows for flood insurance pursuant to the rule?

If a lender or its servicer is required to escrow for flood insurance under the Regulation, it must do so even if it does not escrow for taxes or other insurance.⁹⁴ A lender or servicer is not, however, obligated to escrow for taxes and other insurance solely because it must escrow for flood insurance pursuant to the Regulation, though there may be other laws or regulations that require that additional escrow.

ESCROW 3. Are lenders required to escrow force-placed insurance?

Yes, the Regulation requires lenders or their servicers to escrow flood insurance premiums for any residential designated loan made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for an exception from the escrow requirement.⁹⁵

The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

⁹³ 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

⁹⁴ 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

⁹⁵ 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

ESCROW 4. Does the requirement to escrow flood insurance premiums and fees apply when a loan does not experience a triggering event, such as when the loan is modified without being increased, extended, or renewed; the loan is assumed by another borrower; or the building securing the loan is remapped into a Special Flood Hazard Area (SFHA)?

No, subject to certain exceptions. The Regulation provides that a lender or its servicer is required to escrow flood insurance premiums and fees when a designated loan is made, increased, extended, or renewed (a triggering event), unless either the lender or the loan is excepted from the escrow requirement.⁹⁶ Until the loan experiences a triggering event, the lender is not required to escrow flood insurance premiums and fees, unless: (i) a borrower requests the escrow in connection with the requirement that the lender provide an option to escrow for outstanding loans;⁹⁷ or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.⁹⁸

ESCROW 5. Are multi-family buildings or mixed-use properties included in the definition of “residential improved real estate” under the Regulation for which escrows are required (unless an exception applies)?

Yes. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied.⁹⁹ Single-family dwellings (including mobile

⁹⁶ 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a) (NCUA).

⁹⁷ 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).

⁹⁸ 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

⁹⁹ 12 CFR 23.2(j) (OCC); 12 CFR 208.25(b)(8) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are considered residential improved real estate.

However, with regard to mixed-use properties, the lender should look to the primary use of a building to determine whether it meets the definition of “residential improved real estate.” (*See* Q&As Amount 3 and 4 for guidance on residential and nonresidential buildings.) A loan secured by residential improved real estate is not subject to the escrow requirement if the loan is an extension of credit primarily for business, commercial or agricultural purposes.¹⁰⁰

ESCROW 6. If a borrower obtains a second mortgage loan for a property located in an SFHA, and it is determined that the first lienholder does not have sufficient flood insurance coverage for both liens and is not currently escrowing for flood insurance, does the junior lienholder have to escrow for the additional amount of flood insurance coverage?

Under the Regulation, for a closed-end second mortgage loan, junior lienholders are not required to escrow for flood insurance as long as the borrower has obtained flood insurance coverage that meets the mandatory purchase requirement. Thus, the junior lender or its servicer must ensure that adequate flood insurance is in place (*See* Q&A Other Security Interests 4 for junior lienholder requirements).¹⁰¹ Q&A Other Security Interests 4 explains the requirements for junior lienholders. If adequate flood insurance has not been obtained by the first lienholder and insurance must be purchased in connection with the second mortgage loan to meet the mandatory purchase requirement, the junior lender or its servicer would need to escrow the insurance

¹⁰⁰ 12 CFR 22.5(a)(2)(i) (OCC); 12 CFR 208.25(e)(1)(ii)(A) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

¹⁰¹ 12 CFR 22.5(a)(2)(ii) (OCC); 12 CFR 208.25(e)(1)(ii)(B) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

obtained in connection with the second mortgage loan.¹⁰² However, the escrow requirements do not apply to a junior lien that is a home equity line of credit (HELOC) since HELOCs have a separate escrow exception under the Act and Regulation.¹⁰³

ESCROW 7. Does a lender or servicer have to escrow for loans when the security property is not located in an SFHA, but the borrower chooses to buy flood insurance?

Under the Regulation, lenders and servicers are only required to escrow for loans that are secured by residential improved real estate or a mobile home located or to be located in SFHAs where flood insurance is available under the NFIP and that experience a triggering event (made, increased, extended, or renewed) on or after January 1, 2016, unless either the lender or the loan qualifies for an exception.¹⁰⁴ If the property securing the loan is not located in an SFHA, it is not a designated loan, and the lender or its servicer is not required to escrow, although the lender or servicer may offer escrow service to the borrower.

XIII. REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – SMALL LENDER EXCEPTION

SMALL LENDER EXCEPTION 1. Is the \$1B small lender exception for the mandatory escrow of flood insurance premiums at the lending institution level or bank holding company level?

¹⁰² 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹⁰³ 12 CFR 22.5(a)(2)(iv) (OCC); 12 CFR 208.25(e)(1)(ii)(D) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

¹⁰⁴ 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

By its own terms, the small lender exception to the flood insurance escrow requirement applies to lenders rather than holding companies.¹⁰⁵ Therefore, the \$1 billion requirement is calculated based on the assets held at the lending institution level, rather than at the holding company level.

SMALL LENDER EXCEPTION 2. If a lender was required to escrow for taxes and hazard insurance solely under the (a) Higher-Priced Mortgage Loan (HPML) rules or (b) USDA or FHA programs on or before July 6, 2012, is such a lender, who otherwise qualifies for the small lender exception, required to escrow the premiums and fees for flood insurance?

The Act and Regulation provide that a small lender is eligible for the exception only if, on or before July 6, 2012, the lender: (1) was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and (2) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.¹⁰⁶

- (a) With respect to an HPML, Federal law in effect on or before July 6, 2012, permitted a borrower to request cancellation of the escrow rather than have it apply for the entire term of the loan. Therefore, HPML escrow requirements would not result in the loss of the escrow exception for a small lender that made an HPML-covered loan prior to July 6, 2012, because the lender was not required under Federal law to escrow for the entire term of the loan. Note that the phrase “entire term” applies only with respect to the

¹⁰⁵ 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

¹⁰⁶ 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

Federal or State law requirements criterion of the exception. In addition, if a lender required escrow for an HPML solely to comply with Federal law, a lender complying with that law would not be considered to have its own separate policy of consistently and uniformly requiring escrow.

- (b) With respect to loans under the USDA or FHA programs, under Federal law, such loans require the deposit of taxes, insurance premiums, fees and other charges in an escrow account for the entire term of the loan. Therefore, the first criterion of the exception would not be met and would disqualify the lender from the small lender exception under the Act and the Regulation.

SMALL LENDER EXCEPTION 3. Is a lender disqualified from the small lender escrow exception if it is required to collect escrowed funds on a mortgage loan on behalf of a third party?

To qualify for the small lender exception, one requirement is the lender must not have had a policy on or before July 6, 2012, of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.¹⁰⁷

- With regard to mortgage loans for which the lender had a policy on or before July 6, 2012, of collecting escrow funds at closing and the lender maintained servicing of the loan, the lender would not qualify for the exception because the lender established an individual escrow account for the loan it would then service.

¹⁰⁷ 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(B)(2) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c) (1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).

- With regard to mortgage loans for which the lender did not have a policy on or before July 6, 2012, of collecting the escrow funds on its own behalf at closing, but escrowed funds on behalf of a third party and then transferred those escrow funds to the third party servicing that loan, the lender would be able to qualify for the small lender exception provided the lender did not establish an individual escrow account and the lender transferred the funds to the third party as soon as reasonably practicable. The small lender must also satisfy the other requirements for the exception, but because no individual escrow account was established for the loan whose servicing rights were transferred pursuant to a third party's requirements, the lender would not have had a policy of consistently and uniformly requiring the deposit of funds in an escrow account.

SMALL LENDER EXCEPTION 4. Is a lender eligible for the small lender exception if it offers escrow accounts only upon a borrower's request?

Yes. If a lender only offers escrow accounts upon the request of borrowers, this practice does not constitute a consistent or uniform policy of requiring escrow. The small lender exception does not apply if, on or before July 6, 2012, the lender had a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for a loan secured by residential improved real estate or a mobile home.¹⁰⁸

SMALL LENDER EXCEPTION 5. Is the option to escrow notice required for all outstanding loans secured by residential real estate that are not excepted from the escrow requirement? What about outstanding loans that are not secured by buildings located in SFHAs?

¹⁰⁸ 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(B)(2) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c) (1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).

Under the Regulation, lenders or their servicers are required to offer and make available the option to escrow flood insurance premiums and fees for all outstanding designated loans secured by residential improved real estate or a mobile home located in an SFHA as of January 1, 2016, or July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception to the escrow requirement.¹⁰⁹ With the expiration of the June 30, 2016, deadline to comply with the option to escrow notice requirement for outstanding loans as of January 1, 2016, that requirement currently applies only to lenders who have a change in status and no longer qualify for the small lender exception.¹¹⁰ Such lenders will be required to provide the option to escrow notice by September 30 of the first calendar year in which the lender has had a change in status pursuant to the Regulation.¹¹¹ The requirement to provide the option to escrow notice does not apply to outstanding loans or to lenders that are excepted from the general escrow requirement under the Regulation. The option to escrow notice requirement also does not apply to loans that are not subject to the mandatory flood insurance purchase requirement.

SMALL LENDER EXCEPTION 6. If the borrower has waived escrow of flood insurance premiums and fees, does the lender or its servicer still need to send a notice to offer the ability to escrow for the flood insurance?

Yes, if the small lender exception no longer applies. (*See* Q&A Small Lender Exception 5). The Regulation does not exclude loans for which borrowers have previously waived escrow from the requirement to offer and make available the option to escrow flood insurance premiums and fees.

¹⁰⁹ 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).

¹¹⁰ 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC); 12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).

¹¹¹ 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

Consequently, lenders or their servicers must send a notice of the option to escrow flood insurance premiums and fees to borrowers who have previously waived escrow or for whom lenders previously offered an option to escrow.¹¹² Although a borrower may have previously decided to waive escrow or been offered an option to escrow, it is possible that the borrower's circumstances have changed, and if offered another chance to escrow, the borrower may desire to do so.

SMALL LENDER EXCEPTION 7. Is it correct that lenders that qualify for the small lender exception are not required to provide borrowers the escrow notice or the option to escrow notice?

Yes. Lenders that qualify for the small lender exception are not required to provide borrowers either the escrow notice or the option to escrow notice unless the lender ceases to qualify for the small lender exception.¹¹³

**XIV. REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES –
LOAN EXCEPTIONS**

LOAN EXCEPTIONS 1. Are escrow accounts for flood insurance premiums and fees required for commercial loans that are secured by multi-family residential buildings?

¹¹² 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

¹¹³ 12 CFR 22.5(d)(1) (OCC); 12 CFR 208.25(e)(4)(i) (Board); 12 CFR 339.5(d)(1) (FDIC); 12 CFR 614.4935(d)(1) (FCA); and 12 CFR 760.5(d)(1) (NCUA).

No. Extensions of credit primarily for business, commercial or agricultural purposes are not subject to the escrow requirement for flood insurance premiums and fees, even if such loans are secured by residential improved real estate or a mobile home.¹¹⁴

LOAN EXCEPTIONS 2. Do construction-permanent loans qualify for the 12-month exception if one phase of the loan is for 12 months or less?

Generally, no. Construction-permanent loans (or C-P loans) are loans that have a construction phase of approximately one year before the loan converts into permanent financing. During the construction phase, the loan is typically interest-only, so the borrower does not start paying principal until the permanent phase. After the construction phase, the borrower generally comes in to sign papers to start the permanent phase, but this is not a true closing. Given that C-P loans are generally 20- to 30-year term loans, a C-P loan would not qualify for the 12 month-exception from escrow, even if one phase of the loan is for 12 months or less.

LOAN EXCEPTIONS 3. Although a lender is not required to monitor whether a subordinate lien moves into first lien position for the purpose of the mandatory escrow requirement, if the lender becomes aware that the subordinate lien exception no longer applies, when must the lender begin to escrow?

If at any time during the term of the loan a lender determines that a subordinate lien exception no longer applies, the lender must begin escrowing flood insurance premiums and fees as soon as reasonably practicable (unless another exception applies).¹¹⁵ Lenders should ensure that the loan

¹¹⁴ 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

¹¹⁵ 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

documents for the subordinate lien permit the lender to require an escrow if the loan takes a first lien position.

LOAN EXCEPTIONS 4. Which requirements for an escrow account apply to a property covered by an RCBAP?

An RCBAP (Residential Condominium Building Association Policy) is a policy purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. Typically, a portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and RCBAP premiums are paid by the condominium association as a common expense, an escrow account is not required.¹¹⁶ However, if the RCBAP coverage is inadequate and the unit is also covered by a flood insurance policy for supplemental coverage, premiums for the supplemental policy would need to be escrowed, provided the lender or the loan did not qualify for any other exception from the Regulation's escrow requirement.¹¹⁷ Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

LOAN EXCEPTIONS 5. Is there an exception to the escrow requirement for loans secured by multi-family buildings? Is there an exception for commercial loans?

¹¹⁶ 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).

¹¹⁷ 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

Under the Regulation, the escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes even if secured by residential real estate, such as a multi-family building.¹¹⁸

In addition, the escrow requirements in the Regulation would not apply to a loan secured by a particular unit in a multi-family residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense.¹¹⁹ Otherwise, the escrow requirements generally would apply to loans for particular units in multi-family residential buildings.

XV. FORCE PLACEMENT OF FLOOD INSURANCE

FORCE PLACEMENT 1. What is the requirement for the force placement of flood insurance under the Act and the Regulation?

When a lender makes a determination that the collateral securing the loan is uninsured or underinsured, it must begin the force-placement process. Specifically, the Act and the Regulation provide that if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan that a building or mobile home and any personal property securing the 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 lender or its servicer must notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the Regulation. If the borrower fails to

¹¹⁸ 12 CFR 22.5(a)(2)(i) (OCC); 12 CFR 208.25(e)(1)(ii)(A) (Board); 12 CFR 339.5(a)(2)(i) (FDIC); 12 CFR 614.4935(a)(2)(i) (FCA); and 12 CFR 760.5(a)(2)(i) (NCUA).

¹¹⁹ 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).

obtain flood insurance within 45 days of the lender’s notification to the borrower, the lender must purchase flood insurance on the borrower’s behalf at that time. The lender must force place flood insurance for the full amount required under the Regulation, or if the borrower has purchased flood insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender would be required to force place only for the “insufficient amount,” that is, the difference between the amount the borrower insured and the required amount of flood insurance. The Act and the Regulation also provide that the lender or its servicer may purchase insurance on the borrower’s behalf and may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. (*See also Q&A Force Placement 8*).¹²⁰

A lender or its servicer may include in the force-placement notice the amount of flood insurance needed. By providing this information, the lender or its servicer can help ensure that a borrower obtains the appropriate amount of insurance. In addition, before the lender or servicer must force place flood insurance, if the lender or servicer is aware that a borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should inform the borrower an additional amount of insurance is needed in order to comply with the Regulation.

¹²⁰ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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, that the lender uses batch processing to send the force-placement notice to its borrowers.

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.¹²¹

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.¹²²

¹²¹ 42 U.S.C. 4012a(e); 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹²² 12 U.S.C. 4012a(e)(1). *See also* 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.¹²³

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.¹²⁴ 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 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,

¹²³ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a)(FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹²⁴ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

the lender must purchase coverage on the borrower's behalf.¹²⁵ 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.

FORCE PLACEMENT 7. May a lender commence a force-placed insurance policy on the day the previous policy expires, or must the new policy begin on the day after?

The Regulation provides that the lender or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage, beginning on the date on which flood insurance lapsed or did not provide a sufficient coverage amount.¹²⁶

A lender, however, may not require the borrower to pay for double coverage. The Regulation requires the lender or its servicer to refund to the borrower all premiums paid by the borrower for any force-placed insurance purchased by the lender or its servicer during any period in which the borrower's flood insurance coverage and the force-placed insurance policy were each in effect.¹²⁷

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

¹²⁵ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a)(FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹²⁶ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹²⁷ 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).

FORCE PLACEMENT 8. When force placement occurs, what is the amount of insurance required to be placed?

The Regulation states that the minimum amount of flood insurance required “must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.”¹²⁸ Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees added to the loan balance.¹²⁹

To illustrate this point, assume that there is a loan with an outstanding principal balance of \$200,000, secured by a residential property located in a special flood hazard area that has an insurable value of \$350,000. The borrower has a \$200,000 flood insurance policy for that property, reflecting the minimum amount required under the Agencies’ regulations. If the \$200,000 flood insurance policy lapses, the lender or its servicer must notify the borrower of the need to obtain adequate flood insurance. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the lender or its servicer must purchase insurance on the borrower’s behalf.¹³⁰

If the lender intends to add the premium for the force-placed policy to the loan balance, the lender must ensure that the policy is issued in an amount sufficient to cover the anticipated higher loan balance, including the force-placed policy premium, even if the addition of the force-

¹²⁸ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹²⁹ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA)

¹³⁰ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

placed premium is not considered a triggering event. (*See also* Q&A Force Placement 10). In this scenario, if the cost of the force-placed policy is \$2,000, the coverage amount of the force-placed policy must be at least \$202,000.

FORCE PLACEMENT 9. When may a lender or its servicer charge the borrower for the cost of force-placed insurance?

A lender, or a servicer acting on its behalf, may force place insurance and charge the borrower for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf at any time starting from the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The lender or servicer would not have to wait 45 days after providing notification to force place insurance.¹³¹

Lenders that monitor loans secured by property located in an SFHA for continuous flood insurance coverage can minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. If a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, for example, due to a re-mapping, it may charge the borrower for premiums and fees incurred by the lender or servicer for a force-placed flood insurance policy purchased on the borrower's behalf, including premiums and fees for coverage, beginning on the date of no or insufficient coverage, provided that the policy was effective as of the date of the insufficient coverage. When a lender or its servicer purchases a policy on the borrower's behalf, the lender or its servicer may not charge for premiums and fees for coverage beginning on the

¹³¹ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

date of lapse or insufficient coverage if that policy purchased on the borrower's behalf did not provide coverage for the borrower prior to purchase.

FORCE PLACEMENT 10. Does adding the flood insurance premium to the outstanding loan balance constitute a triggering event- an “increase” that would trigger the applicability of flood insurance regulatory requirements?

The Act and the Regulation require a lender to notify the borrower that the borrower should obtain adequate flood insurance when the lender determines that a building or a mobile home located or to be located in a Special Flood Hazard Area is not covered by any or adequate flood insurance.¹³² If the borrower fails to obtain adequate flood insurance within 45 days, then the lender must purchase insurance on the borrower's behalf. The lender may charge the borrower for the premiums and fees incurred by the lender in purchasing the force-placed flood insurance.¹³³

Among the various methods that a lender might use to charge a borrower for force-placed flood insurance are: (1) adding the premium and fees to the existing mortgage loan balance; (2) adding the premium and fees to a separate, unsecured account; or (3) billing the borrower directly for the premiums and fees of the force-placed flood insurance. The treatment of force-placed flood insurance premiums and fees depends on the method the lender chooses for charging the borrower.

Premium and fees added to mortgage loan balance

¹³² 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹³³ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

If the lender's loan contract with the borrower includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt to be secured by the building or mobile home, such an advancement would be considered part of the loan. As such, the addition of the flood insurance premiums and fees to the loan balance is not considered an "increase" in the loan amount, and thus would not be considered a triggering event. If, however, there is no explicit provision permitting this type of advancement of funds in the loan contract, the addition of flood insurance premiums and fees to the borrower's loan balance would be considered an "increase" in the loan amount, and, therefore is considered a triggering event because no advancement of funds was contemplated as part of the loan. (*See also Q&A Force Placement 8*).

Premium and fees added to an unsecured account

If the lender accounts for and tracks the amount owed on the force-placed flood insurance premium and fees in a separate, unsecured account, this approach does not result in an increase in the loan balance and, therefore, is not considered a triggering event.

Premium and fees billed directly to borrower

If the lender bills the borrower directly for the cost of the force-placed flood insurance, this approach does not increase the loan balance and is not considered a triggering event.

FORCE PLACEMENT 11. What documentation is sufficient to demonstrate evidence of flood insurance in connection with a lender's refund of premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance?

With respect to when a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance, the Regulation specifically addresses the documentation requirements. The Regulation provides that, for purposes of confirming a borrower's existing flood insurance coverage, a lender must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent.¹³⁴ The Regulation does not require that the declarations page contain any additional information in order to be accepted as fulfilling the mandatory flood insurance purchase requirement.

In situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does not specify what documentation would be sufficient. Generally, it is appropriate, although not required by the Regulation, for lenders to accept a copy of the flood insurance application and premium payment as evidence of proof of purchase for new policies.

FORCE PLACEMENT 12. If a lender cannot obtain a refund from the insurance company because the borrower did not provide proof of coverage in a timely manner or the insurance company fails to provide the lender the refund within 30 days, is the lender required to refund the premium to the borrower?

Yes. The Regulation specifically requires the refund of force-placed insurance premiums and any related fees charged to the borrower for any overlap period within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage without exception.¹³⁵

FORCE PLACEMENT 13. Is a lender permitted to increase, renew, or extend a designated loan that is currently insured by force-placed insurance? More specifically, if the borrower

¹³⁴ 12 CFR 22.7(b)(2) (OCC); 12 CFR 208.25(g)(2)(ii) (Board); 12 CFR 339.7(b)(2) (FDIC); 12 CFR 614.4945(b)(2) (FCA); and 12 CFR 760.7(b)(2) (NCUA).

¹³⁵ 12 CFR 22.7(b)(1) (OCC); 12 CFR 208.25(g)(2)(i) (Board); 12 CFR 339.7(b)(1) (FDIC); 12 CFR 614.4945(b)(1) (FCA); and 12 CFR 760.7(b)(1) (NCUA).

is undergoing a refinance or a loan modification, can the lender rely on the existing force-placed insurance to meet the mandatory purchase requirement?

A lender can rely on the force-placed insurance to satisfy the mandatory flood insurance purchase requirement if the borrower does not purchase his or her own policy. The Regulation states that a lender “shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.”¹³⁶ Assuming the force-placed policy is in effect and otherwise satisfies the regulatory coverage standards, then that policy may satisfy the mandatory purchase requirement.

When a lender refinances increases, renews, or extends an existing loan, the lender is required to provide the notice of special flood hazards, which details the borrower’s obligation to obtain a flood insurance policy for any building in an SFHA securing the loan.¹³⁷ At that time, the lender could encourage the borrower to purchase his or her own policy, likely at a reduced cost to the borrower.

FORCE PLACEMENT 14. If a borrower’s force-placed flood insurance expires, is the lender required to send a force-placement notification to the borrower prior to renewing the force-placed flood insurance coverage?

No. The Regulation does not require the lender to send a notice to the borrower prior to renewing a force-placed policy. However, the lender or its servicer, at its discretion, may notify the borrower that the lender is planning to renew or has renewed the force-placed policy. Such a

¹³⁶ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹³⁷ 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

notification may encourage the borrower to purchase his or her own policy, which may be available for a lower premium amount.

FORCE PLACEMENT 15. Are lenders required to have in place “Life-of-Loan” monitoring?

Although there is no explicit duty to monitor flood insurance coverage over the life of the loan in the Act or Regulation, for purposes of safety and soundness, many lenders monitor the continuous coverage of flood insurance for the building or mobile home and any personal property securing the loan. Such a practice helps to ensure that lenders complete the force placement of flood insurance in a timely manner upon lapse of a policy, that there is continuous coverage to protect both the borrower and the lender, and that lenders are promptly made aware of flood map changes.

FORCE PLACEMENT 16. If a lender or its servicer receives a notice of remapping that states that a property will be remapped into an SFHA as a future effective date, what do the Act and Regulation require the lender or its servicer to do?

The Act and Regulation provide that if a lender, or its servicer, determines at any time during the term of a designated loan, that a building or mobile home and any personal property securing a loan is uninsured or underinsured, the lender or its servicer must begin the notice and force-placement process, as detailed in Q&A Force Placement 1.¹³⁸ A loan that is secured by property that was not located in an SFHA does not become a designated loan until the effective date of the map change, remapping the property into an SFHA. Therefore, when a lender or its servicer receives advance notice that a property will be remapped into an SFHA, the effective date of the

¹³⁸ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

remapping becomes the date on which the lender or its servicer must determine whether the property is covered by sufficient flood insurance. If the borrower does not purchase a flood insurance policy that begins on the effective date of the map change, the lender or its servicer must send the force-placement notice to the borrower to purchase adequate flood insurance.¹³⁹ Similar to the guidance set forth in Q&A Force Placement 4, a lender also may send notice prior to the effective date of the map change as a courtesy.

In addition, as of the effective date of the remapping, the lender or servicer may force place flood insurance and charge the borrower for the force-placed insurance. However, if the borrower purchases an adequate flood insurance policy, the lender or servicer would need to reimburse the borrower for premiums and fees charged for the force-placed coverage during any period of overlapping coverage.¹⁴⁰

XVI. FLOOD INSURANCE REQUIREMENTS IN THE EVENT OF THE SALE OR TRANSFER OF A DESIGNATED LOAN AND/OR ITS SERVICING RIGHTS

SERVICING 1. How do the flood insurance requirements under the Regulation apply to lenders under the following scenarios involving loan servicing?

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the

¹³⁹ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹⁴⁰ 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).

regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee.¹⁴¹ Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a nonregulated party, the regulated lender must notify FEMA or its designee of the identity of the new servicer.¹⁴² The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding

¹⁴¹ 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

¹⁴² 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

position that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer maintains compliance with the flood insurance requirements.

Scenario 2: A nonregulated lender originates a designated loan. The nonregulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The nonregulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers certain requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.¹⁴³ Those requirements only are triggered when a regulated lender makes, increases, extends, or renews a designated loan.¹⁴⁴

A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required,¹⁴⁵ then the regulated lender must comply with the Regulation, including

¹⁴³ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹⁴⁴ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹⁴⁵ 42 U.S.C. 4012a(e)(1).

force placing insurance, if necessary.¹⁴⁶ Depending upon the circumstances, as a matter of safety and soundness, the lender may undertake due diligence upon the purchase of a loan, which would make the lender aware of the lack of adequate flood insurance and trigger flood insurance compliance requirements. Further, if the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.¹⁴⁷

When a regulated lender purchases only the servicing rights to a loan originated by a nonregulated lender, the regulated lender is obligated to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.¹⁴⁸

SERVICING 2. When a lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Administrator of FEMA or the Administrator’s designee, *i.e.* the insurance provider?

The Regulation states that the Administrator’s designee is the insurance company issuing the flood insurance policy.¹⁴⁹ The borrower’s purchase of an NFIP policy (or the lender’s force

¹⁴⁶ 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

¹⁴⁷ 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

¹⁴⁸ 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

¹⁴⁹ 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).

placement of an NFIP policy) will constitute notice to FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.¹⁵⁰

SERVICING 3. Would a Real Estate Settlement Procedures Act (RESPA) Notice of Transfer sent to the Administrator of FEMA (or the Administrator's designee, *i.e.*, the insurance provider) satisfy the regulatory provisions of the Act?

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

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

SERVICING 4. Can delivery of the notice be made electronically, including batch transmission?

¹⁵⁰ 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

Yes. The Regulation specifically permits transmission by electronic means.¹⁵¹ A timely batch transmission of the notice would also be permissible, if it is acceptable to the Administrator's designee, *i.e.*, the insurance provider.

SERVICING 5. If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Administrator or the Administrator's designee (*i.e.*, the insurance provider)?

Yes.¹⁵² Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

SERVICING 6. Is a lender required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer?

No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer.¹⁵³ The obligation of the lender is to notify the Administrator or the Administrator's designee (*i.e.*, the insurance provider) of the identity of the servicer transfers to the new servicer. The duty to notify the insurance provider of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer.¹⁵⁴ For example, if a lender makes and services a loan and then sells the loan in the secondary market and also sells the servicing rights to a mortgage company, then the lender must notify the insurance provider of the identity of the new servicer and the other information requested by FEMA so that flood

¹⁵¹ 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).

¹⁵² 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).

¹⁵³ 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).

¹⁵⁴ 12 U.S.C. 4104a(b)(1).

insurance transactions can be properly administered by the insurance provider. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the lender, is responsible for notifying the insurance provider of the identity of the new servicer.

SERVICING 7. In the event of a merger or acquisition of one lender with another, what are the responsibilities of the parties for notifying the Administrator’s designee (*i.e.* the insurance provider)?

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

XVII. MANDATORY CIVIL MONEY PENALTIES

PENALTY 1. Which violations of the Act can result in a mandatory civil money penalty?

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

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- Failure to provide force-placement notice or purchase force-placed flood insurance coverage, as appropriate (42 U.S.C. 4012a(e));
- Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- Notice of servicer and any change of servicer (42 U.S.C. 4104a(b)).

The Act provides that any regulated lending institution found to have a pattern or practice of the violations “shall be assessed a civil penalty” by its Federal supervisory agency in an amount not to exceed \$2,000 per violation (42 U.S.C. 4012a(f)(5)). There is no ceiling on the total penalty amount that a Federal supervisory agency can assess for a pattern or practice of violations. Each Agency adjusts the limit pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).¹⁵⁵ As required by the Act, the penalties must be paid into the National Flood Mitigation Fund.

PENALTY 2. What constitutes a “pattern or practice” of violations for which civil money penalties must be imposed under the Act?

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

The Policy Statement on Discrimination in Lending (Policy Statement) provided the following guidance on what constitutes a pattern or practice: Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The

¹⁵⁵ Please refer to 12 CFR 19.240(b) & 12 CFR 109.103(c)(2)(OCC); 12 CFR 263.65(b) (Board); 12 CFR 308.132(d)(18) (FDIC); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001 (NCUA) for the Agencies’ current civil penalty limits.

totality of the circumstances must be considered when assessing whether a pattern or practice is present.

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

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

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

Brian P. Brooks
Acting Comptroller of the Currency.

Ann E. Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
Dated at Washington, DC, on June 12, 2020.
Robert E. Feldman,
Executive Secretary.

Dated at McLean, VA, this 10th day of February 2020.

Dale Aultman
Secretary,
Farm Credit Administration Board.

Gerard Poliquin
Secretary of the Board,
National Credit Union Administration.