FDIC

Consumer Compliance Examination Manual

V-6 Flood Disaster Protection Act

Chapter Last Updated: ~~November 2023~~November 2026

The National Flood Insurance Program (NFIP) is administered primarily under the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA).[1] The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas (SFHA) if their community participates in the NFIP. The NFIP, administered by a department of the Federal Emergency Management Agency (FEMA) known as the Federal Insurance and Mitigation Administration (FIMA), makes federally backed flood insurance available to consumers through NFIP Direct Program agents who deal directly with FEMA or through the Write Your Own Program (WYO), which allows consumers to purchase federal flood insurance from private insurance carriers. The NFIP aims to reduce the impact of flooding by providing affordable insurance to property owners and by encouraging communities to adopt and enforce floodplain management regulations. The FDPA requires federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in an SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance. Flood insurance may be provided through the NFIP or through a private insurance carrier.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994[2] which is called the National Flood Insurance Reform Act of 1994 (1994 Act), comprehensively revised the Federal flood insurance statutes. The purpose of the 1994 Act was to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[3] The 1994 Act required the federal financial regulatory agencies, the Board of Governors of the Federal Reserve System (FRB); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); and the Office of the Comptroller of the Currency (OCC) to revise their current flood insurance regulations and brought lenders regulated by the Farm Credit Administration (FCA) under the coverage of the Federal flood insurance statutes. The federal financial

regulatory agencies and the FCA (collectively, the Agencies) jointly issued regulations on August 29, 1996 (61 FR 45684).[4]

The 1994 Act also made the flood insurance requirements directly applicable to the loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration (SBA), Federal Housing Administration (FHA), and the Department of Veterans Affairs (VA).

The mandatory flood insurance purchase requirements of the FDPA were again significantly amended with the passage of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). These statutes made changes to the provisions pertaining to force placement of flood insurance; escrowing of flood insurance premiums and fees; exemptions to the mandatory flood insurance purchase requirement; and civil money penalties. Moreover, a new provision mandating the acceptance of a private flood insurance policy meeting certain criteria as satisfaction of the mandatory purchase requirement was added to the FDPA. The Agencies jointly issued rules addressing force placement, escrow, and the exemption to the mandatory purchase requirement for detached structures on July 21, 2015 (80 FR 43215). The Agencies jointly issued rules implementing the private flood insurance provisions of the Biggert-Waters Act on February 20, 2019 (84 FR 4953).

Objectives of the FDPA:

- Provide flood insurance to owners of improved real estate located in SFHAs of communities participating in the NFIP.
- Require communities to enact measures designed to reduce or avoid future flood losses as a condition for making federally subsidized flood insurance available.
- Require federal financial regulatory agencies to adopt regulations prohibiting their regulated lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located or to be located in an SFHA of a community participating in the NFIP, unless the property securing the loan is covered by flood insurance.
- Require federal agencies, such as the FHA, SBA and the VA not to subsidize, insure, or guarantee any loan if the property securing the loan is in an SFHA of a community not participating in the NFIP.

Structures Eligible for Flood Insurance Under the NFIP

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

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

Structures Not Eligible for Flood Insurance Under the NFIP

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

Flood Insurance Requirements for Lending Institutions

Basic Requirement

Flood insurance, either issued through the NFIP or from a private insurance provider, is required for the term of the loan on buildings or mobile homes when an institution makes, increases, extends or renews a designated loan, meaning all three of the following factors are present:

- The loan (commercial or consumer) is secured by improved real estate or a mobile home that is affixed to a permanent foundation (security property);
- The property securing the loan is located or will be located in an SFHA as identified by FEMA; and
- The community in which the property is located participates in the NFIP.

The FDPA provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in an SFHA unless the improved real property is covered by the minimum amount of flood insurance required by statute. This includes situations where a security interest in improved real property is taken only "out of an abundance of caution."

Nonparticipating Communities

Although a lender may make, increase, extend, or renew a loan in a nonparticipating community, a lender is still required to determine whether the security property is located in an SFHA and if so, to notify the borrower. The lender must also notify the borrower that flood insurance coverage under the NFIP is not available because the community does not participate in the NFIP. If the nonparticipating community has been identified for at least one year as containing an SFHA, properties located in the community will not be eligible for federal disaster relief assistance in the event of a federally declared disaster.

Because of the lack of NFIP flood insurance coverage and limited federal disaster assistance available, a lender should carefully evaluate the risk involved in making such a loan. A lender making a loan in a nonparticipating community may want to require the purchase of private flood insurance, if available. Also, a lender with significant lending in nonparticipating communities should establish procedures to ensure that such loans do not constitute an unacceptably large portion of the financial institution's loan portfolio.

Federal agency lenders such as the FHA, the SBA and the VA will not subsidize, insure or guarantee any loan if the property securing the loan is in a SFHA of a community not

participating in the NFIP. In addition, Freddie Mac and Fannie Mae will not purchase mortgages secured by improved properties located in SFHAs in nonparticipating communities.

Special Situation—Table Funded Loans

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

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

Treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices. The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer.

Exemptions to the Purchase Requirement

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

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

- A structure that is part of a residential property is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. It is detached from the primary residential structure if it is not joined by any structural connection to that structure.
- Whether a structure serves as a residence is based on the institution's good faith determination that the structure is intended for residential use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities, but not necessarily all three.

Amount of Flood Insurance Required

The minimum amount of flood insurance required must be at least equal to the lesser of the outstanding principal balance of the loan, the maximum amount available under the NFIP for the type of structure, or the insurable value of the property. Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures the loan and not the land itself.

The limits of coverage for flood policies are:

- $250,000 for residential property structures and $100,000 for personal contents.
- $500,000 for non-residential structures and $500,000 for contents.
- $500,000 for non-condominium residential buildings of five units or greater and $100,000 for personal contents.[5]

Acceptance of Private Insurance Policies

A regulated lending institution is required to accept a private insurance policy to satisfy the flood insurance purchase requirement if the policy meets the definition of "private flood insurance" as set forth in the regulation (mandatory acceptance).

A regulated lending institution may choose to accept certain flood insurance policies that do not meet the definition of "private flood insurance" set forth in the regulation if the policy meets certain criteria (discretionary acceptance). A regulated lending institution may also exercise its discretion to accept certain plans providing flood coverage issued by "mutual aid societies" provided that certain criteria are met.

Mandatory Acceptance

- Under the regulation, “private flood insurance” means an insurance policy that: is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located, or
- is recognized, or not disapproved as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;
- provides flood insurance coverage that is at least as broad as the coverage provided under the NFIP’s Standard Flood Insurance Policy (SFIP) for the same type of property, including when considering deductibles, exclusions and conditions offered by the insurer; to be at least as broad as the coverage provided under an SFIP, the policy must at a minimum:
    - define the term “flood” to include the events defined as “flood” in an SFIP;
    - contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage; other coverages; and increased cost of compliance coverage;
    - contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the institution;
    - provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and
    - not contain conditions that narrow the coverage provided in an SFIP;
- provides that the insurer will give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or servicer acting on its behalf;
- includes information about the availability of flood insurance coverage under the NFIP;
- includes a mortgage interest clause similar to the clause contained in an SFIP;

includes a provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

- contains cancellation provisions that are as restrictive as the provisions in an SFIP.

For purposes of the definition of "private flood insurance," the SFIP is the policy that is in effect as of the date the private flood insurance policy is provided to the regulated lending institution. The SFIP is available on the FEMA website: https://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-po (https://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-p forms). The regulation includes a compliance aid provision to help a regulated lending institution determine whether a flood insurance policy meets the definition of "private flood insurance" and must be accepted under the regulation. A regulated lending institution may determine that a policy meets the definition of "private flood insurance" without further review of the policy if the policy or an endorsement to the policy states: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

Discretionary Acceptance

Under the regulation, a regulated lending institution may, at its discretion, accept a flood insurance policy issued by a private insurer, even if the policy does not meet the statutory and regulatory definition of "private flood insurance" as set forth above. A regulated lending institution, may, at its discretion, accept a private flood insurance policy in satisfaction of the flood insurance purchase requirement if the policy:

- provides coverage in the amount as required under the regulation;
- is issued by an insurer that is licensed, admitted or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved by the insurance regulator of the State or jurisdiction where the property to be insured is located;
- covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

- provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

Some factors that a regulated lending institution could consider in determining whether a flood insurance policy provides sufficient protection of a loan include:

- whether the flood insurance policy's deductibles are reasonable based on the borrower's financial condition;
- whether the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to ensure timely force placement of flood insurance, if necessary;
- whether the terms and conditions of the flood insurance 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;
- whether the flood insurance policy complies with applicable State insurance laws; and
- whether the private insurance company has the financial solvency, strength, and ability to satisfy claims.

The regulation defines a "mutual aid society" as an organization: (1) whose members share a common religious, charitable, educational, or fraternal bond; (2) that covers losses caused by damage to members' property pursuant to an agreement, including damages caused by flooding, in accordance with this common bond; and (3) that has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. A regulated lending institution may, at its discretion, accept a plan issued by a mutual aid society in satisfaction of the flood insurance purchase requirement, if the following criteria are met:

- the regulated lending institution's primary Federal supervisory agency has determined that such plans qualify as flood insurance for purposes of the Federal flood insurance statute;
- the plan provides coverage in the amount required under the regulation;
- the plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
- the plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution documents its conclusion regarding sufficiency of the protection of the loan in

writing.

FDIC examiners will evaluate whether mutual aid society plans qualify as flood insurance on a case-by-case basis, consistent with these criteria as set forth in 12 CFR 339.3(c)(4).

~~FDIC Instructions for the Qualification of Plans Provided by Mutual Aid Societies~~

~~In general, FDIC examiners will evaluate whether mutual aid society plans qualify as flood insurance on a case-by-case basis. To satisfy the first criterion listed above for the acceptance of plans offered by a mutual aid society, a plan can be deemed to qualify as flood insurance for purposes of the Flood Disaster Protection Act of 1973, if either the:~~

1. ~~*mutual aid society* issuing the plan is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the state or jurisdiction in which the property to be insured is located; or~~
2. ~~*mutual aid plan* is considered and regulated as insurance by that state or jurisdiction in which the property to be insured is located.~~

- ~~When a financial institution uses its discretion to accept a mutual aid society plan, FDIC examiners will rely on the requirements of individual states' laws and the financial institution's due diligence when assessing compliance with the final rule's first criterion. Evidence of compliance may include, among other things, for example, a certificate or other documentation indicating that *either* the mutual aid society is licensed, admitted, or otherwise approved to engage in the business of insurance in the state or jurisdiction in which the property to be insured is located, *or* the mutual aid plan is considered and regulated as insurance by that state or jurisdiction.~~

Waiting Period

NFIP flood insurance policies that are not issued in conjunction with the making, increasing, extending or renewing of a loan have a 30-day waiting period. The congressional intent behind this requirement was to prevent the purchase of flood insurance (and any direct loss to the U.S. government) in times of imminent loss. However, if the initial purchase of flood insurance is made during the 13- month period following revision or update of a Flood Insurance Rate Map for the community, there is a one-day waiting period.

There is no waiting period when an additional amount of NFIP insurance is required in connection with the making, increasing, extending or renewing of a loan, such as a

second mortgage, home equity loan, or refinancing.

Special Situations—Second Mortgages/Home Equity Loans

Both second mortgages and home equity loans are transactions that may be subject to the mandatory purchase requirements of the FDPA. Because only one NFIP flood insurance policy can be issued on a building, an institution should not request a new NFIP flood insurance policy if one already exists. Instead, the institution should have the borrower contact the insurance agent:

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

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

As an alternative, the borrower may also consider obtaining a private flood insurance policy in the proper amount.

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

- As part of its procedures, an institution should review its records periodically so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or
- Upon origination, require the purchase of flood insurance for the total amount of the line, the value of the improved property or the maximum amount of flood insurance coverage available, whichever is less.

Special Situations—Condominium Policies

FEMA's condominium master policy is called a Residential Condominium Building Association Policy (RCBAP). 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 flood insurance coverage that can be purchased under an RCBAP is either 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.

An institution must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- the outstanding principal balance of the loan, 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.

Therefore, an institution must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an RCBAP, or other flood insurance policy, covering either 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; or
- Obtain a Dwelling Policy if the condominium owners association has not purchased flood insurance as described above or if that coverage is less than either 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. The amount of coverage under a Dwelling Policy required to be purchased by the individual unit owner would be the difference between the condominium policy's coverage allocated to that unit and the mandatory flood insurance purchase requirements discussed above.

For instance, the maximum amount of coverage on a 50-unit condominium building would be $12,500,000 ($250,000 x 50). If the replacement cost value of the building was $10,000,000, the condominium association could purchase a policy of $10,000,000. This amount of insurance would meet the requirements of the regulations for any individual unit insurance requirement in the condominium.

Non-residential condominium buildings are not eligible for coverage under the RCBAP.

The NFIP offers a maximum amount of building coverage up to $500,000 for these buildings and $500,000 for commonly owned contents. Under the NFIP, the owner of a non-residential condominium unit within a non-residential condominium building may purchase only contents coverage for that unit. Building coverage may not be purchased in the name of the unit owner. The maximum allowable contents coverage for non-residential owners is $500,000.

Other Special Situations

- *Multiple Structures*— Multiple structures that secure a loan located in an SFHA must each be covered by flood insurance, even though the value of one structure may be sufficient to cover the loan amount. Under the NFIP, FEMA generally requires one policy per building, but also permits borrowers to insure non-residential buildings using one policy with a schedule separately listing each building. This coverage alternative may be especially useful for loans secured by agricultural properties and improvements.
- *Other Real Estate Owned*— An institution with other real estate owned (OREO) in SFHAs should, as a prudent practice, purchase flood insurance policies on its OREO property, although it is not required to do so by the regulations.

Escrow Requirements

The regulations require the escrowing of flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home made, increased, renewed, or extended on or after January 1, 2016. In addition, institutions must offer and make available the option to escrow for flood insurance premiums and fees to borrowers with designated loans secured by residential improved real estate or a mobile home outstanding as of January 1, 2016. The escrow provisions are designed to improve compliance with flood insurance requirements by ensuring that borrowers with designated loans secured by residential improved real estate or a mobile home set aside funds to maintain flood insurance for the life of the loan.

While the escrow requirement pertains generally to any designated loan secured by residential improved real estate or a mobile home, there are two types of exceptions: a small lender exception and a loan-type exception. The regulation provides that an institution is not required to escrow if it has total assets of less than $1 billion as of December 31 of either of the two prior calendar years and, as of July 6, 2012:

- The institution was not required by Federal or State law to escrow taxes, insurance premiums, fees, or any other charges for the term of the loan; and
- The institution did not have a policy of uniformly and consistently escrowing the same.

If an excepted institution no longer qualifies for the exception because its assets exceeded the threshold for two consecutive calendar year ends, it must begin escrowing for any designated loan secured by residential improved real estate or a mobile home made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status. If a financial institution provides escrow accounts only upon requests from borrowers, this does not constitute a uniform or consistent policy of requiring escrows.

In addition, the escrow requirement does not apply to the following types of loans:

- Extensions of credit primarily for business, commercial, or agricultural purposes even if secured by residential real estate;
- Loans in a subordinate position to a senior lien secured by the same property upon which the borrower has obtained sufficient flood insurance;
- Loans secured by a property that is covered by a flood insurance policy with sufficient flood insurance coverage, which is provided by a condominium, cooperative, or homeowners association;
- Home equity lines of credit; Nonperforming loans; or
- Loans with a term of no longer than 12 months.

A nonperforming loan in this instance is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of the past due status, is collected or otherwise discharged in full.

A loan that has a term exceeding 12 months does not qualify for the 12 month exception, even if one phase of the loan is for 12 months or less.

If the institution determines that a loan no longer qualifies for one of these loan- type exceptions, the institution must begin escrowing as soon as reasonably practicable.

Option to escrow: An institution (or its servicer) must offer and make available to borrowers the option to escrow flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home that are outstanding as of

January 1, 2016. In addition, an institution must provide the option to escrow notice to borrowers by June 30, 2016. A model clause for the notice on the option to escrow is provided in Appendix B of the regulations.

An institution that no longer qualifies for the small lender exception must provide a notice of the option to escrow flood insurance premiums and fees for loans outstanding on July 1 of the first calendar year in which it has a change in status by September 30 of that year. Further, the financial institution must begin escrowing as soon as reasonably practicable after receiving a borrower's request to escrow. The notice regarding the option to escrow does not have to be provided in conjunction with any other disclosure or be segregated from other information provided to the borrower. An institution may choose whether to provide a separate notice or add it to any other disclosure the lender provides the borrower, such as a periodic statement.

Standard Flood Hazard Determination Form

When an institution makes, increases, extends, or renews any loan secured by improved real estate or by a mobile home, it ***must*** use the standard flood hazard determination form (SFHDF) developed by FEMA[6] to determine whether the building or mobile home offered as security property is or will be located in an SFHA in which flood insurance is available under the Federal flood insurance statutes.

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

The SFHDF is available on the FEMA Website at: http://www.fema.gov/media-library/assets/documents/225 (http://www.fema.gov/media-library/assets/documents/225). Decisions as to the applicability of flood insurance may not be based on an institution's unilateral determination of elevations at which floods may occur. Official elevation determinations and, therefore, map revisions or amendments, Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA), respectively, may be performed only by FEMA.

Letter of Map Amendment (LOMA)

- A flood map will occasionally show a property as being in an SFHA, even though

the building on the property is actually above the base flood elevation. In practice, flood insurance maps do not reflect every rise in terrain, and there may be instances of high ground inadvertently included in the SFHAs. Nevertheless, lenders are bound by the information shown on the FEMA maps until the map is changed by FEMA.

- To resolve such a situation, a property owner can submit elevation materials with a request to FEMA for a LOMA to remove the property from the SFHA. The request must be submitted on the appropriate FEMA application form available at https://www.fema.gov/flood-maps/change-your-flood-zone (https://www.fema.gov/flood-maps/change-your-flood-zone).
- Upon receiving a complete application package, FEMA will normally complete its review and issue its determination within 4-6 weeks.
- After obtaining a LOMA, a borrower must submit it to the lender for the flood insurance requirement to be waived. The lender has the discretion to continue to require flood insurance if the lender determines it is prudent to do so.

Letter of Map Revision (LOMR)

- A LOMR is appropriate when physical changes are necessary to raise the land above the base flood elevation 100-year flood level. For example, a LOMR request is appropriate when a property, located within a SFHA, is graded and filled to raise the level of the land above the base flood elevation 100-year flood level. The request for a LOMR must be initiated and approved by the community since changes in land level may affect other property owners. Community approval also confirms that the change in the land has been reviewed and is compatible with the community's planning.
- A LOMR request must be submitted to FEMA on the appropriate form, available at: https://www.fema.gov/flood-maps/change-your-flood-zone (https://www.fema.gov/flood-maps/change-your-flood-zone).
- After obtaining a LOMR, the borrower must submit it to the lender before the flood insurance requirement is waived. The lender has the discretion to continue to require flood insurance if the lender determines that it is prudent to do so.

Flood maps, Standard Flood Hazard Determination forms, and Community Status Books may be obtained from FEMA by:

- Calling: 1-800-358-9616 (tel:18003589616) or 1-800-611-6125 (tel:18006116125), or

- Ordering online: www.msc.fema.gov (http://www.msc.fema.gov/)

To obtain information on a community's participation status, contact a FEMA representative at 1-800-358-9616 (tel:18003589616) to request a community status book. Information on community status is also available on the Internet at www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-c (https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-pr status-book).

Reliance on Prior Determination

An institution may rely on a prior flood determination, whether or not the security property is located in an SFHA, and it is exempt from liability for errors in the previous determination if:

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

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

- If FEMA's map revisions or updates show that the security property has been remapped into an SFHA, or
- If the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

An institution may also rely on a previous determination, which is not more than seven years old and is set forth on an SFHDF, when it increases, extends, renews, or purchases a loan. The making of a loan is not listed as a permissible event that permits an institution to rely on a previous determination. However, when the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the institution may rely on the previous determination, but 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 affecting the property since the original determination was made. The same is true for multiple loans made by the same lender to the same borrower secured by the same property. A new determination is required when a loan refinancing or assumption is made by a lender different from the one who

obtained the original determination because this constitutes a new loan.

Force Placement Requirements

An institution is not required to monitor for map changes, and flood determinations are not required to be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan the institution or its servicer determines that required flood insurance is deficient, the Agencies' regulations require initiation of force placement procedures.

An institution or a servicer acting on its behalf is required to purchase or "force place" flood insurance for the borrower if the institution or the servicer determines that coverage is inadequate. An institution, or servicer acting on its behalf, upon discovering that the security property is not covered by an adequate amount of flood insurance, must provide notice to the borrower that the borrower should obtain flood insurance. If the borrower fails to purchase flood insurance in the appropriate amount within 45 days, the lender must purchase insurance on the borrower's behalf. If there is a brief delay in force placing coverage, the Agencies expect the lender to be able to provide a reasonable explanation, for example, because the lender uses batch processing when purchasing force-placed flood insurance policies.

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

Under the Biggert-Waters Act, an institution may force place and charge for insurance beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Biggert-Waters Act also provides that an institution must terminate force-placed insurance within 30 days of receipt of confirmation of a borrower's existing flood insurance coverage.

Additionally, an institution must refund to the borrower all premiums and fees for force-placed insurance paid by the borrower during any period of overlap between the borrower's policy and the force-placed policy. Because an insurer is the entity that actually cancels the policy, an institution need only notify the insurer to terminate the force-placed policy in order to comply with the termination requirement.

Force placement authority is designed to be used if, over the term of the loan, the institution or its servicer determines that flood insurance coverage on the security property is deficient; that is, whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum coverage available under the NFIP. If a borrower fails to obtain the required amount of flood insurance coverage upon notification by an institution or its servicer, the amount that must be force placed is equal to the difference between the present amount of coverage, if any, and the lesser of the outstanding principal balance or the maximum coverage limit.

There is no required form of notice to borrowers for use in connection with the force placement procedures. An institution or its servicer may choose to send the notice directly or may use the insurance company that issues the force placement policy to send the notice. Force-placed flood insurance policies are available through private insurers or through the NFIP. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force placement procedures. For information concerning the MPPP, lenders and others should consult FEMA's Website.[7]

Determination Fees

The regulations permit an institution or its servicer to charge a reasonable fee to the borrower for the costs of making a flood hazard determination under the following circumstances:

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

The loan agreement or other contractual documents between the parties may also permit the imposition of fees.

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

Truth in Lending Act Issues

The Commentary to Regulation Z states that a fee for services that will be performed periodically during the loan term is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. This would include the fee for life-of-loan monitoring. The fee for the original flood determination (i.e., whether a security property is in an SFHA) is excluded from the finance charge. The Commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge.[8] If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

When an institution makes, increases, extends or renews a loan secured by property that is or will be located in a SFHA, the institution must provide a written notice of special flood hazards to the borrower and the servicer, if there is one. This notice of special flood hazards must be provided regardless of whether the security property is located in a participating or non-participating community. The written notice must contain the following information:

- A warning that the building or mobile home is or will be located in a SFHA.
- A description of the flood purchase requirements contained in section 102(b) of the FDPA, as amended.
- A statement, if applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers.
- A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP.
- A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company.
- A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

- A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a Federally declared disaster.

For any loan for which an institution is required to escrow under the regulations, the institution must provide a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance required under the regulations. The language in the notice about escrow should be substantially similar to the model clauses provided in Appendix A of the regulations, under the section titled "Escrow Requirements for Residential Loans." The escrow notice may be provided in the notice of special flood hazards or separately.

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

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

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

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

The Agencies generally regard ten days as a "reasonable" time interval.

Notice to Servicer

Loan servicers must also be notified of special flood hazards. In many cases, the servicer's identity will not be known until well after the loan closing; consequently, notification to the servicer in advance of the loan closing would not be possible or would serve no purpose. Notice to the servicer is required as promptly as practicable after the institution provides notice to the borrower, and must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes. Delivery to the servicer of a copy of the borrower's notice suffices as notice to the servicer.

Notice to the Administrator of FEMA

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

Notice of Option to Escrow

When an institution must offer and make available to a borrower the option to escrow flood insurance premiums and fees, the institution is required to mail or deliver to the borrower a written notice of the option to escrow for required flood insurance. The language in this notice must be similar to the language in the model clause of Appendix B of the regulations. The notice must also include the method(s) by which the borrower may request the escrow. Institutions must mail or deliver the notice no later than June 30, 2016 for any loan covered by flood insurance and outstanding on January 1, 2016.

Institutions that no longer qualify for the small lender exception must mail or deliver, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution had a change in status, the notice by September 30 of that year.

Record-Keeping Requirements

The record keeping requirements of the regulations include retention of:

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

There is no particular form required for the record of receipt; however, it should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt may include:

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

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

Penalties and Liabilities

The FDPA provides penalties for violations of:

- Mandatory flood purchase requirement;
- Escrow requirements;
- Notice requirements; and
- Force placement requirements.

If an institution is found to have a pattern or practice of committing any of these violations, the Agencies are required to assess civil money penalties in an amount not to exceed $2,000 per violation. Any penalty assessed will be paid into the FEMA National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent

purchaser of a loan. No penalty may be imposed after the expiration of four years beginning on the date of the occurrence of the violation.

Examination Objectives

1. To determine whether an institution performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the regulations.
2. To determine if the institution requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located or to be located in a SFHA in a participating community.
3. To determine if the institution provides the required notices to the borrower and servicer when the property is located in a SFHA, and to the Administrator of FEMA whenever flood insurance is required as a condition of the loan.
4. To determine if the institution requires flood insurance premiums to be escrowed when required by law.
5. To determine if the institution complies with the force placement provisions if, at any time during the term of a loan, it determines that flood insurance on the loan is not sufficient to meet the requirements of the regulation.
6. To determine if the institution complies with the private flood insurance requirements of the regulation.
7. To require corrective action when policies or internal controls are deficient, or when violations of law are identified.

Examination Procedures[9]

The following procedures should be performed, as appropriate:

- By reviewing previous examinations and supervisory correspondence;
- By obtaining and reviewing the institution's policies, procedures, and other pertinent information;
- By reviewing the institution's system of internal controls;
- By reviewing consumer complaints submitted to the institution.[10]
- By discussing procedures with management; and
- By reviewing a sample of loan files.

Coverage and Internal Control

1. Determine if the institution has effective internal controls in place through appropriate policies, procedures, training, and monitoring to ensure compliance with the requirements of the regulations.
2. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in an SFHA.
3. Verify that the process used accurately identifies special flood hazard areas.
4. For those special flood hazard areas identified, determine if the communities in which they are located participate in the NFIP.
5. If the detached structure is not covered by flood insurance, review the institution's documented conclusion and verify that the structure meets the exemption.
6. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
7. If the institution purchases servicing rights, review the contractual obligations placed on the institution as servicer by the owner of the loans to ascertain if flood insurance requirements are identified and compliance responsibilities are adequately addressed.
8. If the institution utilizes a third party to service loans, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately addressed.

Property Determination Requirements

1. Verify that flood zone determinations are accurately recorded on the SFHDF. (Note: An institution is required to prepare a flood hazard determination for all detached structures, including those that may not be in a SFHA or require flood insurance coverage. 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 to ensure compliance with the flood insurance requirements.)
2. Verify that the institution relies on a previous determination only if it is not more than seven years old; the determination was recorded on the SFHDF; and the determination is not on a property located in a community that has been remapped.
3. If the institution utilizes a third party to prepare flood zone determinations, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately covered, including the extent of the third party's guarantee of work and the procedures in place to resolve disputes relating to determinations.
4. Verify that the institution retains a copy of the completed SFHDF, in either hard

copy or electronic form, for as long as it owns the loan.

Purchase Requirements

1. For loans that require flood insurance, determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan.
    a. If the institution accepted a private flood insurance policy in accordance with the mandatory acceptance requirements, verify that the policy either: (a) contains the compliance aid assurance clause exactly as follows: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation" or (b) that the policy meets the definition of "private flood insurance" as set forth in the regulation.

    b. If the institution accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements, verify the following:
        - the policy provides a sufficient amount of insurance;
        - the policy is issued by an insurer permitted under the regulation;
        - the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
        - the institution determined that the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and that the institution documented its conclusion regarding sufficiency of the protection of the loan in writing.

    c. If the institution accepted a plan issued by a mutual aid society in accordance with the requirements for acceptance of such a plan, verify the following:
        - the institution's regulator has determined that such plans qualify as flood insurance;
            - ~~for FDIC-regulated institutions, assess whether the regulated lending institution has completed the due diligence necessary to determine that the mutual aid plan is considered insurance under applicable state law. (See section on mutual aid societies for more information)~~
        - the plan provides coverage in the amount required;
        - the plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and
        - the institution documented in writing its conclusion that the plan provides

sufficient protection of the designated loan, consistent with general safety and soundness principles.

2. In connection with a residential property, if flood insurance was not required for a detached structure, determine whether the institution followed its internal policies and procedures and verify that the institution documented its decision in writing not to require insurance for such structure at the time of loan origination.
3. If the institution makes loans insured or guaranteed by a government agency (SBA, VA, or FHA) determine how it complies with the prohibition against making these loans if the security property is in an SFHA within a non-participating community.

Determination Fee Requirements

1. Determine that any fees charged to the borrower by the institution for flood zone determinations (absent some other authority such as contract language) are charged only when a loan:
    - Is made, increased, renewed, or extended;
    - Is made in response to a remapping by FEMA; or
    - Results in the purchase of flood insurance under the force placement provisions.
2. If other authority permits the institution to charge fees for determinations in situations other than the ones listed above, determine if the institution is consistent in this practice.
3. Determine the reasonableness of any fees charged to a borrower for flood determinations by evaluating the method used by the institution to determine the amount of the charge. Consider, for example, the relationship of the fees charged to the cost of services provided.

Notice Requirements

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

1. Ascertain that when an institution makes, increases, extends or renews a loan secured by property located in an SFHA, written notice is mailed or delivered to the borrower within a reasonable time prior to completion of the transaction.
2. Verify that the notice contains:
    - A warning that the property securing the loan is or will be located in an SFHA;

- A description of the flood insurance purchase requirements;
- A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers, if applicable;
- A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;
- A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;
- A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent;
- A statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a federally declared disaster, if applicable.

3. If an institution is required to escrow under the regulations, verify that the institution provided a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance, similar to the model clause in Appendix A of the regulations.
4. If the seller or lessor provided the notice to the purchaser or lessee, verify that the institution obtained satisfactory written assurance that the notice was provided within a reasonable time before the completion of the sale or lease transaction.
5. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
6. If applicable, verify that the institution provided written notice to the servicer of the loan within the prescribed time frames and that the institution retains a record of receipt of the notice for as long as it owns the loan.

Notice of the Option to Escrow

1. If the institution is required to send a notice of option to escrow flood insurance premiums and fees, ascertain that written notice is mailed or delivered to the borrower: 1) by June 30, 2016 for any loan covered by flood insurance and outstanding on January 1, 2016; or, if applicable, 2) by September 30 of the first

calendar year in which the institution has had a change in status and no longer qualifies for the small lender exception for any loan covered by flood insurance and outstanding as of July 1 of that calendar year.

2. Verify that the notice contains:

- A statement that the borrower has an option to escrow required flood insurance premiums and fees.
- A statement about the methods the borrower may use to request the escrow.

Notice of Servicer's Identity

If the institution transfers servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (the Administrator of FEMA's designee) within prescribed time frames.

Escrow Requirements

1. Verify that the institution escrows for flood insurance premiums and fees for designated loans made, increased, renewed, or extended on or after January 1, 2016 unless the loan qualifies for one of the exceptions or the institution qualifies for the small lender exception.
2. If a designated loan no longer qualifies for a loan-related exception, verify that the institution established an escrow account as soon as reasonably practicable.
3. If the institution no longer qualifies for the small lender exception, verify that the institution started requiring escrow on designated loans made, increased, extended or renewed on or after July 1 of the first calendar year of changed status.
4. Verify that an institution (or its servicer) offered and made available to borrowers the option to escrow flood insurance premiums and fees for loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016. In addition, verify that an institution started escrowing as soon as reasonably practicable after receiving the borrower's request to escrow.
5. Verify that, for institutions that no longer qualify for the small lender exception, the institution mailed or delivered, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution no longer qualifies for the small lender exception, the notice of the option to escrow by September 30 of that year. In addition, verify that the institution started escrowing as soon as reasonably practicable after receiving a borrower's request to escrow.
6. Verify that the institution's escrow procedures comply with section 10 of RESPA.

Force Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that it has appropriate policies and procedures in place to exercise its force placement authority.
2. If the institution is required to force place insurance, verify:
   - That it provides written notice to the borrower that flood insurance is required, and
   - That if the required insurance is not purchased by the borrower within 45 days from the time that the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf.
3. If the institution purchases required flood insurance on the borrower's behalf and charges the borrower for premiums and fees incurred for coverage, verify that within 30 days of receiving confirmation of a borrower's existing flood insurance coverage, the institution:
   - Notifies the insurance provider to terminate the existing force-placed insurance, and
   - Refunds to the borrower all force-placed insurance premiums and any fees paid for by the borrower during any period of overlap between the borrower's policy and the force-placed policy.

FDPA Examination Checklist

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

Coverage

1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in the regulations? If yes, complete the remainder of this checklist.
2. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, does it have procedures to ensure that the requirements of the regulations are followed?
3. If the institution purchases servicing rights to loans covered by the regulation, do the documents between the parties specify the contractual obligations on the institution with respect to flood insurance compliance?
4. If the institution utilizes third parties to service loans covered by the regulation,

do the contractual documents between the parties require the servicer to meet the requirements of the regulations?

Property Determination

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

Determination Fees

1. Absent some other authority (such as contract language) does the institution charge a fee to the borrower for a flood determination only when:
   - It is made when a loan is made, increased, renewed or extended, or
   - It is made in response to a remapping by FEMA, or
   - It results in the purchase of flood insurance under the force placement provisions?
2. If the institution has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently?
3. For those loans subject to TILA, if the institution requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower, does it either:

- Break out the original determination charge from the charge for life-of-loan monitoring or
- Include the full amount of the charge as a finance charge?

4. Are the fees charged by the institution for making a flood determination reasonable?

Notice Requirements

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

1. Are borrowers whose security property is located in an SFHA provided written notice of special flood hazards within a reasonable time prior to loan closing?
2. Does the notice contain the following required information?
   - A warning that the building or mobile home is located in a SFHA;
   - A description of the flood insurance requirements;
   - A statement that flood insurance is available under the NFIP and is also available from private insurers;
   - A statement that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;
   - A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;
   - A statement that the borrower is encouraged to compare flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies, and that the borrower should inquire about the availability, cost, and comparisons of flood insurance coverage to an insurance agent;
   - A statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a federally declared disaster, if applicable.
3. If an institution is required to escrow under the regulations, verify that the institution provided a written notice with the notice of special flood hazards informing the borrower that the institution is required to escrow all premiums and fees for flood insurance, similar to the model clause in Appendix A of the regulations.

4. If the institution uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor?
5. Does the institution provide a copy of the notice of special flood hazards to the servicer of the loan within the required time frames?
6. Does the institution retain a record of receipt of the notifications provided to the borrower and the servicer for as long as it owns the loan?

Notice of Option to Escrow

1. If the institution is required to mail or deliver a notice of the option to escrow flood insurance premiums and fees, ascertain that written notice is mailed or delivered to the borrower: 1) by June 30, 2016 for any loan covered by flood insurance and outstanding as of January 1, 2016; or 2) if applicable, by September 30 of the first calendar year in which the institution has had a change in status and no longer qualifies for the small lender exception in the regulation for any loan covered by flood insurance and outstanding on July 1 of that calendar year.
2. Verify that the notice contains:
    - A statement that the borrower has an option to escrow required flood insurance premiums and fees.
    - A statement about the methods the borrower may use to request the escrow.

Insurance Requirements

1. If an improved property or mobile home is located in an SFHA and flood insurance is required, does the institution have the borrower obtain a policy, with the institution as loss payee, in the correct amount prior to closing?
2. When multiple properties securing the loan are located in SFHAs, does the institution have sufficient insurance, either through a single policy with a scheduled list of several buildings or multiple policies, to meet the minimum requirements of the regulation? (See narrative for description of minimum requirements.)
3. If the institution accepts a private flood insurance policy in accordance with the mandatory acceptance requirements set forth in the regulation, does the institution verify that either: (a) the policy or an endorsement to the policy contains the compliance aid assurance clause exactly as follows: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation”; or (b) the policy meets the definition of “private flood insurance” as set forth in the regulation?

4. If the institution exercises its discretion to accept flood insurance issued by a private insurer that does not meet the statutory definition of private flood insurance, does the institution comply with the regulation's discretionary acceptance requirements?
5. If the institution accepts mutual aid plans, are the plans accepted in accordance with the regulation's requirements?

Escrow Requirements

1. Does the institution require the escrow of premiums and fees for flood insurance on designated loans secured by residential improved real estate or a mobile home made, increased, extended, or renewed after January 1, 2016 unless the loan qualifies for one of the exceptions or the institution qualifies for the small lender exception?
2. If a designated loan secured by residential improved real estate or a mobile home no longer qualifies for the loan-related exception, does the lender establish an escrow as soon as reasonably practicable?
3. If the institution no longer qualifies for the small lender exception, did the lender begin requiring escrow on designated loans secured by residential improved real estate or a mobile home made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status?
4. Did the institution (or its servicer) offer and make available to borrowers the option to escrow flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016? In addition, did the institution start escrowing as soon as reasonably practicable after receiving a borrower's request to escrow?
5. If the institution no longer qualifies for the small lender exception, did the institution mail or deliver, for any loan covered by flood insurance and outstanding on July 1 of the first calendar year in which the institution no longer qualifies for the small lender exception, the notice of the option to escrow by September 30 of that year? In addition, did the institution start escrowing as soon as reasonably practicable after receiving a borrower's request to escrow?
6. Does the institution comply with the provisions of section 10 of RESPA (12 CFR §1024.17 of Regulation X) for escrows?

Force Placement Requirements

1. If at any time during the life of the loan, the institution determines that property securing a designated loan lacks adequate flood insurance coverage:
    - Does the institution provide written notice to the borrower stating that the

necessary coverage must be obtained or the institution will purchase it on the borrower's behalf?

- Does the institution purchase the coverage on the borrower's behalf if the borrower does not obtain the required policy 45 days after the notice to the borrower has been sent?

2. If the institution purchases required flood insurance on the borrower's behalf and charges the borrower for premiums and fees incurred for coverage, verify that within 30 days of receiving confirmation of a borrower's existing flood insurance coverage, the institution:
   - Notifies the insurance provider to terminate the existing force-placed insurance, and
   - Refunds to the borrower all force-placed insurance premiums and any fees paid for by the borrower during any period of overlap between the borrower's policy and the force-placed policy.

Notice to Administrator of FEMA

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

References

Flood Disaster Protection Act of 1973, as amended

12 CFR Part 339: Loans in Areas Having Special Flood Hazards

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

2009 Interagency Flood Insurance Questions and Answers

2011 Interagency Flood Insurance Questions and Answers

FIL-42-2009 Flood Insurance: Revised Interagency Questions and Answers Regarding

Flood Insurance

FIL-14-2013 Interagency Statement on the Impact of Biggert-Waters Act

FIL 28-2014: Interagency Statement on Increased Maximum Flood Insurance Coverage for "Other Residential Buildings"

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

Background

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 two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, and NCUA to revise their flood insurance regulations and required the FCA to promulgate a flood insurance regulation for the first time. The OCC, Board, FDIC, NCUA, and FCA (collectively, "the Agencies") fulfilled these requirements by issuing a joint final rule in the summer of 1996. See 61 FR 45684 (August 29, 1996).

In October 2013, the Agencies jointly issued proposed rules[11] to implement the escrow, force placement, and private flood insurance provisions of the Biggert- Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act).[12] In March 2014, Congress enacted the HFIAA, which, among other things, amended the Biggert-Waters Act's requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the mandatory flood insurance purchase requirement 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 in the Biggert- Waters Act related to private flood insurance, with a final rule issued in July 2015.[14] In February 2019, the Agencies finalized regulations to implement the private flood insurance related provisions of the Biggert-Waters Act.[15]

The Agencies have previously issued Flood Insurance Questions and answers in 2009 and 2011. In light of the significant changes to flood insurance requirements pursuant to the Biggert-Waters Act and HFIAA, as well as the Agencies' regulations issued to implement these laws, the Agencies issued interagency proposed questions and

answers (Q&As) in July, 2020 that covered flood insurance requirements related to the escrow of flood insurance premiums, the detached structure exemption, and force placement procedures. Separately, in March, 2021, the Agencies issued proposed new private flood insurance Q&As to supplement the proposed July 2020 *Flood Insurance* Q&As. The proposed Q&As covered private flood insurance requirements implemented by the Agencies' February 2019 final rule (PDF) (https://www.govinfo.gov/content/pkg/FR-2019-02-20/pdf/2019- 02650.pdf). The Q&As included provisions related to mandatory acceptance, discretionary acceptance and other general compliance topics. The Agencies have analyzed all comments received and revised the Q&As as appropriate. Further the Agencies have combined both sets of Q&As into one document and issued 144 new and revised Interagency Q&As in May, 2022. These 2022 Interagency Q&As supersede the 2009 and 2011 Interagency Q&As and supplement other guidance or interpretations issued by the Agencies related to loans in areas having special flood hazards.

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers (Q&As) are organized by topic. Each topic addresses a major area of the Act and Regulation. For ease of reference, the Q&As provide a logical flow based on the flood insurance process for lenders, servicers. Each Q&A is designated by the category to which it belongs and then designated in numerical order for that particular category. The categories are abbreviated in the actual Q&A identifier. For example, the topic *Determining the Applicability of Flood Insurance Requirements for Certain Loans* has a corresponding Q&A identifier of *APPLICABILITY*, followed by the numeric question in the series.

Additionally, 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 (codified at 42 U.S.C. 4001 et seq.). "Regulation" refers to each agency's current final rule.[16]The agencies are providing answers to questions pertaining to the following topics:

1. Determining the Applicability of Flood Insurance Requirements for Certain Loans [Applicability]
2. Exemptions from the Mandatory Flood Insurance Purchase Requirements [Exemptions]
3. Private Flood Insurance – Mandatory Acceptance [Mandatory]
4. Private Flood Insurance – Discretionary Acceptance [Discretionary]

5. Private Flood Insurance – General Compliance [Private Flood Compliance]
6. Standard Flood Hazard Determination Form [SFHDF]
7. Flood Insurance Determination Fees [Fees]
8. Flood Zone Discrepancies [Zone]
9. Notice of Special Flood Hazards and Availability of Federal Disaster Relief [Notice]
10. Determining the Appropriate Amount of Flood Insurance Required [Amount]
11. Flood Insurance Requirements for Construction Loans [Construction]
12. Flood Insurance Requirements for Residential Condominiums and Co-Ops [Condo and Co-Op]
13. 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]
14. Requirement to Escrow Flood Insurance Premiums and Fees – General [Escrow]
15. Requirement to Escrow Flood Insurance Premiums and Fees – Small Lender Exception [Escrow Small Lender Exception]
16. Requirement to Escrow Flood Insurance Premiums and Fees – Loan Exceptions [Escrow Loan Exceptions]
17. Force Placement of Flood Insurance [Force Placement]
18. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights [Servicing]
19. Mandatory Civil Money Penalties [Penalty]

Determining the applicability of flood insurance requirements for certain loans (APPLICABILITY)

1. *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)?*

   Answer: 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 an SFHA. Nonetheless, a lender, using the Standard Flood Hazard Determination Form, must still determine whether the building or mobile home is located in an SFHA.[17] 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.[18] 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 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.

2. *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.[19] 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.[20] If the limited utility or value structure does not qualify for the detached structure exemption, a lender may consider "carving out" the building from the security it takes on the loan to avoid having to require flood insurance on the structure. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether and how it would be able to market and sell the property securing its loan in the event of foreclosure. *See also* Q&A Exemptions 1.

3. *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?*

   A lender must determine whether a building securing the loan is in an SFHA.[21] In cases in which the loan is secured by multiple buildings and some of the buildings are located in an[22] 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. In addition, 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.

Further, if any portion of a building is located in an SFHA in which flood insurance is available under the Act, the flood insurance requirement applies even if the entire structure is not located in the SFHA. However, a building located on a portion of a plat or lot that is not in an SFHA is not subject to the mandatory flood insurance purchase requirement even if a portion of the plat or lot not containing a building extends into an SFHA.[23]

4. *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?*

   Answer: 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, 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.

5. *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?*

   Answer: 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.[24] 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.[25] 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 refinances, extends, increases, or renews a designated loan, it must comply with the Regulation.[26]

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

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

In contrast, if the loan modification or restructuring changes terms of the loan such as by increasing the outstanding principal balance beyond what was contemplated as part of the loan under the contract with the borrower, or by extending the maturity date of the loan, the Regulation would apply because the lender increased or extended the terms of the loan beyond what was originally contemplated to be part of the loan.[27]

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

Answer: 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.[28] A loan made through a table funding process is treated as though the party advancing the funds has originated the loan.[29] 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.

8. *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?*

   Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed,[30] 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.[31] 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.

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

   Answer: 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. [32] Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan.[33] Although the 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. This due diligence and monitoring is especially important when the lead lender itself is not subject to Federal flood insurance requirements.

10. *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?*

    Answer: 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. This due diligence is especially important when the lead lender itself is not subject to Federal 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.

11. *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?*

    Answer: 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.

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

    Answer: 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,[34] provide timely, complete, and accurate notices to borrowers,[35] 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 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.[36] 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.

13. *APPLICABILITY 13. What is a "triggering event" under the Regulation? If there is a triggering event, what is required under the Regulation?*

    Answer: Under the Regulation, a triggering event occurs when a designated loan is made, increased, extended, or renewed (also known as a "MIER" or "MIRE" event).[37] If a triggering event occurs with respect to a designated loan, the lender must comply with the Regulation as applicable, including the mandatory flood insurance purchase requirement, the requirement to provide the Notice of Special Flood Hazards to the borrower, the requirement to notify the Administrator of the Federal Emergency Management Agency (FEMA) or the Administrator's designee (the insurance provider) in writing of the identity of the servicer of the loan, and the requirement to escrow for a loan secured by residential property, unless either the lender or the loan qualifies for an exception.[38]

    Examples of events that are not considered triggering events for purposes of the Regulation include: the purchase of a loan from another lender (*see* Q&A Applicability 5); a loan restructuring or modification that does not increase the

amount of the loan nor extend or renew the terms of the loan (see Q&A Applicability 6); the assumption of the loan by another borrower; the remapping of a building securing the loan into an SFHA; the acquisition by a lender of an interest in a loan either by participation or syndication (see Q&A Applicability 9); a cashless roll (*see* Q&A Applicability 10); certain automatic extensions of credit (see Q&A Applicability 11); and certain treatments of force placement premiums and fees (see Q&A Force Placement 10).

14. *APPLICABILITY 14. May a lender rely on an insurance policy providing portfolio-wide coverage to meet the flood insurance purchase requirement or the force placement requirement under the Regulation?*

    Answer: It depends. A lender may not rely on an insurance policy providing portfolio-wide coverage to meet the flood insurance purchase or force placement requirements if the policy only provides coverage to the lender ("single interest"). When a flood insurance policy has expired and the borrower has failed to renew coverage, 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,[39] and may not rely on an insurance policy that provides portfolio-wide coverage as a substitute for a force-placed policy.

    In contrast, lenders may purchase a master flood insurance policy that provides coverage for its entire portfolio and covers both the lender and the borrower ("dual interest"). Such policies provide coverage for the entire portfolio as well as individual coverage, and include the issuance of an individual property policy or certificate after the required notice period.

15. *APPLICABILITY 15. When does mandatory flood insurance on a designated loan need to be in place during the closing process?*

    Answer: 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.[40] 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 date(s). Therefore, in "dry" settlement States, the "closing date" is the date of property transfer, regardless of loan signing or funding date.

For transactions where there is no transfer of property ownership, such as a refinance, and the borrower is purchasing a new flood insurance policy or is required to increase flood insurance coverage, the lender should use the loan's consummation date as the effective date for the flood insurance policy, as noted above.

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.*

Exemptions from the mandatory flood insurance purchase requirements (EXEMPTIONS)

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

Answer: 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.[41] 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.[42] 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.[43] *See also* Q&A Exemptions 2. 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.

17. *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?*

    Answer: 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.[44] 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.[45] 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.

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

    Answer: Yes, as required under the Regulation, a flood hazard determination is needed to determine whether a building or mobile home securing a loan is or will be located in an SFHA where flood insurance is available under the Act.

    In order to determine whether the exemption for non-residential detached structures that are part of a residential property may apply, a flood hazard determination must be conducted first, without regard to whether there may be

any detached structures that could be exempt.[46]

19. *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?*

    Answer: Yes. If a borrower has a flood insurance policy on a detached structure that is part of a residential property and does not serve as a residence, the lender is no longer mandated by the Act to require flood insurance on that structure.[47] 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.

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

    Answer: Yes, a lender must examine the status of a detached structure upon a qualifying triggering event to determine whether the detached structure exemption still applies.[48] See Applicability 13. There is no duty to monitor the status of a detached structure following the lender's initial determination unless a triggering event occurs. However, regardless of the absence of a duty to monitor the status of a detached structure in the Regulation, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

21. *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?*

    Answer: 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.[49] 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.[50] 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.[51]

22. *EXEMPTIONS 7. If a loan is secured by a residential property and the primary residential structure 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?*

    Answer: 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.[52] 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. See the NFIP Flood Insurance Manual. In this case, the other building would not qualify as a detached structure because it is attached to the primary residential structure by a stairway or covered walkway and does not stand alone.

Private flood insurance – Mandatory acceptance (MANDATORY)

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

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

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

    Answer: The Regulation does not require that a lender originate a loan that does not meet the lender's underwriting criteria. The flood insurance purchase requirement only applies to loans secured by structures located or to be located in an SFHA in which flood insurance is available under the Act.[53] The flood insurance purchase requirement does not apply within non- participating communities, where NFIP insurance is not available under the Act. *See* Q&A Applicability 1. Therefore, the lender does not need to change its policy of not originating

mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance requirements under the Regulation.

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

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

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

    Answer: If a flood insurance policy issued by a private insurer includes the compliance aid statement, the lender may choose to rely upon the statement and would not need to review the policy further to determine if the policy meets the definition of "private flood insurance."

    However, the lender is not required to accept this policy based upon inclusion of the compliance aid statement alone and may choose to make its own determination about whether the policy meets the definition of "private flood insurance" or whether the policy is acceptable under the discretionary acceptance or mutual aid criteria.[54]

    If a flood insurance policy issued by a private insurer does not include the compliance aid statement, the lender may not reject the policy solely because it does not include this statement. The lender is not relieved from the requirement to accept a policy that meets the definition of "private flood insurance," as long as the policy meets the amount of insurance required under the Regulation.[55] Further, the lender may determine the policy is acceptable under the discretionary acceptance or mutual aid criteria.

27. *MANDATORY 5. If a flood insurance policy issued by a private insurer includes the*

compliance aid statement, does a lender need to conduct an additional review of the policy for compliance with the mandatory acceptance provision of the Regulation?

Answer: No, under the mandatory acceptance provision of the Regulation, if a policy or an endorsement to the policy contains the compliance aid statement, further review is not necessary in order for the lender to determine that a policy meets the definition of "private flood insurance."[56] It is important to note that, in order for the lender to rely on the compliance aid statement without further review of the policy, the language of the compliance aid statement must be stated in the policy, or as an endorsement to the policy, as set forth in the Regulation.[57] If the language is different from the compliance aid statement set forth in the Regulation, the lender cannot rely on the protections of the compliance aid statement in the Regulation and should review the policy to determine if it meets the definition of "private flood insurance." However, a policy containing the compliance aid statement need not be rejected if there are stylistic differences, such as formatting, font, and punctuation that do not change the substantive meaning of the clause, from the compliance aid statement included in the Regulation. *See also* Q&A Mandatory 6.

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

    Answer: Although a lender may rely on the compliance aid statement to determine that a flood insurance policy meets the definition of "private flood insurance" in the Regulation, the lender must also ensure that the amount of insurance is at least equal to the lesser of the outstanding principal balance of the designated loan, or the maximum limit of coverage available for the particular type of property under the Act.[58] *See also* Q&A Mandatory 5.

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

    Answer: Yes, the lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision.[59] However, if the policy does not meet the discretionary acceptance criteria, the lender will still need to

determine whether it must accept the policy under the mandatory acceptance criteria.[60]

Note that if the lender accepts a policy under the discretionary acceptance provision, the Regulation requires the lender to document that the policy provides sufficient protection of the loan.[61] *See also* Q&A Discretionary 2.

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

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

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

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

Private flood insurance – Discretionary acceptance (DISCRETIONARY)

32. *DISCRETIONARY 1. Are lenders required to accept flood insurance policies that meet the discretionary acceptance criteria?*

    Answer: No, the discretionary acceptance criteria in the Regulation sets forth the minimum acceptable criteria that a flood insurance policy must have for the lender to accept the policy under the discretionary acceptance provision. It is at the lender's discretion to accept a policy that meets the discretionary acceptance criteria so long as the policy does not meet the mandatory acceptance criteria.

33. *DISCRETIONARY 2. If the lender determines that a flood insurance policy meets the discretionary acceptance criteria and accepts that policy, what documentation will demonstrate that the policy provides sufficient protection of the loan,*

consistent with general safety and soundness principles?

Answer: The Regulation requires the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles. *See also* Q&A Discretionary 4. This review may be performed and recorded electronically. While the Regulation does not require any specific documentation to demonstrate that the policy provides sufficient protection of the loan, lenders may include any information that reasonably supports the lender's conclusion following review of the policy.

34. *DISCRETIONARY 3. How can a lender evaluate the sufficiency of an insurer's solvency, strength, and ability to satisfy claims when determining whether a flood insurance policy provides sufficient protection of the loan, consistent with general safety and soundness principles?*

    Answer: A lender may evaluate an insurer's solvency, strength, and ability to satisfy claims by obtaining information from the State insurance regulator's office of the State in which the property securing the loan is located, among other options. A lender can rely on the licensing or other processes used by the State insurance regulator for such an evaluation. *See* Q&A Discretionary 4.

35. *DISCRETIONARY 4. What are some factors to consider when determining whether a flood insurance policy issued by a private insurer under the discretionary acceptance provision or a mutual aid plan provides sufficient protection of a loan secured by improved real property located in an SFHA, consistent with general safety and soundness principles?*

    Answer: 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 deductible is 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.

Private flood insurance – General compliance (PRIVATE FLOOD COMPLIANCE)

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

    Answer: The maximum deductible for a flood insurance policy issued by a private insurer varies depending on whether the lender accepts the policy under the mandatory acceptance or the discretionary acceptance provision. For purposes of compliance with the mandatory acceptance provision, the Regulation provides that a policy must provide coverage at least as broad as the coverage provided under an SFIP for the same type of property, including a deductible that is no higher than the specified maximum under an SFIP for any total coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender.[62] For a private policy with a coverage amount exceeding that available under the NFIP, the deductible may exceed the specific maximum deductible under an SFIP. However, for safety and soundness purposes, the lender should consider whether the deductible is reasonable based on the borrower's financial condition, among other factors. *See* Q&A Amount 9.

- For example, if a private policy for a commercial building provided $1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of $500,000 for a commercial building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP. The lender should consider whether the deductible is reasonable based on the borrower's financial condition.
- Similarly, if a private policy for a residential building provided $1,000,000 of flood insurance coverage, which is in excess of the NFIP maximum coverage of $250,000 for a residential building, then it would be acceptable for a million-dollar policy to have a deductible higher than the maximum deductible for a policy available under the NFIP. The lender should consider whether the deductible is reasonable based on the borrower's financial condition.

For purposes of compliance with the discretionary acceptance provision, the Regulation requires that the policy provide sufficient protection of the loan, consistent with safety and soundness principles.[63] Among the factors a lender could consider in determining whether a policy provides sufficient protection of a loan is whether the policy's deductible is reasonable based on the borrower's financial condition. Unlike the limitation on deductibles for policies accepted under the mandatory acceptance provision for any total coverage amount up to the maximum available under the NFIP, a

lender can accept a flood insurance policy issued by a private insurer under the discretionary acceptance provision with a deductible higher than that for an SFIP for a similar type of property, provided the lender has determined the policy provides sufficient protection of the loan, consistent with safety and soundness principles.

Whether the lender is evaluating the policy under the mandatory acceptance provision or the discretionary acceptance provision, a lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.[64] However, a lender may accept a private flood insurance policy covering multiple buildings regardless of whether any single building covered by the policy has an insurable value lower than the amount of the per occurrence deductible. *See* Q&A Amount 9, Q&A Amount 10, and Q&A Private Flood Compliance 2.

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

    Answer: Yes. If the lender is accepting the private flood insurance policy under the mandatory acceptance provision, the Regulation requires that the private flood insurance policy be at least as broad as an SFIP, which includes a requirement that the private flood insurance policy contain a deductible *no higher* than the specified maximum deductible for an SFIP.[65] The lender may require a borrower's private flood insurance policy deductible to be lower than the maximum deductible for an SFIP in connection with a policy that the lender accepts under the mandatory acceptance provision, consistent with general safety and soundness principles and based on a borrower's financial condition, among other factors.

    If the lender is accepting a flood insurance policy issued by a private insurer under the discretionary acceptance provision, the lender need only consider whether the policy, including the stated deductible, provides sufficient protection of the loan, consistent with general safety and soundness principles.[66] *See also* Q&A Private Flood Compliance 1.

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

    Answer: The Act and the Regulation do not prohibit lenders from charging fees to borrowers for contracting with third parties to review flood insurance policies

issued by private insurers. As explained in Q&A Fees 1 and Q&A Fees 2, lenders may charge limited, reasonable fees for flood determinations and life-of-loan monitoring. Similarly, the Act and the Regulation do not prohibit lenders from charging a fee to a borrower when a third party reviews a flood insurance policy issued by a private insurer. However, lenders should be aware of any other applicable requirements regarding fees and disclosures of fees.

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

    Answer: The Act and Regulation do not specify the acceptable types of documentation for a lender to rely on when reviewing a flood insurance policy issued by a private insurer. Lenders should determine whether they have sufficient evidence to show the policy meets the private flood insurance requirements under the Regulation.

    Lenders can take steps to help mitigate against closing delays such as designating employees responsible for reviewing flood policies, training employees, and requesting additional information from insurers early in the process. If the lender does not have enough information to determine if the policy meets the private flood insurance requirements under the Regulation, then the lender should timely request additional information as necessary to complete its review. *See also* Q&A Private Flood Compliance 5.

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

    Answer: It depends. If the declarations page provides enough information for the lender to determine whether the policy meets the mandatory acceptance provision or discretionary acceptance provision of the Regulation or if the declarations pages contains the compliance aid statement, then the lender may rely on the declarations pages. However, if the declarations page does not provide enough information for the lender to determine whether the policy satisfies the mandatory acceptance provision or discretionary acceptance provision of the Regulation, the lender should request additional information about the policy to aid in making its determination.

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

    Answer: Yes. A lender can accept a multiple-peril policy that covers the hazard of flood, either in the policy or as an endorsement, under the private flood insurance provisions of the Regulation.

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

    Answer: Lenders must comply with Federal flood insurance requirements. The requirements for the secondary market are separate from the Regulation. A lender should carefully review these separate requirements for secondary market investors regarding acceptable private flood insurance if the lender plans to sell loans to such investors and should direct questions regarding these requirements to the appropriate entities.

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

    Answer: For loans serviced on behalf of lenders supervised by the Agencies, the servicer must comply with the Regulation in determining whether a flood insurance policy issued by a private insurer must be accepted under the mandatory acceptance provision or may be accepted under the discretionary acceptance provision or mutual aid provision. For loans serviced on behalf of other entities not supervised by the Agencies, the servicer should comply with the terms of its contract with that entity. For example, when servicing loans on behalf of Fannie Mae or Freddie Mac, where there are insurer rating requirements specified within those entities' servicing guidance or other relevant authorities that are not required in the Regulation, the servicer should adhere to those servicing requirements.

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

    Answer: A lender may refer to the website of the State insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue an insurance policy in a particular State. If the lender cannot determine this information from the website, the lender could contact the State insurance regulator directly. Further, information with respect to surplus lines insurer eligibility also may be available in the Consumer Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders may consult commercial service providers regarding the eligibility of surplus lines insurers in particular States provided the lenders have a reasonable basis to believe that these service providers have reliable information. With regard to nonadmitted alien insurers in particular, lenders could review the NAIC's Quarterly Listing of Alien Insurers.[67]

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

    Answer: Yes, if the surplus lines insurer is eligible or not disapproved to place insurance in the State or jurisdiction in which the property to be insured is located, lenders may accept policies issued by surplus lines insurers as coverage for noncommercial (*i.e.*, residential) properties.

    Consistent with the Act and the Regulation, the Agencies confirm that policies issued by surplus lines insurers for noncommercial properties are covered in the definition of "private flood insurance" and in the discretionary acceptance provision. In the definition of "private flood insurance," surplus lines policies for noncommercial properties are covered as policies that are issued by insurance companies that are "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."[68] Similarly, within the discretionary acceptance provision, noncommercial residential policies issued by surplus lines carriers are covered as policies that are issued by private insurance companies that are "otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located."[69]

For purposes of the Regulation, the meaning of "otherwise approved" is based on whether applicable State law provides that the surplus lines insurer is eligible or not disapproved to place insurance in that State. Even if the surplus lines insurer is not considered to be engaged in the business of insurance under applicable State law, the surplus lines insurer would still be "otherwise approved" only for purposes of this provision of the Regulation if the insurer is eligible or not disapproved to place insurance in the State.

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

    Answer: Any time the borrower presents the lender with a new flood insurance policy issued by a private insurer, regardless of whether a triggering event occurred, the lender must review the policy to determine whether it meets the private flood insurance requirements of the Regulation.[70] A lender may determine that the policy meets the mandatory acceptance criteria without further review if the policy or an endorsement to the policy includes the compliance aid statement.[71] If there is no compliance aid statement, or the lender chooses not to rely on the compliance aid statement, the lender must conduct its own review to determine if the policy meets the mandatory acceptance criteria. *See* Q&A Mandatory 4. If the policy does not meet the mandatory acceptance criteria, the lender may still accept the policy if it meets the discretionary acceptance criteria, or, if applicable, the mutual aid plan criteria. *See also* Q&A Mandatory 7. If the policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria, the lender may not accept the policy.[72]

    If the lender has previously reviewed the flood insurance policy under the mandatory acceptance provision, the discretionary acceptance provision, or the mutual aid plan provision the lender may rely on its previous review, provided there are no changes to the terms of the policy that would affect the acceptance under the Regulation. The lender's previous written documentation will constitute the documentation required under the Regulation each time the policy comes up for renewal. The lender should have effective internal controls in place through appropriate policies, procedures, training, and monitoring to ensure compliance with the requirements of the Regulation.

Standard flood hazard determination form (SFHDF)

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

    Answer: 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.[73] 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.[74]

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

    Answer: Yes. Although not a statutory requirement, a lender may provide a copy of the flood determination to the borrower. 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. The Agencies note that under the FEMA process for a Letter of Determination Review (LODR), a lender would need to make the determination available to the borrower.

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

    Answer: Yes.[75] 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.

50. *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?*

    Answer: 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 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.

Flood insurance determination fees (FEES)

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

    Answer: 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.[76]

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

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

Answer: 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.

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.[77] 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.[78]

Flood zone discrepancies (ZONE)

53. *ZONE 1. Does a lender need to reconcile a discrepancy between the flood zone designation on the flood determination form and the flood zone associated with a flood insurance policy?*

Answer: No, a lender need not reconcile or otherwise be concerned with a flood zone discrepancy. For NFIP policies issued under FEMA's Risk Rating 2.0 - Equity in Action (Risk Rating 2.0),[79] premium rates are no longer determined by the flood zone in which the property is located. Moreover, the flood zone is no longer included on the declarations page for NFIP policies issued under Risk Rating 2.0.

Flood insurance policies issued by a private insurer may still include the flood zone on the declarations page. Further, NFIP policies that have not been issued or renewed under Risk Rating 2.0 will include the flood zone on the declarations page.[80] In these cases, lenders also need not reconcile any discrepancy.

The flood zone determination is still necessary to determine if a property is located in an SFHA. 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.[81] For disputes regarding whether a property is located in an SFHA, *see* Q&A Zone 3.

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

    Answer: 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 associated with the policy. *See* Q&A Zone 1.

55. *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?*

    Answer: 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 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.[82]

Notice of special flood hazards and availability of federal disaster relief (NOTICE)

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

    Answer: 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.[83] 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.

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

    Answer: 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.[84] What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. A lender should bear in mind, however, that a borrower should receive timely notice to ensure that (1) the borrower has the opportunity to become aware of the borrower's responsibilities under the Act; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. The Agencies generally regard 10 calendar days as a "reasonable" time interval.

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

    In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such "home only" transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and a force placement notice must be given to the borrower under those provisions.[85] If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force-place the insurance.[86]

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

    Answer: 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.[87]

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

    Answer: 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.[88]

    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.[89]

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

    Answer: The record of receipt provided by the borrower must be maintained for the period of time that the lender owns the loan.[90] 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; the borrower's electronic signature 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.

61. *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?*

    Answer: The Regulation does not waive 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.[91]

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

    Answer: 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,[92] 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.[93] Therefore, lenders should consult the Act and Regulation to determine the information needed.

Determining the appropriate amount of flood insurance required (AMOUNT)

63. *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"?*

    Answer: 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 $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.[94] The NFIP does not insure land; therefore, land values are not included in the calculation.[95]

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. 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).[96]

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

Answer: 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 coverage provided by the hazard insurance and that adjustments may be necessary), the replacement cost value listed on the flood insurance policy declarations page, or any other reasonable approach, so long as it can be supported.

65. *AMOUNT 3. What are examples of residential buildings?*

Answer: 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, containing 2–4 residential units and in which non-residential uses are limited to less than 25 percent of the building's total floor area. This category includes apartment buildings and condominium buildings. It excludes hotels and motels with normal room rentals for less than six months.
- An *other residential building* is a residential building containing five or more residential units or a mixed-use building in which the total floor area devoted to non-residential uses is less than 25 percent of the building's total floor area. 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 six 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.*

66. *AMOUNT 4. What are examples of non-residential buildings?*

Answer: Pursuant to the *NFIP Flood Insurance Manual*, a non-residential building includes:

a. A building in which the named insured is a commercial enterprise primarily carried out to generate income and the coverage is for:
    - A building not designed for habitation or residential uses;
    - 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.
    - The following buildings where the normal occupancy of a guest is less than six months: condominium buildings, apartment buildings, hotels and motels, tourist homes, or rooming houses.

b. Other non-residential buildings including, but not limited to the following: houses of worship, schools, agricultural structures, garages, pool houses, clubhouses, and recreational buildings.

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

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

    Answer: 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.[97] Example: (Calculating insurance required on a non-residential building): 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 (non-residential 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.

68. *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?*

    Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together.[98] 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.

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.[99]

Example: Lender makes a loan in the principal amount of $150,000 secured by five non-residential 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 non-residential buildings (or $1.5 million total); or
  - Insurable value ($100,000 for each non-residential 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.

69. *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?*

    Answer: 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.[100] 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. [101] Since the NFIP policy does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the building.

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

    Answer: 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.

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

    Answer: Yes. However, it may not be a sound business practice for a lender, as a matter of policy, to always allow the borrower to use the maximum deductible. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible

amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.[102]

72. *AMOUNT 10. Can a lender accept a blanket flood insurance policy or blanket multi-peril policy covering multiple buildings that includes a per-occurrence deductible, regardless of whether any single building covered by the policy has an insurable value lower than the amount of the deductible?*

    Answer: Yes, a lender may accept a blanket flood insurance policy or blanket multi-peril policy covering multiple buildings that includes a per-occurrence deductible, regardless of whether any single building covered by the policy has an insurable value lower than the amount of the deductible. A blanket flood insurance policy or blanket multi-peril policy that includes a per- occurrence deductible provides coverage for each building covered by such a policy, regardless of whether any individual building covered under the policy has an insurable value that may be lower than the amount of the deductible. However, a lender may not allow the borrower to use a deductible amount equal to the aggregate insurable value of the property to avoid the mandatory purchase requirement. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such deductible would pose to the borrower and lender. *See* Q&A Amount 9.

Flood insurance requirements for construction loans (CONSTRUCTION)

73. *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?*

    Answer: 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.[103]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.

74. *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?*

    Answer: 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.[104] 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 provide the requisite notice to the borrower prior to loan origination.[105] The lender must then comply with the mandatory purchase requirement under the Act and Regulation.[106]

75. *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?*

    Answer: Yes. The NFIP will insure a building in the course of construction before it is walled and roofed using the NFIP-issued rates based on the construction designs and the intended use of the building. However, buildings in the course of construction that are not walled and roofed are not eligible for coverage when construction stops for more than 90 days and/or if the lowest floor for rating purposes is below the Base Flood Elevation. The NFIP will not insure materials or supplies intended for use in such construction, alteration, or repair unless they are contained within an enclosed building on the premises or adjacent to the premises. (*See NFIP Flood Insurance Manual*; the NFIP Dwelling Form for an SFIP).

    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 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.

76. *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?*

    Answer: 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.[107] The

NFIP provides that lenders may comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA by requiring borrowers to have a flood insurance policy in place at the time of loan origination. 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 after a foundation slab has been poured and/or an Elevation Certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed. However, in order to comply with the Regulation,[108] the lender must require the borrower to have flood insurance for the security property in place before the lender disburses funds to pay for building construction (except for funds to be used to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials). If the lender elects this approach and does not require the borrower to obtain flood insurance at loan origination, then it should have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower in light of the NFIP 30-day waiting period requirement. (*See NFIP Flood Insurance Manual*). See also Q&A Construction 5.

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

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

78. *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?

Answer: 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.[109]

Flood insurance requirements for residential condominiums and co-ops (CONDO AND CO-OP)

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

    Answer: 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.[110] 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.

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

    Answer: 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 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.

81. *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?*

    Answer: 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.[111]

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 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.[112] 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 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 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.

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 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 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). *See 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.

82. *CONDO AND CO-OP 4. For residential condominiums with no RCBAP coverage, what action must a lender take for an individual unit owner?*

    Answer: If there is no RCBAP on the residential condominium building, then the lender must require the individual unit owner to obtain coverage in an amount

sufficient to meet the requirements outlined in Q&A Condo and Co- Op 3.[113]

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 million ÷ 50 = $200,000).

The lender must require the individual unit owner 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).)

83. *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?*

    Answer: 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 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 to purchase supplemental coverage in an amount sufficient to meet the Regulation's flood insurance requirements.[114] 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 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 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 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.

84. *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?*

    Answer: 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 of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements.[115] The lender should encourage the individual unit owner 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 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 of inadequate insurance coverage, the lender must force place the necessary flood insurance on the borrower's behalf.[116]

85. *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?*

    Answer: 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 ÷ 200,000 = .90

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

Step B: 150,000 x .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 ÷ 200,000 = 1.00 (100% of what should be carried to avoid coinsurance penalty)

Step B: 150,000 x 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 218 than $149,500 ($150,000 amount of loss

minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

86. *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?*

    Answer: 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.

87. *CONDO AND CO-OP 9. What are the flood insurance requirements for a residential condominium unit or a non-residential condominium unit located in a non-residential condominium building? What are the flood insurance requirements for a non-residential condominium unit located in a residential*

condominium building?

Answer: Coverage is not available under the NFIP for an individual residential condominium unit or a non-residential condominium unit located in a non-residential condominium building. NFIP coverage is also not available for a non-residential condominium unit located in a residential condominium building. Therefore, a loan secured by one of these types of units is not a designated loan under the Regulation, and the mandatory flood insurance requirement does not apply. The Agencies note, however, that contents coverage is available through the NFIP for these types of units. *See NFIP Flood Insurance Manual.*

88. *CONDO AND CO-OP 10. What flood insurance requirements apply to a loan secured by a share in a cooperative building that is located in an SFHA?*

    Answer: 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 non-residential 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.

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)

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

    Answer: 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.[117]

90. *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?

Answer: 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.[118] 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.

91. *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?*

    Answer: 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 amount of all loans or the maximum amount of flood insurance coverage available, whichever is less;[119] 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.[120]

92. *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?*

    Answer: 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 for other buildings), or the insurable value of the building or mobile home.[121] 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.

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 224 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.

93. *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?*

Answer: 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.[122] 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.

94. *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?*

    Answer: 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."[123] 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.

95. *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?*

    Answer: Yes. Flood insurance is required for the building located in the SFHA and any personal property securing the loan.[124] 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 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.

96. *OTHER SECURITY INTERESTS 8. If a loan is secured by Building A, which is located in an SFHA, and contents located in Building B where building B does not secure the loan, is flood insurance required on the contents securing the loan?*

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

97. *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"?*

    Answer: 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.[125]

    The language in the loan agreement or security instrument determines whether the improved real estate and contents are taken as security for the loan. If a lender intends to take a security interest in the improved real estate and contents, the loan agreement or security instrument should include language indicating that the improved real estate and contents are security for the loan. If the lender does not intend to take a security interest in either the improved real estate and/or contents, the loan agreement or security instrument should not include language to this effect, including language inserted out of an "abundance of caution."

98. *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?*

    Answer: Yes, flood insurance is required. The language in the loan agreement or security instrument determines whether the contents are taken as security for the loan. If the lender takes a security interest in contents located in a building in an SFHA securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected.[126]

99. *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.[127] In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

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

    Answer: 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.[128]

Requirements to escrow flood insurance premiums and fees – General (ESCROW)

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

    Answer: 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.[129]

    A lender is not required to escrow for flood insurance if it qualifies for the small lender exception[130] or the loan qualifies for one of the following loan- related exceptions[131] 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.[132] If a lender, other than a lender that qualifies for the small lender exception, determines at any time during 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.[133]

102. *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?*

Answer: 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.[134] 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.

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

Answer: 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.[135] The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

104. *ESCROW 4. Does the requirement to escrow flood insurance premiums and fees apply when a loan does not experience a triggering event?*

Answer: 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.[136] 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;[137] or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.[138]

105. *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)?*

Answer: 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.[139] Single-family dwellings (including mobile 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 non-residential 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.[140]

106. *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?*

Answer: 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.[141] 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 obtained in connection with the second mortgage loan.[142] 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.[143]

107. *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?*

    Answer: 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.[144] 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.

Requirement to escrow flood insurance premiums and fees – Escrow small lender exception (ESCROW SMALL LENDER EXCEPTION)

108. *ESCROW 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?*

    Answer: By its own terms, the small lender exception to the flood insurance escrow requirement applies to lenders rather than holding companies.[145] Therefore, the $1 billion requirement is calculated based on the assets held at the lending institution level, rather than at the holding company level.

109. *ESCROW 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) U.S. Department of Agriculture (USDA) or Federal Housing Administration (FHA) 130 131 234 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?

Answer: 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.[146]

- 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 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.
- 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.

110. *ESCROW 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?*

Answer: 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.[147]

- 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.
- 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.

111. *ESCROW SMALL LENDER EXCEPTION 4. Is a lender eligible for the small lender exception if, on or before July 6, 2012, it offered escrow accounts only upon a borrower's request?*

    Answer: Yes. If, on or before July 6, 2012, a lender offered escrow accounts only upon the request of borrowers, this practice did not constitute a consistent or uniform policy of requiring escrow and the lender is eligible for the exception, provided all other conditions for the exception are met. 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.[148]

112. *ESCROW 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?*

    Answer: 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.[149] 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.[150] 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.[151] 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.

113. *ESCROW 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?*

Answer: Yes, if the small lender exception no longer applies. See Q&A Escrow 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. 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.[152] 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.

114. *ESCROW 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?*

Answer: 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.[153]

Requirement to escrow flood insurance premiums and fees – Escrow loan exceptions (ESCROW LOAN EXCEPTIONS)

115. *ESCROW LOAN EXCEPTIONS 1. Are escrow accounts for flood insurance premiums and fees required for commercial loans that are secured by residential property?*

    Answer: 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.[154] *See* Q&A Exemptions 1 for further information on the definition of residential property.

116. *ESCROW LOAN EXCEPTIONS 2. Are escrow accounts for flood insurance premiums and fees required for loans secured by particular units located in multi-family buildings?*

    Answer: 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.[155] *See* Q&A Exemptions 1. Otherwise, the escrow requirements generally would apply to loans for particular units in multi- family residential buildings.

117. *ESCROW LOAN EXCEPTIONS 3. Which requirements for an escrow account apply to a property covered by an RCBAP?*

    Answer: 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.[156] 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.[157] Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

118. *ESCROW LOAN EXCEPTIONS 4. Do construction-permanent loans qualify for the 12-month exception if one phase of the loan is for 12 months or less?*

    Answer: 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.

119. *ESCROW LOAN EXCEPTIONS 5. 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?*

    Answer: 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).[158] Lenders should ensure that the loan documents for the subordinate lien permit the lender to require an escrow if the loan takes a first lien position.

Force placement of flood insurance (FORCE PLACEMENT)

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

    Answer: 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 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.[159]

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.

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

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

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

Answer: 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.[160]

123. *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?*

Answer: 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.[161] 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.[162]

124. *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?*

Answer: 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.[163] 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.

125. *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?*

Answer: No. The Act and Regulation state that once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after that notice, the lender must purchase coverage on the borrower's behalf.[164] 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.

126. *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?*

Answer: 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.[165]

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.[166]

For example, if the previous policy expires at 12:01 am, the lender's new force-placed policy should not begin to provide coverage until 12:01 am of the same day. If the lender did force place at a date and time that would result in the force-placed policy providing overlapping coverage, the lender should not charge the borrower for the period of overlapping coverage.

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

Answer: 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."[167] 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 outstanding principal balance plus any additional force-placed premium and fees capitalized into the outstanding principal balance.[168]

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 an SFHA 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 Regulation. 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.[169] If the lender intends to capitalize the premium for the force-placed policy into the outstanding principal balance, the lender must ensure that the policy is issued in an amount sufficient to cover the anticipated higher outstanding principal balance, including the force-placed policy premium, even if the capitalization of the force-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.

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

Answer: A lender, or a servicer acting on its behalf, may force place flood 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.[170] 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 remapping, 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 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. A lender's or servicer's frequent need to purchase policies on a borrower's behalf having coverage that

precedes the date of purchase may, depending upon the facts and circumstances, indicate that there are weaknesses within the lender's or servicer's compliance management system.

129. *FORCE PLACEMENT 10. Does capitalizing the flood insurance premium into the outstanding principal balance constitute a triggering event - an "increase" that would trigger the applicability of flood insurance regulatory requirements?*

Answer: 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 an SFHA is not covered by any or adequate flood insurance.[171] 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.[172]

Among the various methods that a lender might use to charge a borrower for force-placed flood insurance are: (1) capitalizing the premium and fees into the outstanding principal balance; (2) adding the premium and fees to a separate account; (3) advancing funds from the escrow account to pay for the premiums and fees of the force-placed flood insurance; or (4) billing the borrower directly for the premiums and fees of the force-placed flood insurance policy. The treatment of force-placed flood insurance premiums and fees depends on the method the lender chooses for charging the borrower.

Premium and fees capitalized into outstanding principal balance

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 capitalization of the flood insurance premiums and fees into the outstanding principal 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 capitalization of flood insurance premiums and fees into the borrower's outstanding principal 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 account

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

Premium and fees advanced from the borrower's escrow account

If the lender's loan contract with the borrower permits the lender to advance the premiums and fees for the force-placed flood insurance from the borrower's escrow account, this approach does not increase the outstanding principal balance and 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 outstanding principal balance and is not considered a triggering event.

130. *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?*

Answer: 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.[173] The Regulation does not require that the declarations page contain any additional information in order to ascertain whether the policy meets the mandatory flood insurance purchase requirement to determine whether a refund is required. *See* Q&A Private Flood Compliance 5 for further guidance regarding evaluation under the private flood insurance requirements of the Regulation.

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.

131. *FORCE PLACEMENT 12. If a lender receives a confirmation, consistent with the Regulation, of a borrower's existing flood insurance coverage evidencing an overlap with a force-placed flood insurance policy, but the lender does not receive a refund from the insurance provider of the force-placed flood insurance policy in a timely manner, is the lender still required to refund any premiums for overlapping coverage to the borrower within 30 days?*

    Answer: 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.[174]

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

    Answer: A lender can rely on existing 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."[175] Assuming the force- placed policy is in effect and otherwise satisfies the regulatory coverage standards, then that policy may satisfy the mandatory purchase requirement.

    A refinance is the "making" of a loan, and a loan modification that increases, renews, or extends a loan is a triggering event for the flood insurance requirements. *See* Applicability 6 and Applicability 13. Therefore, 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.[176] At that time, the lender, at its discretion, could encourage the borrower to purchase his or her own policy, which may be available for a lower premium amount.

133. *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?*

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

134. *FORCE PLACEMENT 15. Are lenders required to have in place "Life-of-Loan" monitoring for continuous coverage of designated loans?*

Answer: 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.

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

Answer: 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.[177] 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 that remaps 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 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.[178] 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, if the lender makes a determination that the property securing a designated loan is not covered by sufficient flood insurance, the lender or servicer must begin the force placement process and may charge the borrower for the force-placed insurance.[179] 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.[180]

If the lender or its servicer receives notice after a property has been remapped into an SFHA, then the lender or its servicer must determine whether the property securing the loan is covered by sufficient flood insurance. The lender or its servicer must begin the notice and force placement process, as detailed in Q&A Force Placement 1, if the property is uninsured or underinsured.[181] *See also* Q&A Force Placement 9.

Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights (SERVICING)

136. *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 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 the

Administrator of FEMA or its designee if the policy is an NFIP policy.[182] In the case of a flood insurance policy issued by a private insurer, the lender should provide notice of the identity of the new servicer to the private insurer. 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, and the policy is an NFIP policy, the regulated lender must notify the Administrator of FEMA or its designee of the identity of the new servicer.[183] In the case of a flood insurance policy issued by a private insurer, the lender should provide notice of the identity of the new servicer to the private insurer. 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 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.[184] Those requirements only are triggered when a regulated lender makes, increases, extends, or renews a designated loan.[185]

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,[186] then the regulated lender must comply with the Regulation, including force placing insurance, if necessary.[187] 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.[188]

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 the Administrator of 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.[189]

137. *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?*

Answer: Under the Regulation, the Administrator's designee is the insurance company issuing the flood insurance policy.[190] The borrower's purchase of an NFIP policy (or the lender's force placement of an NFIP policy) will constitute notice to the Administrator of 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.[191]

In the case of a flood insurance policy issued by a private insurer, the lender should provide notice to the flood insurance provider. If the lender does not provide this notice to the flood insurance provider, the provider will be unable to properly administer the policy, such as by providing notice to the servicer about the expiration of the flood insurance policy.

138. *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 requirements of the Act?*

Answer: 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.

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

Answer: Yes. The Regulation specifically permits transmission by electronic means.[192] 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.

140. *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)?*

Answer: Yes, in the case of an NFIP policy.[193] 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.

In the case of a flood insurance policy issued by a private insurer, the lender should provide notice to the flood insurance provider. If the lender does not provide this notice to the flood insurance provider, the provider will be unable to properly administer the policy, such as by providing notice to the servicer about the expiration of the flood insurance policy.

141. *SERVICING 6. Is a lender required to provide notice when the servicer, not the*

lender, sells or transfers the servicing rights to another servicer?

Answer: No. After servicing rights are sold or transferred, the subsequent notification obligations applicable in connection with NFIP policies are the responsibility of the new servicer.[194] The obligation of the lender 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.[195] 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 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.

Similarly, for a flood insurance policy issued by a private insurer, if a lender sells or transfers the servicing rights, the Agencies do not expect the lender to provide notice to the insurance provider of any subsequent sale or transfer of the servicing rights.

142. *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)?*

Answer: If a lender is acquired by or merges with another lender, the duty in connection with NFIP policies 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.

Similarly, for a flood insurance policy issued by a private insurer, the successor lender should provide notice to the flood insurance provider in the event that notification is not provided by the acquired lender prior to the effective date of the acquisition or merger.

Mandatory civil money penalties (PENALTY)

143. *PENALTY 1. Which violations of the Act can result in a mandatory civil money*

penalty?

Answer: 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).[196] As required by the Act, the penalties must be paid into the National Flood Mitigation Fund.[197]

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

Answer: 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 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.

[1] These statutes are codified at 42 USC §4001-4129. FEMA administers the NFIP; its regulations implementing the NFIP appear at 44 CFR Parts 59-80.
[2] Pub. L.103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).
[3] H.R. Conf. Rep. No. 652, 103d Cong. 2d Sess. 195 (1994). (Conference Report).
[4] Agency regulations are codified at 12 CFR 22 (OCC); 12 CFR 208 (FRB); 12 CFR 339 (FDIC); 12 CFR 614 (FCA); 12 CFR 760 (NCUA).
[5] This amount was increased from $250,000 to $500,000 as of June 1, 2014.
[6] See 63FR 27857 (May 21, 1998) (codified at 44 CFR § 65.16).

[7] https://www.fema.gov/pdf/nfip/manual201205/content/10_mppp.pdf
[8] See 12 CFR part 1026, supplement 1, comment 4(c)(7)-3.
[9] These reflect the interagency examination procedures in their entirety.
[10] Consumer complaints can be a source of information about private flood policies that the institution did not accept.
[11] 78 FR 65107 (Oct. 30, 2013).
[12] Pub. L. 112-141, 126 Stat. 916 (2012).
[13] Pub. L. 113–89, 128 Stat. 1020 (2014).
[14] 80 FR 43215 (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] See note 1 above.
[17] 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).
[18] 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).
[19] 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).
[20] 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).
[21] 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).
[22] 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).
[23] See 42 U.S.C. 4012a(b); FEMA Standard Flood Hazard Determination Form.
[24] 12 CFR 22.2(e), 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (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).
[25] 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).
[26] 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).
[27] 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).
[28] 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).
[29] 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).
[30] 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).
[31] 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).
[32] 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).
[33] 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).
[34] 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).
[35] 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).

[36] 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).
[37] 12 CFR 22.3(a); 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).
[38] See 12 CFR part 22 (OCC); 12 CFR part 208.25 (Board); 12 CFR part 339 (FDIC); 12 CFR part 614 (FCA); and 12 CFR part 760 (NCUA).
[39] 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).
[40] 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).
[41] 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).
[42] 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).
[43] 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).
[44] 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).
[45] 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).
[46] 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).
[47] 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).
[48] 12 CFR 22.3(a) and 22.4(c) (OCC); 12 CFR 208.25(c)(1) and 208.25(d)(3) (Board); 12 CFR 339.3(a) and 339.4(c) (FDIC); 12 CFR 614.4930(a) and 614.4932(c) (FCA); and 12 CFR 760.3(a) and 760.4(c) (NCUA).
[49] 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).
[50] 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c)(3) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).
[51] 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).
[52] 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).
[53] Pub. L. 93–234, 87 Stat. 975 (1973).
[54] See 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c)(3) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).
[55] 12 CFR 22.3(c)(1) (OCC); 12 CFR 208.25(c)(3)(i) (Board); 12 CFR 339.3(c)(1) (FDIC); 12 CFR 614.4930(c)(1) (FCA); and 12 CFR 760.3(c)(1) (NCUA).
[56] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25(c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).
[57] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25(c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).
[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).
[59] 12 CFR 22.3(c)(3) (OCC); 12 CFR 208.25(c)(3)(iii) (Board); 12 CFR 339.3(c)(3) (FDIC); 12 CFR 614.4930(c)(3) (FCA); and 12 CFR 760.3(c)(3) (NCUA).
[60] 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c)(3) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).

[61] 12 CFR 22.3(c)(3) (OCC); 12 CFR 208.25(c)(3)(iii) (Board); 12 CFR 339.3(c)(3) (FDIC); 12 CFR 614.4930(c)(3) (FCA); and 12 CFR 760.3(c)(3) (NCUA).
[62] 12 CFR 22.2(k) (OCC); 12 CFR 208.25 (b)(9) (Board); 12 CFR 339.2 (FDIC): 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[63] 12 CFR 22.3(c)(3)(iv) (OCC); 12 CFR 208.25(c)(3)(iii)(D) (Board); 12 CFR 339.3(c)(3)(iv) (FDIC); 12 CFR 614.4930(c)(3) (iv) (FCA); and 12 CFR 760.3(c)(3)(iv) (NCUA).
[64] 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).
[65] 12 CFR 22.2(k)(2)(iii) (OCC); 12 CFR 208.25(b)(9)(ii)(B) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[66] 12 CFR 22.3(c)(3)(iv)(D) (OCC); 12 CFR 208.25(c)(3)(iii)(D) (Board); 12 CFR 339.3(c)(3)(iv) (FDIC); 12 CFR 614.4930(c) (3)(iv) (FCA); and 12 CFR 760.3(c)(3)(iv) (NCUA).
[67] https://www.naic.org/prod_serv_alpha_listing.htm#quarterly_alien.
[68] See 84 FR 4953, 4955-4956 (Feb. 20, 2019). See also 12 CFR 22.2(k)(1)(i) (OCC); 12 CFR 208.25(b)(9)(i)(A) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[69] See 84 FR 4953, 4962 (Feb. 20, 2019). See also 12 CFR 22.3(c)(3)(ii) (OCC); 12 CFR 208.25(c)(3)(iii)(B) (Board); 12 CFR 339.3(c)(3)(ii) (FDIC); 12 CFR 614.4930(c)(3)(ii) (FCA); and 12 CFR 760.3(c)(3)(ii) (NCUA).
[70] See 12 CFR 22.3(c)(1) (OCC); 12 CFR 208.25(c)(3)(i) (Board); 12 CFR 339.3(c)(1) (FDIC); 12 CFR 614.4930(c)(1) (FCA); and 12 CFR 760.3(c)(1) (NCUA).
[71] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25 (c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).
[72] 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).
[73] 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).
[74] 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).
[75] 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).
[76] 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).
[77] 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).
[78] 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).
[79] 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).
[80] 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).
[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).
[82] [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).
[83] 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).
[84] 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).
[85] 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).

[86] 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).
[87] 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).
[88] 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).
[89] 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).
[90] 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).
[91] 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).
[92] 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).
[93] 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).
[94] 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).
[95] 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).
[96] 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).
[97] 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).
[98] 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).
[99] See 42 U.S.C. 4012a; 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).
[100] 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).
[101] 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).
[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 22.2(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).
[104] 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).
[105] 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).
[106] 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).
[107] 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).
[108] 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).
[109] 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).
[110] 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).
[111] 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).
[112] 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).
[113] 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).
[114] 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).
[115] 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).
[116] 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).
[117] 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).
[118] 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).
[119] 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).
[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).
[121] 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).
[122] 12 CFR 22.3(a), 22.6(a) (OCC); 12 CFR 208.25(c)(1) and (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).
[123] 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).
[124] 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).
[125] 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).
[126] 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).
[127] 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).
[128] 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).
[129] 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).
[130] 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).
[131] 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).
[132] 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).
[133] 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).
[134] 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).

[135] 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).
[136] 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).
[137] 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).
[138] 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).
[139] 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).
[140] 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).
[141] 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).
[142] 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).
[143] 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).
[144] 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)
[145] 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).
[146] 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).
[147] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(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).
[148] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(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).
[149] 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).
[150] 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).
[151] 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).
[152] 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).
[153] 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).
[154] 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).
[155] 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).
[156] 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).
[157] 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).
[158] 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).
[159] 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).
[160] 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).
[161] 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).
[162] 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).
[163] 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).
[164] 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).
[165] 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).
[166] 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).
[167] 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).
[168] 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)
[169] 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).
[170] 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).
[171] 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).
[172] 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).
[173] 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).
[174] 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).
[175] 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).
[176] 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).
[177] 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).
[178] 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).
[179] 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).
[180] 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).
[181] 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).
[182] 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).
[183] 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).

[184] 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).
[185] 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).
[186] 42 U.S.C. 4012a(e)(1).
[187] 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).
[188] 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 CFR760.3(a) (NCUA).
[189] 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).
[190] 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).
[191] 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).
[192] 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).
[193] 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).
[194] 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).
[195] 12 U.S.C. 4104a(b)(1).
[196] Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890. This act was amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599. 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.
[197] 42 U.S.C. 4012a(f)(8).

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