Regulation B for Commercial Loans

Community Banker for Compliance

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12 CFR § 1002.1

Authority and Scope - 12 CFR § 1002.1(a)

Regulatory Discussion

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction and applies to any extension of credit, including extensions of credit to individuals, small businesses, corporations, partnerships, and trusts.

The CFPB's Regulation B, implementing the ECOA, describes lending acts and practices that are specifically prohibited, permitted, or required.

Note the commentary on both methods of credit evaluation (judgmental or credit scoring) under "scope" as well as "foreign applicability."

- With respect to methods of credit evaluation, refer to the definitions in §1002.2(p) and (t).
- With respect to foreign applicability, Regulation B only applies to lending activities that take place within the United States without regard to whether or not the applicant is a United States' citizen. This statement should not be confused with the "national origin" prohibited base discussed under §1002.1(b) nor the "immigration status" discussed under §1002.6(b)(7).

Regulatory Text

(a) **Authority and scope.** This part, known as Regulation B, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in §1002.2(l), other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 3170-0013.

Regulatory Commentary

1(a) Authority and scope.

1. ***Scope.*** *The Equal Credit Opportunity Act and Regulation B apply to all credit - commercial as well as personal—without regard to the nature or type of the credit or the creditor, except for an entity excluded from coverage of this part (but not the Act) by section 1029 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519). If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit*

transaction covered by Regulation Z (Truth in Lending) (12 CFR part 1026). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. ***Foreign applicability.*** *Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.*

3. ***Bureau.*** *The term Bureau, as used in this part, means the Bureau of Consumer Financial Protection.*

Purpose - 12 CFR § 1002.1(b)

Regulatory Discussion

Regulation B prohibits discrimination based on the following factors:

- Race
- Color;
- Religion;
- National origin;
- Sex [including sexual preference, as of 2021];
- Marital status;
- Age (provided the applicant has the capacity to contract (usually addressed in State law));
- The applicant's receipt of income derived from any public assistance program; or
- The applicant's exercise, in good faith, of any right under the Consumer Protection Act.

"Prohibited basis" refers not only to the characteristics of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is considered "public assistance." The term includes (but is not limited to) Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need to consider Medicare and Medicaid as public assistance.

Further information on these factors will be discussed in greater detail later in this manual.

Regulation B requires creditors to:

- Notify applicants of action taken on their applications (see Section 9, §1002.9);
- Report credit history in the names of both spouses on an account (see Section 10, §1002.10);
- Retain records of credit applications (see Section 12, §1002.12);
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling related loans (see Section 13, §1002.13); and
- Provide applicants with copies of appraisal reports used in connection with credit transactions (see Section 14, §1002.14).

Note Regarding Sexual Orientation

In 2021, the CFPB stated that it was illegal to discriminate on the basis of sexual preference. Young & Associates, Inc. have advocated this position in seminars for many years. While the CFPB did not alter the regulatory text or commentary)and therefore, we have not as well), we have placed the following in several places in the manual as a reminder:

- Sex [including sexual preference].

Regulatory Text

(b) **Purpose.** The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

Regulatory Commentary

None.

Section 2: Selected Definitions
12 CFR § 1002.2

Introduction

We have omitted any regulatory discussion in the section, as it would not assist in the understanding of the material.

Introduction Regulatory Text

For the purposes of this part, unless the context indicates otherwise, the following definitions apply.

Account - 12 CFR § 1002.2(a)

Regulatory Text

(a) **Account** means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

Regulatory Commentary

None.

Adverse Action - 12 CFR § 1002.2(c)

Regulatory Text

(c) **Adverse action.**

(1) **The term means:**

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) **The term does not include:**

(i) A change in the terms of an account expressly agreed to by an applicant;

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

Regulatory Commentary

2(c) Adverse action.

Paragraph 2(c)(1)(i).

1. ***Application for credit.*** *If the applicant applied in accordance with the creditor's procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.*

Paragraph 2(c)(1)(ii).

1. ***Move from service area.*** *If a credit card issuer terminates the open-end account of a member because the member has moved out of the card issuer's service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under §1002.9.*

2. ***Termination based on credit limit.*** *If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under §1002.9.*

Paragraph 2(c)(2)(ii).

1. ***Default - exercise of due-on-sale clause.*** *If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)-1 for treatment of a purchaser who requests to assume the loan.)*

2. ***Current delinquency or default.*** *The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with §1002.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.*

Paragraph 2(c)(2)(iii).

1. ***Point-of-sale transactions.*** *Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:*

   i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

   ii. The amount of a transaction exceeds a cash advance or credit limit.

   iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

   iv. The authorization facilities are not functioning.

   v. Billing statements have been returned to the creditor for lack of a forwarding address.

2. ***Application for increase in available credit.*** *A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.*

Paragraph 2(c)(2)(v).

1. ***Terms of credit versus type of credit offered.*** *When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under §1002.9.*

Applicant - 12 CFR § 1002.2(e)

Regulatory Text

(e) **Applicant** means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of §1002.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

Regulatory Commentary

2(e) Applicant.

*1. **Request to assume loan.** If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.*

Application - 12 CFR § 1002.2(f)

Regulatory Text

(f) **Application** means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

Regulatory Commentary

2(f) Application.

*1. **General.** A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.*

*2. **Procedures used.** The term "procedures" refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.*

*3. **When an inquiry or prequalification request becomes an application.** A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under §1002.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9-5 for further discussion of prequalification requests; see comment 2(f)-5 for a discussion of preapproval requests.)*

*4. **Examples of inquiries that are not applications.** The following examples illustrate situations in which only an inquiry has taken place:*

i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

*5. **Examples of an application.** An application for credit includes the following situations:*

i. A person asks a financial institution to "preapprove" her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

*6. **Completed application - diligence requirement.** The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)-3, which discusses the creditor's option to deny an application on the basis of incompleteness.)*

Business Credit - 12 CFR § 1002.2(g)

Regulatory Text

(g) **Business credit** refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§1002.3(a)-(d).

Regulatory Commentary

2(g) Business credit.

*1. **Definition.** The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.*

Contractually Liable - 12 CFR § 1002.2(i)

Regulatory Text

(i) **Contractually liable** means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

Regulatory Commentary

None.

Credit Transaction - 12 CFR § 1002.2(m)

Regulatory Text

(m) **Credit transaction** means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

Regulatory Commentary

None.

Discriminate Against an Applicant - 12 CFR § 1002.2(n)

Regulatory Text

(n) **Discriminate against an applicant** means to treat an applicant less favorably than other applicants.

Regulatory Commentary

None.

Good Faith - 12 CFR § 1002.2(r)

Regulatory Text

(r) **Good faith** means honesty in fact in the conduct or transaction.

Regulatory Commentary

None.

Person - 12 CFR § 1002.2(x)

Regulatory Text

(x) **Person** means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

Regulatory Commentary

None.

Pertinent Element of Creditworthiness - 12 CFR § 1002.2(y)

Regulatory Text

(y) **Pertinent element of creditworthiness,** in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

Regulatory Commentary

None.

Prohibited Basis - 12 CFR § 1002.2(z)

Regulatory Text

(z) **Prohibited basis** means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau.

Regulatory Commentary

2(z) Prohibited basis.

1. ***Persons associated with applicant.*** *As used in this part, prohibited basis refers not only to characteristics - the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in §1002.4(a), a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.*

2. ***National origin.*** *A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.*

3. ***Public assistance program.*** *Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is "public assistance" for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.*

Section 3: Limited Exceptions for Certain Classes of Transactions 12 CFR § 1002.3

Introduction

Omitted, as they are not germane to today's discussion. They include:

§ 1002.3 Limited exceptions for certain classes of transactions.

(a) Public utilities credit

(b) Securities credit

(c) Incidental credit

(d) Government credit

Section 4: General Rules
12 CFR § 1002.4

Discrimination - 12 CFR § 1002.4(a)

Regulatory Discussion

Regulation B specifically prohibits a creditor from discriminating against an applicant on any of the prohibited bases (see Section 1, §1002.1(b) of this manual) with respect to any aspect (i.e., cradle to grave) of a credit transaction.

Courts of law have recognized three methods of proof of lending discrimination:

- **Overt evidence of disparate treatment.**

  There is overt evidence of discrimination when a lender openly discriminates on a prohibited basis. Examples:

  - A lender offered a credit card with a limit of up to $750 for applicants aged 21-30 and $1500 for applicants over 30. This policy violated the ECOA's prohibition on discrimination based on age.
  - A lending officer told a member, "We do not like to make home mortgages to Native Americans, but the law says we cannot discriminate and we have to comply with the law." This statement violated §1002.4(b) which prohibits discouraging applicants on a prohibited basis.

- **Comparative evidence of disparate treatment.**

  There is comparative evidence of disparate treatment when a lender treats a credit applicant differently based on one of the prohibited bases. Example:

  - A non-minority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with the couple and determined that the adverse information was incorrect. The non-minority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report.

- **Evidence of disparate impact.**

  There is disparate impact when a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis. Example:

  - A lender's policy is not to extend loans for single family residences for less than $60,000.00. This minimum loan amount policy is shown to disproportionately exclude potential minority applicants from consideration because of their income levels or the value of the houses in the areas in which they live.

Regulatory Text

(a) **Discrimination.** A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

Regulatory Commentary

Paragraph 4(a).

1. ***Scope of rule.*** *The general rule stated in §1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Bureau has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.*

2. ***Examples.***

   i. Disparate treatment would exist, for example, in the following situations:

   A. A creditor provides information only on "subprime" and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

   B. A creditor provides more comprehensive information to men than to similarly situated women.

   C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

   D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

   ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Discouragement - 12 CFR § 1002.4(b)

Regulatory Discussion

Discouraging an applicant from applying for an extension of credit, on a prohibited basis, is also specifically prohibited.

Note the commentary for "affirmative advertising" which allows a creditor to specifically solicit or encourage members of traditional disadvantaged groups to apply for credit. Also review the definitions of, and commentary for, "applicant," "application," "extension of credit," and "prohibited basis" for additional information.

Regulatory Text

(b) **Discouragement.** A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

Regulatory Commentary

Paragraph 4(b).

1. ***Prospective applicants.*** *Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:*

   i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

   ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

   iii. The use of interview scripts that discourage applications on a prohibited basis.

2. ***Affirmative advertising.*** *A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.*

Written Applications - 12 CFR § 1002.4(c)

Regulatory Discussion

A written application is required for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling. Additional details are provided in Section 13, §1002.13(a).

The regulation does not mandate a written application for any other loan type, consumer or commercial purpose. However, it is generally a "best practice" to at least obtain a written application on consumer loan requests. Using a standardized application form creates consistency, which may prove useful in a fair lending examination.

Dwellings include residential structures that contain one to four units, whether or not the structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

This requirement for written applications for certain types of dwelling-related loans is intended to assist the Federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act.

Model application forms are provided in Appendix B. Each form is designated for use in a particular type of consumer credit transaction. Note: the use of these forms is optional; however, if a creditor uses an appropriate model form, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (b), (c) and (d) of §1002.5 (see Section 5 of this manual).

Keep in mind, however, that the use of a regulator-approved consumer loan application form that is dated and signed by all parties requesting credit is the most expeditious manner to assure that the necessary information to make a safe and sound credit decision is obtained and that no prohibited information is requested.

Note the statement "the creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application" under the commentary for "requirement for written applications" as well as the commentary on "telephone applications" and "computerized entry."

Regulatory Text

(c) **Written applications.** A creditor shall take written applications for the dwelling-related types of credit covered by §1002.13(a).

Regulatory Commentary

Paragraph 4(c).

1. ***Requirement for written applications.*** *Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.*

2. ***Telephone applications.*** *A creditor that accepts applications by telephone for dwelling-related credit covered by §1002.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.*

3. ***Computerized entry.*** *Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to §1002.13(b), Applications through electronic media and Applications through video.)*

Form of Disclosures - 12 CFR § 1002.4(d)

Regulatory Discussion

The general rule for the disclosures required by Regulation B states they must be *clear and* *conspicuous* (see commentary) and in a form the applicant may retain.

Exception: the disclosures required by §§1002.5 and 1002.13 do not need to be in a form the applicant may retain.

The required disclosures may also be provided in electronic form, provided there is compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Exception: the disclosures under §§1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2), when accompanying an application accessed by the applicant in electronic form, may be provided in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

See the commentary for additional information on providing electronic "form of disclosures."

Regulatory Text

(d) **Form of disclosures**

(1) **General rule.** A creditor that provides in writing any disclosures or information required by this part must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§1002.5 and 1002.13, in a form the applicant may retain.

(2) **Disclosures in electronic form.** The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2) accompany an application accessed by the applicant in electronic form, these disclosures may be provided to the applicant in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

Regulatory Commentary

Paragraph 4(d).

1. ***Clear and conspicuous.*** *This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.*

2. ***Form of disclosures.*** *Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:*

   i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

   ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit *application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.*

Foreign Language Disclosures - 12 CFR § 1002.4(e)

Regulatory Discussion

The required disclosures may be made in other languages, however, they must be available in English upon request.

Regulatory Text

(e) **Foreign-language disclosures.** Disclosures may be made in languages other than English, provided they are available in English upon request.

Regulatory Commentary

None.

Section 5: Rules Concerning Requests for Information 12 CFR § 1002.5

General Rules – 12 CFR § 1002.5(a)

Regulatory Discussion

The general rule regarding requests for information states a creditor may obtain any information in connection with a credit transaction; however, this section governs the types of information a creditor may gather. Section 6 (§1002.6) of this manual governs how the information may be used.

Specifically for credit secured by the applicant's dwelling, a creditor shall request government monitoring information (GMI) (see Section 13 of this manual, §1002.13).

- Note the commentary for "Information required by Regulation C" (HMDA) and "Collecting information on behalf of creditors".
- Specifically to monitor or enforce compliance with the ECOA, Regulation B, or other Federal or state statutes or regulations, a creditor may obtain information required by a court or enforcement agency.
- Note the commentary for "Local laws" and "Collecting information on behalf of creditors."

Specifically for special-purpose credit, a creditor may obtain information to determine eligibility (see Section 8 of this manual, §§1002.8(b), (c), and (d)).

Exceptions: Paragraphs (b), (c) and (d), discussed in greater detail within this Section 5, include limitations on the following types of information:

- Generally, a creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction (exceptions apply).
- Generally, a creditor may not request any information concerning the spouse or former spouse of an applicant (exceptions apply).

Generally, a creditor shall not inquire:

- about the applicant's marital status (exceptions apply);
- whether income stated is derived from alimony, child support, or separate maintenance payments (exceptions apply);
- about birth control practices, intentions concerning bearing/rearing of children, or capability to bear children (exceptions apply).

Finally, the CFPB added an amendment to Regulation B which will add paragraph (4) under

§1002.5(a) titled "Other permissible collection of information." In essence, this is somewhat of a technical amendment that will permit a creditor to collect information that is specifically required by Regulation C (HMDA). Minor conforming changes are also proposed for comment 5(a)(2)-2 to reference the types of loans covered by revised Regulation C and provide a citation to Regulation C. And, a new comment, 5(a)(4)-1, is proposed to be added to provide guidance on the new proposed paragraph (4).

Regulatory Text

(a) **General rules**

(1) **Requests for information.** Except as provided in paragraphs (b) through (d) of this section, a creditor may request any information in connection with a credit transaction. This paragraph does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

(2) **Required collection of information.** Notwithstanding paragraphs (b) through (d) of this section, a creditor shall request information for monitoring purposes as required by §1002.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this part, or other Federal or state statutes or regulations.

(3) **Special - purpose credit.** A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in §§1002.8(b), (c), and (d).

(4) **Other permissible collection of information.** Notwithstanding paragraph (b) of this section, a creditor may collect information under the following circumstances provided that the creditor collects the information in compliance with appendix B to 12 CFR part 1003:

(i) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years;

(ii) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for an open-end line of credit that is an excluded transaction under 12 CFR 1003.3(c)(12) if it submits HMDA data concerning such open-end lines of credit and applications or if it submitted HMDA data concerning open-end lines of credit for any of the preceding five calendar years;

(iii) A creditor that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if not excluded by 12 CFR 1003.3(c)(11) or (12);

(iv) A creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold period provided in 12 CFR 1003.2(g), 1003.3(c)(11), or 1003.3(c)(12) may, in the second year, collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(11) or (12);

(v) A creditor that is a financial institution under 12 CFR 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g), may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(10).

(vi) A creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant may collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under 12 CFR 1003.2(e) or for a second or additional co-applicant for a loan described in paragraphs (a)(4)(i) through (v) of this section.

Regulatory Commentary

5(a) General rules.

Paragraph 5(a)(1).

*1. **Requests for information.** This section governs the types of information that a creditor may gather. Section1002.6 governs how information may be used.*

Paragraph 5(a)(2).

*1. **Local laws.** Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.*

*2. **Information required by Regulation C.** Regulation C, 12 CFR part 1003, generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for certain dwelling-secured loans, including some types of loans not covered by §1002.13.*

*3. **Collecting information on behalf of creditors.** Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.*

Paragraph 5(a)(4).

1. ***Other permissible collection of information.*** Information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C, 12 CFR part 1003, may nevertheless be collected under the circumstances set forth in §1002.5(a)(4) without violating §1002.5(b). The information must be retained pursuant to the requirements of §1002.12.

Limitations on Information – 12 CFR § 1002.5(b)

Regulatory Discussion

Except as permitted in §1002.5(a)(1) through (3), a creditor is generally prohibited from collecting information with respect to race, color, religion, national origin, or sex of an applicant or any other person associated with a credit transaction. There are two exceptions:

- When the creditor is conducting a self-test to monitor its compliance with the ECOA.
- When the creditor requests a title (i.e., Ms., Miss, Mr., or Mrs.) on an application form that indicates sex; provided the designation of title is disclosed as optional.

Inquiries about the sex of an applicant are generally prohibited in order to discourage sex [including sexual prefernce] discrimination in the lending process. The following are some of the situations that may be encountered which constitute sex discrimination, a prohibited consideration under the Fair Housing Act as well as the ECOA:

- Discounting or disregarding the income of a working wife or single woman
- Refusing to grant a loan, or granting a loan on different terms and conditions, because of sex [including sexual prefernce]
- Requiring more or different information from a female applicant than a male applicant (for example, birth control arrangements or a family plan)
- Subjecting a female applicant to a different or more extensive credit check than that which is usually required for males
- Refusing to include alimony or child support as viable income where evidence is provided of a history of consistent prior payment and indicates that payments are likely to continue
- Basing any aspect of a lending decision on general presumptions about women (for example, that women of childbearing age are poor risks)
- Treating single working parents differently from married working parents
- Requiring a cosigner for women but not for men

Regulatory Text

(b) **Limitation on information about race, color, religion, national origin, or sex.** A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(1) **Self-test.** A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of conducting a self-test that meets the requirements of §1002.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2) **Sex**. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

Regulatory Commentary

None.

Limitations on Information (Spouse or Former Spouse) – 12 CFR § 1002.5(c)

Regulatory Discussion

Except as permitted in §1002.5(a)(1) through (3), a creditor is generally prohibited from collecting information concerning the applicant’s spouse or former spouse. There are two exceptions:

- There are five circumstances, listed under permissible inquiries, whereby the creditor may request information concerning the applicant’s spouse or former spouse.
  - Note: under paragraph (2)(iv), “community property states” include: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Alaska is an opt-in community property state that gives both parties the option to make their property community property.
- As provided under other accounts of the applicant, a creditor may request information on other accounts on which the applicant is “contractually liable” including the name address in whose name the account is held; as well as the names in which the applicant has previously received credit.

Regulatory Text

(c) **Information about a spouse or former spouse**

(1) **General rule.** Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) **Permissible inquiries.** A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) **Other accounts of the applicant.** A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

Regulatory Commentary

None.

Other Limitations on Information Requests (Marital Status) – 12 CFR § 1002.5(d)(1)

Regulatory Discussion

Except as permitted in §1002.5(a)(1) through (3), a creditor is generally prohibited from collecting information with respect to the applicant's marital status. There are two exceptions:

- If an applicant applies for i*ndividual unsecured credit*, a creditor may inquire about the applicant's marital status if the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested.
- If an application is for *other than individual unsecured credit*, a creditor may inquire about the applicant's marital status, using only the terms *married*, *unmarried*, and *separated*.

The commentary provides guidance on the indirect disclosure of prohibited information.

Regulatory Text

(d) **Other limitations on information requests**

(1) **Marital status.** If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

Regulatory Commentary

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1. ***Indirect disclosure of prohibited information.*** *The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:*

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Other Limitations on Information Requests (Alimony, Child Support, Separate Maintenance) – 12 CFR § 1002.5(d)(2)

Regulatory Discussion

Except as permitted in §1002.5(a)(1) through (3), a creditor is generally prohibited from collecting information with respect to income derived from alimony, child support, or separate maintenance payments, unless the creditor discloses that such income need not be provided if the applicant does not want that income considered in determining creditworthiness.

The commentary provides guidance on appropriate methods to inquire about sources of income.

Regulatory Text

(d) **Other limitations on information requests**

(2) **Disclosure about income from alimony, child support, or separate maintenance.** A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Regulatory Commentary

5(d) Other limitations on information requests.

Paragraph 5(d)(2).

1. ***Disclosure about income.*** *The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.*

2. ***General inquiry about source of income.*** *Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.*

3. ***Specific inquiry about sources of income.*** *A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.*

Other Limitations on Information Requests (Childbearing, Childrearing) – 12 CFR § 1002.5(d)(3)

Regulatory Discussion

Except as permitted in §1002.5(a)(1) through (3), a creditor is generally prohibited from collecting information with respect to childbearing and/or childrearing practices, intentions and capabilities. There is one exception:

- A creditor may inquire about the number and ages of an applicant's dependents to determine dependent-related financial obligations or expenditures that may affect creditworthiness.

Regulatory Text

(d) **Other limitations on information requests**

(3) **Childbearing, childrearing.** A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

Regulatory Commentary

None.

Permanent Residency and Immigration Status – 12 CFR § 1002.5(e)

Regulatory Discussion

There is *no prohibition* against a creditor from inquiring about an applicant's, or any other person associated with a credit transaction, permanent residency or immigration status. This can be important information to consider, for example, in the event of default.

A creditor is not allowed to refuse to grant credit because an applicant comes from a particular country, but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order that restricts dealings with citizens (or the government) of a particular country or that imposes limitations on extensions of credit to them.

Regulatory Text

(e) **Permanent residency and immigration status.** A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

Regulatory Commentary

None.

Section 6: Rules Concerning Evaluation of Applications 12 CFR § 1002.6

General Rule Concerning Use of Information – 12 CFR § 1002.6(a)

Regulatory Discussion

This section governs how the information collected in an application may be used to evaluate creditworthiness. In general, a creditor may consider any information obtained in an application, so long as the information is not used to discriminate on a prohibited basis.

When Congress passed the ECOA, it intended to apply an "effects test" concept to a creditor's determination of creditworthiness. In essence, *a creditor practice that is discriminatory in effect is prohibited* because it has a disproportionately negative impact on a prohibited basis. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants.

Regulatory Text

(a) **General rule concerning use of information.** Except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

Regulatory Commentary

6(a) General rule concerning use of information.

1. ***General.*** *When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by §1002.5 from obtaining or from using for any purpose other than to conduct a self-test under §1002.15.*

2. ***Effects test.*** *The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.,) and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect* *because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.*

Specific Rules Concerning Use of Information – 12 CFR § 1002.6(b)(1)

Regulatory Discussion

In general, except for *special purpose credit programs* (see Section 8 of this manual), a creditor shall not discriminate, on a prohibited basis, in the evaluation of an applicant's creditworthiness.

Paragraphs (b)(2) through (b)(9) provide specific rules on the following information:

- Age and receipt of public assistance
- Childbearing and childrearing
- Telephone listing
- Income
- Credit history
- Immigration status
- Marital status
- Race, color, national origin, sex [including sexual prefernce] (GMI), and religion

Regulatory Text

(b) **Specific rules concerning use of information.**

(1) Except as provided in the Act and this part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

Regulatory Commentary

Paragraph 6(b)(1).

1. ***Prohibited basis - special purpose credit.*** *In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See §1002.8.)*

Specific Rules (Age and Receipt of Public Assistance) – 12 CFR § 1002.6(b)(2)

Regulatory Discussion

Generally, a creditor shall not take into consideration an applicant's age (subject to capacity to contract) or whether income is derived from any public assistance program. There are three exceptions; a creditor may consider:

- An applicant's age as a predictive variable in an empirically derived credit scoring system provided the age of an elderly (age 62 or older) applicant is not assigned a negative factor or value.
- An applicant's age or whether income is derived from any public assistance program, in a judgmental system of evaluating creditworthiness – only for the purpose of determining a pertinent element of creditworthiness.
- The age of an elderly (age 62 or older) applicant – when such age is used to favor the applicant.

As a special note, financial institutions should beware of developing "seniors account" packages that offer advantageous credit incentives when the minimum age to have the package is less than 62.

As the examples in commentary illustrate, the evaluation must be made in an individualized, case-by-case manner. It is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to base its decision on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the applicant.

Regulatory Text

(b) **Specific rules concerning use of information.**

(2) **Age, receipt of public assistance.**

(i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

Regulatory Commentary

Paragraph 6(b)(2).

1. ***Favoring the elderly.*** *Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of §1002.8.*

2. ***Consideration of age in a credit scoring system.*** *Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in §1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.*

   i. ***Age-split scorecards.*** *Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.*

3. ***Consideration of age in a judgmental system.*** *In a judgmental system, defined in §1002.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:*

   i. *A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.*

   ii. *A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.*

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

4. ***Consideration of age in a reverse mortgage.*** *A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under §1002.6(b)(2)(iv). In addition, under §1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.*

5. ***Consideration of age in a combined system.*** *A creditor using a credit scoring system that qualifies as "empirically derived" under §1002.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as "demonstrably and statistically sound." While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a "pertinent element of creditworthiness." (See comment 6(b)(2)-3.)*

6. ***Consideration of public assistance.*** *When considering income derived from a public assistance program, a creditor may take into account, for example:*

   i. The length of time an applicant will likely remain eligible to receive such income.

   ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

   iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Specific Rules (Childbearing and Childrearing) – 12 CFR § 1002.6(b)(3)

Regulatory Discussion

A creditor is prohibited, *without exception*, from making assumptions, or using statistics, regarding childbearing or childrearing practices, intentions or capabilities, in evaluating creditworthiness.

Regulatory Text

(b) **Specific rules concerning use of information.**

(3) **Childbearing, childrearing.** In evaluating creditworthiness, a creditor shall not make

assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

Regulatory Commentary

None.

Specific Rules (Telephone Listing) – 12 CFR § 1002.6(b)(4)

Regulatory Discussion

A creditor is prohibited from taking into account whether there is a telephone listing in the applicant's name for consumer credit; however, a creditor may consider whether there is a telephone in the applicant's residence.

Regulatory Text

(b) **Specific rules concerning use of information.**

(4) **Telephone listing.** A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

Regulatory Commentary

None.

Specific Rules (Income) – 12 CFR § 1002.6(b)(5)

Regulatory Discussion

A creditor shall not discount, or exclude from consideration, income because of a prohibited basis or because the income is derived from part-time employment, an annuity, pension, or other retirement benefit. However, a creditor may consider the amount and probable continuance of any income in evaluating creditworthiness.

A creditor shall consider alimony, child support, or separate maintenance payments as income (to the extent such payments are likely to be consistently made) when an applicant relies on such payments when applying for credit.

Creditors are also obligated to consider whether a source of income is taxable under Federal law. For example, if a member is in a 20 percent bracket for income tax purposes, $1,000 in non-taxable income equates to $1,200 in taxable income. Each institution must determine a factor for conversion of non-taxable income into taxable income equivalent. This process is known as "grossing up" the income. As income must be treated consistently by each institution, grossing up must occur before the calculation of any debt-to-income ratios.

The commentary provides additional guidance with respect to consideration of income.

Regulatory Text

(b) **Specific rules concerning use of information.**

(5) **Income.** A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

Regulatory Commentary

Paragraph 6(b)(5).

1. ***Consideration of an individual applicant.*** *A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.*

2. ***Payments consistently made.*** *In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.*

3. ***Consideration of income.***

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

*4. **Part-time employment, sources of income.** A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.*

Specific Rules (Credit History) – 12 CFR § 1002.6(b)(6)

Regulatory Discussion

There are three factors a creditor must consider when using an applicant's credit history in evaluating creditworthiness:

- When available, *the credit history of accounts the applicant is* (and spouse are) *permitted to use* (or for which both are contractually liable).
- When requested, *any information provided by the* applicant that indicates the credit history being considered by the creditor *does not accurately reflect the applicant's creditworthiness*.
- When requested, *the credit history* (when available) *of any account reported in the name of the applicant's spouse* (or former spouse) *that demonstrates accurately the applicant's creditworthiness*.

See the commentary for guidance on "*types of credit references*."

Regulatory Text

(b) **Specific rules concerning use of information.**

(6) **Credit history.** To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

Regulatory Commentary

Paragraph 6(b)(6).

*1. **Types of credit references.** A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.*

Specific Rules (Immigration Status) – 12 CFR § 1002.6(b)(7)

Regulatory Discussion

A creditor may consider an applicant's immigration, or permanent resident, status when evaluating creditworthiness as well as rights and remedies regarding repayment.

The commentary provides additional guidance on the differentiation between national origin, immigration status, and citizenship.

Regulatory Text

(b) **Specific rules concerning use of information.**

(7) **Immigration status.** A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

Regulatory Commentary

Paragraph 6(b)(7).

*1. **National origin - immigration status.** The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student* *visa.*

2. ***National origin - citizenship.*** *A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.*

Specific Rules (Marital Status) – 12 CFR § 1002.6(b)(8)

Regulatory Discussion

The rule for marital status requires a creditor to evaluate the creditworthiness of:

- *married and unmarried* applicants using the same standards; and
- *joint applicants* without regard of the existence, absence, or likelihood of a marital relationship between the parties.

The commentary, however, allows the creditor to consider marital status to ascertain rights and remedies.

Regulatory Text

(b) **Specific rules concerning use of information.**

(8) **Marital status.** Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

Regulatory Commentary

Paragraph 6(b)(8).

1. ***Prohibited basis - marital status.*** *A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.*

Specific Rules (GMI and Religion) – 12 CFR § 1002.6(b)(9)

Regulatory Discussion

The rule for race, color, national origin, sex (GMI), and religion prohibits a creditor to consider these factors *in any aspect of a credit transaction.*

Regulatory Text

(b) **Specific rules concerning use of information.**

(9) **Race, color, religion, national origin, sex.** Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

Regulatory Commentary

None.

State Property Laws – 12 CFR § 1002.6(c)

Regulatory Discussion

A creditor may consider, and apply, State property laws which does not constitute unlawful discrimination of the ECOA or Regulation B.

Regulatory Text

(c) **State property laws.** A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this part.

Regulatory Commentary

None.

Section 7: Rules Concerning Extensions of Credit 12 CFR § 1002.7

Individual Accounts – 12 CFR § 1002.7(a)

Regulatory Discussion

Regulation B has five specific rules (§1002.7(a) through (e)) regarding extensions of credit which will be discussed in this Section 7.

The first rule (§1002.7(a)) with respect to "individual accounts," prohibits a creditor from refusing to grant an individual account to a creditworthy applicant on the basis of sex [including sexual prefernce], marital status, or any other prohibited basis.

See the commentary for guidance on the *designation, and choice, of an authorized user on open-end credit* as well as *authority to overdraft a transaction account*.

Regulatory Text

(a) **Individual accounts.** A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

Regulatory Commentary

7(a) Individual accounts.

*1. **Open-end credit - authorized user.** A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.*

*2. **Open-end credit - choice of authorized user.** A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a non-spouse as an authorized user.*

*3. **Overdraft authority on transaction accounts.** If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.*

Designation of Name – 12 CFR § 1002.7(b)

Regulatory Discussion

The second rule (§1002.7(b)) with respect to "designation of name," prohibits a creditor from refusing to allow an applicant to open or maintain an account in a birth-given first name and surname, including the spouse's surname, or a combined surname.

The commentary provides guidance on designating a single name, on joint applications, for purposes of account administration.

Regulatory Text

(b) **Designation of name.** A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

Regulatory Commentary

7(b) Designation of name.

1. ***Single name on account.*** *A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (See §1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)*

Action Concerning Existing Open-End Accounts (Limitations) - 12 CFR § 1002.7(c)(1)

Regulatory Discussion

The third rule (§1002.7(c)) with respect to "actions concerning existing open-end accounts," is further segregated into two components: (1) "limitations;" and (2) "requiring reapplication."

The first component of the third rule, paragraph (c)(1), "limitations," generally prohibits (unless the applicant is unable or unwilling to repay) a creditor from taking certain actions on an existing open-end account on the basis of the applicant's: reaching a certain age; or retiring; or on the basis of a change in the applicant's name or marital status. The prohibited actions include:

- requiring reapplication (except see paragraph (c)(2));
- changing the terms of the account; or
- terminating the account.

The commentary provides additional guidance on: terminating an existing open-end account coincidental with a marital status change; and requesting periodic updated information on an existing open-end account.

Regulatory Text

(c) **Action concerning existing open-end accounts**

(1) **Limitations.** In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

Regulatory Commentary

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(1).

1. ***Termination coincidental with marital status change.*** *When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:*

   i. Repudiate responsibility for future charges on the joint account.

   ii. Request separate accounts in their own names.

   iii. Request that the joint account be closed.

2. ***Updating information.*** *A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.*

Action Concerning Existing Open-End Accounts (Requiring Reapplication) - 12 CFR § 1002.7(c)(2)

Regulatory Discussion

The second component of the third rule, paragraph (c)(2), "requiring reapplication," provides an exception to (c)(1)(i) and permits a creditor to require reapplication for an existing open-end account on the basis of a change in the marital status if the original credit was based in whole or in part on income of the applicant's spouse and which is no longer available.

The commentary provides procedure to follow when requiring reapplication as well as during the pending reapplication.

Regulatory Text

(c) **Action concerning existing open-end accounts**

(2) **Requiring reapplication.** A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

Regulatory Commentary

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(2).

*1. **Procedure pending reapplication.** A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.*

Signature of Spouse or Other Person (General) – 12 CFR § 1002.7(d)

Regulatory Discussion

The fourth rule (§1002.7(d)) with respect to "signatures of spouse or other person," is further segregated into six components: (1) "rule for qualified applicant;" (2) "unsecured credit;" (3) unsecured credit – community property states;" (4) "secured credit;" (5) "additional parties;" and (6) "rights of additional parties."

The introductory commentary, applicable to all six components, provides additional guidance on *qualified applicant* and *unqualified applicant*.

Regulatory Text

None.

Regulatory Commentary

7(d) Signature of spouse or other person.

1. ***Qualified applicant.*** *The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.*

2. ***Unqualified applicant.*** *When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party - but cannot require that it be the spouse. (See commentary to §§1002.7(d)(5) and (6).)*

Signature of Spouse or Other Person (Qualified Applicant) – 12 CFR § 1002.7(d)(1)

Regulatory Discussion

The first component of the fourth rule, paragraph (d)(1), "rule for qualified applicant," generally prohibits a creditor from requiring the signature of an applicant's spouse (or other person) on any credit instrument if the applicant qualifies for the amount and terms of credit requested.

- **Exception:** a creditor may require the signature of a *joint applicant* on any credit instrument.
- **Note:** the submission of a joint financial statement (or other evidence of jointly held assets) <u>*does not*</u> constitute an application for joint credit.

This signature rule assures that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless it has first been determined that the applicant alone does not qualify for the credit requested.

When an applicant applies for individual credit but does not alone meet a creditor's standards, a cosigner, guarantor, or the like may be required, but a creditor cannot require that it be the spouse or any other specific person.

The commentary provides additional information on three important topics: prohibition to require a cosigner; meaning of "joint applicant," and evidence of joint application.

Regulatory Text

(d) **Signature of spouse or other person**

(1) **Rule for qualified applicant.** Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

Regulatory Commentary

Paragraph 7(d)(1).

1. ***Signature of another person.*** *It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)-1 concerning guarantors of closely held corporations.)*

2. ***Joint applicant.*** *The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.*

3. ***Evidence of joint application.*** *A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.*

Signature of Spouse or Other Person (Unsecured Credit) – 12 CFR § 1002.7(d)(2)

Regulatory Discussion

The second component of the fourth rule, paragraph (d)(2), "unsecured credit," generally permits the creditor to require the signature of a spouse (or other person) *only on the instrument(s) necessary* to enable the creditor to reach property relied upon in the event of death or default of the applicant. This is *applicable to an applicant requesting unsecured credit who is relying upon property owned jointly with another person* to satisfy a creditor's standards of creditworthiness.

The commentary provides important guidance on *determining value of jointly owned property* and *other options to support unsecured credit*.

Regulatory Text

(d) **Signature of spouse or other person**

(2) **Unsecured credit**. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

Regulatory Commentary

Paragraph 7(d)(2).

*1. **Jointly owned property.** If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.*

i. Valuation of applicant's interest. In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the non-applicant spouse in these or similar circumstances.

ii. Other options to support credit. If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (§1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

*2. **Need for signature - reasonable belief.** A creditor's reasonable belief as to what instruments* *need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.*

Signature of Spouse or Other Person (Unsecured Credit – Community Property States) – 12 CFR § 1002.7(d)(3)

Regulatory Discussion

The third component of the fourth rule, paragraph (d)(3), “unsecured credit – community property states,” generally permits a creditor to require the signature of the spouse (or other person) *on any instrument necessary to make community property available* to satisfy debt in the event of default. *This is applicable to a married applicant requesting unsecured credit who either resides in a community property state or is relying on property located in a community property state.*

“Community property states” include: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Alaska is an opt-in community property state that gives both parties the option to make their property community property.

The commentary provides guidance on determining the *residency* of a person who applies for credit in a community property state.

Regulatory Text

(d) **Signature of spouse or other person**

(3) **Unsecured credit - community property states.** If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

Regulatory Commentary

Paragraph 7(d)(3).

*1. **Residency**. In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.*

Signature of Spouse or Other Person (Secured Credit) – 12 CFR § 1002.7(d)(4)

Regulatory Discussion

The fourth component of the fourth rule, paragraph (d)(4), "secured credit," generally permits a creditor to require the signature of the applicant's spouse (or other person) on any instrument necessary to make property being offered as security available to satisfy the debt in the event of default. *This is applicable to an applicant requesting secured credit.*

The commentary provides guidance on three important topics: *creation of enforceable lien; need for signature;* and *integrated instruments*.

Regulatory Text

(d) **Signature of spouse or other person**

(4) **Secured credit.** If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

Regulatory Commentary

Paragraph 7(d)(4).

*1. **Creation of enforceable lien.** Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.*

*2. **Need for signature - reasonable belief.** Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.*

*3. **Integrated instruments.** When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.*

Signature of Spouse or Other Person (Additional Parties) – 12 CFR § 1002.7(d)(5)

Regulatory Discussion

The fifth component of the fourth rule, paragraph (d)(5), "additional parties," generally permits a creditor to request a cosignor, guarantor, endorser, or similar party if an additional party is necessary to support the credit request. *Note: the applicant's spouse (or other person) may serve as the additional party; however, the creditor may not require the spouse be the additional party.*

The commentary provides guidance on three important topics: *qualification of additional parties; reliance on income of another person*; and reevaluation of additional party in *renewals*.

Regulatory Text

(d) **Signature of spouse or other person**

(5) **Additional parties.** If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

Regulatory Commentary

Paragraph 7(d)(5).

1. ***Qualifications of additional parties.*** *In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.*
2. ***Reliance on income of another person - individual credit.*** *An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See §1002.6(c) on consideration of state property laws.)*
3. ***Renewals.*** *If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.*

Signature of Spouse or Other Person (Rights of Additional Parties) –

12 CFR § 1002.7(d)(6)

Regulatory Discussion

The sixth component of the fourth rule, paragraph (d)(6), "rights of additional parties," simply prohibits the creditor from imposing any requirements upon an additional party that the creditor is prohibited from imposing upon an applicant.

The commentary provides important guidance on *guarantees* and *spousal guarantees*.

Regulatory Text

(d) **Signature of spouse or other person**

(6) **Rights of additional parties.** A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

Regulatory Commentary

Paragraph 7(d)(6).

*1. **Guarantees.** A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.*

*2. **Spousal guarantees.** The rules in §1002.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with §1002.7(d)(2).*

Insurance – 12 CFR § 1002.7(e)

Regulatory Discussion

The sixth rule (§1002.7(e)) with respect to "insurance," simply prohibits a creditor from either: refusing to extend credit; and terminating an account; because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

The commentary provides safe harbor for *differences in terms* and *use of insurance information*.

Regulatory Text

(e) **Insurance.** A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

Regulatory Commentary

7(e) Insurance.

*1. **Differences in terms.** Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.*

*2. **Insurance information.** A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.*

Section 8: Special Purpose Credit Programs
12 CFR § 1002.8

Introduction

Omitted.

Section 9: Notifications
12 CFR § 1002.9

Introductory Commentary – 12 CFR § 1002.9

Regulatory Discussion

There are seven paragraphs, (a) through (g) which will be discussed in this Section.

The introductory commentary provides guidance on five topics: *use of the term "adverse action*;" treatment of *withdrawn applications*; determining *when "notification" occurs*; *location of the "notice;"* and treatment of *prequalification requests*.

Regulatory Text

None.

Regulatory Commentary

*1. **Use of the term adverse action.** The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by §1002.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.*

*2. **Expressly withdrawn applications.** When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under §1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. See §1002.12(b)(3).)*

*3. **When notification occurs.** Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.*

*4. **Location of notice.** The notifications required under §1002.9 may appear on either or both sides of a form or letter.*

*5. **Prequalification requests.** Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of §1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the* *consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.*

Notification of Action Taken (When Notification Required) – 12 CFR § 1002.9(a)(1)

Regulatory Discussion

Paragraph (a)(1) under §1002.9 requires a creditor to notify an applicant of *action taken* within the following specific timeframes:

- Within 30 days after receiving a completed application;
  - See the commentary for guidance on: timing of notice - when an application is complete; and notification of approval.
- Within 30 days after taking adverse action on an incomplete application;
  - See paragraph (c) for *notice alternatives* on incomplete applications.
  - See the commentary for guidance on: *incomplete application - denial for incompleteness* and *denial for reasons other than incompleteness*.
- Within 30 days after taking adverse action on an existing account; or
- Within 90 days after notification of a counteroffer if the applicant neither accepts nor uses the credit offered
  - See the commentary for guidance on: length of counteroffer; and counteroffer combined with adverse action notice.

Notification occurs when a creditor delivers or mails a notice to the applicant's last known address. In the case of an oral notification, notification occurs when the creditor communicates the credit decision to the applicant.

Note the commentary on *denial of a telephone application*. When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Regulatory Text

(a) **Notification of action taken, ECOA notice, and statement of specific reasons**

(1) **When notification is required.** A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Regulatory Commentary

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(1).

1. ***Timing of notice - when an application is complete.*** *Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)-6.)*

2. ***Notification of approval.*** *Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.*

3. ***Incomplete application - denial for incompleteness.*** *When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under §1002.9(c).*

4. ***Incomplete application - denial for reasons other than incompleteness.*** *When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or "incomplete application" cannot be given as the reason for the denial.*

5. ***Length of counteroffer.*** *Section 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.*

6. ***Counteroffer combined with adverse action notice.*** *A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with §1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C-4 of appendix C to the regulation.*

7. ***Denial of a telephone application.*** *When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.*

Notification of Action Taken (Content) – 12 CFR § 1002.9(a)(2)

Regulatory Discussion

Paragraph (a)(2) under §1002.9 requires the *notice of adverse action to be in writing* and must include the following information:

- A statement of the action taken;
- The name and address of the creditor;
- A statement of the provisions of 701(a) of the ECOA (see §1002.9(b)(1));
- The name and address of the creditor's Federal supervisory agency (see Appendix A);

and either:

- A statement of specific reasons for the action taken; *or*
- A disclosure of the applicant's right to a statement of specific reasons.

The Dodd-Frank Act amended section 615(a) of the FCRA to require that creditors disclose additional information on FCRA adverse action notices. The statute generally requires that a FCRA adverse action notice include:

- a numerical credit score used in making the credit decision;
- the range of possible scores under the model used;
- up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor);
- the date on which the credit score was created; and
- the name of the person or entity that provided the credit score.

Model Notices C-1 Through C-5

Model notices C-1 through C-5 may be used to comply with the adverse action provisions of both the ECOA and the FCRA. The Board amended these notices to incorporate the additional content requirements prescribed by the Dodd-Frank Act.

Contact Information for the Entity that Provided the Credit Score

The Board added optional language to the model forms that creditors may use to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Because this language is optional, creditors may use or not use the additional language without losing the safe harbor provided under Regulation B and the ECOA. Paragraph 2 of Appendix C is revised to clarify that the disclosure of the entity's contact information is optional.

Use of a Credit Score

In some cases, a creditor that is required to provide an adverse action notice under the FCRA may use a consumer report, but not a credit score, in taking the adverse action. The Dodd-Frank Act requires disclosure if a credit score was used in taking adverse action. A creditor that obtains a credit score and takes adverse action is required to disclose that score, unless the credit score played no role in the adverse action determination. If the credit score was a factor in the adverse action decision, even if it was not a significant factor, the creditor will have used the credit score for purposes of the regulation.

Disclosure that No Credit Score is Available

In some cases, a creditor may try to obtain a credit score for an applicant, but the applicant may have insufficient credit history for the consumer-reporting agency to generate a credit score. This change only applies when a creditor uses a credit score in taking adverse action. The creditor cannot disclose credit score information if an applicant has no credit score. Nothing in the Dodd-Frank Act prevents a creditor, however, from providing the applicant notice that no credit score was available from a consumer-reporting agency, although this is not required.

Key Factors

The Dodd-Frank Act expressly requires disclosure of the top key factors that adversely affected the credit score, whether or not the effect was substantial. A person taking adverse action must provide the consumer the required information. The FCRA requires disclosure of all of the key factors that adversely affected the credit score in the model used, up to four, subject to the FCRA, which states that if the key factors that adversely affected the credit score include the number of inquiries made with respect to the consumer report, the "number of inquiries" must be disclosed as a key factor.

The person taking adverse action is responsible for providing the credit score disclosure, including the key factors adversely affecting the credit score. If a creditor is using a credit score purchased from a consumer-reporting agency, the consumer-reporting agency is in the best position to identify the key factors that affected the score, and the creditor could rely on that information in its disclosure to consumers. Contractual arrangements between creditors and consumer reporting agencies may vary as to how creditors will receive the credit score information necessary to comply. The imposition of requirements on consumer reporting agencies is not within the scope of this rulemaking under the ECOA.

Disclosing Credit Score Information on a Separate Document

The FCRA requires a creditor to provide notice of adverse action to consumers against whom it takes adverse action based in whole or in part on information contained in a consumer report. The Dodd-Frank Act amended FCRA to require a creditor to provide such consumers credit score information. Providing a form with credit score information separately from an adverse action notice does not appear to be consistent with the legislation.

Co-applicants

Section 1002.9(f) of Regulation B permits a creditor to provide an adverse action notice to only one applicant, and requires a creditor to provide an adverse action notice to the primary applicant, when a primary applicant is readily apparent. In contrast, section 615(a) of the FCRA requires a creditor to provide the disclosures mandated by that section to "any consumer" against whom adverse action is taken, if the adverse action is based in whole or in part on information from a consumer report. The FCRA's reference to "any consumer" would seem to include co-applicants. Given privacy and member relations concerns, creditors would generally provide separate FCRA adverse action notices to each applicant with only the individual's credit score on each notice.

Guarantors and Co-Signers

An application may involve a guarantor or co-signer. Under Regulation B, only an applicant can experience adverse action. Further, a guarantor or co-signer is not deemed an applicant. The FCRA provides that adverse action has the same meaning for purposes of the FCRA as is provided in the ECOA and Regulation B in the context of a credit application. Therefore, a guarantor or co-signer would not receive an adverse action notice under the ECOA or the FCRA. The credit applicant would, however, receive an adverse action notice, even if the adverse action decision is made solely based on information in the guarantor's or co-signer's consumer report.

The Dodd-Frank Act does not address whether, in this circumstance, the adverse action notice received by an applicant under the FCRA should include a guarantor or co-signer's credit score. However, there is no intent that an individual receive another individual's credit score. The FCRA associates a credit score with a particular individual. A guarantor or co-signer's credit score should not be disclosed to an applicant in an adverse action notice.

Multiple Scores

Some creditors may obtain multiple credit scores from consumer reporting agencies in connection with their underwriting processes. A creditor may use one or more of those scores in taking adverse action. The Dodd-Frank Act only requires a person to disclose a single credit score used in taking adverse action.

When a creditor obtains multiple scores but only uses one in making the decision, the creditor must disclose the credit score that it used. The Dodd-Frank Act does not specify what credit score should be disclosed in such cases, but only requires a person to disclose a single credit score that is used by the person in making the credit decision. A creditor would comply with the statute by disclosing any of the credit scores that it used. Creditors should have policies and procedures to determine which of the multiple credit scores was used in taking adverse action. For instance, a creditor could have policies and procedures specifying that:

- when the creditor obtains or creates multiple credit scores but only uses one of those credit scores in taking adverse action, for example, by using the low, middle, high, or most recent score, the creditor would disclose that credit score and information relating to that credit score; and
- when a creditor uses multiple credit scores in taking adverse action, for example, by computing the average of all the credit scores obtained, the creditor would disclose any one of those credit scores and information relating to the credit score.

Because credit-scoring models may differ considerably in nature and the range of scores used, consumers would not necessarily benefit if they receive and try to compare multiple scores. Disclosing multiple credit scores could confuse consumers who do not understand the differences, which might lessen the value of the disclosures. Moreover, the Dodd-Frank Act requires the

Consumer Financial Protection Bureau (CFPB) to conduct a study of the different credit scoring systems, and whether these variations disadvantage consumers. The CFPB's study might develop a record that could serve as the basis for reconsidering this issue in a future rulemaking.

Adverse Actions Not Limited to Credit

Section 1002.2(c) of the ECOA limits the definition of adverse action to decisions regarding credit. The FCRA, however, does not include such a limitation. The FCRA therefore applies to adverse action decisions related to credit, but also decisions regarding, for example, a deposit account, insurance product, or employment. Although a credit score may generally be used in making or arranging loans, a credit score may also be used in taking adverse action not related to credit. A person would need to disclose a credit score obtained from a consumer reporting agency as part of the adverse action notice as set forth in the Dodd Frank Act, even if the person used the credit score to take adverse action for a non-lending product. In requiring credit score disclosures, the Dodd-Frank Act does not state that the credit score disclosures are only required for adverse action decisions related to credit.

FORM C-1—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS
Statement of Credit Denial, Termination or Change

Date: ____________________

Applicant's Name: ____________________
Applicant's Address:____________________
Description of Account, Transaction, or Requested Credit: ____________________
Description of Action Taken:____________________

Part I – PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.

This section must be completed in all instances.

____________________Credit application incomplete
____________________Insufficient number of credit references provided
____________________Unacceptable type of credit references provided
____________________Unable to verify credit references
____________________Temporary or irregular employment
____________________Unable to verify employment
____________________Length of employment
____________________Income insufficient for amount of credit requested
____________________Excessive obligations in relation to income
____________________Unable to verify income
____________________Length of residence
____________________Temporary residence
____________________Unable to verify residence
____________________No credit file
____________________Limited credit experience
____________________Poor credit performance with us
____________________Delinquent past or present credit obligations with others
____________________Collection action or judgment
____________________Garnishment or attachment
____________________Foreclosure or repossession
____________________Bankruptcy
____________________ Number of recent inquiries on credit bureau report
____________________Value or type of collateral not sufficient
____________________Other, specify:____________________

Part II— DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE.

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____________________Our credit decision was based in whole or in part on information obtained in a report from the consumer-reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer-reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name:____________________
Address: ____________________
[Toll-free] Telephone number: ____________________

___ [We also obtained your credit score from this Consumer-reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: ____________________

Date: ____________________

Scores range from a low of ______________ to a high of _______________

Key factors that adversely affected your credit score:

____

____

____

____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: ____

____

[Toll-free] Telephone number:____]]

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:
Creditor's name:____________________
Creditor's address:____________________
Creditor's telephone number:____________________

NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Regulatory Text

(a) **Notification of action taken, ECOA notice, and statement of specific reasons**

(2) **Content of notification when adverse action is taken.** A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.

Regulatory Commentary

None.

Notification of Action Taken (Business Applicants) – 12 CFR § 1002.9(a)(3)

Regulatory Discussion

With respect to _business applicants_, paragraph (a)(3) under §1002.9 provides distinction of notification requirements based on gross revenues.

For a business that had gross revenues of ***_$1 million or less_*** in its preceding fiscal year, a creditor shall generally provide notice of action taken according to paragraphs (a)(1) and (2), above.

Except:

The statement of action taken may be oral or written when adverse action is taken;

Disclosure of the applicant's right to a statement of reasons may be given at time of application (subject to conditions);

For telephone applications, the requirements of (a)(3)(i) may be satisfied by an oral statement.

For a business that had gross revenues over ***_$1 million_*** in its preceding fiscal year, a creditor shall generally

Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

Provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request within 60 days of notification.

The commentary provides significant information on notification to business applicants. Under "*manner of compliance*," a creditor may either follow the rules governing consumer credit or choose to treat all business applicants the same (irrespective to revenue size) and follow the requirements of §1002.9(a)(3)(i).

Regulatory Text

(a) **Notification of action taken, ECOA notice, and statement of specific reasons**

(3) **Notification to business credit applicants.** For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

(i) With regard to a **business that had gross revenues of $1 million or less** in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a **business that had gross revenues in excess of $1 million** in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

Regulatory Commentary

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(3).

1. ***Coverage.*** *In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in §1002.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in §1002.9(a)(3)(i) apply unless the application is for trade or similar credit.*
2. ***Trade credit.*** *The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.*
3. ***Factoring.*** *Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in §1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.*
4. ***Manner of compliance.*** *In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with §1002.9(a)(3)(i).*
5. ***Timing of notification.*** *A creditor subject to §1002.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of §1002.9(a)(1) is deemed reasonable in all instances.*

Form of ECOA Notice – 12 CFR § 1002.9(b)(1)

Regulatory Discussion

Paragraph (b)(1) under §1002.9 simple provides the ECOA notice content required in paragraph (a)(2).

Regulatory Text

(b) **Form of ECOA notice and statement of specific reasons**

(1) *ECOA notice*. To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in appendix A of this part].

Until January 1, 2013, a creditor may comply with this paragraph (b)(1) and paragraph (a)(2) of this section by including in the notice the name and address as specified by the appropriate agency in appendix A to 12 CFR part 202, as in effect on October 1, 2011.

Regulatory Commentary

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1. ***Substantially similar notice.*** *The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in §1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.*

Statement of Specific Reasons – 12 CFR § 1002.9(b)(2)

Regulatory Discussion

Paragraph (b)(2) under §1002.9 requires the statement of reasons for adverse action *be specific and indicate the principal reason(s)* for the adverse action.

The commentary provides significant information on the following topics:

- ***Number of specific reasons*:** more than four is not likely to be helpful to the applicant.
- ***Source of specific reasons*:** must relate to and accurately describe the factors considered or scored.
- ***Description of specific reasons*:** need not describe how or why a factor adversely affected an applicant.
- ***Credit scoring system*:** if used, the reasons disclosed must relate only to those factors actually scored.
- ***Credit scoring – method for selecting reasons*:** various methods may be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system.
- ***Judgmental system*:** if used, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

- ***Combined credit scoring and judgmental system*:** if used, the reasons for the denial must come from the component of the system that the applicant failed.
- ***Automatic denial*:** if used, the creditor must disclose that specific factor.

Combined ECOA-FCRA Disclosures

The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files.

- Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons.
- For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations.

The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor).

- Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit.

Sample forms C-1 through C-5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)-1.

Regulatory Text

(b) **Form of ECOA notice and statement of specific reasons**

(2) **Statement of specific reasons.** The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.

Regulatory Commentary

Paragraph 9(b)(2).

1. ***Number of specific reasons.*** *A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.*

2. ***Source of specific reasons.*** *The specific reasons disclosed under §§1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.*

3. ***Description of reasons.*** *A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."*

4. ***Credit scoring system.*** *If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.*

5. ***Credit scoring - method for selecting reasons.*** *The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.*

6. ***Judgmental system.*** *If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.*

7. ***Combined credit scoring and judgmental system.*** *If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)-1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.*

8. ***Automatic denial.*** *Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.*

9. ***Combined ECOA-FCRA disclosures.*** *The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example,*

if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C-1 through C-5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)-1.

Incomplete Application (Notice Alternatives) – 12 CFR § 1002.9(c)(1)

Regulatory Discussion

Paragraph (c)(1) under §1002.9 provides an alternative to the notice of action taken as described in paragraph (a)(1)(ii). The alternative "notice of incompleteness" is discussed in paragraph (c)(2).

Note the commentary does not allow use of the "notice of incompleteness" for preapprovals.

Regulatory Text

(c) **Incomplete applications**

(1) **Notice alternatives.** Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

Regulatory Commentary

9(c) Incomplete applications.

Paragraph 9(c)(1).

1. ***Exception for preapprovals.*** *The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under §1002.2(f).*

Incomplete Application (Notice of Incompleteness) – 12 CFR §

1002.9(c)(2)

Regulatory Discussion

Paragraph (c)(2) under §1002.9 provides the process for using the "notice of incompleteness" instead of using the notice of action taken described in paragraph (a)(1)(ii). The process to be followed is:

- If additional information is needed, the creditor shall send a *written notice*:
  - specifying the information needed,
  - designating a reasonable period of time for the applicant to provide the information, and
  - informing the applicant that failure to provide the information requested will result in no further consideration being given to the application.
- The creditor shall have no further obligation if the applicant fails to respond within the designated time period.
- If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a).

The commentary provides guidance on when a new application may be required.

Regulatory Text

(c) **Incomplete applications**

(2) **Notice of incompleteness.** If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

Regulatory Commentary

9(c) Incomplete applications.

Paragraph 9(c)(2).

1. ***Reapplication.*** *If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.*

Incomplete Application (Oral Request for Information) – 12 CFR § 1002.9(c)(3)

Regulatory Discussion

Paragraph (c)(3) under §1002.9 provides another option to *orally inform* the applicant of the need for additional information. If this option is chose, and the application remains incomplete, the creditor must send a notice of action taken according to paragraph (c)(1) – kind of like a "round robin game!"

Regulatory Text

(c) **Incomplete applications**

(3) **Oral request for information.** At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete, the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

Regulatory Commentary

9(c) Incomplete applications.

Paragraph 9(c)(3).

1. ***Oral inquiries for additional information.*** *If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§1002.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with §1002.9(a).*

Oral Notifications by Small-Volume Creditors – 12 CFR § 1002.9(d)

Regulatory Discussion

Paragraph (d) under §1002.9 allows a creditor, with 150 or fewer applications received during the preceding calendar year, the option to provide oral notice of action taken. We strongly oppose this approach.

Regulatory Text

(d) **Oral notifications by small-volume creditors**. In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

Regulatory Commentary

None.

Withdrawal of Approved Application – 12 CFR § 1002.9(e)

Regulatory Discussion

In the event an application is approved and the applicant has not inquired within 30 days, paragraph (e) under §1002.9 allows the creditor to treat the application as "withdrawn" and need not comply with the notice of action taken requirements in paragraph (a)(1).

When an applicant expressly withdraws a credit application, a creditor is not required to comply with the notification requirements of the regulation. The creditor must, however, comply with the record-retention requirements of the regulation.

Regulatory Text

(e) **Withdrawal of approved application.** When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

Regulatory Commentary

None.

Multiple Applicants – 12 CFR § 1002.9(f)

Regulatory Discussion

In the event an application involves more than one applicant, paragraph (f) under §1002.9 provides that the notice of action taken need only be given to the "primary applicant" (where one is readily apparent).

According to the FRB, there is no expectation of privacy between co-applicants or applicants and guarantors. One statement of reasons for adverse action that combines any negative information about the multiple parties is permissible.

NOTE: the FCRA differs on who must receive the notice of action taken when there are multiple applicants. The second quarter 2013 FRB Consumer Compliance Outlook (page 19) provides the following:

"In the case of multiple applicants under the FCRA, the statute has been interpreted to require notice to all consumers against whom adverse action is taken if the action taken was based information in a consumer report. If the applicants' credit scores were used in taking adverse action, each individual should receive a separate adverse action notice with the credit score and related disclosures associated with his or her individual consumer report; however, an applicant should not receive credit score information about a coapplicant. Regulation B does not prohibit delivery of an adverse action notice to each applicant. If applicable, financial institutions can provide a combined notice of adverse action to all consumer applicants to comply with multiple-applicant requirements under the FCRA, provided a credit score is not required for the adverse action notice because a score was not relied upon in taking adverse action."

Regulatory Text

(f) **Multiple applicants.** When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

Regulatory Commentary

None.

Applications Submitted Through a Third Party – 12 CFR § 1002.9(g)

Regulatory Discussion

In the event an application is submitted, by a third party, to more than one creditor, paragraph (g) under §1002.9 provides the following:

- If the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required.
- If no credit is offered, or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must provide a notice of action taken, directly or through a third party.
    - A notice of action taken given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

The commentary provides additional guidance.

Regulatory Text

(g) **Applications submitted through a third party.** When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

Regulatory Commentary

9(g) Applications submitted through a third party.

1. ***Third parties.*** *The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.*

2. ***Third party notice - enforcement agency.*** *If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.*

3. ***Third-party notice - liability.*** *When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.*

Appendix A to Part 1002—Federal Agencies to be Listed in Adverse Action Notices

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to § 1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. **Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates:** Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC 20006. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

2. To the extent not included in item 1 above:

    a. **National banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:** Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050

    b. **State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act:** Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

    c. **Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:** FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

    d. **Federal Credit Unions:** Omitted

3. **Air carriers:** Omitted.

4. **Creditors Subject to Surface Transportation Board:** Omitted.

5. **Creditors Subject to Packers and Stockyards Act:** Omitted.

6. **Small Business Investment Companies:** Omitted.

7. **Brokers and Dealers:** Omitted.

8. **Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations:** Omitted.

9. **Retailers, Finance Companies, and All Other Creditors Not Listed Above:** Omitted.

Section 10: Furnishing of Credit Information
12 CFR § 1002.10

Furnishing of Credit Information – 12 CFR § 1002.10

Omitted.

Section 11: Relation to State Law
12 CFR § 1002.11

Introduction

Omitted.

Section 12: Record Retention
12 CFR § 1002.12

Retention of Prohibited Information – 12 CFR § 1002.12(a)

Regulatory Discussion

This paragraph allows a creditor to retain "prohibited information" in the three circumstances listed in the regulatory text.

The commentary provides additional guidance on *receipt of prohibited information* and *use of retained information*.

Regulatory Text

(a) **Retention of prohibited information.** A creditor may retain in its files information that is prohibited by the Act or this part for use in evaluating applications, without violating the Act or this part, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this part or other Federal or state statutes or regulations.

Regulatory Commentary

12(a) Retention of prohibited information.

1. ***Receipt of prohibited information.*** *Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.*

2. ***Use of retained information.*** *Although a creditor may keep in its files prohibited information as provided in §1002.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by §1002.6.*

Preservation of Records – 12 CFR § 1002.12(b)

Regulatory Discussion

The introductory commentary to this paragraph provides important guidance on two topics:

- A paper copy of the original document (i.e., an adverse action notice) is not required to be maintained if the creditor can regenerate all of the pertinent information from a computerized or mechanized system.
- The written application is not required to be maintained if the creditor enters the information into a computerized or mechanized system and makes the credit decision mechanically.
    - Exception: if the transaction is subject to government monitoring information (GMI), as required by §1002.13, the personal characteristics must be retained in the computerized or mechanized system.

As a part of the Fair and Accurate Credit Transactions Act (FACT Act) of 2003, creditors can be sued for an FCRA violation up to five years after the date of the adverse action notice. You may wish to consult appropriate legal counsel regarding retention of adverse action notices beyond the 25 months stipulated by Regulation B.

Regulatory Text

None.

Regulatory Commentary

12(b) Preservation of records.

*1. **Copies.** Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.*

*2. **Computerized decisions.** A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with §1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to §1002.13 or the creditor is collecting information pursuant to §1002.5(a)(4), however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.*

Preservation of Records (Applications) – 12 CFR § 1002.12(b)(1)

Regulatory Discussion

This paragraph applies to applications for new credit and requires a creditor to retain:

- Applications received, information concerning applicant characteristics, and any other information (written or recorded) used in evaluating the application;

- Documentation of the notice of action taken and statement of reasons for adverse action; and
- Any written statement from the applicant alleging a violation of the ECOA or Regulation B.

This information must be retained for 25 months (12 months for business credit).

- Exception: See the special rule, in paragraph (b)(5), for business credit applications from to a business that had gross revenues in excess of $1 million in its preceding fiscal year.

Recall that the new paragraph (4) under §1002.5(a) is somewhat of a technical amendment that will permit a creditor to collect information that is specifically required by Regulation C (HMDA).

Regulatory Text

(b) **Preservation of Records**

(1) **Applications.** For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, any information obtained pursuant to §1002.5(a)(4), and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request.

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

Regulatory Commentary

None.

Preservation of Records (Existing Accounts) – 12 CFR § 1002.12(b)(2)

Regulatory Discussion

This paragraph applies to adverse action taken on existing accounts and requires a creditor to retain:

- Any written or recorded information concerning the adverse action; and
- Any written statement from the applicant alleging a violation of the ECOA or Regulation B.

This information must be retained for 25 months (12 months for business credit).

- **Exception:** See the special rule, in paragraph (b)(5), for business credit applications from to a business that had gross revenues in excess of $1 million in its preceding fiscal year.

Regulatory Text

(b) **Preservation of Records**

(2) **Existing accounts.** For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

Regulatory Commentary

None.

Preservation of Records (Other Applications) – 12 CFR § 1002.12(b)(3)

Regulatory Discussion

This paragraph applies to certain "other applications" that are not subject to the notification requirements of §1002.9 and include withdrawals and brokered applications. In these instances, the creditor shall retain all written or recorded information, including any notation of action taken, for 25 months (12 months for business credit).

- **Exception:** See the special rule, in paragraph (b)(5), for business credit applications from to a business that had gross revenues in excess of $1 million in its preceding fiscal year.

Regulatory Text

(b) **Preservation of Records**

(3) **Other applications.** For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of §1002.9,

the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

Regulatory Commentary

Paragraph 12(b)(3).

1. ***Withdrawn and brokered applications.*** *In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9-2.) In such cases, the 25-month requirement runs from the date of application, as when:*

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

Preservation of Records (Enforcement Actions) – 12 CFR § 1002.12(b)(4)

Regulatory Discussion

In the event a creditor is under investigation, subject to an enforcement proceeding for an alleged violation of the ECOA or Regulation B, or has been served with a notice of action pursuant to §1002.16, all relevant information must be retained until final disposition, unless an earlier time is allowed by order of the enforcement agency or court.

Regulatory Text

(b) **Preservation of Records**

(4) **Enforcement proceedings and investigations.** A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or if it has been served with notice of an action filed pursuant to section 706 of the Act and §1002.16 of this part. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Regulatory Commentary

None.

Preservation of Records (Certain Business Applications) – 12 CFR §

1002.12(b)(5)

Regulatory Discussion

This is the exception for record retention for businesses with gross revenues in excess of $1 million in its preceding fiscal year. Rather than retaining relevant information for 12 months, a creditor shall retain information on these businesses for at least 60 days after notice of action taken.

If within the 60 days the business applicant requests in writing the reason for adverse action (or that records be retained), the creditor shall then retain the records for 12 months.

Regulatory Text

(b) **Preservation of Records**

(5) **Special rule for certain business credit applications.** With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

Regulatory Commentary

None.

Preservation of Records (Self-Tests) – 12 CFR § 1002.12(b)(6)

Regulatory Discussion

Refer to §1002.15(b) for the definition of "self-test." All written or recorded information regarding a self-test shall be retained for 25 months.

- **Exception:** In the event a creditor is under investigation, subject to an enforcement proceeding for an alleged violation, or has been served with a notice of civil action:
  - All relevant information must be retained until final disposition, unless an earlier time is allowed by the appropriate agency or court order.

Regulatory Text

(b) **Preservation of Records**

(6) **Self-tests.** For 25 months after a self-test (as defined in §1002.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject

to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Regulatory Commentary

12(b)(6) Self-tests.

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

Preservation of Records (Prescreened Solicitations) – 12 CFR § 1002.12(b)(7)

Regulatory Discussion

This paragraph applies to "prescreened solicitations" (described as an "offer of credit" in the FCRA) and requires a creditor to retain:

- The text of any prescreened solicitation;
- The list of criteria used to select potential recipients; and
- Any correspondence related to complaints.

This information must be retained for 25 months (12 months for business credit).

- Exception: See the special rule, in paragraph (b)(5), for business credit applications from to a business that had gross revenues in excess of $1 million in its preceding fiscal year.

The commentary provides additional guidance.

Regulatory Text

(b) **Preservation of Records**

(7) **Prescreened solicitations.** For 25 months after the date on which an offer of credit is made to potential members (12 months for business credit, except as provided in paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

Regulatory Commentary

12(b)(7) Preapplication marketing information.

1. ***Prescreened credit solicitations.*** *The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an "offer of credit" as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.*

2. ***List of criteria.*** *A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.*

3. ***Correspondence.*** *A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.*

Section 13: Information for Monitoring Purposes 12 CFR § 1002.13

Information to be Requested – 12 CFR § 1002.13(a)

Regulatory Discussion

In the event an application is received:

- For the purchase or refinancing
- Of a "dwelling" (see (a)(2) for definition) occupied, or to be occupied, by the applicant
- As a principal residence
- Where the credit will be secured by the dwelling **the creditor shall request information regarding the applicant, including:**
- Ethnicity and race;
- Sex;
- Marital status; and
- Age

The commentary provides additional guidance on important topics to be considered in satisfying the requirements of this paragraph.

Regulatory Text

(a) **Information to be requested.**

(1) A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(i) Ethnicity and race using either:

(A) For ethnicity, the aggregate categories Hispanic or Latino and not Hispanic or Latino; and, for race, the aggregate categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White; or

(B) The categories and subcategories for the collection of ethnicity and race set forth in appendix B to 12 CFR part 1003.

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) **Dwelling** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

Regulatory Commentary

13(a) Information to be requested.

*1. **Natural person**. Section1002.13 applies only to applications from natural persons.*

*2. **Principal residence.** The requirements of §1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.*

*3. **Temporary financing.** An application for temporary financing to construct a dwelling is not subject to §1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to §1002.13.*

*4. **New principal residence.** A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of §1002.13.*

*5. **Transactions not covered.** The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.*

*6. **Refinancings.** A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.*

*7. **Data collection under Regulation C.** For applications subject to §1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex an applicant in compliance with the requirements of appendix B to 12 CFR part 1003 is acting in compliance with §1002.13 concerning the collection of an applicant's ethnicity, race, and sex information. See also comment 5(a)(2)-2.*

*8. **Application-by-application basis.** For applications subject to §1002.13(a)(1), a creditor may choose on an application-by-application basis whether to collect aggregate information pursuant to §1002.13(a)(1)(i)(A) or disaggregated information pursuant to §1002.13(a)(1)(i)(B) about the ethnicity and race of the applicant.*

Obtaining Information – 12 CFR § 1002.13(b)

Regulatory Discussion

If the information required under paragraph (a) is required, the creditor may either:

- List the questions on the application form; or
- Provide a separate form that refers to the application.

The applicant(s) is not required to supply the information. If the applicant(s) does not supply the information, the form shall indicate that choice.

The creditor is then obligated (to the extent possible) to provide the required information based on visual observation or surname of the applicant(s).

The commentary provides additional guidance on important topics to be considered in satisfying the requirements of this paragraph.

Failure to indicate the process under which the application was received can place the financial institution at a disadvantage during regulatory examinations or legal actions. Therefore, all lenders should be trained to complete the "application received by" information for every loan, every time.

Regulatory Text

(b) **Obtaining information.** Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname. When a creditor collects ethnicity and race information pursuant to §1002.13(a)(1)(i)(B), the creditor must comply with any restrictions on the collection of an applicant's ethnicity or race on the basis of visual observation or surname set forth in appendix B to 12 CFR part 1003. If there is more than one co-applicant, a creditor is permitted, but is not required, to collect the information set forth in paragraph (a) of this section from a second or additional co-applicant.

Regulatory Commentary

13(b) Obtaining of information.

*1. **Forms for collecting data.** A creditor may collect the information specified in §1002.13(a) either on an application form or on a separate form referring to the application. Appendix B to this part provides for two alternative data collection model forms for use in complying with the requirements of §1002.13(a)(1)(i) and (ii) to collect information concerning an applicant's ethnicity, race, and sex. When a creditor collects ethnicity and race information pursuant to §1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. When a creditor collects ethnicity and race information pursuant to §1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity* *designation and more than one racial designation.*

2. ***Written applications.*** *The regulation requires written applications for the types of credit covered by §1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.*

3. ***Telephone, mail applications.***

   i. A creditor that accepts an application by telephone or mail must request the monitoring information.

   ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

   iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4. ***Video and other electronic-application processes.***

   i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

   ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. ***Applications through loan-shopping services.*** *When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.*

6. ***Inadvertent notation.*** *If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by §1002.13, the creditor may process and retain the application without violating the regulation.*

Disclosure to Applicants – 12 CFR § 1002.13(c)

Regulatory Discussion

The creditor is also required to inform the applicant(s) that the information required under paragraph (a) is requested by the Federal Government in order to monitor compliance with anti-discrimination statutes. In addition, the creditor must inform the applicant(s) that if they choose not to provide the information, the creditor must note the information based on visual observation or surname.

The commentary provides guidance on *procedures for providing the disclosures*.

Appendix B provides data collection model forms for use in complying with § 1002.13 and that comply with § 1002.13(c).

Regulatory Text

(c) **Disclosure to applicant(s).** The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

Regulatory Commentary

13(c) Disclosure to applicants.

1. ***Procedures for providing disclosures.*** *The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B provides data collection model forms for use in complying with §1002.13 and that comply with §1002.13(c). A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.*

Substitute Monitoring Program – 12 CFR § 1002.13(d)

Regulatory Discussion

In certain circumstances, an enforcement agency may require a creditor to adopt a monitoring program to collect information in addition to what is required by this section.

Regulatory Text

(d) **Substitute monitoring program**. A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

Regulatory Commentary

13(d) Substitute monitoring program.

1. ***Substitute program.*** *An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.*

Section 14: Rules on Providing Appraisals and Other Valuations 12 CFR § 1002.14

Providing Appraisals and Valuations – 12 CFR § 1002.14(a)

Regulatory Discussion

This section requires creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly.

There are four main elements:

- Requires creditors to notify applicants within three business days of receiving an application of their right to receive a copy of appraisals used in connection with the application.
- Requires creditors to provide applicants a copy of each appraisal and other written valuation promptly upon its completion or three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.
- Permits applicants to waive the timing requirement for providing these copies. However, applicants who waive the timing requirement must be given a copy of all appraisals and other written valuations at or prior to consummation or account opening, or, if the transaction is not consummated or the account is not opened, no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.
- Prohibits creditors from charging for the copy of appraisals and other written valuations, but permits creditors to charge applicants reasonable fees for the cost of the appraisals or other written valuations unless applicable law provides otherwise.

Section 14 (§1002.14) includes paragraphs, (a)(1) through (5) and (b)(1) through (3) which will be discussed in this Section.

The introductory commentary provides guidance on providing the appraisal disclosure to multiple applicants.

Regulatory Text

None.

Regulatory Commentary

14(a) Providing appraisals and other valuations.

1. ***Multiple applicants.*** *If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under §1002.14(a)(1), but it must be the primary applicant where one is readily apparent.*

Providing Appraisals and Valuations (In General) – 12 CFR § 1002.14(a)(1)

Regulatory Discussion

In general, a creditor is required to provide a copy of all appraisals (including other written valuations) associated with a credit application that will be secured by a first lien on a dwelling.

- This requirement applies whether the credit is for business or consumer purpose.
- "Dwelling" is defined in paragraph (b)(2) of this section.

In addition, the copy of the appraisal (or other written valuation) must be provided the earlier of:

- Completion, or
- Three business days prior to consummation (closed-end credit), or
- Account opening (open-end credit).

Note: an applicant may waive these timing requirements and agree to receive the copy of the appraisal (or other written valuation) at or before consummation or account opening.

- The waiver generally must be received at least three business days prior to consummation or account opening.

Exceptions:

- If the appraisal (or other written valuation) contains clerical changes from a previous version that was provided to the applicant according to the timing requirements, a new waiver within three business days or account opening is not required.

- If a waiver is provided and the transaction is not consummated or the account is not opened, the copy of the appraisal (or other written valuation) must be provided to the applicant no later than 30 days after it is determined consummation or account opening will not occur.

Creditors must consider whether there is an "applicant" or "application" for an "extension of credit. While some loan modifications can be subject to the provisions of Regulation B, there is variation between different types of loss mitigation programs. The particulars of the program must be considered in evaluating whether there is an application or applicant for an extension of credit within the meaning of Regulation B. Accordingly, if those transactions would otherwise be covered by Regulation B, the requirements of this section would apply.

The commentary provides additional guidance on the following topics:

- When an applicant requests "*renewal"* of an existing credit
- What is meant by "*written*" appraisal or other written valuation
- Discussion on "*timing*" issues including the meaning of "provide," "deliver," and "promptly upon completion." Examples are included for "*promptly upon completion*."
- Discussion of the "*waiver*" requirements
- Discussion of "*multiple versions of appraisals or valuations*"

Regulatory Text

(a) Providing appraisals and other valuations

(1) **In general.** A creditor shall provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement in this paragraph (a)(1) and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

Regulatory Commentary

14(a)(1) In general.

1. ***Coverage.*** *Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in §1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).*

2. ***Renewals.*** *Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.*

3. ***Written.*** *For purposes of §1002.14, an "appraisal or other written valuation" includes, without limitation, an appraisal or other valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. See §1002.14(a)(5) regarding the provision of copies of appraisals and other written valuations to applicants via electronic means.*

4. ***Timing.*** *Section 1002.14(a)(1) requires that the creditor "provide" copies of appraisals and other written valuations to the applicant "promptly upon completion," or no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.*

   i. *For purposes of this timing requirement, "provide" means "deliver." Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in §1002.14(a)(5).*

   ii. *The application and meaning of the "promptly upon completion" standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.*

   iii. *"Completion" occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. See also comment 14(a)(1)-7.*

   iv. *In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under §1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.*

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided "promptly upon completion" as provided for in §1002.14(a)(1), unless the applicant has waived that deadline as provided under §1002.14(a)(1), in which case as provided for in §1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5. ***Promptly upon completion - examples.*** *Examples in which the "promptly upon completion" standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the "promptly upon completion" standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.*

   i. Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit). On day 15 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

   ii. Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit). An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. A week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation (or account opening). The creditor has provided the appraisal copy promptly upon completion.

   iii. Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit). The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

   iv. Delay in sending an appraisal. On day 12 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

   v. Delay in sending an AVM report while waiting for completion of a second valuation. The creditor receives an AVM report on day 5 after application and completes its review of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and the revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. ***Waiver.*** *Section 1002.14(a)(1) permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant's waiver is effective under §1002.14(a)(1) in either of the following two situations:*

   i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

   ii. If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under §1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7. ***Multiple versions of appraisals or valuations.*** *For purposes of §1002.14(a)(1), the reference to "all" appraisals and other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with §1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, then that version must be provided to the applicant to comply with §1002.14(a)(1). See also comment 14(a)(1)-4 above.*

Providing Appraisals and Valuations (Disclosure) – 12 CFR § 1002.14(a)(2)

Regulatory Discussion

Not later than the third business day after the creditor receives an application for credit (business or consumer purpose) that will be secured by a first lien on a "dwelling," the creditor must deliver the "right to receive a copy of appraisal" notice in writing.

In the event an application subsequently becomes subject to this notice requirement, the creditor shall deliver the notice no later than the third business day after it is determined that the loan will be secured by a first lien on a "dwelling."

There are two appraisal-related disclosure requirements for consumers. In the absence of regulatory action to harmonize the two provisions, creditors would be required to provide two appraisal-related disclosures to consumers for certain loans (i.e., a TILA and an ECOA disclosure for higher-risk mortgage loans secured by a first lien on a consumer's principal dwelling) and just one for certain others (i.e., an ECOA disclosure for first-lien, dwelling-secured loans that are not higher-risk mortgage loans, or a TILA disclosure for higher-risk mortgage loans secured by a subordinate lien).

As both disclosures were created by the same legislation to address overlapping subject matter, the CFPB revised the sample disclosure form C-9 for appraisals in Regulation B to include language to satisfy the new appraisal-related disclosure requirements of both ECOA and TILA. Thus, one disclosure satisfies both statutory requirements. The disclosure is as follows:

> *"We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost."*

Creditors may amend the language of form C-9 to reflect their individual policies and procedures. For example, a creditor may add a telephone number that applicants may call to provide information for appraisal mailing, or a notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.

Regulatory Text

(a) Providing appraisals and other valuations

(2) **Disclosure.** For applications subject to paragraph (a)(1) of this section, a creditor shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application. In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling.

Regulatory Commentary

14(a)(2) Disclosure.

1. ***Appraisal independence requirements not affected.*** *Nothing in the text of the disclosure required by §1002.14(a)(2) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or the use of applicant-ordered appraisals by creditors.*

Providing Appraisals and Valuations (Reimbursement) – 12 CFR § 1002.14(a)(3)

Regulatory Discussion

A fee to provide the copy of the appraisal (or other written valuation) may not be assessed. The creditor, however, may be reimbursed for the actual cost of the appraisal (or other written valuation).

Creditors are not prohibited from charging a fee reasonably designed to reimburse costs incurred in connection with obtaining appraisal and other valuation services, but are prohibited from increasing the fee for the appraisal or other valuation to cover costs of providing documentation. The appraisal fees must be reasonable and customary in the market area where the property is located. Accordingly, the CFPB stated that it believed that the applicable TILA section is simply designed to prevent direct or indirect "upcharging" related to the provision of documents.

The CFPB included a clarifying comment that other laws may separately prohibit creditors from charging fees to reimburse the costs of appraisals, and these laws are not overridden by TILA. The Dodd-Frank Act requires creditors to obtain a second interior appraisal in connection with certain higher-risk mortgages, but prohibits creditors from charging applicants for the cost of the second appraisal.

The specific types of charges that are prohibited under the regulation include charges such as photocopying fees and postage for mailing a copy of appraisals or other written valuations. The regulation does not limit the recoverability of Appraisal Management Company (AMC) charges. Creditors may not increase the base cost of obtaining an appraisal or valuation to cover the cost of providing the copy to the applicant/borrower.

The final rule does not affect the ability of creditors to request up-front payment from applicants before appraisals or other written valuations are ordered (which would protect creditors even if the application is withdrawn, incomplete, or denied), to collect payment at consummation or account opening, or to undertake other efforts to collect the fee if the transaction is not consummated or the account is not opened.

The commentary provides additional information.

Regulatory Text

(a) Providing appraisals and other valuations

(3) **Reimbursement.** A creditor shall not charge an applicant for providing a copy of appraisals and other written valuations as required under this section, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

Regulatory Commentary

14(a)(3) Reimbursement.

1. ***Photocopy, postage, or other costs.*** *Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).*

2. ***Reasonable fee for reimbursement.*** *Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under §1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).*

Providing Appraisals and Valuations (Withdrawn, Denied, or Incomplete Applications) – 12 CFR § 1002.14(a)(4)

Regulatory Discussion

The requirement to provide a copy of the appraisal (or other written valuation) applies whether the credit is extended, denied, or withdrawn.

Creditors are required to provide copies of appraisals and other written valuations even in situations where an applicant provides only an incomplete application.

Regulatory Text

(a) Providing appraisals and other valuations

(4) **Withdrawn, denied, or incomplete applications.** The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

Regulatory Commentary

None

Providing Appraisals and Valuations (Copies in Electronic Form) – 12 CFR § 1002.14(a)(5)

Regulatory Discussion

The copy of the appraisal (or other written valuation) may be provided in electronic form as long as the creditor has received the applicant's consent and is in compliance with other applicable provisions of the E-Sign Act.

Regulatory Text

(a) Providing appraisals and other valuations

(5) **Copies in electronic form.** The copies required by §1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

Regulatory Commentary

None.

Definitions (Consummation) – 12 CFR § 1002.14(b)(1)

Regulatory Discussion

The definition of "*consummation*" is a matter of state law that determines when a consumer becomes contractually obligated on a closed-end credit transaction.

Regulatory Text

(b) **Definitions.** For purposes of paragraph (a) of this section:

(1) **Consummation.** The term "consummation" means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

Regulatory Commentary

14(b)(1) Consummation.

1. ***State law governs.*** *When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; §1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.*

2. ***Credit vs. sale.*** *Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.*

Definitions (Dwelling) – 12 CFR § 1002.14(b)(2)

Regulatory Discussion

"*Dwelling*," as used in this section, means a residential structure that contains one to four units, whether or not it is attached to real property.

The motor vehicle exclusion is limited to this section and is not a pronouncement on whether boats, trailers, recreational vehicles, campers, or motor vehicles would otherwise fall within the definition of "dwelling" in other provisions of Regulation B.

The definition of "dwelling" in this section requires that the unit be a "residential structure", but does not require that it be "owner-occupied." As a result, the requirements of the final rule can apply to transactions involving one-to-four-unit residential structures that may be business or commercial in nature, including for investment purposes.

Regulatory Text

(b) **Definitions.** For purposes of paragraph (a) of this section:

(2) **Dwelling.** The term "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

Regulatory Commentary

14(b)(2) Dwelling.

1. *"Motor vehicles" not covered. The requirements of §1002.14 do not apply to "motor vehicles" as defined by 12 U.S.C. 5519(f)(1).*

Definitions (Valuation) – 12 CFR § 1002.14(b)(3)

Regulatory Discussion

"Valuation," as used in this section, means any estimate of value of a "dwelling" associated with an application for credit (business or consumer purpose) that will be secured by a "dwelling."

For clarity and consistency, the CFPB makes clear that an internal creditor valuation must be disclosed, regardless of whether a third-party appraisal report is prepared.

The commentary provides examples of "*valuations*" and guidance on "*attachments and exhibits*" and "*other documentation*."

Regulatory Text

(b) **Definitions.** For purposes of paragraph (a) of this section:

(3) **Valuation.** The term "valuation" means any estimate of the value of a dwelling developed in connection with an application for credit.

Regulatory Commentary

14(b)(3) Valuation.

*1. **Valuations - examples.** Examples of valuations include but are not limited to:*

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value or opinion of value.

ii. A document prepared by the creditor's staff that assigns value to the property.

iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

iv. A report generated by use of an automated valuation model to estimate the property's value.

v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

*2. **Attachments and exhibits.** The term "valuation" includes any attachments and exhibits that are an integrated part of the valuation.*

*3. **Other documentation.** Not all documents that discuss or restate a valuation of an applicant's property constitute a "valuation" for purposes of §1002.14(b)(3). Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not "valuations" include but are not limited to:*

i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

ii. Governmental agency statements of appraised value that are publically available.

iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

iv. Manufacturers' invoices for manufactured homes.

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

Section 15: Incentives for Self-Testing and Self-Correction
12 CFR § 1002.15

Voluntary Self-Testing and Correction - 12 CFR § 1002.15

Omitted.

Section 16: Enforcement, Penalties and Liabilities 12 CFR § 1002.16

Introduction

Omitted.

Appraisals and Evaluation FAQs

Community Banker for Compliance

Third Quarter (Q3) 2024

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Section 1: Appraisal & Evaluation Guidelines

Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines October 16, 2018

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing these frequently asked questions (FAQs) in response to questions raised regarding the agencies' appraisal regulations and guidance. These FAQs do not introduce new policy or guidance but assemble previously communicated policy and interpretations. The FAQs focus on, and should be reviewed in conjunction with, the agencies' appraisal regulations issued under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI), the real estate lending standards, the December 2010 *Interagency Appraisal and Evaluation Guidelines* (Valuation Guidelines), and the March 2016 *Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions* (Evaluations Advisory). Institutions should also be aware of other regulations and guidance related to appraisals, which these FAQs do not address.

Appraisal & Evaluation Programs

1. **Why does a financial institution need a program for establishing the market value of real property?**

   Answer: Financial institutions should have a program for valuing real property to ensure they are engaging in real estate-related lending in a safe and sound manner and in compliance with Title XI and the agencies' appraisal regulations.

   Lending secured by real estate is a large part of many financial institutions' business plans and is important to the communities served by those institutions. Lessons learned from past crises have shown that poorly managed real estate lending programs, including the failure to properly value real estate that secures transactions, can result in higher loan losses, reduced profitability, and bank failures.

   In light of these problems, Congress adopted Title XI, requiring financial institutions to obtain appraisals prepared by state-certified or state-licensed appraisers for all federally related transactions (FRTs) and requiring the agencies to issue regulations relating to such appraisals.

   Congress expanded Title XI and adopted new provisions relating to appraisals in the Dodd-Frank Act after the 2008 financial crisis.

2. **What regulations are applicable to appraisal and evaluation programs?**

   Answer: The agencies have issued appraisal regulations as required by Title XI for the performance of real estate appraisals in connection with FRTs. These regulations prescribe which real estate-related financial transactions require the services of an appraiser, identify which categories of FRTs must be appraised by a state-certified appraiser and which by a state- licensed appraiser, and prescribe minimum standards for the performance of real estate appraisals in connection with FRTs.

   Financial institutions should also be aware of and comply with two additional rules that apply specifically to residential mortgage loans secured by a consumer's principal dwelling – the HPML Appraisal Rule and the IFR on Valuation Independence. In addition, the agencies adopted regulations regarding real estate lending standards pursuant to section 304 of the Federal Deposit Improvement Act of 1991, which requires banks and federal savings associations to adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by real estate.

   The *Interagency Guidelines for Real Estate Lending Policies*, which were promulgated as an appendix to the real estate lending standards, were issued to assist financial institutions in formulating and maintaining appropriate real estate lending policies in accordance with the regulations. The agencies' real estate lending standards provide that each financial institution's written policies must be consistent with safe and sound lending practices, and must ensure that the financial institution operates within limits and according to standards that are reviewed and approved by the financial institution's board of directors.

3. What types of transactions require an appraisal?

Answer: The agencies' Title XI appraisal regulations require an appraisal performed by a state- certified or state-licensed appraiser for all FRTs. All real estate-related financial transactions engaged in by financial institutions are FRTs unless the transactions are exempt from the appraisal requirements of the appraisal regulations.

The agencies' Title XI appraisal regulations require an evaluation that is consistent with safe and sound banking practices for certain exempt transactions. The Title XI appraisal regulations apply to both commercial and residential transactions; however, for financial institutions the threshold above which an appraisal is required is different for residential transactions, commercial real estate transactions, and qualifying business loans.

As discussed in the Valuation Guidelines, a financial institution's appraisal policy and practices may differ by transaction type. The financial institution should consider the type and complexity of the transaction when ordering appraisals, selecting appraisers, and reviewing appraisals. Moreover, for all lending activity, a financial institution should ensure that independence is maintained when ordering appraisals, selecting appraisers, and reviewing appraisals.

4. What is the purpose of the Valuation Guidelines, and do all financial institutions' valuation programs have to meet every aspect of the Valuation Guidelines?

Answer: The Valuation Guidelines are not regulations and do not prescribe a set of requirements that financial institutions must meet, nor do they represent a checklist or a "one size fits all" approach to supervising financial institutions. Instead, the Valuation Guidelines describe a framework to assist financial institutions in complying with the agencies' appraisal regulations and real estate lending standards.

A financial institution's valuation program should be commensurate with the complexity and nature of its real estate lending activities, risk profile, and business model, and must comply with applicable laws and regulations. For example, a financial institution that engages primarily in owner-occupied real estate lending in its local market area should tailor its valuation program to reflect the size and nature of the loans and collateral. In contrast, a financial institution that engages in significant commercial real estate lending or large acquisition, development, and construction (ADC) projects should tailor its valuation program for these types of higher risk transactions.

5. **Should a financial institution review all appraisals and evaluations?**

   Answer: As part of the credit approval process and prior to making a final credit decision, a financial institution should review appraisals and evaluations to confirm that they comply with the agencies' appraisal regulations and the financial institution's internal policies.

   Reviewers should be independent of the transaction and have no direct or indirect interest in the property or transaction, and be independent of and insulated from any influence by loan production staff. Additionally, as reflected in supervisory guidance, the reviews should confirm that an appraisal or evaluation contains sufficient information and analysis to support the market value conclusion and the decision to engage in the transaction.

   The depth of the review should be commensurate with the risk of the transaction. Valuations supporting lower risk transactions may warrant a less robust review, while valuations supporting higher risk transactions with complex or specialized collateral, such as large ADC projects, may warrant a more robust review.

6. **What cost-effective actions can a smaller financial institution take to implement an appraisal and evaluation review program that meets the standards for independence in the agencies' appraisal regulations?**

   Answer: A small financial institution with limited staff should implement practical safeguards for reviewing appraisals and evaluations when absolute lines of separation between the collateral valuation program and loan production process cannot be achieved. Small financial institutions could have loan officers, other employees, or directors review an appraisal or evaluation, but those individuals should be appropriately qualified, independent of the transaction, and should abstain from any vote or approval related to such loans.

   To the extent that a financial institution is involved in real estate transactions that are complex, out of market, or otherwise exhibit elevated risk, management should assess the level of in-house expertise available to review appraisals or evaluations associated with these types of transactions. If the expertise is not available in-house, the financial institution may find it appropriate to evaluate alternatives, such as outsourcing of the review process, for ensuring that effective and independent reviews are performed.

   For transactions subject to the IFR on Valuation Independence, institutions must comply with the provisions of that rule.

Appraisal Exemptions

7. **When is it appropriate for financial institutions to use the "abundance of caution" exemption?**

Answer: The abundance of caution exemption may only be used in those transactions where a borrower qualifies for an extension of credit based on the strength of the associated cash flow or non-real estate collateral, and knowledge of the market value of the real estate collateral taken as security for the transaction is unnecessary in making the credit decision. The financial institution's credit analysis should clearly document and verify that the credit decision was well supported by repayment sources other than real estate collateral. For transactions that meet the abundance of caution exemption, neither an appraisal nor an evaluation is required. Refer to the following examples.

Example 1: Commercial and Industrial Cash Flow Loan. A financial institution extends a commercial business line of credit to a heating and cooling repair business. The financial institution holds the owner's personal guaranty and has taken a security interest in an investment property owned by the guarantor. The financial institution's credit analysis determines that cash flow from business operations has generated sufficient debt service coverage. The guarantor's global cash flow also reflects sufficient debt service coverage, and the guarantor maintains a strong liquid asset position. All of the borrower's other credit attributes are satisfactory. The financial institution's credit analysis has verified and documented that the financial institution would have made the loan without knowledge of the market value of the real estate. Based on the borrower's overall creditworthiness and the sufficiency of cash flow generated by the business to cover the debt service on the loan, the security interest in the real estate can be considered an abundance of caution.

Example 2: Loan Secured by Other Collateral. A financial institution extends a term loan to a construction company to purchase equipment used in the construction business and secures the loan with a lien on the equipment and the borrower's headquarters building. The real estate lien can be considered an abundance of caution if, for example, the value of the equipment adequately secures the outstanding balance of the loan and the borrower's global cash flow provides for repayment of the loan. In such a case, the cash flow from the operation of the business is the primary source of repayment for the loan and the equipment is the secondary source of repayment. All of the borrower's other credit attributes are satisfactory. The financial institution's credit analysis verified and documented that the financial institution would have made the loan without knowledge of the market value of the real estate.

Prior to making a final commitment to the borrower, the financial institution should document and retain in the credit file the analysis performed to verify that the abundance of caution exemption has been appropriately applied. If the operating performance or financial condition of the borrower subsequently deteriorates and the financial institution determines that the real estate will be relied upon as a repayment source, an appraisal should then be obtained, unless another exemption applies.

8. **Does a financial institution always need to obtain a new appraisal or evaluation for a renewal of an existing loan at the financial institution, particularly where the property is located in a market that has not changed materially?**

Answer: No. A financial institution may use an existing appraisal or evaluation to support the renewal of an existing loan at the financial institution when the market value conclusion within the appraisal or evaluation remains valid.

Validating the market value conclusion of the real property is a fact-specific determination, based on market conditions, property condition, and nature of the transaction. As described in the Valuation Guidelines, a financial institution should establish criteria for validating an existing appraisal or evaluation in its written valuation policies. The criteria should consider factors that could impact the market value conclusion in the existing appraisal or evaluation, such as: the volatility of the local market; changes in terms and availability of financing; natural disasters; supply of competing properties; improvements to the subject or competing properties; lack of maintenance on the subject or competing properties; changes in underlying economic and market assumptions, such as capitalization rates and lease terms; changes in zoning, building materials, or technology; environmental contamination; and the passage of time. Regarding this last factor, there is no provision in the agencies' appraisal regulations specifying the useful life of an appraisal or evaluation.

The financial institution must also consider whether an appraisal or an evaluation is required for the transaction. The agencies' appraisal regulations require an evaluation for transactions involving an existing extension of credit at the financial institution when either (1) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the real estate collateral protection after the transaction, even with the advancement of new money, or (2) there is no advancement of new money, other than funds necessary to cover reasonable closing costs. Alternatively, a financial institution could choose to obtain an appraisal, although only an evaluation is required. For example, an institution may choose to obtain an appraisal to achieve a higher level of risk management or to conform to internal policies.

In the context of renewal transactions, whether there has been a material change in market conditions may affect both whether an appraisal or evaluation is required and whether an existing appraisal or evaluation remains valid. A financial institution can assess whether there has been a "material change" in market conditions by considering the factors detailed above for validating an existing appraisal or evaluation. When there has been an obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the real estate collateral protection, the existing appraisal or evaluation is no longer valid. In such situations, if no new money is advanced, a financial institution must obtain a new evaluation, or may choose to satisfy the agencies' appraisal regulations by obtaining a new appraisal.

However, if new money is advanced, a financial institution must obtain a new appraisal unless another exemption from the appraisal requirement applies. Refer to the following examples.

Example 1. A financial institution originated a revolving line of credit for a specified term, and at the end of the term, renews the line for another specified term with no new money advanced. The financial institution's credit analysis concluded that there had been a material change in market conditions or the physical aspects of the property that threatened the adequacy of the real estate collateral protection. Based on this conclusion, the financial institution could not validate an existing appraisal or evaluation to support the transaction.

The agencies' appraisal regulations would require an evaluation, rather than an appraisal, because no new money was advanced, even though the financial institution concluded there is a threat to the adequacy of the collateral protection. Alternatively, the financial institution could choose to obtain a new appraisal, although only an evaluation would be required.

Example 2. A financial institution originated an ADC loan and, at maturity, renewed the loan and advanced new money that exceeded the original credit commitment. The financial institution's credit analysis concluded that a material change in market conditions or the physical aspects of the property threatened the adequacy of the real estate collateral protection. Based on this conclusion, the financial institution could not validate an existing appraisal or evaluation to support the transaction. The agencies' appraisal regulations would require an appraisal to support the transaction, because the financial institution advanced new money and concluded there is a threat to the adequacy of the real estate collateral protection.

Example 3. Consider the same scenario in ***Example 2*** above; however, the financial institution's credit analysis concluded that there had not been a material change in market conditions or physical aspects of the property that threatened the adequacy of the real estate collateral protection. Based on this conclusion, the agencies' appraisal regulations would require an appropriate evaluation to support the transaction. The financial institution could use a valid existing evaluation or appraisal, or could choose to obtain a new evaluation to support the transaction. Alternatively, a financial institution could choose to obtain a new appraisal, but a new appraisal would not be required.

Example 4. A financial institution originated a balloon mortgage secured by a single-family residential property. At the end of the term, the financial institution renews the balance of the mortgage for another term, with no new money advanced. The financial institution's credit analysis concluded that there had not been a material change in market conditions or the physical aspects of the property that threatened the adequacy of the real estate collateral protection. Based on this conclusion, the agencies' appraisal regulations would require the financial institution to obtain an appropriate evaluation to support the transaction. The financial institution could use a valid existing evaluation or appraisal, or could choose to obtain a new evaluation to support the transaction. Alternatively, the financial institution could choose to obtain a new appraisal, although a new appraisal would not be required.

Financial institutions should consider the risk posed by transactions that do not require new appraisals or evaluations and may consider obtaining a new appraisal or evaluation based on the financial institution's risk assessment. In addition, financial institutions making HPMLs must ensure compliance with the HPML Appraisal Rule.

9. When engaging in a renewal transaction, how can a financial institution document the validity of an existing appraisal or evaluation?

Answer: A financial institution should document the assessment of the validity of an existing appraisal or evaluation in the credit file. The documentation should detail the facts and analysis to support the financial institution's determination that the market value conclusion of the collateral can be used to support the subsequent transaction. The level of detail for the assessment of the validity of appraisals or evaluations in the credit file could vary in accordance with the transaction type. For example, documentation for a renewal of a residential mortgage loan may be less detailed than for a residential tract development loan or commercial property.

10. Are real estate transactions secured by farmland eligible for the $1 million exemption for certain business loans?

Answer: Yes, real estate transactions secured by farmland are eligible for the $1 million exemption if they meet the regulatory requirements. The agencies appraisal regulations establish a $1 million threshold above which appraisals are required for business loans that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment (qualifying business loans). A loan secured by farmland could be treated as a qualifying business loan and be eligible for the corresponding $1 million threshold if repayment is primarily from the proceeds from the farm business (for example, sale of crops and related payments).

However, a loan secured by farmland whose repayment is primarily from rental income from renting or leasing the farmland to a non-affiliated entity would not be eligible for the qualifying business loan threshold. Transactions secured by multiple farmland properties that are owned by one or more affiliated limited liability companies could meet the qualifying business loan exemption, if they meet the source of repayment requirements provided in the appraisal regulations.

Appraisals and Evaluations

11. What information should be contained in an evaluation?

Answer: The agencies' appraisal regulations require evaluations to be appropriate for the transaction and consistent with safe and sound banking practices, but do not specifically define the content to support the evaluation. As explained in the Valuation Guidelines, an evaluation should contain sufficient information detailing the analysis, assumptions, and conclusions to support the credit decision. An evaluation's content should be documented in the credit file or reproducible. An evaluation should include sufficient information to identify the property, address the property's actual physical condition, and detail the analysis, assumptions, and conclusions that support the market value conclusion. The level of detail documented in the evaluation should reflect the risk in the transaction. For example, in general, an evaluation for most residential properties could be less detailed than evaluations for commercial properties.

When developing policies and procedures regarding supplemental information that a financial institution will require to develop an evaluation, the financial institution should be aware that some valuation assignments, such as for properties in rural areas or non-disclosure states or properties that are not sufficiently similar to other properties in the local market, may be more challenging to value due to a lack of comparable sales data.

Although the sales comparison approach is the most used valuation method, in areas where there have been few, if any, recent comparable sales of similar properties in reasonable proximity to the subject property, the person who performs an evaluation may consider alternative valuation methods and other information for developing an evaluation and supporting a market value conclusion.

For example, the cost approach to valuing real property might be an appropriate valuation approach, particularly if the property is newer construction. Similarly, for an income producing or rental property, the income approach could be appropriate to support a market value conclusion in an evaluation.

12. When would a financial institution be able to use a tax assessment valuation (TAV) in the development of an evaluation?

Answer: A financial institution could use a TAV as a component in the development of an evaluation when it demonstrates a valid correlation between the TAV and the market value of the property by:

- Determining and documenting how the tax jurisdiction calculates the TAV and how frequently property revaluations occur;
- Performing an analysis to determine the relationship between the TAV and market values for properties within a tax jurisdiction; and
- Testing and documenting how TAVs correlate to market value based on contemporaneous sales at the time of assessment and revalidating whether the correlation remains stable as of the effective date of the evaluation.

A TAV with a valid correlation analysis could be used, along with other supporting information appropriate to the type of transaction, to prepare an evaluation and develop a market value conclusion. A TAV is not, in and of itself, an alternative to an evaluation. As with all evaluations, transactions that rely heavily on a TAV as part of the evaluation process should describe and document the method(s) the financial institution used to confirm the property's actual physical condition and the extent to which an inspection was performed.

Financial institutions should establish policies and procedures that specify the supplemental information that is required to develop an evaluation supported by a TAV. A financial institution should be able to demonstrate that such an evaluation provides a credible market value conclusion and supports the financial institution’s decision to enter into a transaction.

13. If a financial institution engages in a FRT with an intermediate lender, such as a warehouse lender, in which the financial institution extends credit to the intermediate lender collateralized by the intermediate lender’s real estate-related transactions with third parties, can the financial institution accept appraisals ordered by the intermediate lender to support the value of the underlying real estate collateral?

Answer: Yes, the financial institution may accept the appraisals from the intermediate lender, provided the intermediate lender is a financial services institution, the appraiser has no direct or indirect interest in the property or the transaction, *and* the other requirements of the appraisal regulations are fulfilled.

14. Can a financial institution approve a residential or commercial real estate loan subject to receipt and review of an appraisal or evaluation, or must the appraisal or evaluation be obtained and reviewed prior to making the final decision?

Answer: A financial institution may grant conditional approvals to prospective borrowers before obtaining an appraisal or evaluation. However, a final credit decision or action should only occur after the financial institution receives, reviews, and accepts the appraisal or evaluation.

15. The work-out plan on a problem loan calls for a financial institution to receive an assignment of a note secured by a deed of trust on a different property. Is this transaction considered a real-estate-related financial transaction and is an appraisal required on the collateral property?

Answer: Yes, this transaction is considered a real-estate-related financial transaction. The agencies' appraisal regulations require an evaluation in certain loan workout situations. In such situations, although only an evaluation would be required, the financial institution could choose to obtain a new appraisal.

Independence

16. A financial institution plans to make a construction loan to a tract developer to build multiple homes. Is it permissible for the developer to order appraisals on the properties to support the construction loan request? Could the developer select an appraiser from the lender's approved appraiser list and in turn submit the appraiser's name to potential permanent lenders?

Answer: No, the financial institution may not accept a borrower-ordered appraisal and may not allow the borrower to select an appraiser from its approved appraiser list.

17. Are appraisers required to disclose whether they have been engaged to appraise a given property in the past?

Answer: The agencies' appraisal regulations do not specifically require that the financial institution obtain information from appraisers as to whether an appraiser has previously appraised a given property. However, the regulations do require that all appraisals conform to Uniform Standards of Professional Appraisal Practice (USPAP), and USPAP requires that an appraiser disclose any services regarding a given property performed by the appraiser within the three-year period immediately preceding acceptance of an assignment, as an appraiser or in any other capacity. The agencies' appraisal regulations also require a financial institution, when engaging a fee appraiser, to confirm that the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The financial institution should ask relevant questions of an appraiser to confirm that the appraiser is independent of the transaction and capable of rendering an unbiased opinion.

18. **Can a staff appraiser or an appraisal company affiliated with the financial institution be considered independent, since the financial institution compensates them?**

    Answer: Yes, if a staff appraiser prepares an appraisal, that appraiser must be independent of the loan production function and not involved in the approval of the transaction. Staff appraisers must not have any direct or indirect interest in the property or transaction. Likewise, when fee appraisers from an affiliated appraisal company prepare appraisals, such fee appraisers must not have any direct or indirect interest in the property or transaction. For transactions subject to the IFR on Valuation Independence, institutions must refer to that rule for the circumstances under which a staff appraiser or appraisal company affiliated with the creditor would not be considered to have a conflict of interest based on the person's employment or affiliate relationship with the creditor.

19. **May a financial institution accept an appraisal prepared by an appraiser who was engaged by the loan broker for the transaction?**

    Answer: The agencies' appraisal regulations allow a financial institution to accept an appraisal prepared by an appraiser engaged by another financial services institution, including a loan broker, as long as the appraiser has no direct or indirect interest, financial or otherwise, in the property or transaction and the appraisal conforms to the requirements of the regulations and is otherwise acceptable. Financial institutions should review broker-ordered appraisals thoroughly to confirm that the appraisal complies with the regulations and meets the quality standards required by the financial institution's appraisal policies. For transactions subject to the IFR on Valuation Independence, institutions must refer to that rule for the circumstances under which the loan broker ordering the appraisal would not be considered to have a conflict of interest as a result of performing multiple settlement services for the transaction.

20. **May an appraisal be routed from one financial institution to another financial institution via the borrower?**

    Answer: A financial institution should not accept an appraisal from the borrower. However, the borrower can inform the financial institution that there is an existing appraisal. Prior to accepting an appraisal from another financial institution, the institution should confirm that the appraiser is independent of the transaction, the appraiser was engaged directly by the other financial institution, and the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable.

21. **May an appraiser deliver an appraisal report to more than one lender assuming the appraisal has been ordered by one of the lenders?**

Answer: The agencies' appraisal regulations do not address whether an appraiser can deliver an appraisal report to more than one lender. The case may depend upon the provisions of the engagement letter. For example, the lender may specify in the engagement letter that the appraisal may be provided to another financial institution if the lender decides not to go forward on the loan. In the case of a syndicated loan, a lead lender is usually responsible for engaging the appraiser and providing copies of the appraisal to the other participating financial institutions. With regard to standards of confidentiality, USPAP directs an appraiser to be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

22. May a financial institution accept a transferred appraisal prepared by an appraiser who had an affiliated business relationship with the financial services institution that originally ordered the appraisal?

Answer: The affiliated business relationship between the financial services institution and the fee appraiser does not violate the independence requirement of the agencies' appraisal regulations, provided the fee appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The financial institution receiving the appraisal should confirm that the appraiser is independent of the transaction and that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable. For transactions subject to the IFR on Valuation Independence or the HPML Appraisal Rule, institutions should confirm that the appraisal complies with those rules.

23. How can a financial institution confirm appraiser independence when accepting an appraisal prepared for another financial services institution?

Answer: Documentation (such as an engagement letter) should be available to indicate that the financial services institution (not the borrower) ordered the appraisal and that the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The original lender's engagement letter to the appraiser should be included in the credit file. For transactions subject to the IFR on Valuation Independence, an institution's documentation should be available to indicate that the requirements of that rule are met.

Flood Rules for Commercial Loans

Community Banker for Compliance

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Section 1: Background and History

Background

Flooding has long been the costliest and most devastating disaster in the United States. For decades, the national response to flood disasters was generally limited to constructing flood-control systems such as dams, levees, seawalls, and the like, and providing disaster relief to flood victims.

This approach did not reduce losses, nor did it discourage unwise development. In addition, building techniques to reduce flood damage were often overlooked. To compound the problem, the public generally could not buy flood coverage from insurance companies which were largely unwilling to underwrite and bear the risk of flood because of its catastrophic nature.

In the face of mounting flood losses and escalating costs of disaster relief to the general taxpayers, the U.S. Congress created the National Flood Insurance Program (NFIP). The intent was to reduce future flood damage through community floodplain management ordinances, and provide protection for property owners against potential losses through a federal insurance mechanism that requires a premium to be paid for the protection.

The NFIP is administered by the Federal Emergency Management Agency (FEMA), which is now part of the U.S. Department of Homeland Security.

Key Legislation

Over time, the following have been enacted to assist the federal government to combat the rising costs of responding to flood disasters. Each will be briefly discussed in the remainder of this section.

- The National Flood Insurance Act of 1968 (established the NFIP)
- The Flood Disaster Protection Act of 1973 (introduced the mandatory purchase provisions)
- The National Flood Insurance Reform Act of 1994 (strengthened the mandatory purchase provisions of the 1973 Act)
- The Flood Insurance Reform Act of 2004 (Focused on severe repetitive loss properties and miscellaneous topics that did not affect the requirement to purchase flood insurance.)
- The Biggert-Waters Flood Insurance Reform Act of 2012 (extended the National Flood Insurance Program (NFIP) for five years and made certain other reforms to the NFIP)
- Homeowner Flood Insurance Affordability Act of 2014

This Manual

Many portions of the Manual are taken directly from the *Flood Insurance Manual* as published by the Federal Emergency Management Agency.

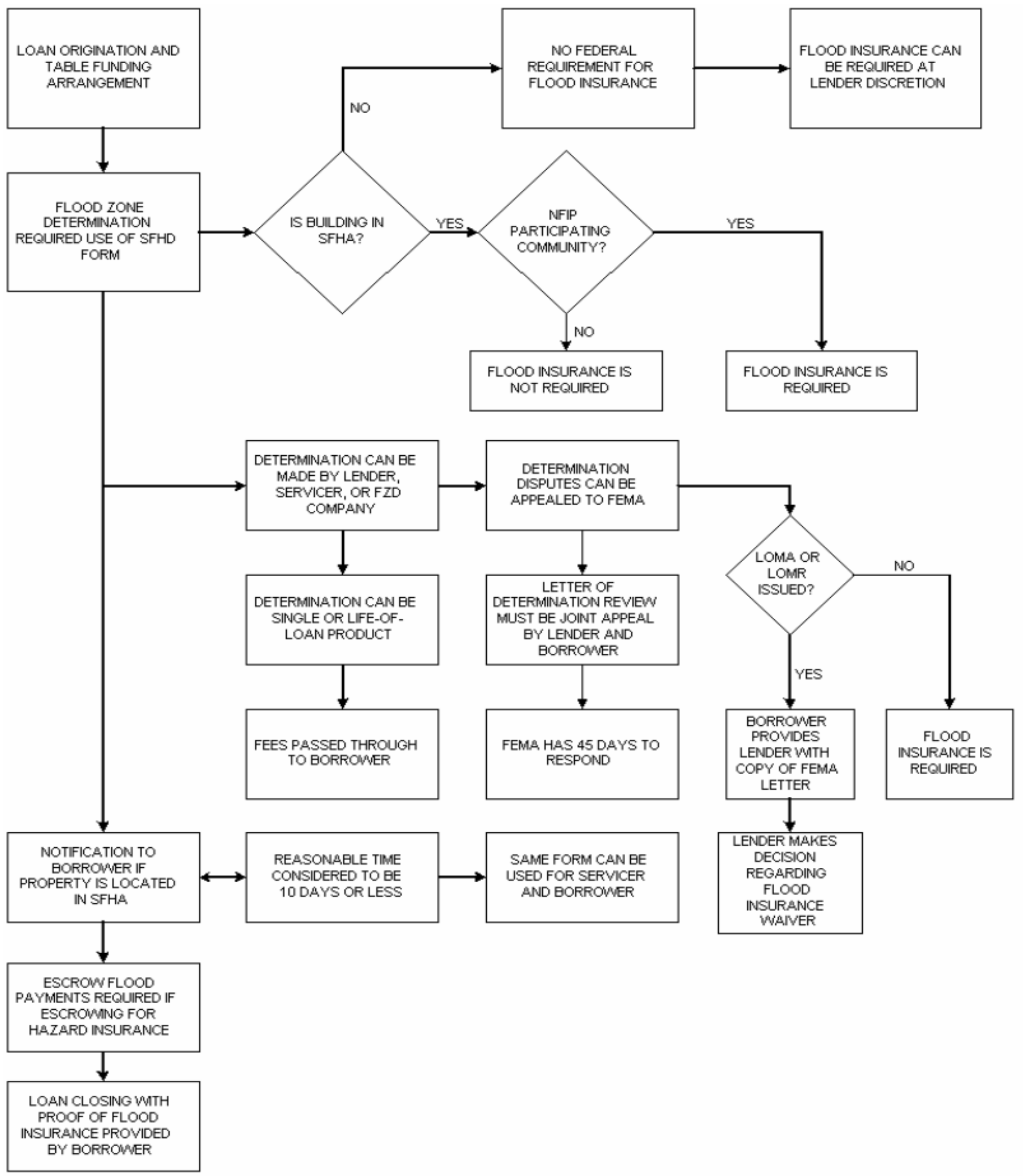
The complete Guide can be found at:

https://www.fema.gov/flood-insurance/work-with-nfip/manuals

FEMA and the Regulator's Role

In September 2007 FEMA issued a comprehensive document titled *National Flood Insurance Program Mandatory Purchase of Flood Insurance Guidelines* (*2007 Guidelines*). While no longer effective, the flow chart on the next page comes from that guide and is still accurate.

MANDATORY PURCHASE AT LOAN ORIGINATION
(Making, increasing, renewing, or extending a loan)



Section 2: Consequences of Flood Events

Regulatory Penalties

Under the 1994 Reform Act, Congress directed the agencies to impose civil money penalties for noncompliance with the mandatory purchase requirements.

The law requires penalties related to covered loans on which a lender fails to:

- Place insurance,
- Escrow flood insurance premium on applicable loans,
- Provide notice requirements pertaining to designated loans, or
- Force place the insurance in such a way that constitutes a "pattern or practice of committing violations" giving rise to an assessable event. Similar provisions exist with respect to GSEs.

The per-violation amounts of civil penalties are adjusted by statute for inflation on a periodic basis. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, Federal agencies must evaluate and adjust the penalty amount at least once every 4 years. **The 2024 penalty per violation is $2,661 with no annual cap.**

Other remedial sanctions consist of unsatisfactory bank ratings, memoranda of understanding, and ultimately, cease and desist orders being issued against lending institutions found to have a pattern or practice of committing violations.

Related FAQs

Mandatory Civil Money Penalties

1. **(2022 - REVISED) 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). As required by the Act, the penalties must be paid into the National Flood Mitigation Fund.

2. (2022 - REVISED) 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.

Civil Liability

In legal actions where aggrieved borrowers have instituted actions against lenders for failure to obtain flood insurance coverage, the courts have stated that the mandatory purchase and notice statutes are designed for regulatory purposes to strengthen the NFIP.

The court rulings have concluded that the statute and lender regulations are not intended to make “incidental beneficiaries” of aggrieved borrowers who find themselves without NFIP coverage on flood-damaged structures located in an SFHA. In the past, the courts have ruled that the mandatory purchase statute does not grant borrowers any “implied private cause of action” that might enable them to automatically recover funds on the basis of a lender’s failure to comply with the Flood Disaster Protection Act of 1973. Courts have agreed with the lenders that the intent of the law is to promote sound land use management and lessen the payments made from the Federal Treasury for disaster assistance, as well as to protect the lenders themselves.

Section 3: Selected Definitions (FEMA Guide and FDIC 12 C.F.R. § 339.3)

Section Notes

Much of this section of the manual is a direct quote from the FEMA Guide. We have formatted the information. We also removed some definitions, as they have little relevance to our discussion, or the definition is obvious. Additional definitions come from the FDIC version of the flood regulation.

Introduction

This list of terms is intended to include those that have specific meaning to the National Flood Insurance Program (NFIP). In a few instances, standard industry terms have been added for additional focus and emphasis.

Definitions

Actual Cash Value (ACV). The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

Binder or Certificate of Insurance. A temporary agreement between company, agent/producer, and insured that the policy is in effect. The NFIP does not recognize binders. However, for informational purposes only, the NFIP recognizes Certificates of Insurance and similar forms for renewal policies.

Blanket Insurance. A single amount of insurance applying to more than one building and/or contents. Blanket insurance is not permitted under the NFIP.

Breakaway Wall. A wall that is not part of the structural support of a building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building.

A structure with 2 or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; *or*

A manufactured home (a "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in 1 or more sections, and affixed to a permanent foundation); *or*

A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

"Building" does not mean a gas or liquid storage tank or a recreational vehicle, a park trailer, or other similar vehicle, except as described above.

Building in the Course of Construction. A walled and roofed building (see the General Rules section for exception) that is principally above ground and affixed to a permanent site. It does not include building materials or supplies intended for use in construction, alteration, or repair unless such materials or supplies are within an enclosed building on the premises.

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

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

Business Property. Either a business building or the contents within a business building, or both.

Coinsurance. A penalty imposed on the loss payment unless the amount of insurance carried on the damaged building is at least 80% of its replacement cost or the maximum amount of insurance available for that building under the NFIP, whichever is less. Co-insurance applies only to building coverage under the Residential Condominium Building Association Policy (RCBAP).

Condominium Association. The entity made up of the unit owners responsible for the maintenance and operation of the following:

- Common elements owned in undivided shares by unit owners
- Other real property in which the unit owners have use rights;

where membership in the entity is a required condition of unit ownership.

Declarations Page. A computer-generated summary of information provided by the prospective policyholder in the application for flood insurance. The declarations page also describes the term of the policy and the limits of coverage and displays the premium and the insurer's name. The declarations page is a part of the flood insurance policy.

Deductible. The fixed amount of an insured loss that is the responsibility of the insured and that

Dwelling. A building designed for use as a residence for no more than 4 families or a single-family unit in a building under the condominium form of ownership.

Fair Market Value. The price that the seller is willing to accept, and the buyer is to pay on the open market and in an arm's length transaction.

Flood.

A general and temporary condition of partial or complete inundation of 2 or more acres of normally dry land area or of 2 or more properties (at least 1 of which is the policyholder's property) from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source; *or*
- Mudflow; *or*
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood Hazard Boundary Map (FHBM). Official map of a community issued by FEMA, where the boundaries of the flood, mudflow, and related erosion areas having special hazards have been designated.

Flood Insurance Rate Map (FIRM). Official map of a community on which FEMA has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs), and the risk premium zones applicable to the community.

High-Rise Building. High-rise condominium buildings have 5 or more units and at least 3 floors excluding enclosure even if it is the lowest floor for rating purposes. An enclosure below an elevated building, even if it is the lowest floor for rating purposes, cannot be counted as a floor to avoid classifying the building as low rise. Under the NFIP, townhouses/rowhouses are not considered high-rise buildings, regardless of the number of floors.

Improvements and Betterments. Fixtures, alterations, installations, or additions made or acquired solely at a tenant's expense and comprising part of an insured building.

Letter of Determination Review (LODR). FEMA's ruling on the determination made by a lender or third party that a borrower's building is in a Special Flood Hazard Area (SFHA). A LODR deals only with the location of a building relative to the SFHA boundary shown on the Flood Insurance Rate Map (FIRM).

Letter of Map Amendment (LOMA). An amendment to the currently effective FEMA map which establishes that a property is not located in a Special Flood Hazard Area (SFHA). A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR). An official amendment to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Loss in Progress. A loss that is already in progress as of 12:01 a.m. on the first day of the policy term; or, as to any increase in the limits of coverage which is requested, a loss that is already in progress when the additional coverage is requested.

Low-Rise Building. Low-rise condominium buildings have fewer than 5 units regardless of the number of floors or 5 or more units with fewer than 3 floors including basement. All townhouses/rowhouses, regardless of the number of floors or units, and all single-family detached condominium buildings are classified as low rise. An enclosure below an elevated building, even if it is the lowest floor for rating purposes, cannot be counted as a floor to avoid classifying the building as low rise.

Mandatory Purchase. Under the provisions of the Flood Disaster Protection Act of 1973, individuals, businesses, and others buying, building, or improving property located in identified areas of special flood hazards within participating communities are required to purchase flood insurance as a prerequisite for receiving any type of direct or indirect Federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

Manufactured (Mobile) Home. A structure built on a permanent chassis, transported to its site in 1 or more sections, and affixed to a permanent foundation. “Manufactured (mobile) home” does not include recreational vehicles.

Manufactured (Mobile) Home Park or Subdivision, Existing. A manufactured (mobile) home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured (mobile) homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or before December 31, 1974, or before the effective date of the community’s initial Flood Insurance Rate Map (FIRM), whichever is later.

Manufactured (Mobile) Home Park or Subdivision, Expansion to Existing Site. The preparation of additional sites by the construction of facilities for servicing the lots on which manufactured (mobile) homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Manufactured (Mobile) Home Park or Subdivision, New. A manufactured (mobile) home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured (mobile) homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed after December 31, 1974, or on or after the effective date of the community’s initial Flood Insurance Rate Map (FIRM), whichever is later.

Mixed-Use Building. A building that has both residential and non-residential uses.

Modular Building. A building that is usually transported to its site on a steel frame or special trailer because it does not have a permanent chassis like a manufactured (mobile) home. A modular building is classified and rated under 1 of the other building types.

Multifamily Building. An Other Residential Building that is not a condominium building.

Mutual aid society means 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 damage 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.

Non-Residential Building. A commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-Residential Property. Either a non-residential building, the contents within a non-residential building, or both.

Other Non-Residential Building. This is a subcategory of nonresidential buildings; a non-habitational building that does not qualify as a business building or residential building.

Other Residential Building. A residential building that is designed for use as a residential space for 5 or more families or a mixed-use building in which the total floor area devoted to non-residential uses is less than 25% of the total floor area within the building.

Other Residential Property. Either an other-residential building, the contents within an other residential building, or both.

Participating Community. A community for which FEMA has authorized the sale of flood insurance under the NFIP.

Policy. The entire written contract between the insured and the insurer. It includes the following:

- The printed policy form;
- The Application and declarations page;
- Any endorsement(s) that may be issued; *and*
- Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.
- Only 1 dwelling, specifically described by the prospective policyholder in the Application, may be insured under a policy.

Post-FIRM Building. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

Pre-FIRM Building. A building for which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial Flood Insurance Rate Map (FIRM).

Preferred Risk Policy (PRP). : a lower-cost SFIP written under the General Property (GP) Form or Dwelling Form that offered fixed combinations of building/contents coverage limits or contents only coverage. The PRP insurance product is no longer offered, though policyholders with lower risk will continue to pay lower premiums.

Primary Residence. A single-family building, condominium unit, apartment unit, or unit within a cooperative building that will be lived in by the policyholder or the policyholder's spouse for:

1. More than 50% of the 365 calendar days following the current policy effective date; or
2. 50% or less of the 365 calendar days following the current policy effective date if the policyholder has only one residence and does not lease that residence to another party or use it as rental or income property at any time during the policy term.

A policyholder and the policyholder's spouse may not collectively have more than one primary residence.

Primary Residential Property. Either a primary residence or the contents within a primary residence, or both.

Principal Residence. A single-family dwelling in which, at the time of loss, the named insured or the named insured's spouse has lived for either 80% of the 365 days immediately preceding the loss, or 80% of the period of ownership, if less than 365 days.

Private flood insurance means an insurance policy that:

1. Is issued by an insurance company that is:
   a. 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
   b. 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;
2. Provides flood insurance coverage that is at least as broad as the coverage provided under an 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:
   a. Define the term "flood" to include the events defined as a "flood" in an SFIP;
   b. Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;
   c. 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 lender;
   d. 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
   e. Not contain conditions that narrow the coverage provided in an SFIP;

3. Includes all of the following:
    a. A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:
        i. The insured; and
        ii. The FDIC-supervised institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;
    b. Information about the availability of flood insurance coverage under the NFIP;
    c. A mortgage interest clause similar to the clause contained in an SFIP; and
    d. 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
4. Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

Replacement Cost Value (RCV). The cost to replace property with the same kind of material and construction without deduction for depreciation.

Residential Building. 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.

Residential Condominium Building. A building, owned and administered as a condominium, containing 1 or more family units and in which at least 75% of the floor area is residential.

Residential Condominium Building Association Policy (RCBAP). See "Standard Flood Insurance Policy (SFIP) – Residential Condominium Building Association Policy (RCBAP)."

Residential Property. Either a residential building or the contents within a residential building, or both.

Single Family Dwelling. Either:

1. A residential single-family building in which the total floor area devoted to non-residential uses is less than 50% of the building's total floor area, or
2. 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% of the unit's total floor area.

Special Flood Hazard Area (SFHA). An area having special flood, mudflow, or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V. For the purpose of determining Community Rating System (CRS) premium discounts, all AR and A99 Zones are treated as non-SFHAs.

Standard Flood Insurance Policy (SFIP)

Dwelling Form. The policy form used to insure a building designed for use as a residence for no more than 4 families or a single-family unit in a residential building under a condominium form of ownership. This form is also used to insure residential contents in any building. The owner of a residential building with 5 or more units can use this form to insure contents only in his or her own residential unit.

General Property Form. The policy form used to insure a non-residential building or a 5-or-more-unit residential building not eligible for the Residential Condominium Building Association Policy (RCBAP). This form is also used to insure non-residential contents in any building or a building owner's residential contents located in multiple units within a building with 5 or more units.

Residential Condominium Building Association Policy (RCBAP). The policy form used to insure a building, owned and administered as a condominium, containing 1 or more units and in which at least 75% of the floor area is residential. The building must be located in a Regular Program community.

Stock. Merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping. "Stock" does not include any property not covered under "Section IV. Property Not Covered" of the General Property Form, except the following:

- Parts and equipment for self-propelled vehicles;
- Furnishings and equipment for watercraft;
- Spas and hot tubs, including their equipment; *and*
- Swimming pool equipment.

2–4 Family Building. A residential building, including an apartment building, containing two to four residential spaces and in which commercial uses are limited to less than 25% of the building's total floor area.

Underground Building. A building for which 50% or more of the Actual Cash Value (ACV), including machinery and equipment that are part of the building, is below ground.

Unfinished Area. An enclosed area that is used only for the parking of vehicles, building access, or storage purposes and that does not meet the definition of a finished (habitable) area. Drywall used for fire protection is permitted in unfinished areas.

Unit. A unit owned by the policyholder in a condominium building.

Walled and Roofed. A building that has 2 or more exterior rigid walls and a fully secured roof and that is affixed to a permanent site.

Write Your Own (WYO) Program. A cooperative undertaking of the insurance industry and FEMA begun in October 1983. The Write Your Own (WYO) Program operates within the context of the NFIP and involves private insurance carriers that issue and service NFIP policies.

Zone. A geographical area shown on a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM) that reflects the severity or type of flooding in the area.

Section 4: National Flood Insurance Program Overview

Introduction

The mandatory purchase provisions of the National Flood Insurance Reform Act of 1994 and other key legislation governs the National Flood Insurance Program (NFIP). The mandatory purchase law directed the Federal agency lender regulators and Government-Sponsored Enterprises (GSEs) to develop and adopt regulations requiring lenders subject to their jurisdiction not to make, increase, renew, or extend any loan on applicable property unless flood insurance is purchased and maintained to protect that property securing loans in high flood risk areas.

Implementation of the mandatory flood insurance purchase requirements is the responsibility of the various Federal agencies that oversee lenders. Each Federal lending regulator and GSE has the responsibility to issue its own regulations to implement the statutory requirements.

The authority of FEMA is limited to administering the NFIP, which enables property owners in participating communities to purchase federally backed flood insurance. FEMA does not have statutory responsibility for enforcing the mandate to purchase flood insurance.

The essential part of the compliance provision contained in the law addresses three kinds of lenders:

- Federally Regulated Lenders
- Government-Sponsored Enterprises (GSEs) for Housing
- Federal Agency Lenders
    - Although the intent of the law is to require borrowers to purchase flood insurance, the requirements are directed to federally regulated and federally insured lenders and to secondary-market entities involved in mortgage loan transactions.

Mandatory purchase requirements apply to all federally related loans. Each instance of making, increasing, extending, or renewing a "designated loan" - a loan secured by a building or manufactured (mobile) home located or to be located in an SFHA, where flood insurance is available under the 1968 Act - serves as a tripwire of sorts for compliance with these requirements. At each tripwire in the mortgage process, the lender or servicer must ensure that flood insurance is purchased and maintained.

General Insurance Requirements

Insurance Required at Loan Closing

A designated loan must have flood insurance as a condition of closing. If a borrower will not voluntarily obtain coverage, the lender must deny the loan. A lender cannot accept a borrower's assurance that he or she will obtain coverage in the future or grant the lender indemnity while he or she seeks coverage. A lender cannot force place flood insurance at the original loan inception. However, if force-placed insurance is in place at the time of a refinance, the force-placed insurance can be used as adequate flood insurance. Closing a designated loan without coverage in place constitutes a violation of the regulation.

Insurance Coverage Required for the Entire Loan Term

Flood insurance must be obtained and maintained during the term of the loan. Regulated lending institutions and GSEs are responsible for providing notice of and requiring flood insurance coverage for the term of the loan on buildings located or to be located in any SFHA in participating communities. Flood insurance is required even if the SFHA designation is first identified after settlement, but during the term of the loan. This requirement is designed to combat coverage lapses allowed to occur by individuals who believe they will not be flooded, and therefore discontinue payment of flood insurance premiums during the term of the loan.

Mandatory Purchase vs. Potential Flooding

While the mandatory purchase requirement applies only to buildings located in SFHAs of participating communities, NFIP flood insurance is available and highly encouraged in low-to-moderate flood risk areas of NFIP participating communities. This is especially significant because, historically, about 40 percent of the NFIP claims paid have actually been outside of SFHAs.

Lenders and property owners may wish to exercise additional caution and consider flood insurance in areas subject to flooding due to storm water, in areas where the NFIP has used approximate methods to map SFHAs, or in remote locations where no SFHAs have been designated by FEMA.

A requirement for flood insurance on secured property that is not subject to the mandatory purchase requirement is a matter of contract between the lender and borrower.

Some buildings in a participating community may be ineligible for Federal flood insurance because of statutory restrictions or NFIP underwriting rules.

FDIC Regulatory Text Concerning Mandatory Purchase

§ 339.3 Requirement to purchase flood insurance where available.

(a) **In general.** An FDIC-supervised institution 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. The amount of 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 the particular type of property under the Act. 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.

(b) **Table funded loans.** An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the Purpose of this part.

FDIC Regulatory Text Regarding Exemptions

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption;

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less; or

(c) 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 this paragraph (c):

(1) "a structure that is a part of a residential property" is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes;

(2) a structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) "serve as a residence" shall be based upon the good faith determination of the FDIC-supervised institution that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

Related FAQs

Exemptions from the Mandatory Flood Insurance Purchase Requirements

1. **(2022 - REVISED) 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. 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. 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. *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.

2. **(2022 - NEW) 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. 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. 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.

3. **(2022 - NEW) 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.

4. **(2022 - NEW) 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. 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.

5. **(2022 - NEW) 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. *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.

6. **(2022 - NEW) 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. 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. 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.

7. **(2022 - NEW) 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. 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.

Lender Responsibilities

The statutory requirements apply when improved real property (that is, a building) or manufactured (mobile) home is taken as security for a loan. A lender's responsibilities include the following actions:

- Determine whether the building or manufactured (mobile) home offered as security for a loan is, or will be, located in an SFHA;

- Document the determination of flood hazard status, whether the building is in a low-to-moderate flood risk area or in an SFHA, on the current Standard Flood Hazard Determination Form (SFHDF);
- Provide notice to the borrower if collateral is, or will be, in an SFHA per the appropriate sample Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance, the two versions of which are shown in Appendix 4 of the *2007 Guidelines*;
- Require that adequate flood insurance is obtained for buildings in SFHAs;
- Require the escrow of flood insurance premiums if escrow is required for other items, such as hazard insurance and taxes;
- During the term of the loan, ensure that flood insurance is maintained or obtained if the lender becomes aware that the building involved subsequently becomes part of an SFHA; and
- Force place flood insurance if the borrower allows the policy to lapse or if insurance is inadequate.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

12. (2022 - NEW) 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, provide timely, complete, and accurate notices to borrowers, 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. 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. **(2022 - NEW) 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). 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.

    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. **(2022 - REVISED) 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, 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. **(2022 - NEW) 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. 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*.

Section 5: Types of FEMA Flood Insurance Available and Coverage

Introduction

The following was taken from FEMA's Guide, and shows the types of insurances available through the National Flood Insurance Program.

NFIP insurers may only use the Standard Flood Insurance Policy (SFIP) established by FEMA in federal regulation to sell and service NFIP flood insurance policies. The SFIP defines the coverages, limitations, and exclusions for NFIP flood insurance policies and includes terms and conditions that are unique to the NFIP. The SFIP outlines flood insurance coverage for a one-year policy term under three different forms: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP). The effective date of the SFIPs is October 1, 2021.

This section does not discuss private flood insurance.

SFIP FORM	ELIGIBLE POLICYHOLDERS	ELIGIBLE BUILDING OCCUPANCIES
Dwelling Form	Available to the following types of policyholders: • Homeowner • Unit owner • Building owner • Residential renter Note: In some cases, a condominium association may purchase a Dwelling Form policy for a Residential Unit on behalf of the unit owner, who is the policyholder.	In a Regular Program or Emergency Program community provides building and/or contents coverage for: • Single-Family Home • Residential Manufactured/Mobile Home • Residential Unit • Two-to-Four Family Building Note: The Dwelling Form also covers residential contents in a non-residential building insured under a separate policy from the building.
General Property Form	Available to the following types of policyholders: • Building owner • Unit owner • Building or unit lessee	In a Regular Program or Emergency Program community: • Other Residential Building • Non-Residential Building • Non-Residential Manufactured/Mobile Building • Non-Residential Unit Note: The General Property Form also covers nonresidential

		contents in a residential building insured under a separate policy from the building.
RCBAP	Issued to a residential condominium association on behalf of the association and unit owners	In a Regular Program community only: • Residential Condominium Building See the Condominium Rating Information heading in Section 3: How to Write for more information on RCBAP eligibility and what policy form to use if ineligible.

Section 6: Buildings Eligible for Flood Coverage

Introduction

This entire section of this manual is a direct quote from the FEMA Guide. We have formatted the information, but have not made any further edits.

Building Property Eligibility (FEMA Guide)

A. Eligible Buildings

Insurance may be written only on a structure with 2 or more outside rigid walls and a fully secured roof that is affixed to a permanent site. Buildings must resist flotation, collapse, and lateral movement. At least 51% of the Actual Cash Value (ACV) of buildings, including machinery and equipment, which are a part of the buildings, must be above ground level, unless the lowest level is at or above the Base Flood Elevation (BFE) and is below ground by reason of earth having been used as insulation material in conjunction with energy-efficient building techniques.

1. **Agricultural Building**

   A building used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities. Examples of eligible agricultural buildings include barns, silos, and grain storage buildings.

2. **Boathouses Located Partially Over Water**

   [Text omitted.]

3. **Buildings Entirely Over Water – Constructed or Substantially Improved before October 1, 1982**

   [Text omitted.]

4. **Buildings Partially Over Water**

   [Text omitted.]

5. **Building Partially Underground**

   [Text omitted.]

6. **Buildings Under Construction**

   The NFIP will insure a building under construction, alteration, or repair before it is walled and roofed, using the NFIP-issued rates based on the construction designs and the intended use of the building.

A building under construction that is not walled and roofed is not eligible for coverage if construction stops for more than 90 days or the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is below the BFE. 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.

7. **Condominium Building**

A condominium is a building or a complex of buildings containing a number of individually owned apartments or houses where each unit owner has an undivided interest in common elements of the building. Residential condominium buildings eligible for the RCBAP must be insured under the RCBAP.

8. **Cooperative Building**

Corporations own and manage cooperative buildings, and their ownership differs from the condominium form of ownership. Residents within cooperative buildings buy shares of the corporation, rather than the real estate (building, land, or both building and land). A cooperative building must have at least 75 percent of the total floor area used for residential purposes to qualify as a residential occupancy. Cooperative buildings are not eligible for the RCBAP.

9. **Detached Garage**

In general, the SFIP can only insure one building. However, the Dwelling Form includes limited coverage for a detached garage servicing a one-to-four family dwelling. Coverage is limited to no more than 10 percent of the limit of liability on the one-to-four family dwelling. This coverage does not apply to garages used for residential, commercial, or agricultural purposes.

10. **Homeowners' Association (Non-Condominium)**

A Homeowners' Association not in the condominium form of ownership owns the common areas, and individual building owners have a right to use and enjoy the common areas. A Homeowners' Association can purchase a policy for an individual building in the building owner's name when the Association's by-laws require the Association to purchase flood insurance building coverage for its members. A Homeowners' Association not in the condominium form of ownership is not eligible for the RCBAP.

11. **Manufactured (Mobile) Homes/Travel Trailers**

[Text omitted.]

B. Single and Multiple Buildings

To qualify as a single-building structure and be subject to the single-building limits of coverage, a building must be:

1. Separated from other buildings by intervening clear space; or
2. Separated into divisions by solid, vertical, load-bearing walls; each division may be insured as a separate building.

a. These walls must divide the building from its lowest level to its highest ceiling and have no openings.

b. If there is access through the division wall by a doorway or other opening, the structure must be insured as 1 building unless it meets all of the following criteria:

- It is a separately titled building contiguous to the ground; and
- It has a separate legal description; and
- It is regarded as a separate property for other real estate purposes, meaning that it has most of its own utilities and may be deeded, conveyed, and taxed separately.

NOTE: If writing multiple policies for multiple buildings at the same location, the insurer must maintain detailed information describing the ownership and insurable interest that pertains to each policy. Insurers can submit requests to FEMA seeking single building determinations for complex structures with multiple building owners or mixed ownership types.

Where there are multiple separate buildings located at a single address (for example, a single-family residence and a guest house on the same property) and the property owners want to insure both buildings, the insurer should write two separate policies and use the property description field on each Application Form to distinguish the buildings.

Where there are multiple buildings on the same property connected by means of rigid exterior walls, solid load-bearing interior walls, stairways, an elevated walkway, or roof, the insurer may write a policy covering them as a single building or multiple policies covering them as separate buildings.

C. Additions and Extensions

[Text omitted.]

D. Walls

[Text omitted.]

E. Determination of Building Occupancy

The following terms should be used to determine the appropriate occupancy classification:

1. **Single-Family Dwelling**

   [Text omitted.]

2. **2–4 Family Building**

   [Text omitted.]

3. **Other Residential Building**

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

4. **Non-Residential Business**

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

   a. A building designed as a non-habitational building;

   b. A mixed-use building in which the total floor area devoted to residential uses is

      i. 50% or less of the total floor area within the building if the residential building is a single-family property; or

      ii. 75% or less of the total floor area within the building for all other residential properties; or

   c. A building designed for use as office or retail space, wholesale space, hospitality space, or for similar uses.

5. **Other Non-Residential**

   This is a subcategory of non-residential buildings; a non-habitational building that does not qualify as a business building or mixed-use building that does not qualify as a residential building. This category includes, but is not limited to, churches, schools, farm buildings (including grain bins and silos), garages, pool houses, clubhouses and recreational buildings. A small business cannot use this category.

F. Primary Residence Determination

[Text omitted.]

Section 7: Buildings Ineligible for NFIP Coverage

Introduction

Most buildings are eligible for coverage under the NFIP, but there are exceptions.

The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete, current list of coverages and exclusions may be found in Section 2 of the FEMA Flood Insurance Manual, April 2024: Equity in Action Edition: (https://www.fema.gov/sites/default/files/documents/fema_nfip_flood-insurance-manual_042024.pdf).

For certain categories of properties located in participating communities, flood insurance coverage may be restricted. This includes manufactured (mobile) homes that do not meet NFIP insurability requirements. In special situations, Congress or FEMA has chosen to deny eligibility for flood insurance, and treats the buildings similarly to those in nonparticipating communities. Therefore, the mandatory purchase requirement does not apply. Lenders should consider requiring private flood insurance for these types of risks.

Ineligible Property (FEMA Guide)

A. Section 1316 Properties

Coverage may not be available for buildings that are constructed or altered in such a way as to place them in violation of State or local floodplain management laws, regulations, or ordinances. Contents and personal property contained in these buildings are ineligible for coverage.

Section 1316 of the National Flood Insurance Act of 1968 allows States to declare a structure to be in violation of a law, regulation, or ordinance. Flood insurance is not available for properties that are placed on the 1316 Property List. Insurance availability is restored once the violation is corrected, and the 1316 Declaration has been rescinded.

B. Container-Type Buildings

Gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units, and their contents are ineligible for coverage.

C. Buildings Entirely Over Water

Buildings newly constructed or substantially improved on or after October 1, 1982, and located entirely in, on, or over water or seaward of mean high tide are ineligible for coverage.

D. Buildings Partially Underground

If 50% or more of the building's ACV, including the machinery and equipment, which are part of the building, is below ground level, the building or units and their contents are ineligible for coverage unless the lowest level is at or above the BFE and is below ground by reason of earth having been used as insulation material in conjunction with energy-efficient building techniques.

E. Water Treatment Plant

The NFIP does not insure a water treatment plant unless 51 percent or more of its ACV is above ground.

F. Building Used for the Manufacture or Distribution of a Controlled Substance

The NFIP may not knowingly insure a building, or its contents used for the manufacture or distribution of a controlled substance in violation of federal law. Doing so would directly promote, effectuate, or encourage a violation of the law, which would violate public policy and general principles of insurance. This restriction includes buildings or contents used to grow or dispense marijuana in locations where this activity is legal under state law, because governing federal law makes it unlawful to use any place for the manufacture or distribution of a controlled substance. FEMA can provide additional information on the application of this guidance to specific circumstances.

Examples of Ineligible Risks (FEMA Guide)

Some specific examples of ineligible risks are provided below. See the policy for a definitive listing of property not covered.

A. Building Coverage

1. Boat Repair Dock
2. Boat Storage Over Water
3. Boathouses (exceptions listed on page GR 4)
4. Camper
5. Cooperative Unit within Cooperative Building
6. Decks (except for steps and landing; maximum landing area of 16 sq. ft.)
7. Drive-In Bank Teller Unit (located outside walls of building)
8. Fuel Pump
9. Gazebo (unless it qualifies as a building)

10. Greenhouse (unless it has at least 2 rigid walls and a roof)
11. Hot Tub or Spa (unless it is installed as a bathroom fixture)
12. Open Stadium
13. Pavilion (unless it qualifies as a building)
14. Pole Barn (unless it qualifies as a building)
15. Pumping Station (unless it qualifies as a building)
16. Storage Tank – Gasoline, water, chemicals, sugar, etc.
17. Swimming Pool Bubble
18. Swimming Pool (indoor or outdoor)
19. Tennis Bubble
20. Tent
21. Timeshare Unit within Multi-Unit Building
22. Travel Trailer (unless converted to a permanent on-site building meeting the community's floodplain management permit requirements)
23. Water Treatment Plant (unless at least 51% of its ACV is above ground)

B. Contents Coverage

1. Automobiles – Including dealer's stock (assembled or not)
2. Bailee's Customer Goods – Including garment contractors, cleaners, shoe repair shops, processors of goods belonging to others, and similar risks
3. Contents Located in a Structure Not Eligible for Building Coverage
4. Contents Located in a Building Not Fully Walled and/or Contents Not Secured Against Flotation
5. Motorcycles – Including dealer's stock (assembled or not)
6. Motorized Equipment – Including dealer's stock (assembled or not)

C. Non-Residential Condominium Unit

The owner of a non-residential condominium unit within a residential or a non-residential condominium building cannot purchase building coverage. Contents-only coverage may be purchased by the unit owner.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

3. **(2022 - REVISED) 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?**

   Answer: A lender must determine whether a building securing the loan is in an SFHA. In cases in which the loan is secured by multiple buildings and some of the buildings are located in an SFHA in which flood insurance is available under the Act, but other buildings are not located in an SFHA (or are located in an SFHA, but not in a participating community), a lender is required to obtain flood insurance only on the buildings securing the loan that are located in an SFHA in which flood insurance is available under the Act. 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.

Section 8: Contents Eligibility and Other Examples of Eligible Risk

Introduction

The following was taken from the FEMA Guide. We formatted the material, but no other changes were made.

Contents Eligibility

A. Eligible Contents

Contents must be located in a fully enclosed building. However, under the Dwelling Form, in a building that is not fully enclosed, contents must be secured to prevent flotation out of the building.

B. Vehicles and Equipment

The NFIP covers self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:

1. Used mainly to service the described location; *or*
2. Designed and used to assist handicapped persons while the vehicles or machines are inside a building at the described location.

Parts and equipment as open stock – not part of a specific vehicle or motorized equipment – are eligible for coverage.

C. Silos, Grain Storage Buildings, and Cisterns

Contents located in silos, grain storage buildings, and cisterns are insurable.

D. Commercial Contents Coverage

Commercial contents in a residential property must be insured on the General Property Form.

Other Examples of Eligible Risks

Examples of eligible risks are provided below. For information on amounts of insurance available, refer to the Rating section in this manual.

A. Cooperative Building – Entire Building in Name of Cooperative

Cooperative buildings are owned and managed by a corporation, and their ownership differs from the condominium form of ownership. Residents within cooperative buildings buy shares of the corporation, rather than the real estate (building, land, or both building and land). Cooperative buildings where at least 75% of the area is used for residential purposes are considered residential occupancies.

Residents of a unit within a cooperative building may purchase contents coverage under the Dwelling Form. Since they are not in the condominium form of ownership, they cannot be insured under the RCBAP.

B. Units Within a Cooperative Building

Shareholders/tenants residing in cooperative buildings may not purchase building coverage for their units. The residents of a unit within a cooperative building may purchase contents coverage under the Dwelling Form.

Ten percent of the contents coverage may be applied to betterments and improvements at the time of loss.

C. Timeshare Building – Entire Building in Name of Corporation

Timeshare buildings *not* in the condominium form of ownership where at least 75% of the area of the building is used for residential purposes are considered as residential occupancies under the NFIP.

Timeshare buildings in the *condominium* form of ownership are eligible for coverage and must be insured under the RCBAP. These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums, including the requirement that 75% of the area of the building be used for residential purposes.

D. Buildings Within a Non-Condominium Homeowners Association

When a homeowners association's (HOA) by-laws require the HOA to purchase flood insurance building coverage for its members, the policy must be written in the name of the building owner. The HOA may be listed as an additional insured.

E. Condominium Buildings

Refer to the Condominiums section of this manual.

Section 9: Special Flood Hazard Determination Form

Introduction

There is a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether a building or mobile home is located in an area identified as a special flood hazard and in an area in which national flood insurance is available. The flood regulations require that covered lenders shall use the Standard Flood Hazard Determination (SFHD) form as developed by the Director of FEMA when determining whether a building or mobile home offered as collateral security for a loan is or will be located in a Special Flood Hazard Area (SFHA) in which flood insurance is available under the Act.

Should collateral pledged as security on a loan be located in a SFHA, the lender is also required to provide an appropriate notice to the borrower indicating whether flood insurance is available.

This portion of the manual explores the SFHD form and the flood notice, as well as any additional notices that may be required in connection with a covered loan. Although the form is "Expired," they have not offered a new, updated form for use.

FDIC Regulatory Text Regarding the SFHDF

§ 339.6 Required use of standard flood hazard determination form.

(a) **Use of form**. An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard determination form from FEMA's website at www.fema.gov.

(b) **Retention of form.** An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

Relevant FAQs

Standard Flood Hazard Determination Form

1. (2022 – UNCHANGED) 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. 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.

2. **(2022 - REVISED) 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.

3. **(2022 - UNCHANGED) May the SFHDF be used in electronic format?**

   Answer: Yes. 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.

4. **(2022 - REVISED) 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.

The Importance of a Building's Location

The statutory requirement to purchase flood insurance applies only when a loan is extended on improved real property (i.e., a building or manufactured [mobile] home) that is located or will be located in an SFHA in a participating community.

Even though a portion of real property on which a building is located may lie within an SFHA, the purchase and notice requirements do not apply unless the building itself, or some part of the building, is in the SFHA. However, even if that part of the building within the SFHA is not subject to coverage (e.g., a deck), the entire building is considered to be in the SFHA.

Lenders may require the purchase of flood insurance even if a building is located outside an SFHA. A decision to require coverage under such circumstances is not compelled by the statute, but is founded on the contractual relationship between the parties. Lenders have the prerogative to require flood insurance to protect their investments, provided that they have reserved that option in their mortgage loan document.

In many instances, community officials, insurance company personnel, insurance agents, real estate agents, surveyors, or appraisers may be helpful and knowledgeable resources. However, to the extent that such parties cannot or will not grant guarantees, reliance upon the information they provide cannot be used for exculpatory purposes if the lender is confronted with a regulatory violation or a civil claim for damages.

Standard Flood Hazard Determination Form

The Standard Flood Hazard Determination Form (SFHDF) is used to comply with Section 303 (a) of Title V of the National Flood Insurance Reform Act of 1994 (NFIRA). The SFHDF is used by federally regulated lending institutions when making, increasing, extending, renewing or purchasing a loan for the purpose of determining whether flood insurance is required and available. The form may also be used by insurance agents, property owner, realtors and community officials for flood insurance related activities and flood zone documentation.

Using Third Parties to Prepare SFHD Forms

The Act sets the ultimate responsibility to place flood insurance on the lender, yet allows for limited reliance on third parties to the extent that the information they provide is guaranteed. Therefore, the lender, servicer, or a third-party vendor may conduct the determination of a building's location. Regardless of the alternative chosen, the lender must take the responsibility for making determinations and redeterminations. Under no circumstances should a financial institution rely on the statements of a borrower that the structure in question is either inside or outside an SFHA. The Act provides appropriate channels to resolve disputes by a borrower when the location of collateral in or out of a SFHA is in question.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent that "such person guarantees the accuracy of the information."

Given the unique skill base required to accurately read and interpret flood maps, many lenders today rely on the use of third-party service providers to prepare SFHD forms. In many lenders' shops, this necessary skill base extends beyond the resources available within the bank. These third parties can offer these skills at a reasonable cost and most often back up their preparations with a compliance guarantee.

In addition, for the lender's and borrower's protection, the third parties typically offer a "life-of-loan" service to be purchased at the time of the initial preparation of the SFHD form. This life-of-loan service, if purchased by the lender, will serve to inform the lender of any changes to the flood map affecting the property pledged security. This service provides a peace of mind to the lender and borrower to receive a notification if the collateral is subsequently affected by either becoming considered as located in a SFHA or a remapping that removes the collateral from a SFHA, thereby eliminating the need for the borrower to maintain flood insurance. This life-of-loan service is not mandated by the Act.

Elements of the SFHD Form

The following pages contain the current SFHD form. The instructions are included on the following pages.

From the FEMA Website

The Standard Flood Hazard Determination Form (SFHDF) is required for all federally backed loans and is used by lenders to determine the flood risk for their building loans. The SFHDF is authorized by the National Flood Insurance Reform Act of 1994 (NFIRA) and is imposed on lenders by their regulatory entities, not by FEMA. FEMA oversees the National Flood Insurance Program (NFIP) which makes federally administered flood insurance available throughout the United States and is responsible for development, updates and making the form available to users. Implementation of the mandatory flood insurance purchase requirements of the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 94, as amended, is the responsibility of the various Federal agencies that regulate lenders. Please contact your regulator or lender to determine their requirements. This form may be locally reproduced. The current version of the SFHDF has an expiration date of September 30, 2023.

The Result

Based on the information above, lenders should ignore the October 2018 expiration date on the current SFHDF, until FEMA decides to change to a new version.

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency

OMB Control No. 1660-0040
Expires: 09-30-2023

STANDARD FLOOD HAZARD DETERMINATION FORM (SFHDF)

SECTION I - LOAN INFORMATION

1. LENDER/SERVICER NAME AND ADDRESS	2. COLLATERAL DESCRIPTION (Building/Mobile Home/Property) (See instructions for more information.)	
3. LENDER/SERVICER ID #	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED

SECTION II

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number

B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective / Revised Date	3. Is there a Letter of Map Change (LOMC)? ◯ NO ◯ YES (if yes, and LOMC date/no. is available, enter date and case no. below.) Date Case No.
4. Flood Zone	5. No NFIP Map	

C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply.)

1. ☐ Federal Flood Insurance is available (community participates in the NFIP). ☐ Regular Program ☐ Emergency Program of NFIP
2. ☐ Federal Flood Insurance is not available (community does not participate in the NFIP).
3. ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood Insurance may not be available.

CBRA/OPA Designation Date: ____________________

D. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? ☐ YES ☐ NO

If yes, flood insurance is required by the Flood Disaster Protection Act of 1973.
If no, flood insurance is not required by the Flood Disaster Protection Act of 1973. Please note, the risk of flooding in this area is only reduced, not removed.

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building /mobile home on the NFIP map.

E. COMMENTS (Optional)

F. PREPARER'S INFORMATION

NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender)	DATE OF DETERMINATION

FEMA FORM FF-206-FY-21-116 (formerly 086-0-32) (04/21)

Page 1 of 1

Standard Flood Hazard Determination Form (SFHDF) Instructions

Section 1

1. ***Lender/Servicer Name and Address:*** Enter lender name and address.
2. ***Collateral Description:*** Preparer should coordinate with user to ensure the collateral is sufficiently identified. Suggested forms of collateral identification include, but are not limited to, property address, parcel or lot number and longitude/latitude. If needed, additional information may be attached to this form.
3. ***Lender/Servicer ID No:*** Optional. Preparer should coordinate with user to ensure the lender is sufficiently identified on the form. The lender name and address (Box 1. above) may be sufficient.
4. ***Loan Identifier:*** Optional. May be used by lenders to conform with their individual Method of Identifying Loans.
5. ***Amount of Flood Insurance Required:*** Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. A lender retains the prerogative to require flood insurance in excess of the minimum federal requirements not by the direction of FEMA. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the insured value of the building/mobile home/personal property.

Section 2

A. National Flood Insurance Program (NFIP) Community Jurisdiction

1. NFIP Community Name. Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worchester, Township of; Baldwin County; Jefferson Parish) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.
2. County(ies). Enter the name of the county or counties in which the community is located. For unincorporated areas of a county, enter "unincorporated areas." For independent cities, enter "independent city."
3. State. Enter the two-digit state abbreviation. (Examples: VA, TX, CA)
4. NFIP Community Number. Enter the 6-digit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website

http://msc/fema.gov or by calling 1-800-358-9616. If no NFIP Community Number exists for the community, enter "none."

NFIP Data Affecting Building/Mobile Home

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map may be obtained from FEMA by calling 1-800-358-9616. Scanned copies of the NFIP maps can be viewed on FEMA's website at http://msc.fema.gov. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. NFIP Map Number or Community-Panel Number. Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075F). Some older maps will have a 9-digit number (Example: 12345601A). Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another, but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none."

2. NFIP Map Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93) This will be the latest of all dates shown on the map.

3. Is there a Letter of Map Change (LOMC)? This field can remain blank if no Letter of Map Change (LOMC) (these include the Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) or similar FEMA Map Letter(s)) applies to the subject property. If there is a LOMC, list the date and number. Information on the LOMC is available from the following sources:

   - The community's official copy of its NFIP map(s) should have a copy of all subsequently issued FEMA Letters attached.

   - For a LOMC issued on or after October 1, 1994. Information is available in the FEMA Manual located at https://www.fema.gov/flood-insurance/work-with-nfip/manuals

   - The FEMA Map Service Center website is https://msc.fema.gov/portal

4. Flood Zone. Enter the flood zone(s) in which the building or mobile home is located. (Examples: A, AE, A4, AR, AR/A, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D). If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered to be in the SFHA. Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none."

5. No NFIP Map. If no NFIP map covers the area where the building or mobile home is located, check this box.

Federal Flood Insurance Availability

This is a review of community eligibility; it does not address individual building related eligibility. That is reviewed in the insurance process.

Check all boxes that apply; Note that boxes 1 (Federal Flood Insurance is available) and 2 (Federal Flood Insurance is not available) are mutually exclusive. In most instances, Federal flood insurance is available to all residents with eligible property in a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book, which is available from FEMA and at https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book.

The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in areas designated by the Coastal Barrier Resources Act to be in a Coastal Barrier Resources Area (CBRA) and Otherwise Protected Areas (OPA) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. Information about the Coastal Barrier Resources System (CBRS) may be obtained by visiting the U.S. Fish and Wildlife Service's website at http://www.fws.gov.

Determination

If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

Comments

Optional Comment. Preparer may add additional comments/pages/data as needed.

Preparer's Information

If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. An individual's name may be included, but is not required.

Date of Determination. Enter date on which flood zone determination was completed.

Multiple Buildings. For guidance regarding multiple buildings, please contact your regulator, servicer, lender or other entity as applicable.

Guarantees Regarding Information. Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

Form Availability. The form is available at (https://omb.report/omb/1660-0040).

Purpose of Form. In accordance with P.L. 103-325, Sec. 1365, (b) (1), this form has been designated to facilitate compliance with the flood insurance purchase requirements of the National Flood Insurance Reform Act of 1994.

For Lending Related Guidance Regarding This Form. Implementation of the mandatory flood insurance purchase requirements of the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 94, as amended, is the responsibility of the various Federal agencies that regulate lenders. Please contact your regulator or lender to determine their requirements.

Reliance on the SFHDF

The lender must take the responsibility for making flood zone determinations. The 1994 Reform Act states that the lender may provide for the acquisition or determination of flood hazard information to be made by a person other than the lender only to the extent that such person guarantees the accuracy of the information.

A previous determination may not be reused when making a new loan. If the loan is not new, (i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan) the determination can be reused if:

- It is less than 7 years old; and
- No new or revised FIRM or FHBM has been issued in the interim; and
- It was initially recorded on the SFHDF.

If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a secondary lien position, and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred.

Once a new map has been issued, a lender must use that map as a guide, and a new determination is required.

A separate SFHDF is required for buildings on adjacent properties. However, if a single property contains multiple buildings, a listing of buildings on the parcel can be attached to the SFHDF.

Only one building may be insured under one NFIP policy. There are some exceptions, covered earlier in this manual.

The form need not be kept in the loan file, but a lender is expected to be able to retrieve the record within a reasonable time period upon being requested by its federal supervisory agency. Lenders are neither required to provide, nor prohibited from providing, the WYO insurer, insurance agent, or the borrower with a copy of the form.

Lenders and servicers cannot accept self-certification or assurance from the mortgagor-borrower that the building is not in an SFHA. If the lender wishes to change its original determination of the building's location based on information submitted by the mortgagor, the lender/servicer must conclude that its original determination was in error and make any change on the basis of its review of that new information.

The ultimate responsibility for making such determinations about a building's flood zone location rests with the lender, not the borrower. Contested determinations are subject to the FEMA review process.

Fees for Determining Location

Anyone (person or financial institution) who makes a loan secured by improved real estate or a mobile home, or any servicer for such a loan, may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area that has special flood hazards if the following conditions are met:

- The borrower may be charged the fee if the determination
- Is made as a result of the making, increasing, extending, or renewing of a loan that is initiated by the borrower or
- Is made as a result of a revision or updating of the floodplain areas and flood risk zones or publication of a notice or compendia of such that affects the area in which the improved real estate or mobile home securing the loan is located or
- Is required by FEMA or
- Results in the forced placement of insurance coverage by a lender.
- The purchaser or transferee of a loan may be charged the fee in the case of sale or transfer of the loan.

Retention

A lender shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time it owns the loan.

FDIC Regulatory Text Concerning Determination Fees

§ 339.8 Determination fees.

(a) **General.** Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001--4129), any FDIC-supervised institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) **Borrower fee.** The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) **Purchaser or transferee fee.** The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

Relevant FAQs

Flood Insurance Determination Fees

1. (2022 - REVISED) 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.

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

2. (2022 - REVISED) 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. 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.

Section 10: Flood Notice

Introduction

When a lender makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the lender shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

FDIC Regulatory Text Concerning Flood Notice

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) **Notice requirement**. When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) **Contents of notice.** The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, 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;

(4) 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.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) 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.

(c) **Timing of notice**. The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) **Record of receipt.** The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the FDIC-supervised institution owns the loan.

(e) **Alternate method of notice.** Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) **Use of sample form of notice.** An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

Relevant FAQs

Notice of Special Flood Hazards and Availability of Federal Disaster Relief

1. **(2022 - REVISED) 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. 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.

2. **(2022 - REVISED) 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. 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. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force-place the insurance.

3. **(2022 - UNCHANGED) 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.

4. **(2022 - REVISED) 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.

   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.

5. **(2022 - REVISED) How long must the lender maintain the record of receipt by the borrower of the Notice of Special Flood Hazards?**

   The record of receipt provided by the borrower must be maintained for the period of time that the lender owns the loan. 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.

6. **(2022 - REVISED) 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.

7. **(2022 - REVISED) 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, 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. Therefore, lenders should consult the Act and Regulation to determine the information needed.

Sample Form

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

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: __________. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard a

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

___ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- At a minimum, flood insurance purchased must cover the lesser of:

  (1) the outstanding principal balance of the loan; or

  (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.
- Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and contact an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans]

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.]

___Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

Section 11: Flood Maps

Introduction

The following was taken from the FEMA Guide. We have formatted the information, but have made no changes to the actual text.

I. Overview

[Text omitted.]

A. Types of Flood Maps

Flood Insurance Rate Maps (FIRMs) are the official community maps that show special flood hazard areas (1%-annual-chance-flood). Although the FIRM is the current type of map produced by FEMA, some communities may still have effective Flood Hazard Boundary Maps (FHBM). A brief description of the two types of maps are as follows:

- **Flood Insurance Rate Map (FIRM)** – The most common official flood map for a county or community, on which FEMA has delineated the Special Flood Hazard Areas (SFHAs) and other risk premium zones that apply to the community. These are generally available for Regular Program communities. Countywide FIRMs supersede all previous versions of the FEMA flood hazard maps for individual communities. Countywide FIRMs show flooding information for the entire county's geographic area, including incorporated communities. Both the current (effective) version and historic versions are available on the MSC site. If a new version is imminent, those pending versions may also be found on the MSC site.

- **Flood Hazard Boundary Map (FHBM)** – The FHBM is an older format of a flood map and is based on approximate data. While no longer produced, these were generally used for Emergency Program communities. Communities with these maps may have a separately published map that shows the regulatory floodway.

For detailed information, refer to *Answers to Questions About the NFIP* (March 2022 | F-084).

B. Map Information

[Text omitted]

II. Map Zones

A. Special Flood Hazard Areas

Flood maps identify high, moderate, and low risk areas of flooding. High-risk areas are known as Special Flood Hazard Areas. These are shown on flood maps as flood zones beginning with A or V; Zone V is used for coastal areas. SFHAs are subject to inundation by the base flood (1%-annual-chance flood).

1. **Zone A** - Areas determined using less detailed methodologies that are subject to inundation by the 1%-annual-chance flood event. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown on the map. Mandatory flood insurance purchase requirements and floodplain management standards apply.

2. **Zones AE and Zones A1–A30** - Areas subject to inundation by the 1%-annual-chance flood event, as determined by detailed hydraulic analyses. BFEs are shown on the maps. Mandatory flood insurance purchase requirements and floodplain management standards apply.

3. **Zone AH** - Areas subject to inundation by 1%-annual-chance shallow flooding (usually areas of ponding), where average depths are between 1 and 3 feet. BFEs derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.

5. **Zone AO** - Areas subject to inundation by 1%-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between 1 and 3 feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone. Some areas with high flood velocities, such as alluvial fans and washes, are designated as Zone AO. Communities are encouraged to adopt more restrictive requirements for these areas. Mandatory flood insurance purchase requirements and floodplain management standards apply.

6. **Zone A99** - Areas subject to inundation by the 1%-annual-chance flood event, but which will ultimately be subject to reduced flood hazard upon completion of a flood protection system that is under construction. These are SFHAs where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No BFEs or depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

7. **Zone AR** - Areas that result from a non-accredited flood protection system that is being restored to provide flood hazard reduction from the base flood. Mandatory flood insurance purchase requirements and floodplain management standards apply.

8. **Zones AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A** - These areas have dual flood zones. This reflects both the presence of a non-accredited flood protection system that is being restored and areas that are subject to flooding from other water sources. Mandatory flood insurance purchase requirements and floodplain management standards apply.

9. **Zone V** - Areas along coasts subject to inundation by the 1%-annual-chance flood event with additional hazards associated with storm-induced waves. Because detailed hydraulic analyses have not been performed, no BFEs or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

10. **Zones VE and Zones V1–V30** - Areas subject to inundation by the 1%-annual-chance flood event with additional hazards due to storm-induced velocity wave action. BFEs derived from detailed hydraulic analyses are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

B. Moderate, Minimal Hazard Areas

Areas outside SFHAs, where the flood risk is lower. Mandatory flood insurance purchase requirements and floodplain management standards do not apply.

1. **Zones B, and X (Shaded)** - Areas of moderate flood hazard, between the boundaries of the SFHA and the 0.2%-annual-chance (or 500-year) flood zone.

2. **Zones C and X (Unshaded) -** Areas of minimal flood hazard, outside the SFHA and at elevations higher than the that of the 0.2%-annual-chance (or 500-year) flood. If a community's local flooding is too small to map, but they participate in the NFIP, they may not have a published map. The NFIP considers all areas within these communities to be Zone X (previously known as Zone C), and flood insurance coverage is available under the Regular Program.

2. **Zone D** - Areas with possible but undetermined flood hazards. No flood hazard analysis has been conducted. Flood insurance is optional and available, and rates in Zone D areas are commensurate with the uncertainty of the flood risk. Agents should also use the Zone D rating when a community incorporates portions of another community's area where no map has been prepared.

III. Locating a Specific Property on a Map

[Text omitted]

IV. Changing or Correcting a Flood Map by a Letter of Map Change (LOMC)

There are three procedures a community and/or property owner may use to change a flood map:

A. Letter of Map Amendment (LOMA)

The Letter of Map Amendment, or MT-1, process is a way for a property owner or authorized representative to request a property-specific determination or comment regarding the flood hazard designation for as-built or proposed development. MT-1 determinations amend the community's effective FIRM by clarifying whether the subject is within the SFHA. MT-1 comments provide feedback on whether proposed development, if completed exactly as proposed, would be within the effective SFHA when complete. During the review, FEMA considers the horizontal location of the subject on its community's effective FIRM and allows for detailed property elevation data to be submitted and compared to the calculated BFE.

There are two types of MT-1 determination requests.

- **Letter of Map Amendment (LOMA):** a determination from FEMA for a lot or existing structure that has NOT been elevated by fill (natural grade).
- **Letter of Map revision based pm Fill (MOMR-F):** a determination from FEMA for a lot or existing structure that HAS been elevated by fill.

Two types of MT-1 comment requests may be submitted to FEMA.

- **Conditional Letter of Map Amendment (CLOMA):** : a request for a conditional determination (comment) for a proposed structure that will NOT be elevated by fill (natural grade). Requests require both a proposed Lowest Adjacent Grade and a certified location for the proposed structure. Note: Requests for FEMA's comment on existing land will be processed as an as-built determination (LOMA) for either the entire recorded property or a portion of the legally recorded property if a metes and bounds description and map are submitted. (See Sections 3.4 and 4.8 for more details on requests based on a metes and bounds description and map.)
- **Conditional Letter of Map Revision based on Fill (CLOMR-F):** a request for a conditional determination (comment) from FEMA for a lot or proposed structure that WILL be elevated by fill.

B. Letter of Map Revision

The Letter of Map Revision, or MT-2, process results in an official revision to the effective FEMA map. It changes flood zones, floodplain and floodway delineations, flood elevations, and/ or planimetric features. Applicants should make all LOMR requests to FEMA through the chief executive officer of the community, as the community must adopt any changes and revisions to the map resulting from a LOMR.

There are two types of MT-2 requests.

- **Letter of Map revisions (LOMR):** A letter from FEMA officially revising a portion of the effective FIRM to show changes to floodplains, regulatory floodways, and/or flood elevations (see 44 CFR Parts 60, 65, and 72). A FIRM is not republished with the LOMR process, but annotated copies of the FIRM and FIS are included, if applicable. A LOMR's effects are reflected in the NHFL database.
- **Conditional Letter of Map Revision (CLOMR):** : A letter from FEMA commenting on whether a proposed project, if built as proposed, would meet the minimum NFIP requirements (see 44 CFR Parts 60, 65, and 72). Additionally, a CLOMR may be issued for proposed hydrology-only changes compared to the effective hydrology.

C. Physical Map Revision

A Physical Map Revision (PMR) is an official republication of a FIRM panel(s) and FIS report to change flood insurance zones, floodplain delineations, flood elevations, floodways, and planimetric features. Because of the increased time and cost involved to change, reprint, and redistribute an NFIP map, compared to those for a LOMR, a PMR is usually processed only when a revision reflects large-scope changes. The republished FIRM will also account for any LOMRs issued since the last publication of the FIRM. A PMR request also uses the MT-2 application. FEMA will analyze the data and determine if the revision will be processed as a PMR or LOMR. **NOTE:** Check the old maps to verify past rating determinations and to establish floodplain management compliance requirements. Historic maps are also available through the MSC.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

4. **(2022 - REVISED)** 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.

V. Flood Hazard Products

[Text omitted.]

Section 12: Flood Insurance Purchase Requirements

General Insurance Purchase Requirement

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 are covered by flood insurance for the term of the loan. The amount of insurance must be acceptable (see below). A lender that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

Relevant FAQs

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

11. **(2022 - REVISED) 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?**

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

12. **(2022 - REVISED) 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.

Flood Insurance Purchase and Compliance Requirements

Federal Financial Assistance

Federal officers and agencies are prohibited from approving any financial assistance for acquisition or construction purposes for use in any area:

1. That has been identified as a special flood hazard area, and

2. In which the sale of flood insurance has been made available
3. Unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance
   a. In an amount at least equal to its development or project cost (less estimated land cost) or
   b. To the maximum limit of coverage made available with respect to the particular type of property, whichever is less.

If the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance applies during the life of the property, regardless of transfer of ownership of such property.

Keep in mind that "financial assistance for acquisition or construction purposes" is any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. It includes the purchase or subsidization of mortgages or mortgage loans and excludes assistance resulting from the Disaster Relief and Emergency Assistance Act other than assistance under the Act in connection with a flood.

Government-Sponsored Enterprises

Government-Sponsored Enterprises (GSEs) for Housing include the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). These entities are federally chartered corporations whose sole business is to support residential housing by providing a secondary market for mortgages. GSEs are required to implement procedures reasonably designed to ensure that designated loans have flood insurance at the time of origination and at any time during the term of the loan. Under their guidelines, servicers of loans sold to those agencies are required to assume responsibility for compliance with the mandatory flood insurance requirements.

As secondary market agencies, GSEs have no direct contact or dealings with borrowers, but do have the ultimate exposure on the loan. Consequently, the GSE guidelines are designed to ensure that any "covered loan" they buy has flood insurance for the life of the loan. They now require lenders and servicers to keep flood insurance up to date, monitor publication of all future map and community changes, and impose or relieve the mandatory purchase requirement during the term of the loan.

If your bank sells loans to or service loans for GSEs, you should consult the most current Selling and Servicing Guides and Announcements (if applicable) for the most recent flood insurance requirements. Lenders who have additional questions regarding flood insurance requirements may contact their Customer Account Manager, Servicing Consultant, or Portfolio Manager.

Nonparticipating Communities

In 1977, the Flood Disaster Protection Act was amended to allow lenders to make conventional loans located in special flood hazard areas, if they were located in nonparticipating communities and as long as the proper notifications (described in the following section) have been provided. A conventional loan is a loan by a private lender, as distinguished from a loan by a Federal government agency that is not secured, insured, or guaranteed by a Federal government agency. Such a loan, even when made by a lender that is regulated by or has its deposits insured by a Federal financial regulatory agency, remains a conventional loan because the loan itself is not secured, insured, or guaranteed by a Federal government agency.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

1. **(2022 - REVISED) 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. 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. 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 an unacceptable risk to the lender.

FDIC Regulatory Text Concerning Mandatory Purchase

§ 339.3 Requirement to purchase flood insurance where available.

(a) **In general.** An FDIC-supervised institution 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. The amount of 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 the particular type of property under the Act. 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.

(b) **Table funded loans.** An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

Coverage Requirements and Limits

The maximum limits of flood insurance coverage available under the NFIP

Building Coverage	Emergency Program Maximum Amount Available	Regular Program Maximum Amount Available
Single family and 2-4 family dwelling	$ 35,000	$250,000
Other residential	$100,000	$250,000
Small business & Multi-Family	$100,000	$500,000
Churches and other nonresidential properties	$100,000	$500,000
Contents coverage (per unit)		
Residential	$ 10,000	$100,000
Small business	$100,000	$500,000
Churches and other properties	$100,000	$500,000

Special limits apply in Alaska, Hawaii, Guam, and the Virgin Islands. For details, refer to Table 22. Maximum Coverage Limits in the Regular Program, and Table 23. Maximum Coverage Limits in the Emergency Program sections of the FEMA Manual at

https://www.fema.gov/flood-insurance/work-with-nfip/manuals

Acceptable proof of coverage may be a copy of the Flood Insurance Application and premium payment, or a copy of the Declarations Page. The NFIP does not recognize binders or certificates of insurance.

Deductibles

The minimum deductible for building coverage varies based on the building occupancy, Pre-FIRM or Post-FIRM construction, receipt of statutory discounts, and the amount of building coverage purchased.17 In most cases, a higher deductible may reduce the premium. Contents-only policies (policies with no building coverage) receive a minimum $1,000 deductible.

NOTES:

- If the building's value is less than the minimum deductible available, then the amount of any building loss will be less than the minimum deductible.

- If a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, then the deductible amount will be two times the deductible that would otherwise apply to a completed building.
- Policies in the Emergency Program have the same deductible options as shown under the Exception: Pre-FIRM receiving Any Statutory Discount columns.

Deductible Options for the Single Family, Residential Manufactured/Mobile Home, Residential Unit, Two-to-Four Family Buildings

Standard Building Options		Exception Building Options: Pre-FIRM Building Receiving Any Statutory Discount		Contents Options
Building Coverage of $100,000 or less	Building Coverage over $100,000	Building Coverage of $100,000 or less	Building Coverage over $100,000	Contents Coverage of Any Amount
$1,000	$1,250	$1,500	N/A	$1,000
$2,000	$2,000	$2,000	$2,000	$2,000
$5,000	$5,000	$5,000	$5,000	$5,000
$10,000	$10,000	$10,000	$10,000	$10,000

Deductible Options for Other Residential Buildings, Non-Residential Buildings, Non-Residential Manufactured/Mobile Buildings and Non-Residential Units

Standard Building Options		Exception Building Options: Pre-FIRM Building Receiving Any Statutory Discount		Contents Options
Building Coverage of $100,000 or less	Building Coverage over $100,000	Building Coverage of $100,000 or less	Building Coverage over $100,000	Contents-Only Coverage
$1,000 / $1,000	$1,250 / $1,250	$1,500 / $1,500	N/A	$1,000
$2,000 / $2,000	$2,000 / $2,000	$2,000 / $2,000	$2,000 / $2,000	$2,000
$5,000 / $5,000	$5,000 / $5,000	$5,000 / $5,000	$5,000 / $5,000	$5,000
$10,000 / $10,000	$10,000 / $10,000	$10,000 / $10,000	$10,000 / $10,000	$10,000
$25,000 / $25,000	$25,000 / $25,000	$25,000 / $25,000	$25,000 / $25,000	$25,000
$50,000 / $50,000	$50,000 / $50,000	$50,000 / $50,000	$50,000 / $50,000	$50,000

Deductible Options for Residential Condominium Building

Standard Building Options		Exception Building Options: Pre-FIRM Building Receiving Any Statutory Discount	
Building Coverage of $100,000 or less	Building Coverage over $100,000	Building Coverage of $100,000 or less	Building Coverage over $100,000
$1,000 / $1,000	$1,250 / $1,250	$1,500 / $1,500	N/A
$2,000 / $2,000	$2,000 / $2,000	$2,000 / $2,000	$2,000 / $2,000
$5,000 / $5,000	$5,000 / $5,000	$5,000 / $5,000	$5,000 / $5,000
$10,000 / $10,000	$10,000 / $10,000	$10,000 / $10,000	$10,000 / $10,000
$25,000 / $25,000	$25,000 / $25,000	$25,000 / $25,000	$25,000 / $25,000

Relevant FAQs

Determining the Appropriate Amount of Flood Insurance Required

3. (2022 - REVISED) 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 nonresidential 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*.

4. (2022 - REVISED) What are examples of non-residential buildings?

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

1. 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.
2. 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*.

9. (2022 - REVISED) 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.

10. (2022 - NEW) 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.

Land and Land Values Not Insurable

The statutory requirements apply to improved real property, or land with a building on it, including a manufactured (mobile) home. Raw land is not insurable under the NFIP. The building must be insurable under NFIP requirements in order to qualify for coverage.

Acquisition and development loans are not subject to the regulation because they do not meet the definition of a designated loan. Therefore, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any building (structure) on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement.

Calculating Coverage

To meet compliance requirements, the amount of 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 particular type of structure; or
  - The "insurable value" of the structure, which is the same as 100 percent replacement cost value (RCV) for residential situations and the actual cash value (ACV), which is replacement cost value minus depreciation for commercial structures. (Unlike the practice in other lines of property insurance, building RCVs or ACVs under the NFIP do not include market values or the value of the land.)

The following "Flood Insurance Calculator" may be used to guide you in calculating the required amount of flood insurance.

Flood Insurance Calculator

Use this form to calculate the amount of flood insurance that is needed when a loan is secured by a building(s) or manufactured / mobile home, including condominiums, located in a special flood hazard area (SFHA).

Note: The NFIP states that each building must have its own separate flood insurance policy and that only one policy may be issued per building. Evidence of flood insurance is required upon or before loan closing. This form does not include contents coverage.

Residential or Non-Residential Building (Not Including Condominiums)

Lesser of:

A) Enter the Outstanding Principal Balance of the new loan — Line 1 $____________
Enter any superior liens on the building (current balances) — Line 2 + $____________
Enter the total of Lines 1 and 2: — Line A = $____________

B) Maximum Available thru NFIP is the Lesser of:

a. Enter the maximum limit available — Line 3 $____________
($250,000 per residential building X Number of Building or
$500,000 per non-residential building X Number of Buildings)

b. Enter the full insurable value for each building — Line 4 $____________
(do not include land value)

Enter the lesser of Line 3 and 4 — Line B = $____________

Enter the lesser of Lines A and B — $____________

This is the amount of insurance that is required.

Insurance Calculation for Residential Condominiums

Lesser of:

A) Enter the Outstanding Principal Balance of the new loan — Line 1 $___________
Enter any superior liens on the building (current balances) — Line 2 + $___________
Enter the total of Lines 1 and 2: — Line A = $___________

B) Maximum Available thru NFIP is the Lesser of:

a. Enter the maximum limit available — Line 3 $___________
($250,000 per residential condominium unit)

b. Enter the "insurable value" allocated to the Residential condominium unit** (replacement cost value of the condominium building ÷ number of units in the building) — Line 4 $___________

Enter the lesser of Line 3 and 4 — Line B = $_________

Enter the lesser of Lines A and B — Line C $___________

This is the amount of insurance that is required.

***the insurance agent is required to provide the replacement cost value of the condominium building and the number of units in the building on the declaration page of the RCBAP.*

Enter the number of units in the condominium building Line 5 _____________

Enter the total dollar amount of the flood policy (RCBAP) Line 6 $____________

Divide Line 6 by Line 5 and enter the amount: Line D $____________
(this is the flood coverage currently in place per unit)

Enter the amount from Line C: Line E $_____________
(this is the flood coverage required)

Subtract Line D from Line E: (Line D – Line E) Line F $_____________

If Line F is a positive number, sufficient flood insurance coverage is in place.

If Line F is a negative number, that is the amount of additional flood insurance that is required to be purchased.

Borrower(s): ____ Loan #: _____________________

Address of Property: ____

____

Date Completed: _________________________ Completed By: __________________________

Adequate Insurance

To protect collateral interests, a lender should consider whether its collateral is adequately insured against flood damage. A sound flood insurance risk management approach follows the insurance industry practice of insuring buildings to full RCV or ACV. Such a risk management strategy meets or exceeds the minimal compliance requirements and is the easiest approach for lenders to implement. Security interests in SFHAs should be protected with flood insurance to the full insurable value, to the extent possible under the NFIP.

The maximum amount of flood insurance coverage available under the NFIP is the lesser of the insurable value of the building or the maximum amount of coverage available for that type of property under the NFIP. This is especially significant in cases where the loan exceeds the value of the insurable building(s). Where the outstanding principal balance of the loan exceeds the insurable value of the building, the insurance amount must be the insurable value of the building rather than the outstanding principal balance of the loan.

Although the statute requires the lender's interest to be protected by flood insurance, a lender may need to consider other factors, such as GSE requirements, in determining the amount of insurance required. Depending on the practice of the mortgagee, the policy may not be sufficient to protect the full equity amount held in the property by the mortgagor in the event of a loss. If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the cost of repairing the building. By insuring buildings to the full RCV or ACV, the lender and borrower are both better protected. For multiple buildings, the lender must ensure that a separate flood insurance policy is provided for each building requiring coverage.

Relevant FAQs

Determining the Appropriate Amount of Flood Insurance Required

1. **(2022 - REVISED) 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. The NFIP does not insure land; therefore, land values are not included in the calculation.

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).

2. **(2022 - REVISED) 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.

5. **(2022 - REVISED) 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:

- o The maximum limit available for the type of structure; or
- o The "insurable value" of the structure.

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 (nonresidential building).
    - Insurable value of the equipment shed is $30,000.

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

6. (2022 - REVISED) 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. 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.

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

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

8. **(2022 - REVISED) 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.

Administrative Topics (FEMA Guide)

A. Policy Term

The policy term available is 1 year for both NFIP Direct business policies and policies written through WYO Companies.

B. Electronic Signatures

NFIP insurers must sell and service NFIP policies in a customer-centric manner as part of their normal business practices. To improve the policyholder's experience and to reduce administrative burden, FEMA approves and encourages the use of electronic signatures on NFIP transactions. FEMA will not deny the legal effect, validity, or enforceability of a signature solely because it is in electronic form. Insurers should accept electronic signatures in accordance with their general business practices and applicable laws.

C. Delivery of the Policy

The policy contract must be sent to the insured on new business or when changes are made to the policy form. The policy declarations page must be sent to the insured, agent/producer, and, if applicable, lender. The insurer must also send the NFIP Summary of Coverage and a cover letter to reference the enclosures. The insurer may send the documents via postal or electronic delivery in accordance with their usual business practice. FEMA recommends that the insurers use an opt-in approach to electronic communication with policyholders.

D. Evidence of Insurance

A copy of the Flood Insurance Application and premium payment, or a copy of the declarations page, is sufficient evidence of proof of purchase for new policies. The NFIP does not recognize binders. However, for informational purposes only, the NFIP recognizes certificates or evidences of flood insurance, and similar forms, provided for renewal policies if the following information is included:

1. Policy Form/Type (GP, DP, RCBAP*, PRP)
2. Policy Term
3. Policy Number
4. Insured's Name and Mailing Address
5. Property Location
6. Current Flood Risk Zone
7. Rated Flood Risk Zone (zone used for rating, including when grandfathering or issuing coverage under the Newly Mapped procedure)
8. Grandfathered: Y/N
9. Mortgagee Name and Address
10. Coverage Limits and Deductibles
11. Annual Premium

* For an RCBAP, include the number of units and Replacement Cost Value (RCV) of the building.

E. Assignment

A building owner's flood insurance building policy may be assigned to a purchaser of the insured building with the written consent of the seller. The seller must sign the assignment endorsement on or before the closing date. If applicable, primary residency must be validated at the time of assignment. Failure to submit primary residency documentation will result in non-primary residence charges effective the assignment date.

There is a 30-day waiting period before coverage can go into effect when an NFIP policy is assigned from a seller to a buyer where the buyer does not obtain a mortgage. If the buyer obtains a mortgage, the waiting period does not apply.

Policies on buildings in the course of construction and policies insuring contents only may not be assigned.

Section 13: Policy Effective Date

Introduction

This entire section of this manual is a direct quote from the FEMA Guide. We have formatted the information but have not made any further edits. The reader should be aware that this section was designated as "Section 2, III." In the manual, and "Section 2, III." is used below as a reference number.

Policy Effective Date

There is a standard 30-day waiting period for new applications and for endorsements to increase coverage, with some exceptions as described in subsection C. Effective Date.

NOTE: If a flood that is already in progress began before the effective date of the policy, even if the actual damage occurs after the policy effective date, the loss is not covered.

A. Receipt Date (in the Determination of the Effective Date)

The effective date is determined based in part upon the receipt date as follows:

1. If the Application or endorsement form and the premium payment are received by the insurer within 10 days from the date of application or endorsement request, or if mailed by certified mail within 4 days from the date of application or endorsement request, then the effective date will be calculated from the application or endorsement date. Use the application date or endorsement date plus 9 days to determine whether the Application or endorsement and premium payment were received within 10 days. When sent by certified mail, use the application date or endorsement date plus 3 days to determine whether the Application or endorsement and premium payment were mailed within 4 days.
2. If the Application or endorsement form and the premium payment are received by the insurer after 10 days from the date of application or endorsement request or are not mailed by certified mail within 4 days from the date of application or endorsement request, then the effective date will be calculated from the date the insurer receives the Application or endorsement and premium payment.

As used in Section 2, III.A.1. and 2. above, the term "certified mail" extends to not only the U.S. Postal Service, but also certain third-party delivery services. Acceptable third-party delivery services include Federal Express (FedEx), United Parcel Service (UPS), and courier services and the like that provide proof of mailing. Third-party delivery is acceptable if the delivery service provides documentation of the actual mailing date and delivery date to the insurer. Bear in mind that third-party delivery services deliver to street addresses but cannot deliver to U.S. Postal Service post office boxes.

B. Presentment of Premium Date Requirements for Loan Closing

FEMA requires WYO Companies and the NFIP Servicing Agent to record the presentment of premium date, the closing date, and the premium payor (insured, lender, title company, settlement attorney, etc.).

Presentment of premium is defined as:

1. The date of the check or credit card payment by the applicant or the applicant's representative if the premium payment is not part of a loan closing.
2. The date of the closing, if the premium payment is part of a loan closing.

For a loan closing, premium payment from the escrow account (lender's check), title company, or settlement attorney is considered made at closing, if the premium is received by the writing company within 30 days of the closing date.

NOTE: An agency check may be used if settlement paperwork or a photocopy of the original check from the lender, title company, or settlement attorney is provided as documentation.

If the premium payment is not part of the closing, the closing date is the effective date only if the application date is on or before the closing and the Application and premium payment are received by the writing company within 10 days of the closing date.

C. Effective Date – New Policy

1. **Standard 30-Day Waiting Period**

   The effective date of a new policy will be 12:01 a.m., local time, on the 30th calendar day after the application date and the presentment of premium. This includes new policies obtained when a lender determines that flood insurance is required for an existing loan on a building that does not have flood insurance. (Example: a policy applied for on May 3 will become effective 12:01 a.m., local time, on June 2.) The rules provided in subsection A. Receipt Date must be used.

2. **No Waiting Period (Loan Transaction)**

   Flood insurance that is initially purchased in connection with the making, increasing, extending, or renewal of a loan shall be effective at the time of loan closing, provided that the policy is applied for at or before closing. Use the rules below to determine the effective date.

   a. Premium payment from the escrow account (lender's check), title company, or settlement attorney is considered made at closing if the check is received by the writing company within 30 days of the closing date (closing date plus 29 days) and the Application is dated on or before the closing date. If received after 30 days, the effective date is the receipt date regardless of the flood zone.

   b. If premium payment is from other than the escrow account (lender's check), title company, or settlement attorney, and the Application is dated on or before the loan closing date, the effective date is the closing date if the Application and premium are received within 10 days of the closing date (closing date plus 9 days). If received after 10 days, the effective date is the receipt date regardless of the flood zone.

(*Example*: presentment of premium and application date – April 3; refinancing – April 3 at 3:00 p.m.; policy effective date – April 3 at 3:00 p.m.)

The insurer may rely on an agent's/producer's representation on the Application that the loan exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, to verify the effective date of the policy before adjusting the loss.

3. 1-Day Waiting Period (Map Revision)

Flood insurance initially purchased during the 13-month period beginning on the effective date of a map revision shall be effective 12:01 a.m., local time, the day after the date of application and the presentment of premium. The rules provided in subsection A. Receipt Date must be used.

The 1-day waiting period rule applies only where the FHBM or FIRM is revised to show the building to be in an SFHA when it had not been in an SFHA. (*Example*: FIRM revised – January 1, 2009; policy applied for and presentment of premium – August 3, 2009; policy effective date – August 4, 2009.) The 1-day waiting period rule applies for all buildings, including those owned by condominium associations.

The insurer may rely on an agent's/producer's representation on the Application that the map revision effective date exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation, such as a copy of the previous and current map or other documentation confirming the map revision or update, to verify the effective date of the policy before adjusting the loss.

The 1-day waiting period applies only to the initial purchase of flood insurance, which includes coverage already in effect on the map revision date. The 1-day waiting period rule does not apply to renewals or transfers of business effective after the initial purchase of flood insurance.

4. No Waiting Period (in Connection with the Purchase of an RCBAP)

When a condominium association is purchasing an RCBAP, the 30-day waiting period does not apply if the condominium association is required to obtain flood insurance as part of the security for a loan under the name of the condominium association. The coverage is effective upon completion of an Application and presentment of premium. The rules provided in subsection A. Receipt Date must be used unless the premium payment was made from the escrow account (lender's check), title company, or settlement attorney.

The insurer may rely on an agent's/producer's representation on the Application that the loan exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, to verify the effective date of the policy before adjusting the loss.

5. Submit-for-Rate Submission

With 2 exceptions, the effective date of a new policy will be 12:01 a.m., local time, on the 30th calendar day after the presentment of premium.

The 2 exceptions are as follows:

a. There is no waiting period if the initial purchase of flood insurance on an Application requiring the Submit-for-Rate procedure is in connection with making, increasing, extending, or renewing a loan, provided that the policy is applied for and the presentment of premium is made at or prior to the loan closing. The rules provided in subsection A. Receipt Date must be used unless the premium payment was made from the escrow account (lender's check), title company, or settlement attorney.

   The insurer may rely on an agent's/producer's representation on the Application that the loan exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation, such as settlement papers, to verify the effective date of the policy before adjusting the loss.

b. During the 13-month period beginning on the effective date of a map revision, the effective date of a new policy shall be 12:01 a.m., local time, following the day after the date the increased amount of coverage is applied for and the presentment of additional premium is made. This rule applies only on an initial purchase of flood insurance where the FHBM or FIRM is revised to show the building to be in an SFHA when it had not been in an SFHA. The rules provided in subsection A. Receipt Date must be used.

The insurer may rely on an agent's/producer's representation on the Application that the map revision effective date exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation, such as a copy of the previous and current map or other documentation confirming the map revision or update, to verify the effective date of the policy before adjusting the loss.

6. Contents Only

Unless the contents are part of the security for a loan, the 30-day waiting period applies to the purchase of contents-only coverage.

7. Community's Initial Entry or Conversion from Emergency to Regular Program

Process according to rules C.1 through C.7 above and D.1–D.3 and F.1–F.2 below.

D. Effective Date – Endorsement

1. Standard 30-Day Waiting Period

The effective date for new coverage or an increase in limits on a policy in force shall be 12:01 a.m., local time, on the 30th calendar day following the date of endorsement and the presentment of additional premium, or on such later date set by the insured to conform with the reason for the change. The rules provided in subsection A. Receipt Date must be used.

2. No Waiting Period (Loan Transaction)

The 30-day waiting period does not apply when the additional amount of flood 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. The increased amount of flood coverage shall be effective at the time of loan closing, provided that the increased amount of coverage is applied for at or before closing. The rules provided in subsection A. Receipt Date must be used.

The insurer may rely on an agent's/producer's representation on the endorsement that the loan exception applies unless there is a loss during the first 30 days after the endorsement effective date. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, before adjusting the loss.

3. **1-Day Waiting Period (Map Revision)**

The first increase in coverage requested during the 13-month period beginning on the effective date of a map revision shall be effective 12:01 a.m., local time, the day after the endorsement date and presentment of the additional premium. This rule applies only where the FHBM or FIRM is revised to show the building to be in an SFHA when it had not been in an SFHA. The rules provided in subsection A. Receipt Date must be used.

E. Effective Date – Renewal

1. Inflation Increase Option

The 30-day waiting period does not apply when an additional amount of insurance is requested at renewal time that is no more than the amount of increase recommended by the insurer on the renewal bill to keep pace with inflation.

If a revised renewal offer results from an endorsement that increases coverage more than the previously offered inflation increase option and becomes effective at least 30 days before renewal, the revised limits will apply at policy renewal. The revised renewal offer must be generated at least 30 days before the policy renewal in order for these revised limits to take effect at renewal.

In either situation, the increased amount of coverage will be effective at 12:01 a.m. on the date of policy renewal provided the premium for the increased coverage is received before the expiration of the grace period.

2. **Higher PRP and Newly-Mapped-Rated Policy Coverage Limits**

The 30-day waiting period does not apply to a renewal offer to the insured for the next-higher limits available under the PRP and the Newly- Mapped-rated policy.

3. **Deductible Reduction**

The deductible amount may be reduced at the time of renewal. In order for the deductible reduction to take effect on the renewal date, the request and full premium must be received at least 30 days prior to the renewal effective date, except when the deductible reduction is part of the renewal offer and the renewal offer reflecting the deductible reduction was made at least 30 days prior to the renewal date.

F. Effective Date – Change/Correction

1. **Post-Wildfire Conditions**

The 30-day waiting period does not apply if a property has been affected by flooding from Federal land that was caused by post-wildfire conditions. If the specific property suffers a loss and a claim is submitted, the insurer should evaluate whether the conditions warrant the exception of the 30-day waiting period. The following requirements must be met: the community where the property is located has been determined to be at an elevated risk of flood and a wildfire containment date has been issued; the adjuster determines that the flood causing the loss was affected by flooding from Federal land and caused by intense post-wildfire conditions; and the policy was purchased no later than 60 days after the fire containment date.

2. **Rewrite of a Standard-Rated Policy to a PRP/ Newly-Mapped-Rated Policy**

The 30-day waiting period does not apply when an insured decides to rewrite the existing policy at the time of renewal from a standard-rated policy to a PRP/Newly-Mapped-rated policy, provided that the selected PRP/Newly-Mapped-rated policy coverage limit amount is no higher than the next-highest PRP/Newly-Mapped-rated policy amount above that which was carried on the standard-rated policy using the highest of building and contents coverage. If the standard-rated policy has only contents coverage and is rewritten as a contents-only PRP/Newly-Mapped-rated policy, the 30-day waiting period does not apply.

When converting a standard-rated policy to a PRP/ Newly-Mapped-rated policy, the 30-day waiting period will not apply if the standard-rated policy has only building coverage and is rewritten as a PRP/Newly-Mapped-rated policy that includes contents coverage.

In addition, if the structure is no longer eligible under the PRP/Newly-Mapped-rated policy or the insured decides to rewrite the existing PRP/Newly- Mapped-rated policy at renewal time to a standard-rated policy, the 30-day waiting period does not apply provided the coverage limit amount is no more than the previous PRP/Newly-Mapped-rated policy coverage amount or the next-higher PRP/ Newly-Mapped-rated policy amount above that.

Section 14: Special Considerations

Land Acquisition and Development Loans

The NFIP does not insure land, and the law does not address mortgages secured by land alone. Acquisition and development loans are not subject to the regulation because they do not meet the definition of a designated loan.

Therefore, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any building (structure) on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement.

Low-Value Building on High-Value Land

Lenders are sometimes confronted with a situation where a building is located on land whose value alone would be sufficient to secure the loan without regard to the value of the building. However, the lender cannot waive the flood insurance requirement, even though the value of the land would provide more than adequate security for the amount of the loan. If the land has a building on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest.

The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required flood insurance coverage is the least of the:

- principal balance of the loan(s),
- insurable value of the building, or
- maximum coverage available under the NFIP.

The NFIP policy does not provide coverage for losses in excess of the value of the insurable building.

The question of limits on relatively low value buildings can be an issue, especially in agricultural areas where the buildings are included as part of the loan collateral. The law does not differentiate agriculture from other areas of lending, and no exception by regulated lenders can be made without legislative action.

Relevant FAQs

Low-Value Building on High-Value Land

7. (2022 - REVISED) 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. 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. Since the NFIP policy does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the building.

2. **(2022 - REVISED) 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?**

   Answer: 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. 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. 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.

Buildings in the Course of Construction

If a building to be constructed in an SFHA will become eligible for coverage when completed, flood insurance may be purchased to provide coverage during the construction period. Therefore, when a development or interim loan is made for construction of insurable improvements on land, flood insurance coverage can be purchased, even though construction has not begun.

While the NFIP statutes require flood insurance at loan closing, they do not specifically address the subject of buildings in the course of construction. For that reason, each regulatory agency or lender must determine at what point in the construction process coverage is required.

One option for implementing the mandatory flood insurance coverage is to require the purchase of the policy at the time that the development loan is made, in an amount adequate to meet the mandatory purchase requirement.

Another option would be for the lender to require flood insurance at the time of a specified drawdown of the loan for actual construction of the building. This would require the lender to monitor the loan more closely to determine when actual construction begins.

A policy obtained under either option would not be subject to the standard 30-day waiting period. The policy would be effective at the time of the flood insurance application and presentment of premium.

Material to be used on a building in the course of construction, but is yet to be walled and roofed, is eligible for flood insurance, subject to certain underwriting restrictions. Materials or supplies intended for use in such construction, alteration, or repair are insurable if they are contained within an enclosed building on the premises or adjacent to the premises. The NFIP, to the extent possible, conforms its practices with those of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place.

Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE).

Additionally, for a condominium building in the course of construction to be eligible under the RCBAP form, the building must be owned by a condominium association.

Relevant FAQs

Flood Insurance Requirements for Construction Loans

1. **(2022 - REVISED) 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. 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.

2. **(2022 - REVISED) 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. 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. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

3. **(2022 - REVISED) 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.

4. **(2022 - REVISED) 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. 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, 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.

5. **(2022 - REVISED) 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.

6. **(2022 - NEW) 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.

Manufactured (Mobile) Homes

To be eligible for coverage under the NFIP, a manufactured (mobile) home/travel trailer must meet certain requirements.

A manufactured (mobile) home is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation. The term Manufactured (mobile) homes in the Guidelines does not include recreational vehicles.

Under the NFIP, a travel trailer can be considered a building only if it is without wheels, built on a chassis and affixed to a permanent foundation, and regulated under the community's floodplain management and building ordinances or laws. The statutory requirements apply to a loan securing mobile homes that are, or will be, located in an SFHA. NFIP coverage is available only with respect to a building or mobile home and not the land on which the building or mobile home sits. A chattel mortgage on a mobile home may trigger the mandatory purchase requirements.

In instances where the location of the mobile home has not been established by the time of closing, the bank should notify the borrower that flood insurance must be obtained if the mobile home will eventually be located in an SFHA, in a participating community, and must be permanently affixed to a foundation to be eligible for coverage under the NFIP.

In order to make this determination, the bank should require borrowers to provide notice to the bank when the mobile home is permanently anchored. A flood determination must then be made by the bank, and if the mobile home is located in an SFHA, the bank must notify the borrower that flood insurance must be purchased within 45 days of notice.

Although the Real Estate Settlement Procedures Act (RESPA) does not require escrowing on a loan where land is not part of the security, the scope of the 1994 Reform Act includes escrowing on a designated loan secured by a mobile home. Section 10 of RESPA, which pertains to the escrow rules, applies only to mobile homes that are also secured by the real estate upon which they are situated. A mobile home lender is required to escrow even if the loan is on the mobile home only.

Personal Property

Flood insurance coverage for contents is not required by law unless personal property, in addition to a building, secures the loan. Because residential mortgages rarely include personal possessions as part of the loan security, lenders are not required to compel borrowers to purchase contents coverage, as this is not a designated loan.

When a commercial loan on a building includes inventory and other trade or business movable property as security for a loan, that property must be covered by a separate policy under the General Property form.

On the other hand, flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. However, the Guidelines note that obtaining contents coverage for personal property or inventory located in high flood risk areas is prudent, even when not mandated by law.

Relevant FAQs

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

6. **(2022 - REVISED) 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." 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.

7. **(2022 - REVISED) 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.110 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.

8. **(2022 - REVISED) 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.

9. **(2022 - REVISED) 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.

10. **(2022 - NEW) 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.

Underinsured Buildings

Coverage must be "in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available." Therefore, to meet minimum compliance requirements, lenders must see to it that flood insurance coverage on a building is at least the lowest of the following:

- The maximum amount of NFIP flood insurance coverage available; or
- The outstanding principal balance of the loan(s); or
- The insurable value (RCV or ACV) of the building.

Lenders should consider whether minimum required coverage amounts will be adequate to protect their interests and those of their borrowers. Borrowers should be urged to seek assistance from their agents regarding their flood insurance needs. To the extent allowed by the maximum limits available under the NFIP, flood insurance coverage amounts should include the cost of the foundation and correspond to the coverage amounts provided by homeowners insurance, which typically are purchased at the level of insurance to value.

When a lender (or a servicer acting on the lender's behalf) discovers that a building used as security is covered by an inadequate amount of flood insurance, it must first provide notice and opportunity for the borrower to obtain the required amount of flood insurance. If the borrower fails to purchase insurance, the lender then must purchase flood insurance in the appropriate amount on the borrower's behalf. The statute designates the same steps to be followed in the event additional insurance is required as when no insurance exists.

Relevant FAQs

Flood Zone Discrepancies

1. **(2022 - REVISED) 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), 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. 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. For disputes regarding whether a property is located in an SFHA, *see* Q&A Zone 3.

2. **(2022 - REVISED) 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.

3. **(2022 - NEW) 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.

Home Equity and Second Mortgages

Flood insurance is required on designated home equity, or second mortgage loans made by regulated lenders if the loans are secured by a building or a manufactured (mobile) home/travel trailer, regardless of the lien priority. The location of the secured property home equity or second mortgage, governs whether flood coverage is required.

Even though home equity and second mortgage loans are subordinate to a primary loan, the terms of the mandatory purchase law apply with equal force.

The standard 30-day waiting period does not apply on home equity loans and second mortgages. Coverage is effective at the time of application and presentment of premium.

Subject to the limit on insurance available and the requirement cap, a home equity lender must protect its interests by having coverage in place at the time the loan is extended. The lender must make a determination about the flood insurance requirement when the application for the loan is made.

If the first mortgagee otherwise complied with the mandatory purchase requirements and no remapping has occurred, then no new determination is needed for the second mortgage or home equity loan.

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 because the borrower will be drawing down differing amounts on the line of credit at different times. In those instances where there is no policy on the collateral, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. Drawing against an approved line of credit does not require further determinations to be made.

A lender may take the following alternative approaches:

- Review its records periodically (at least annually) 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 all loans or the maximum amount of flood insurance coverage available, whichever is less.

If a secondary lienholder determines that a first mortgagee has neglected to obtain flood insurance coverage, the secondary lienholder must be assured that coverage is purchased on the entire outstanding loan amount in order to comply with the statutory requirements, as well as to protect its priority as to insurance proceeds. Similarly, if the first mortgage has insufficient coverage, the borrower must cure this deficiency by purchasing additional coverage sufficient to protect all outstanding loans. If not, the loan should not be made.

Because only one NFIP policy can be issued on a building, no matter how many loans exist, a secondary lienholder must verify that any required escrow of premium is being undertaken by the primary lienholder. Accordingly, the lienholder must coordinate coverage through its borrower and the insurance agent of record. A home equity and secondary lienholder's interest is accomplished by endorsement to the policy.

Relevant FAQs

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

1. **2022 - UNCHANGED) 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.

2. **(2022 - REVISED) 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. 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.

3. **(2022 - NEW) 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; 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.

4. **(2022 - REVISED) 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. 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 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.

5. **(2022 - UNCHANGED) 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. 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.

The Possibility of Different Coverage Requirements

Each federal agency has the right to require higher limits as deemed appropriate. For example, the Small Business Administration (SBA) requires flood insurance up to the value of a property or the maximum amount of insurance that can be purchased, whichever is less, regardless of the amount of the loan. The Federal National Mortgage Association (FNMA), on the other hand, requires the amount of flood insurance to be equal to the lesser of 100 percent of the insurable value of the facilities or the maximum coverage available.

Instead of establishing minimum amounts of coverage to comply with the federal agencies' requirements, it is suggested that the lender establish its own guidelines as they apply to the local needs of the community and the lender.

Section 15: Force Placement

Introduction

If a lender, or a servicer acting on behalf of the lender, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required, then they shall notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the lender or its servicer shall purchase insurance on the borrower's behalf. They may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

A sample notice appears at the end of this section.

Force placement applies to any borrower of a designated loan, commercial or residential, whether or not escrow is required. On any type of force placed policy, a lender should keep evidence of the determination that the loan is in an SFHA, including information concerning the FIRM panel and method by which the determination was made.

Home equity and second mortgage loans are also included under the requirement. A secondary lienholder that force places coverage only to the extent of its loan will not protect its interest if a first mortgagee claims priority to any insurance proceeds.

Force placement by a second mortgagee will require coordination with the first mortgagee, as well as with the insurance producer and insurer on the first mortgage, if one exists.

A lender must carry out the force placement as a matter of law, independent of the contractual provisions of the loan. Force placement is not limited to those situations provided for under the mandatory purchase law.

The amount of insurance coverage must be at least the lowest of the outstanding principal balance of the loan(s), the insurable value of the structure, or the maximum limit available under the NFIP. If the lender opts to protect only its security in the loan (loan balance), the insurance proceeds may be inadequate. Force placement of flood insurance is intended only as a last resort, and on mortgages whose mortgagors have failed to respond to the notifications required by law.

A lender must inform its borrowers that they have a free choice of an insurer from whom to purchase coverage. That free-choice purchase option also applies to a lender when dealing with force-placed coverage. If, within 45 days from the initial notice, a borrower fails to comply by voluntarily obtaining coverage, a lender or servicer must obtain either:

- A Mortgage Portfolio Protection Program (MPPP) policy through a WYO insurer; or
- An SFIP through either a WYO insurer or the NFIP Servicing Agent; or
- Non-NFIP flood coverage from a private industry insurer if such coverage is available.

FDIC Regulatory Text Concerning Force Placement of Flood Insurance

§ 339.7 Force placement of flood insurance.

(a) **Notice and purchase of coverage.** If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution 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 coverage lapsed or did not provide a sufficient coverage amount.

(b) **Termination of force-placed insurance.**

(1) **Termination and refund.** Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) **Sufficiency of demonstration.** For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall 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 agent.

Relevant FAQs

Force Placement of Flood Insurance

1. **(2022 - REVISED) 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.

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.

2. **(2022 - NEW) 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.

3. (**2022 - REVISED) 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.

4. **(2022 - REVISED) 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. 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.

5. **(2022 - REVISED) 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. 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.

6. **(2022 - NEW) 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. 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.

7. **(2022 - NEW) 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.

   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.

   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.

8. **(2022 - REVISED) 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." 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.

   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.

   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.

9. **(2022 - REVISED) 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. 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.

10. (2022 - NEW) 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. 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.

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.

11. **(2022 - NEW) 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. 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.

12. **(2022 - NEW) 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.

13. **(2022 - NEW) 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." 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. 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.

14. **(2022 - NEW) 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.

15. **(2022 - NEW) 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.

16. **(2022 - NEW) 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. 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. 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. 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.

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. *See also* Q&A Force Placement 9.

Sample Force Placement Notice

NOTICE OF FLOOD INSURANCE REQUIREMENT

Dear Customer:

Our records indicated that the property securing your loan is located in a Special Flood Hazard Area (SFHA) and that flood insurance is required to be maintained on the property for the entire term of the loan. As of this date, we have not received evidence that a current flood insurance policy is in place.

If you have already purchased flood insurance, please forward to us a copy of the policy or the application form along with a paid receipt.

The flood insurance policy submitted must contain flood coverage for at least the current amount of your loan or the maximum amount available from the National Flood Insurance Program (NFIP).

We must receive your evidence of flood insurance within the next 45 days or it will be necessary for us to obtain a flood insurance policy protecting our interest in the property.

If we are forced to obtain flood insurance on your behalf, the amount we will purchase and cost is shown below:

Amount of Insurance	**Deductible**	**Annual Premium**
$XX,XXX	$X,XXX	$XXX.XX

Please be aware that flood insurance we obtain may be more expensive than a policy you could obtain on your own and will provide coverage for only the physical damage to the building due to flood and will not include other coverage, such as contents and personal liability.

Regards,

Lender

Section 16: Condominiums, Cooperatives and Timeshares

Introduction

The mandatory purchase of flood insurance requirements apply with equal force to condominium, cooperative, and timeshare units. Placing and monitoring coverage on units within multi-unit buildings presents special circumstances to lenders and merits particular care. The statutory requirements can be explained through a review of how the various National Flood Insurance Program (NFIP) policies correspond to the forms of ownership as follows:

- The Residential Condominium Building Association Policy was designed for eligible residential condominium associations and timeshares that are of the fee or real estate ownership type, in Regular Program Communities.
- The General Property Form policy applies to residential cooperatives and timeshares that are non-fee interest and residential condominium buildings not eligible for the Residential Condominium Building Association Policy. The General Property Form policy also applies to nonresidential condominiums and unit owners.
- The Dwelling Form policy may be issued on an individual residential unit.

For eligibility requirements and limits available on the various coverages under these policies, refer to the Condominiums section of the NFIP Flood Insurance Manual, or consult property insurance professionals for assistance.

Condominiums (FEMA Guide)

I. Methods of Insuring Condominiums

There are 4 methods of insuring condominiums under the National Flood Insurance Program (NFIP). Each method has its own eligibility requirements for condominium type. Only residential buildings having a condominium form of ownership are eligible for the Residential Condominium Building Association Policy (RCBAP).

A. Residential Condominium: Association Coverage on Building and Contents

[Text omitted.]

B. Residential Condominium: Unit Owner's Coverage on Building and Contents

[Text omitted.]

C. Non-Residential Condominium: Building and Contents

Non-residential condominium buildings and their commonly owned contents may be insured in the name of the association under the General Property Form. The "non-residential" limits apply.

D. Non-Residential Condominium: Unit Owner's Coverage (Contents)

The owner of a non-residential or 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.

In the event of a loss, up to 10% of the stated amount of contents coverage can be applied to losses to condominium interior walls, floors, and ceilings. The 10% is not an additional amount of insurance.

II. Residential Condominium Building Association Policy (RCBAP) Form

[Text omitted.]

III. Eligibility Requirements

[Text omitted.]

Relevant FAQs

Flood Insurance Requirements for Residential Condominiums and Co-Ops

1. **(2022 - REVISED) 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. 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.

2. **(2022 - UNCHANGED) 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.

Insurance Requirements

The flood insurance amount required by statute for an applicable loan on a condominium unit is the same as for a free-standing structure.

Once the minimum amount required to fulfill the statutory requirement is identified from the above example, it is compared to the portion of the RCBAP limit attributable to the unit. If the unit's portion of the RCBAP equals or exceeds the minimum amount required by law, the loan is compliant, but not necessarily adequately insured against flood loss. If the unit's portion of the RCBAP is less than the minimum amount required by statute, the association should be asked to increase its limits. If the association refuses, the unit owner may purchase flood insurance under the Dwelling Form for the difference, if acceptable to the lender. Meeting the compliance requirement via this combination of coverages (RCBAP and Dwelling Form) does not fill gaps in coverage nor ensure that the security is adequately protected against flood loss.

If there is no RCBAP, the unit owner can meet the minimum statutory requirement by purchasing a Dwelling Form policy at least equaling the minimum required amount, if acceptable to the lender.

Related FAQs

Flood Insurance Requirements for Residential Condominiums and Co-Ops

3. **(2022 - REVISED) 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

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. 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.

Evidence of Compliance

As a condition of making, increasing, extending, or renewing a loan on the residential condominium unit and as frequently as required, a mortgagee must obtain a copy of the:

- RCBAP documenting the amount of insurance, ideally insured to RCV, or at least the unit's portion equaling the statutory requirement; or
- RCBAP and Dwelling Form (or application and paid receipt) jointly equaling at least the minimum statutorily required amount of insurance; or
- Dwelling Form equaling the minimum amount required to meet statutory requirements.

The Declarations Page of each RCBAP issued or renewed must show the building's replacement cost value and the number of units within that building.

While any of these insurance methods might meet the statutory requirements, an RCBAP not insured to full value and/or a Dwelling Form policy could expose the lender and borrower to unknown risk.

FEMA suggests the following simple way to address both compliance requirements and flood insurance needs for safety and soundness of collateral interests. Lenders may apply a risk management strategy, as a condition to granting loans secured by condominium units in high-flood-risk areas, by requiring that condominium buildings be insured under the RCBAP to their full RCV or the maximum amount available, whichever is less. The compliance requirement is then equaled or exceeded with no additional calculation necessary.

Coverage

The entire residential condominium building is covered under the RCBAP, including both common building elements and individually owned building elements within the units, improvements within the units, and personal property owned in common if contents coverage is carried. The RCBAP does not protect the individual owner from loss to personal property owned exclusively by the unit owner.

The NFIP prohibits duplication of NFIP policies on the same risk. As described below, both an association and a unit owner may obtain NFIP coverage, but the unit owner's coverage is proscribed in that it is in excess of the association policy. The combined coverage of the RCBAP and the unit owner Dwelling Form policy cannot exceed the statutory limits or insurable value, whichever is less. The RCBAP is primary in relation to the unit owner's policy.

Relevant FAQs

Flood Insurance Requirements for Residential Condominiums and Co-Ops

4. (2022 - REVISED) 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.

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).)

5. (2022 - REVISED) 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. 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.

6. **(2022 - REVISED) 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. 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.

Policy Limits

The maximum amount of building coverage that can be purchased on a high-rise or low-rise condominium under the RCBAP is the replacement cost value of the building or the total number of units in the condominium building multiplied by $250,000, whichever is less. The maximum coverage limit under the NFIP for contents is $100,000 or the Actual Cash Value (ACV) of the contents, whichever is less.

Valuation

FEMA encourages lenders to seek the assistance of insurance agents and companies to determine the replacement cost value of residential condominium buildings, including the foundations. Any building at risk of flooding should be protected to the same degree as it is for fire and wind perils, to the extent possible under the NFIP policy limits, which are established by Congress.

Coinsurance Provision

Under the RCBAP, associations have an incentive to purchase and maintain coverage in an amount equal to the cost of replacing the building and its foundation, to the extent possible under the NFIP limits. FEMA encourages condominium associations to insure their building to 100 percent of the full replacement cost value, because construction costs continue to increase while the RCBAP limits do not automatically increase over time. At the time of loss, the amount of insurance should represent at least 80 percent or more of the replacement cost or the maximum amount of coverage available under the NFIP, in order to avoid the coinsurance penalty. The 80 percent referenced here is an insurance tool that may apply at the time of loss; it is not a compliance tool.

If the 80 percent threshold is met, the NFIP will pay compensable partial losses up to the limits of the policy minus any deductible. When an association carries limits to full replacement cost value, the unit owner does not need to obtain supplemental building coverage to offset a potential assessment in a total loss situation. The RCBAP's policy limits exclusively, and no additional separate policy limits (such as the unit owner's coverage), can apply to avoid the coinsurance penalty. For example, a Dwelling Form policy limit does not increase the RCBAP limit and would not avoid the coinsurance penalty.

Coverage under the RCBAP is on an RCV basis so that no deduction for depreciation is taken for building elements at loss settlement. However, condominium associations are encouraged to insure their buildings to full replacement cost value, or to the maximum available limit of $250,000 per unit multiplied by the number of units, whichever is less.

Example of RCBAP Coinsurance Penalty

- Building RCV at time of loss $12,500,000
- 80 percent of RCV at time of loss $10,000,000
- Actual amount of insurance carried $ 6,000,000
- Amount of loss $ 6,000,000
- Loss settlement (before deductible) $ 3,600,000

The amount of insurance carried ($6,000,000) represents only 60 percent of the 80 percent required amount ($10,000,000) that avoids the coinsurance penalty. A shortage of $2,400,000 therefore results, which represents the coinsurance penalty.

RCBAP Loss Settlement Formula

$$\frac{\$6{,}000{,}000 \text{ (ins. amt.) X } \$6{,}000{,}000 \text{ (loss)}}{\$10{,}000{,}000 \text{ (80 percent of RCV at time of loss)}} = \$3{,}600{,}000$$

Example of Adequate Amount of Insurance, Avoiding RCBAP Coinsurance Penalty

Building RCV at policy purchase	$11,000,000
80 percent of RCV at policy purchase	$ 8,800,000
Amt. insurance purchased (RCV)	$11,000,000
Building RCV at time of loss	$12,500,000
80 percent of RCV at time of loss	$10,000,000
Amount of loss	$ 6,000,000
Loss settlement (before deductible)	$ 6,000,000

In the preceding example, insurance was purchased to the full RCV of the building at $11,000,000. At the time of loss, the RCV of the building had risen to $12,500,000.

Because the actual amount of insurance is within 20 percent of the replacement value of the building, there is no coinsurance penalty. Purchasing insurance to full RCV, rather than to 80 percent of the replacement cost, should go a long way toward protecting the insurable interests of the lender, the association, and the unit owner.

Relevant FAQs

Flood Insurance Requirements for Residential Condominiums and Co-Ops

7. (2022 - REVISED) 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 than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

8. **(2022 - REVISED) 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.

9. **(2022 - NEW) 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.*

10. **(2022 - NEW) 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.

Dwelling Form Policy

Unit Owner's Building Coverage

A unit owner can acquire supplemental building coverage to the RCBAP by purchasing building coverage for the unit under a Dwelling Form that is written in excess of the association policy. The policies are coordinated such that the Dwelling Form policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured or to assessments. The Dwelling Form does not extend the RCBAP limits, nor does it enable the association to fill gaps in coverage.

Combined loss payments under the RCBAP and Dwelling Form, including assessment coverage, cannot exceed the insurable value or maximum NFIP limits for building coverage. Assessment coverage applies, up to the building coverage limits of the Dwelling Form policy purchased, when there is no association policy (RCBAP). Assessment coverage under the Dwelling Form applies when there is an RCBAP, but only to that part of the loss that exceeds 80 percent of the building replacement cost value.

Unit Owner's Personal Property Coverage

Personal property owned by individual unit owners must be insured under an individual unit owner's Dwelling Form policy. With the exception of the noncondominium timeshare unit owner, unit owners may apply up to 10 percent of their personal property coverage limit to flood damage to improvements made at the unit owner's expense. However, this 10 percent of the contents coverage limit does not apply if the association's General Property Form policy maximum limit of $250,000 has been reached and/or if the improvements in the unit are covered by an RCBAP or a private flood insurance policy. Additionally, use of the personal property coverage limit is at the discretion of the unit owner and reduces the contents limit.

Loss Assessment Coverage

The following examples demonstrate how the unit owner's Dwelling Form policy will respond in certain loss situations.

Example A—No RCBAP:

- If the unit owner purchases building coverage under the Dwelling Form and there is no RCBAP, the Dwelling Form policy responds to assessments against unit owners for damages to common areas up to the Dwelling Form policy limit.
- However, if there is damage to the building elements of the unit as well, the building coverage limit under the Dwelling Form policy may not be exceeded by the combined settlement of unit building damages, which would apply first, and the loss assessment.

Example B—RCBAP insured to at least 80 percent of building replacement cost:

- If the unit owner purchases building coverage under the Dwelling Form and if there is an RCBAP covering at least 80 percent of the building RCV, the loss assessment coverage under the Dwelling Form policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost.
- The loss assessment coverage under the Dwelling Form 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 Form policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted.

Note that coverage combinations cannot exceed the total limit of $250,000 per unit.

Example C—RCBAP insured to less than 80 percent of building replacement cost:

- If the unit owner purchases building coverage under the Dwelling Form and there is an RCBAP that was insured to less than 80 percent of the building RCV at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its coinsurance penalty.

Loss assessment is available only to cover the building damages in excess of the 80 percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building RCV at the time of loss before the loss assessment becomes available. Covered repairs to the unit, if applicable, would have priority over loss assessments under the Dwelling Form.

General Property Form Policy

Nonresidential

To purchase coverage under the NFIP on a nonresidential condominium building, a condominium association must use the General Property Form. Both building and contents coverages are available separately, with building and contents limits up to $500,000 each per nonresidential building. The nonresidential unit owner also may purchase contents coverage using this policy.

A Dwelling Form policy is not available to the nonresidential unit owner. In addition, a condominium association must use the General Property Form to purchase coverage on a residential condominium building not eligible for the RCBAP or when the building is located in an Emergency Program community.

Cooperative Associations

Because cooperatives are not in the condominium form of ownership, they cannot be insured under the RCBAP. Residential or nonresidential cooperative buildings must be insured by the association or corporation under the General Property Form. A unit owner in a cooperative building does not receive a real estate interest in a unit, but rather a share of stock in a corporation with the right to occupy a particular unit. The entity that owns the cooperative building, not the various unit members, is the named insured.

Cooperative buildings where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. Such residential building owners can insure the building under the General Property Form for a maximum building coverage limit of $250,000 in a Regular Program community.

Timeshares

Timeshare buildings basically fall into two categories: those where a real estate ownership interest has been conveyed and those where just the right to the use of a unit has been conveyed.

Timeshare buildings in the condominium form of ownership (fee or real estate) are eligible for coverage under the RCBAP.

These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums, including the requirement that 75 percent of the area of the building be used for residential purposes.

Timeshare buildings not in the condominium form of ownership where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. They can be insured by the owner of the building under the General Property Form for a maximum building coverage amount of $250,000 in a Regular Program community.

Homeowners Associations

Individually titled town homes and single-family buildings, whose owners belong to a non-condominium homeowners association, can be insured by the individual owners under the Dwelling Form and not by the homeowners association. The homeowners association may purchase coverage for a building it may own, such as a clubhouse, under the General Property Form.

Section 17: Implementation of Key Provisions

Introduction

This section is taken directly from Section E, "Implementation of Key Provisions" of the *2007 Guidelines*. The purpose is to describe how certain key provisions of the 1994 Reform Act are to be implemented within the industry. While the guidelines are no longer valid, the tripwires discussed here still exist.

Trip Wires

Loan Activity

The making, increasing, extending, or renewing of a loan is a "tripwire" for compliance with the mandatory flood insurance purchase requirements. This tripwire occurs most frequently upon loan origination, e.g., when a lender knows or has reason to know whether the mandatory purchase requirements apply. Another tripwire occurs in any situation that alerts a lender or servicer to a change in circumstances, (e.g., a known map change, or the receipt of a notice to pay the premium to avoid policy expiration.)

If a borrower executes a note on improved real estate as collateral for a personal loan, and the lender does not perfect a security interest or mortgage in the building itself, the loan is not a designated loan and, therefore, is not subject to the mandatory purchase requirement.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

6. **(2022 - REVISED) 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.

Loan Transfer or Purchase

The transfer or purchase of a loan among regulated lenders or servicers does not constitute the making of a loan, so it does not trigger the mandatory purchase requirement.

It is the lending regulators' position that deeming a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and purchaser of loans sold in the secondary market. As a condition of purchase, a loan purchaser may require the seller to determine whether the building securing the loan is in a high flood risk area, also known as a Special Flood Hazard Area (SFHA). The practice of requiring a seller to make a representation as to compliance with the mandatory purchase requirements also provides additional protection to a loan purchaser. This representation is particularly important when the loans are in communities that have SFHAs.

However, the Government-Sponsored Enterprises (GSEs) do require flood insurance coverage on any loan located in an SFHA and transferred to or purchased by them. They require their respective sellers and servicers to be in full compliance with the flood insurance statutes.

Freddie Mac and Fannie Mae have different views on this tripwire, and sellers/servicers should understand the position of the GSE to which they are selling loans.

A conventional loan may be extended in a community that does not participate in the National Flood Insurance Program (NFIP), however, a lender may find that it cannot pass the loan on to Fannie Mae or Freddie Mac. The GSEs have restated they will not buy mortgages secured by properties in nonparticipating communities if they are located in an SFHA.

However, they will accept loans in nonparticipating communities that have not been mapped. The quality control measures instituted by the GSEs set the standard for the industry, even for transactions to private investors who are outside the GSE market. When any loan is sold and servicing is transferred to the new servicer, notice of the identity of the new servicer must be provided to the Federal Emergency Management Agency's (FEMA) designee, which is the insurance company listed on the policy.

Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

5. **(2022 - REVISED) 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. 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. 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.

Portfolio Review

A look-back or retroactive loan portfolio review, as well as a review made on a prospective basis, which may disclose uninsured risks, is encouraged but not required by the law. The statutory requirements contain no express or implied language that obligates a regulated lender to review its portfolio of existing loans. Under GSE criteria, a lender or servicer is required to monitor loans sold to the GSE.

The law requires lenders and servicers to develop policies and procedures to ensure that flood insurance coverage is obtained before a loan can be granted, when a determination has been made that a building securing a loan is located in an SFHA. The lender or servicer also must ensure that a policy does not lapse after it has been placed at loan origination. If the policy lapses and the borrower refuses to purchase flood insurance within 45 days of the required notice, the lender must force place coverage.

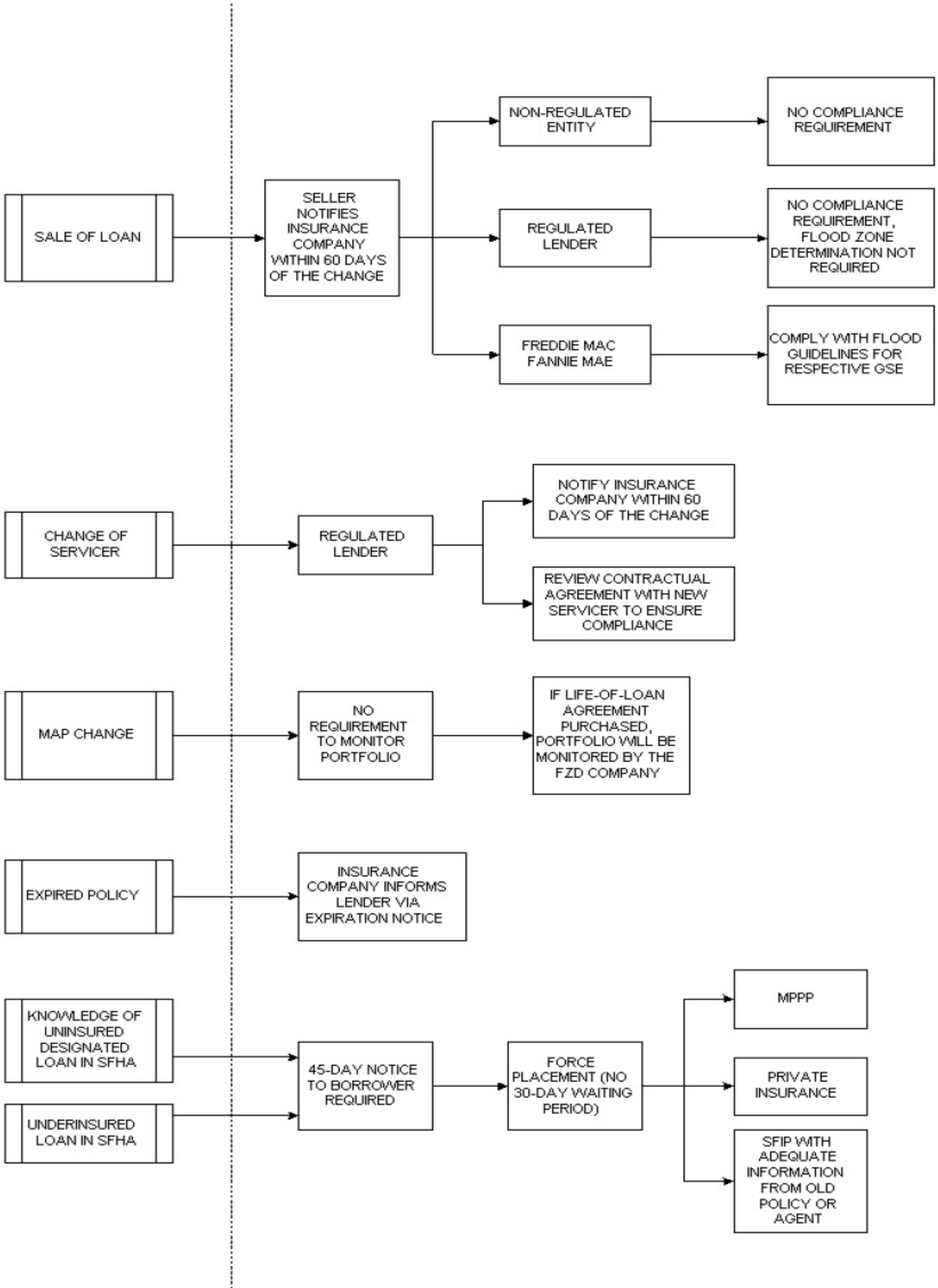
A mortgagee or servicer must require the purchase of flood insurance at any time during the term of the loan when the lender determines that the building or manufactured (mobile) home is located in an SFHA. This position is intended to ensure that buildings located in SFHAs are covered by flood insurance, regardless of whether the area is designated as an SFHA by the Administrator of FEMA before or after the loan is originated. For example, when a community or area is remapped by FEMA, buildings that were not located in an SFHA at the time the mortgage was made may later be identified to be in an SFHA.

Apart from the requirements mandated on the origination of a loan, a regulated lender need only review and take action on any part of its existing portfolio, (i.e., "look forward," for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage.) However, scheduled periodic reviews that track the need for flood insurance on loan portfolios are encouraged. The law does not include remapping to the list of statutory tripwires. Neither the Reform Act nor the agencies' regulations require lenders to monitor for map changes.

The GSE sales guides go beyond the statutory requirements by directing lenders to continually monitor map changes and changes in community status under the NFIP.

A visual illustration from the *2007 Guidelines* appears below.

TRIPWIRES DURING LIFE OF LOAN



Relevant FAQs

Determining the Applicability of Flood Insurance Requirements for Certain Loans

8. **(2022 - REVISED) 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, 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. 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.

Safety and Soundness

Federal lending regulators view adequate flood insurance coverage as an important factor in measuring the safety and soundness of a lending institution that extends loans in SFHAs. The existence of flood insurance is a component of prudent underwriting and protects the lender's ongoing interest in its collateral. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. The Federal regulators encourage lenders to evaluate and modify their flood insurance programs as needed to comport with both the mandatory purchase requirements and the principles of safe and sound banking that may be unique to a particular lender.

A lender's flood insurance needs vary widely depending on lending concentrations within the geographic areas it serves. For example, a high prevalence of loans in an SFHA requires particular vigilance. Institutions that are significantly exposed to the risks for which flood insurance is designed to compensate should determine the adequacy of flood insurance coverage by conducting periodic reviews, or reviews triggered by remapping of areas represented in their loan portfolio. Accordingly, a map change in a community that contains a significant number of loans in an SFHA merits a heightened analysis. The same principle applies to a regulated lender's purchase or transfer of existing loans in a community containing a special flood hazard.

In non-participating communities, lenders should have procedures in place to ensure that loans on properties in SFHAs where flood insurance is not available do not constitute a large portion of the institution's loan portfolio.

Impact on Servicers

A servicer may be a regulated lender or a private entity assisting a lender as an independent contractor. The provisions of the law apply to all banking institutions' subsidiaries and service corporations. If a servicer is a subsidiary of a regulated lender, it is included under the law. The activities that apply to servicers include escrow, force placement, and zone determination, as well as the submission and receipt of notices. A servicer is directly involved in NFIP activities as a recipient of notices such as a copy of the borrower's Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance from the lender and the expiration/renewal notice from the insurer.

The regulations that address a servicer's activities treat loan servicers as acting on behalf of regulated lending institutions. Under the regulations, loan servicers are to be held answerable for their actions to the lender by means of contract. A lender thus may fulfill its duties by imposing its responsibilities on the servicer under a loan service agreement.

Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will fulfill Federal insurance requirements for escrow, force placement, flood hazard determinations, and the various notices, with conditions for recourse. The Federal regulations state that where deficiencies are found in existing loan servicing contracts, lenders should revise these agreements to provide for the loan servicer to fulfill Federal flood insurance requirements. It would also be prudent to monitor the activity of servicing agents.

The mandatory purchase provisions do not apply directly to loan originators that are not banking institutions or to servicers that are not acting on behalf of a banking institution. However, these non-bank originators and servicers must see to it that loans they sell or service for a GSE meet the requirements of the 1994 Reform Act. Non-bank (e.g., mortgage broker), nonconforming loan lenders who do not originate for GSEs do not come under the authority of the 1994 Reform Act.

Relevant FAQs - Determining the Applicability of Flood Insurance Requirements for Certain Loans

9. (2022 - REVISED) 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. Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan. 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. **(2022 - NEW) 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. **(2022 - NEW) 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.

Section 18: Private Flood Insurance

Summary

The rule requires regulated lending institutions to accept "private flood insurance," as defined in the Biggert-Waters Act. It includes a streamlined compliance aid provision to help regulated lending institutions evaluate whether a flood insurance policy meets the definition of "private flood insurance." This compliance aid allows a regulated lending institution to conclude 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."**

The rule permits regulated lending institutions to choose to accept certain flood insurance policies issued by private insurers, even if the policies do not meet the statutory and regulatory definition of "private flood insurance." There are conditions for accepting these policies. The key conditions in the final rule are a requirement that the policy provide sufficient protection for a designated loan, consistent with general safety and soundness principles, and a requirement that the regulated lending institution document its conclusion regarding the sufficiency of protection in writing. The final rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing flood coverage issued by "mutual aid societies."

Requirement to Purchase Flood Insurance

A regulated lending institution cannot 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. The coverage amount 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 Federal flood insurance statutes. Flood insurance coverage under the Federal flood insurance statutes is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

Compliance Aid for Mandatory Acceptance

The Agencies believe that many regulated lending institutions, especially small institutions with a lack of technical expertise regarding flood insurance policies, will have difficulty evaluating whether a flood insurance policy meets the definition of "private flood insurance." For this reason, they included a compliance aid that provided a policy would be deemed to meet the definition of "private flood insurance" if the following three criteria are met:

1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of "private flood insurance" by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;
2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and

3) the policy includes the following statement within the policy or as an endorsement to the policy: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

If a policy includes this statement, the regulated lending institution may rely on the statement and need not review the policy to determine whether it meets the definition of "private flood insurance." However, the institution could choose not to rely on this statement and instead make its own determination.

If insurers choose to include this statement in their policies, it facilitates the ability of regulated lending institutions, 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 across the market. A policy that includes this statement provides policyholders and regulated lending institutions with recourse against insurance companies that fail to abide by the terms included in the definition of "private flood insurance," consistent with relevant State law. This provision does not relieve a regulated lending institution of the requirement to accept a policy that both meets the definition of "private flood insurance" and fulfills the flood insurance coverage requirement, even if the policy does not include the statement. This provision does not permit regulated lending institutions to reject policies solely because they are not accompanied by the statement.

Discretionary Acceptance

Although the FDPA (as added by the Biggert-Waters Act) requires a regulated lending institution to accept "private flood insurance," as that term is defined by statute, in satisfaction of the flood insurance purchase requirement, Biggert-Waters Act is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance." When this section was added, the Agencies construed the term "flood insurance" in the flood insurance purchase requirement to continue to permit regulated lending institutions to exercise their discretion to accept certain policies issued by private insurers that do not contain all of the criteria in the statutory definition of "private flood insurance."

The rule provides that regulated lending institutions may accept, on a discretionary basis, a flood insurance policy issued by a private insurer if the policy meets the amount and term requirements specified in the flood insurance purchase requirement.

State insurance laws and regulators play an important role regarding the oversight of insurance activities in each State. This role is acknowledged in the discretionary acceptance provision, which provides that a regulated lending institution may only accept a flood insurance policy issued by a private insurer, including a policy for residential property issued by a surplus lines insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by a State insurance regulator. In the case of a policy insuring nonresidential commercial property issued by a surplus lines insurer, the insurer must be recognized, or not disapproved, by a State insurance regulator.

The rule provides that to be accepted under the discretionary acceptance provision, the policy must cover 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.

Accordingly, the rule permits regulated lending institutions to accept flood insurance policies issued by private insurers that do not meet the statutory and regulatory definition of "private flood insurance" if four criteria are met.

- First, the policy must provide coverage in the amount required by the flood insurance purchase requirement.
- Second, the policy must be 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. As indicated in the proposed rule, this criterion is included in the definition of "private flood insurance" in the Biggert-Waters Act, and the Agencies find that it is appropriate to include it as a criterion for discretionary acceptance in the final rule as well. As noted previously in the discussion of mandatory acceptance, the Agencies believe that surplus lines insurers for noncommercial properties are covered as 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."
- Third, the policy must cover 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.
- Fourth, the policy must provide sufficient protection of the designated loan, consistent with general safety and soundness principles, and the regulated lending institution must document its conclusion regarding sufficiency of the protection of the loan in writing.

Some factors, among others, 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.

Mutual Aid Societies

A "mutual aid society" is 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 damage 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 can accept a private policy issued by a "mutual aid society" in satisfaction of the flood insurance purchase requirement provided four criteria are met:

(1) the institution's primary supervisory agency has determined that such types of policies qualify as flood insurance for purposes of the Federal flood insurance statutes;

(2) the policy meets the amount of coverage for losses and term requirements specified in the flood insurance purchase requirement;

(3) the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(4) the regulated lending institution has determined that the policy provides sufficient protection of the loan secured by the property located in an SFHA.

The mutual aid societies provision only makes it possible for regulated lending institutions to exercise their discretion to accept coverage issued by mutual aid societies in satisfaction of the flood insurance purchase requirement, provided the coverage meets the criteria adopted by the Agencies. Furthermore, such coverage can only be accepted if the institution determines that the coverage provides sufficient protection of the loan consistent with general safety and soundness principles.

We note that many regulators oppose mutual aid society policies.

FDIC Regulatory Text Concerning Mandatory Purchase

§ 339.3 Requirement to purchase flood insurance where available.

(a) ***

(b) ***

(c) **Private flood insurance.**

(1) **Mandatory acceptance.** An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) **Compliance aid for mandatory acceptance.** An FDIC-supervised institution may determine that a policy meets the definition of private flood insurance in § 339.2, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

(3) **Discretionary acceptance.** An FDIC-supervised institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in § 339.2 in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) 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;

(iii) 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

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) **Mutual aid societies.** Notwithstanding the requirements of paragraph (c)(3) of this section, an FDIC-supervised institution may accept a plan issued by a mutual aid society, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if:

(i) The FDIC has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the FDIC-supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

Relevant FAQs

Private Flood Insurance – Mandatory Acceptance

1. **(2022 - NEW) 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

2. **(2022 - NEW) 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. The flood insurance purchase requirement does not apply within nonparticipating communities, where NFIP insurance is not available under the Act. See Q&A Applicability 1. Therefore, the lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance requirements under the Regulation.

3. **(2022 - NEW) 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.

4. **(2022 - NEW) 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.

   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. Further, the lender may determine the policy is acceptable under the discretionary acceptance or mutual aid criteria

5. **(2022 - NEW) 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." 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. 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.

6. **(2022 - NEW) 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. *See also* Q&A Mandatory 5.

7. **(2022 - NEW) 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. 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.

   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. *See also* Q&A Discretionary 2.

8. **(2022 - NEW) 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.

9. **(2022 - NEW) 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

1. **(2022 - NEW) 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.

2. **(2022 - NEW) 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.

3. **(2022 - NEW) 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.

4. **(2022 - NEW) 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

1. **(2022 - NEW) 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. 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. 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. 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.

2. **(2022 - NEW) 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. 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. *See also* Q&A Private Flood Compliance 1.

3. **(2022 - NEW) 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.

4. **(2022 - NEW) 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. **(2022 - NEW) 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.

6. **(2022 - NEW) 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.

7. **(2022 - NEW) 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.

8. **(2022 - NEW) 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.

9. **(2022 - NEW) How can a lender determine: (i) whether an insurer is licensed or admitted in a particular State, (ii) or whether a surplus lines or non-admitted 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 non-admitted alien insurers in particular, lenders could review the NAIC's Quarterly Listing of Alien Insurers.

10. (2022 - NEW) 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." 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."

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.

11. (2022 - NEW) 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. 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. 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.

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.

Section 19: Flood Insurance Escrow Requirement

Introduction

A regulated lending institution, or a servicer acting on behalf of a regulated lending institution, is required to escrow all premiums and fees for required flood insurance, unless the loan or the lending institution qualifies for one of the statutory exceptions.

The escrow requirement applies to any loan secured by residential improved real estate or a mobile home that hits a MIRE. A map change is not a triggering event. Therefore, lenders would not be required to escrow flood insurance premiums and fees based solely on that change.

Loan-Related Exceptions

There are several exceptions to the general escrow requirement. These exceptions include:

- loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided;
- loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met;
- loans that are secured by residential improved real estate or a mobile home that is used as collateral for a business purpose;
- home equity lines of credit;
- nonperforming loans; and
- loans with terms not longer than 12 months.

These exceptions are in addition to the small lender exception applicable to banks that have total assets of less than $1 billion.

There is no duty for a bank or servicer to evaluate the applicability of the subordinate lien exception, or any of the other exceptions. However, similar to the force placement provisions relating to the mandatory flood insurance purchase requirement, when a lender makes a determination that the subordinate lien exception no longer applies, for example, when it receives notice that the senior lien has been paid off or when it conducts the required inquiry at a triggering event, then the lender must begin escrowing flood insurance premiums and fees. Therefore, lenders should ensure that the loan documents executed in connection with a subordinate loan permit the lender to require an escrow in connection with the loan in the event the loan takes a first lien position and becomes subject to the escrow requirement.

The law excepts from the escrow requirement loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development when covered by a flood insurance policy that:

- meets the mandatory flood insurance purchase requirement;

- is provided by the condominium association, cooperative, homeowners association or other applicable group; and
- the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense.

If the amount of the policy purchased by the condominium association, cooperative, homeowners association, or other applicable group does not satisfy the mandatory flood insurance purchase requirement, then the borrower would be required to obtain a supplemental policy to cover the deficiency. In those instances, the regulated lending institution must escrow the premiums and fees for the supplemental policy unless the small lender exception applies.

There is also a statutory exception from the escrow requirement for home equity lines of credit (HELOCs).

The underlying law also includes an exception from the escrow requirement for nonperforming loans (90 days past due). The Agencies believe further clarification is required regarding this exception. The Agencies adopted language that is adapted from the FCA's regulations on categorizing assets to provide that a nonperforming loan 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 past due status, is collected or otherwise discharged in full.

The final exception is for a loan that has a term of not to exceed 12 months. If a loan of 12 months or less is extended or renewed for an additional term of 12 months or less, the Agencies' regulations would permit the exception to apply to the extended or renewed loan because an extension or renewal is a triggering event. Therefore, at the time of the triggering event, the regulated lending institution may apply the exception if the term of the newly extended or renewed loan is for a term of 12 months or less.

If a bank, or its servicer, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that experiences a MIRE on or after January 1, 2016, that an exception does not apply, then the lender or its servicer must require the escrow of all flood insurance premiums and fees as soon as reasonably practicable. If the loan is subject to RESPA, all pertinent RESPA rules and disclosures will apply.

Small Lender Exception

In addition to the exceptions to the escrow requirement discussed above, the statutes contain an exception for certain small lenders. The FDPA, as amended, states that, except as provided by State law, banks that have total assets of less than $1 billion are excepted from the escrow requirement if, on or before July 6, 2012, the institution:

- in the case of a loan secured by residential improved real estate or a mobile home, 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 the loan, and
- did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

Because Biggert-Waters does not specify a point in time to measure the asset size of an institution to determine whether it qualifies for the exception, the Agencies proposed that a regulated lending institution may qualify for the exception if it has total assets of less than $1 billion as of December 31 of either of the two prior calendar years. There is no current statutory authority to adjust the asset size for inflation.

When a bank exceeds the $1 billion asset-size threshold, the bank will have six months to make all appropriate changes for its new status. A bank would be required to escrow flood insurance premiums and fees for any loans made, increased, extended, or renewed on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status.

Based on the Agencies' regulation, a regulated lending institution could technically reclaim small lender status. However, given the burden that a regulated lending institution would undertake to establish an escrow program, the Agencies question whether an institution would find it appropriate to abandon a program in which it has invested resources to develop and risk causing confusion to borrowers who have grown accustomed to escrowing flood insurance premiums and fees, especially if the institution could lose the small lender exception again in the future.

Notice

A bank, or a servicer acting on its behalf, must mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. The purpose of the notice ensures that borrowers are informed about the requirement to escrow premiums and fees for mandatory flood insurance.

This notice is included in the 2016 and following version of the Notice of Special Flood Hazards. This would help minimize the burden to banks providing this notice and ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance. A bank or its servicer must require the escrow of all flood insurance premiums and fees if the lender, or a servicer determines at any time during the term of a loan that an exception to the escrow requirement for the loan no longer applies.

To alert borrowers to the potential need to escrow in those circumstances, the Agencies also are requiring lenders to provide the escrow notice in connection with any excepted loan that could lose its exception during the term of the loan. Consequently, borrowers of loans that may eventually become subject to the escrow requirement will be informed of that possibility.

Option to Escrow

HFIAA requires banks to offer and make available to a borrower 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. The initial distribution of this notice must be completed by June 30, 2016.

The option to escrow does not apply to loans or lenders that are exempted from the general escrow requirement. If a loan already includes flood escrow, there would be no need for a notice to these customers.

Banks that no longer qualify for the small lender exception must provide the option to escrow for borrowers of loans outstanding on July 1 of the succeeding calendar year following the lender's change in status.

To facilitate compliance, the Agencies proposed a model clause for this notice in Appendix B. Appendix B is located at the end of this section.

FDIC Regulatory Text Concerning Escrow Requirements

§ 339.5 Escrow requirement.

(a) **In general.**

(1) **Applicability.** Except as provided in paragraphs (a)(2) or (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) 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, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) **Exceptions.** Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements of § 339.3(a);

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 339.3(a);

(B) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(C) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(iv) The loan is a home equity line of credit;

(v) The loan is a nonperforming loan, which 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 past due status, is collected or otherwise discharged in full; or

(vi) The loan has a term of not longer than 12 months.

(3) **Duration of exception**. If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a 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, that an exception under paragraph (a)(2) of this section does not apply, then the FDIC-supervised institution or its servicer shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) **Escrow account.** The FDIC-supervised institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) **Notice.** For any loan for which an FDIC-supervised institution is required to escrow under paragraph (a) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 339.9 informing the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A.

(c) **Small lender exception.**

(1) **Qualification.** Except as may be required under applicable State law, paragraphs (a), (b) and (d) of this section do not apply to an FDIC-supervised institution:

(i) That has total assets of less than $1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) 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

(B) Did not have a policy 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.

(2) **Change in status**. If an FDIC-supervised institution previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of $1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must escrow premiums and fees for flood insurance pursuant to paragraph (a) for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) **Option to escrow.**

(1) **In general.** An FDIC-supervised institution, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any

flood insurance required under § 339.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the FDIC-supervised institution qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The FDIC-supervised institution is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) **Notice.** For any loan subject to paragraph (d) of this section, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow, using language similar to the model clause in appendix B.

(3) **Timing**. The FDIC-supervised institution or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the FDIC-supervised institution or servicer receives the borrower's request to escrow.

Appendix B to Part 339 – SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS

Escrow Option Clause

You have the option to escrow all premiums and fees for the payment on your flood insurance policy that covers any residential building or mobile home that is located in an area with special flood hazards and that secures your loan. If you choose this option:

- Your payments will be deposited in an escrow account to be paid to the flood insurance provider.
- The escrow amount for flood insurance will be added to the regular mortgage payment that you make to your lender or its servicer.
- The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy when your lender or servicer receives a notice from your flood insurance provider that the flood insurance premium is due.

To choose this option, follow the instructions below. If you have any questions about the option, contact [Insert Name of Lender or Servicer] at [Insert Contact Information].

[Insert Instructions for Selecting to Escrow]

Relevant FAQs

Requirement to Escrow Flood Insurance Premiums and Fees – General

1. **(2022 - REVISED) 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.

   A lender is not required to escrow for flood insurance if it qualifies for the small lender exception or the loan qualifies for one of the following loan-related exceptions 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. 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.

2. **(2022 - NEW) 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. 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.

3. **(2022 - NEW) 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. The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

4. **(2022 - NEW) 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. 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; or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.

5. **(2022 - REVISED) 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 multifamily, or whether a building is owner- or renter-occupied. 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.

6. (**2022 - NEW) 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. 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. 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.

7. **(2022 - NEW) 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. 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.

Relevant FAQs

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

1. **(2022 - NEW) 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. Therefore, the $1 billion requirement is calculated based on the assets held at the lending institution level, rather than at the holding company level.

2. **(2022 - NEW) 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) 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.

   - 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.

3. (2022 - NEW) 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.

- 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.

4. (2022 - NEW) 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.

5. **(2022 - NEW) 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. 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. 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. 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.

6. **(2022 - NEW) 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. 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.

7. **(2022 - NEW) 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.

Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Loans Exceptions

1. **(2022 - REVISED) 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. *See* Q&A Exemptions 1 for further information on the definition of residential property.

2. **(2022 - NEW) 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. *See* Q&A Exemptions 1. Otherwise, the escrow requirements generally would apply to loans for particular units in multi-family residential buildings.

3. **(2022 - REVISED) 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. 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. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

4. **(2022 - NEW) 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 CP 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.

5. **(2022 - NEW) 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). 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.

Section 20: Flood Policy Renewals

Introduction

This is an abridged version of the Flood Policy Renewal section of the Flood Manual.

I. General Information

The Standard Flood Insurance Policy (SFIP) is not a continuous policy. The policy contract is for the term of one year. Each policy contract expires at 12:01 a.m. on the last day of the policy term. Renewal of an expiring policy establishes a new policy term and new contractual agreement between the policyholder and the Federal Emergency Management Agency (FEMA). The National Flood Insurance Program (NFIP) must issue a notice of expiration not less than 45 days before the expiration of the flood insurance policy by first-class mail to the owner of the property, the servicer of any loan secured by the property, and (if known) the owner of the loan.

All policies, including Submit-for-Rate, must be renewed using the rates in effect on the renewal date.

Policy renewal documentation and premium should be submitted to the insurer in advance of the policy expiration date to ensure there is no lapse in coverage. There are 2 ways to renew a policy:

- The agent/producer will be required by the insurer to renew by means of an application or Recertification Questionnaire. In this instance, the agent/producer should complete an Application for renewal when recertifying or changing policy information and mail it with the Total Amount Due to the insurer. OR
- The payor must respond to a Renewal Notice including a renewal offer by selecting one of the coverage options shown on the direct mail notice and returning it with the Total Amount Due to the insurer.

II. Renewal Notice

All parties listed on the policy declarations page (insured, agent/producer, mortgagees) are to be mailed an initial Renewal Notice (page REN 5) no less than 45 days prior to the policy expiration date. Additional copies of this Renewal Notice may be mailed less than 45 days prior to policy expiration according to a company's standard business practices. The party designated on the policy record as the payor receives the payor's copy of the bill; all other parties receive a copy that states "THIS IS NOT A BILL."

III. Final Notice

Whether renewing by means of an Application, a Recertification Questionnaire, or a Renewal Notice, if the premium payment is not received by the insurer by the policy expiration date, a Final Notice is produced and must be sent to all parties listed on the declarations page (the agent/producer, insured, and any mortgagee). The Final Notice must indicate that coverage has expired and that the expired policy will be reissued with a new effective date if the premium payment is not received by the insurer within 30 days following the policy expiration date.

Mortgagee protection under the policy shall continue in force after the expiration of the policy for 30 days from the mailing date. The Final Notice to the lender must indicate that coverage will terminate if premium is not received within this 30-day period. Insurers must be able to reproduce copies of the Final Notice to the mortgagee and have processes in place to verify the date the Final Notice was mailed.

SUMMARY OF POLICY NOTICES	INSURED	AGENT/PRODUCE R	MORTGAGEE
RENEWAL NOTICE Shown on pages REN 5–6	NFIP mails notice for payment 45 days prior to renewal date.	NFIP mails notice for payment 45 days prior to renewal date.	NFIP mails notice for payment 45 days prior to renewal date.
FINAL NOTICE Shown on pages REN 7–8	NFIP mails notice on policy expiration date.	NFIP mails notice on policy expiration date.	NFIP mails a 30-day notice of nonrenewal on expiration date. Mortgagee protection terminates 30 days after mailing of notice.
POLICY DECLARATIONS PAGE Not shown	NFIP mails policy declarations page.	NFIP mails policy declarations page.	NFIP mails policy declarations page.

Regulation C:
Home Mortgage Disclosure Act

Community Banker for Compliance
Third Quarter (Q3) 2024

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This Manual

Included in this manual are portions of other helps to assist you in complying with the rule. They are:

- The *HMDA Small Entity Compliance Guide* as created by the CFPB. We have abridged some sections, and have removed footnotes.
- Charts, graphs, and other aids as created by the CFPB

In all cases, we included the aids that we determined would be the most helpful in the process of getting ready and complying with HMDA.

All regulatory text is in this manual. The regulatory commentary follows the text, and is in *italics*. The final portion of each section contains one or more of the helps shown above.

Throughout all of the sections, other items appear in **bold.** This was done to make certain items more visible as you are examining the material. For these items, **bold** has no other purpose or meaning.

As we used all regulatory text and commentary plus other resources, there is some duplication of material. The goal was to offer different perspectives to make the information as clear as possible.

Section 1: Authority, Purpose, and Scope
12 CFR § 1003.1

Authority

Regulatory Text [12 CFR § 1003.1(a)]

(a) **Authority.** This part, known as Regulation C, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 et seq.,) as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and have been assigned OMB numbers for institutions reporting data to the Office of the Comptroller of the Currency (1557-0159), the Federal Deposit Insurance Corporation (3064-0046), the Federal Reserve System (7100-0247), the Department of Housing and Urban Development (HUD) (2502-0529), the National Credit Union Administration (3133-0166), and the Bureau of Consumer Financial Protection (3170-0008).

Regulatory Commentary

None.

Purpose

Regulatory Text [12 CFR § 1003.1(b)]

(b) **Purpose.**

(1) This part implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this part is intended to encourage unsound lending practices or the allocation of credit.

Regulatory Commentary

None.

Scope

Regulatory Text [12 CFR § 1003.1(c)]

(c) **Scope.** This part applies to financial institutions as defined in § 1003.2(g). This part requires a financial institution to submit data to the appropriate Federal agency for the financial institution as defined in § 1003.5(a)(4), and to disclose certain data to the public, about covered loans for which the financial institution receives applications, or that it originates or purchases, and that are secured by a dwelling located in a State of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico.

Regulatory Commentary

Paragraph 12 CFR § 1003.1(c)

1. ***General.*** *The comments in this section address issues affecting coverage of institutions and exemptions from coverage.*

2. ***The broker rule and the meaning of "broker" and "investor."*** *For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a "broker," and an institution that acquires a loan from a broker at or after closing is acting as an "investor." (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. An institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in.*

3. ***Illustrations of the broker rule.*** *Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial.*

4. ***Broker's use of investor's underwriting criteria.*** *If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing,*

the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases.

5. ***Insurance and other criteria.*** *If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example).*

6. ***Credit decision of agent is decision of principal.*** *If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.*

7. ***Affiliate bank underwriting (250.250 review).*** *If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a preclosing review by an affiliate bank under 12 CFR 250.250, a regulation of the Board of Governors of the Federal Reserve System that interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes some other action reports that action.*

8. ***Participation loan.*** *An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan.*

9. ***Assumptions.*** *An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports an assumption (or an application for an assumption) as a home purchase loan in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported.*

Section 2: Exemptions and Excluded Institutions (Abridged)
12 CFR § 1003.3

Exclusion – Fiduciary Capacity

Regulatory Text [12 CFR § 1003.3(c)(1)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

(1) A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity;

Regulatory Commentary

*1. **Financial institution acting in a fiduciary capacity.** Section 1003.3(c)(1) provides that a closed-end mortgage loan or an open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity is an excluded transaction. A financial institution acts in a fiduciary capacity if, for example, the financial institution acts as a trustee.*

Exclusion – Unimproved Land

Regulatory Text [12 CFR § 1003.3(c)(2)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

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(2) A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;

Regulatory Commentary

*1. **Loan or line of credit secured by a lien on unimproved land.** Section 1003.3(c)(2) provides that a closed-end mortgage loan or an open-end line of credit secured by a lien on unimproved land is an excluded transaction. A loan or line of credit is secured by a lien on unimproved land if the loan or line of credit is secured by vacant or unimproved property, unless the institution knows, based on information that it receives from the applicant or borrower at the time the application is received or the credit decision is made, that the proceeds of that loan or credit line will be used within two years after closing or account opening to construct a dwelling on, or to purchase a dwelling to be placed on, the land. A loan or line of* *credit that is not excludable under § 1003.3(c)(2) nevertheless may be excluded, for example, as temporary financing under § 1003.3(c)(3).*

Exclusion – Temporary Financing

Regulatory Text [12 CFR § 1003.3(c)(3)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

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(3) Temporary financing;

Regulatory Commentary

Paragraph 3(c)(3).

*1. **Temporary financing.** Section 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. A loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time. For example:*

i. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A or from another lender. The bridge or swing loan is excluded as temporary financing under § 1003.3(c)(3).

ii. Lender A extends credit to a borrower to finance construction of a dwelling. The borrower will obtain a new extension of credit for permanent financing for the dwelling, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under § 1003.3(c)(3).

iii. Assume the same scenario as in comment 3(c)(3)–1.ii, except that the initial construction loan is, or may be, renewed one or more times before the separate permanent financing is obtained. The initial construction loan, including any renewal thereof, is excluded as temporary financing under § 1003.3(c)(3).

iv. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing extended to the same borrower with Lender A once the construction phase is complete. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower, and therefore the temporary financing exclusion does not apply. See also comment 2(j)–3.

v. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under § 1003.3(c)(3), the loan is not designed *to be replaced by separate permanent financing extended to the same borrower, and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under § 1003.3(c)(3) merely because its term is short.*

2. ***Loan or line of credit to construct a dwelling for sale.*** *A construction-only loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. See comment 3(c)(3)–1.ii through .iv for examples of the reporting requirement for construction loans that are not extended to a person exclusively to construct a dwelling for sale.*

Exclusion – Purchase of Partial Interests (Participations)

Regulatory Text [12 CFR § 1003.3(c)(8)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

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(8) The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;

Regulatory Commentary

1. ***Partial interest.*** *Section 1003.3(c)(8) provides that the purchase of a partial interest in a closed-end mortgage loan or an open-end line of credit is an excluded transaction. If an institution acquires only a partial interest in a loan or line of credit, the institution does not report the transaction even if the institution participated in the underwriting and origination of the loan or line of credit. If an institution acquires a 100 percent interest in a loan or line of credit, the transaction is not excluded under § 1003.3(c)(8).*

Exclusion – Agricultural Loans

Regulatory Text [12 CFR § 1003.3(c)(9)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

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(9) A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;

Regulatory Commentary

1. ***Loan or line of credit used primarily for agricultural purposes.*** *Section 1003.3(c)(9) provides that an institution does not report a closed-end mortgage loan or an open-end line of* *credit used primarily for agricultural purposes. A loan or line of credit is used primarily for agricultural purposes if its funds will be used primarily for agricultural purposes, or if the loan or line of credit is secured by a dwelling that is located on real property that is used primarily for agricultural purposes (e.g., a farm). An institution may refer to comment 3(a)-8 in the official interpretations of Regulation Z, 12 CFR part 1026, supplement I, for guidance on what is an agricultural purpose. An institution may use any reasonable standard to determine the primary use of the property. An institution may select the standard to apply on a case-by-case basis.*

Other Exclusions – Commercial Loans

Regulatory Text [12 CFR § 1003.3(c)(10)]

(c) **Excluded transactions.** The requirements of this part do not apply to:

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(10) A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p);

Regulatory Commentary

1. ***General.*** *Section 1003.3(c)(10) provides a special rule for reporting a closed-end mortgage loan or an open-end line of credit that is or will be made primarily for a business or commercial purpose. If an institution determines that a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose, then the loan or line of credit is a covered loan only if it is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p) and no other exclusion applies. Section 1003.3(c)(10) does not categorically exclude all business- or commercial-purpose loans and lines of credit from coverage.*

2. ***Primary purpose.*** *An institution must determine in each case if a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose. If a closed end mortgage loan or an open-end line of credit is deemed to be primarily for a business, commercial, or organizational purpose under Regulation Z, 12 CFR 1026.3(a) and its related commentary, then the loan or line of credit also is deemed to be primarily for a business or commercial purpose under § 1003.3(c)(10).*

3. ***Examples - covered business- or commercial-purpose transactions.*** *The following are examples of closed-end mortgage loans and open-end lines of credit that are not excluded from reporting under § 1003.3(c)(10) because, although they primarily are for a business or commercial purpose, they also meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):*

   i. *A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-*

end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single- family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve a doctor's office or a daycare center that is located in a dwelling other than a multifamily dwelling; and iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

4. ***Examples - excluded business - or commercial-purpose transactions.*** *The following are examples of closed-end mortgage loans and open-end lines of credit that are not covered loans because they primarily are for a business or commercial purpose, but they do not meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § § 1003.2(j), or a refinancing under § 1003.2(p):*

   i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to improve or expand a business, for example to renovate a family restaurant that is not located in a dwelling, or to purchase a warehouse, business equipment, or inventory;

   ii. A closed-end mortgage loan or an open-end line of credit to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory; and

   iii. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily for business or commercial purposes other than home purchase, home improvement, or refinancing, even if the loan or line of credit is cross-collateralized by a covered loan.

Excluded Transactions (from the HMDA Small Servicer Guide - Unabridged)

Regulation C does not apply to transactions that are specifically excluded from coverage. 12 CFR 1003.3(c). Therefore, an Excluded Transaction is not a Covered Loan. The HMDA Rule retains and clarifies existing categories of transactions that are excluded from coverage. It also expands the existing exclusion for agricultural loans, and adds new categories of transactions that are excluded from coverage. Effective January 1, 2018, the following are Excluded Transactions:

1. A Closed-End Mortgage Loan or an Open-End Line of Credit that a Financial Institution originates or purchases in a fiduciary capacity, such as a Closed-End Mortgage Loan or an Open-End Line of Credit that a Financial Institution originates or purchases as a trustee. 12 CFR 1003.3(c)(1); comment 3(c)(1).

2. A Closed-End Mortgage Loan or an Open-End Line of Credit secured by a lien on unimproved land. 12 CFR 1003.3(c)(2). Generally, a loan or line of credit must be secured by a Dwelling to be a Covered Loan. The HMDA Rule also lists Closed-End Mortgage Loans and Open-End Lines of Credit secured only by vacant or unimproved land as Excluded Transactions. However, a loan or line of credit secured by a lien on unimproved land is deemed to be secured by a Dwelling (and might not be excluded) if the Financial Institution knows, based on information that it receives from the applicant or borrower at the time the Application is received or the credit decision is made, that the proceeds of that loan or credit line will be used within two years after closing or account opening to construct a Dwelling on, or to

purchase a Dwelling to be placed on, the land. Comment 3(c)(2)-1.

3. A Closed-End Mortgage Loan or an Open-End Line of Credit that is temporary financing. A transaction is excluded as temporary financing if it is designed to be replaced by separate permanent financing extended to the same borrower at a later time. The separate permanent financing may be extended by any lender (i.e., by either the lender that extended the temporary financing or another lender). A construction-only loan or line of credit is considered temporary financing and excluded under the HMDA Rule if the loan or line of credit is extended to a person exclusively to construct a Dwelling for sale. Comment 3(c)(3)-2.

   Examples:

   Ficus Bank extends a bridge or swing loan to finance a borrower's down payment for a home purchase. The borrower will pay off the bridge or swing loan with funds from the sale of his or her existing home and obtain permanent financing from Ficus Bank at that time. The bridge or swing loan is excluded as temporary financing.

   Ficus Bank extends a construction loan to a borrower to finance construction of the borrower's Dwelling. The borrower will obtain a new extension of credit for permanent financing of the Dwelling from either Ficus Bank or another lender. Ficus Bank renews the construction loan several times before the borrower obtains a new extension of credit from another lender for permanent financing. The construction loan is excluded as temporary financing.

   Ficus Bank extends a construction loan to a borrower to finance construction of the borrower's Dwelling. The construction loan will automatically convert to permanent financing after the construction phase is complete. The construction loan is not temporary financing because it is not designed to be "replaced by" separate permanent financing.

   Ficus Bank extends a nine-month loan to an investor, who uses the loan proceeds to purchase a home, renovate it, and sell it before the loan term expires. The loan is not temporary financing because it is not designed to be "replaced by" separate permanent financing.

4. The purchase of an interest in a pool of Closed-End Mortgage Loans or Open-End Lines of Credit, such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits. 12 CFR 1003.3(c)(4); comment 3(c)(4)-1.

5. The purchase solely of the right to service Closed-End Mortgage Loans or Open-End Lines of Credit. 12 CFR 1003.3(c)(5).

6. The purchase of a Closed-End Mortgage Loan or an Open-End Line of Credit as part of a merger or acquisition or as part of the acquisition of all of a Branch Office's assets and liabilities. 12 CFR 1003.3(c)(6); comment 3(c)(6)-1. For more information on mergers and acquisitions under the HMDA Rule, see Section 8.

7. A Closed-End Mortgage Loan or an Open-End Line of Credit, or an Application for a ClosedEnd Mortgage Loan or Open-End Line of Credit, for which the total dollar amount is less than $500. 12 CFR 1003.3(c)(7).

8. The purchase of a partial interest in a Closed-End Mortgage Loan or an Open-End Line of Credit. 12 CFR 1003.3(c)(8); comment 3(c)(8)-1.

9. A Closed-End Mortgage Loan or an Open-End Line of Credit if the proceeds are used primarily for agricultural purposes or if the Closed-End Mortgage Loan or Open-End Line of Credit is

secured by a Dwelling that is located on real property that is used primarily for agricultural purposes. 12 CFR 1003.3(c)(9); comment 3(c)(9)-1. The HMDA Rule directs Financial Institutions to Regulation Z's official commentary for guidance on what is an agricultural purpose. Regulation Z's official commentary states that agricultural purposes include planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing food, beverages, flowers, trees, livestock, poultry, bees, wildlife, fish or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees or wildlife. See comment 3(a)-8 in the official interpretations of Regulation Z, 12 CFR part 1026. A Financial Institution may use any reasonable standard to determine the primary use of the property, and may select the standard to apply on a case-by-case basis. Comment 3(c)(9)-1.

10. A Closed-End Mortgage Loan or an Open-End Line of Credit that is or will be made primarily for business or commercial purposes, unless it is a Home Improvement Loan, a Home Purchase Loan, or a Refinancing. 12 CFR 1003.3(c)(10). Not all transactions that are primarily for a business purpose are Excluded Transactions. Thus, a Financial Institution must collect, record, and report data for Dwelling-secured, business-purpose loans and lines of credit that are Home Improvement Loans, Home Purchase Loans, or Refinancings if no other exclusion applies. For more information on determining whether a loan or line of credit is a Home Purchase Loan, Home Improvement Loan, or Refinancing, see Section 5.7. The HMDA Rule provides that, if a Closed-End Mortgage Loan or an Open-End Line of Credit is deemed to be primarily for a business, commercial, or organizational purposes under Regulation Z, 12 CFR 1026.3(a) and its official commentary, then the loan or line of credit also is deemed to be primarily for a business or commercial purpose under the HMDA Rule. Comment 3(c)(10)-2. For more information and examples of business-purpose or commercial-purpose transactions that are Covered Loans, see comment 3(c)(10)-3 and -4.

11. A Closed-End Mortgage Loan if the Financial Institution originated fewer than the applicable threshold for Closed-End Mortgage Loans in either of the two preceding calendar years. 12 CFR 1003.3(c)(11); comment 3(c)(11)-1. Effective January 1, 2018 until June 30, 2020, the applicable threshold is 25 Closed-End Mortgage Loans, effective July 1, 2020 though December 31, 2022, the applicable threshold is 100 Closed-End Mortgage Loans, and beginning January 1, 2023 the applicable threshold is 25 Closed-End Mortgage Loans. A Financial Institution is not required to collect, record, or report Closed-End Mortgage Loans if it originated fewer than the applicable threshold in either of the two preceding calendar years. However, the Financial Institution may still be required to collect and report information regarding Open-End Lines of Credit, depending on the number of Open-End Lines of Credit it originates in each of the preceding two calendar years. For more information on how to determine if a Financial Institution "originated" a particular loan when multiple entities are involved in the transaction, see Section 4.2.3. A Financial Institution may report applications for, originations of, and purchases of Closed-End Mortgage Loans that are excluded transactions under 12 CFR 1003.3(c)(11). However a Financial Institution that chooses to report such excluded applications, originations, and purchases must report all such applications it received for Closed-End Mortgage Loans, all Closed-End Mortgage Loans it originates, and all Closed-End Mortgage Loans it purchases that would otherwise be Covered Loans for a given calendar year. 12 CFR 1003.3(c)(11). Effective January 1, 2018, Regulation B permits a Financial Institution to collect information regarding the ethnicity, race, and sex of an applicant for a Closed-End Mortgage Loan that is an excluded transaction under 12 CFR 1003.3(c)(11), if the Financial Institution submits HMDA data concerning such Closed-End Mortgage Loans and applications or if it submitted such HMDA data for any of the preceding five calendar years. See the final rule issued on September 20, 2017.

12. An Open-End Line of Credit if the number of Open-End Lines of Credit that the Financial Institution originated in either of the two preceding calendar years does not meet or exceed the applicable threshold. 12 CFR 1003.3(c)(12); comment 3(c)(12)-1. Effective January 1, 2018 until December 31, 2021, the applicable threshold is 500 Open-End Lines of Credit. During this time period, a Financial Institution is not required to collect, record, or report Open-End Lines of Credit if it originated fewer than 500 of them in either of the two preceding calendar years. Effective January 1, 2022, the applicable threshold will be 200 Open-End Lines of Credit. Effective January 1, 2022, a Financial Institution is not required to collect, record, or report Open-End Lines of Credit if it originated fewer than 200 of them in either of the two preceding calendar years. Comment 3(c)(12)-1. However, the Financial Institution will still be required to collect and report information regarding Closed-End Mortgage Loans, depending on the number of Closed-End Mortgage Loans it originates in each of the preceding two calendar years. For more information on how to determine if a Financial Institution "originated" a particular line of credit when multiple entities are involved in the transaction, see Section 4.2.3.

    A Financial Institution may report applications for, originations of, or purchases of Open-End Lines of Credit that are excluded transactions under 12 CFR 1003.3(c)(12). However, a Financial Institution that chooses to report such excluded applications, originations, or purchases must report all applications for Open-End Lines of Credit that it receives, all Open-End Lines of Credit it originates, and all Open-End Lines of Credit it purchases that would otherwise be Covered Loans for a given calendar year. 12 CFR 1003.3(c)(12); comment 3(c)(12)-2. Effective January 1, 2018, Regulation B permits a Financial Institution to collect information regarding the ethnicity, race, and sex of an applicant for an Open-End Line of Credit that is an excluded transaction under 12 CFR 1003.3(c)(12), if it submits HMDA data concerning such Open-End Lines of Credits and applications or if it submitted such HMDA data for any of the preceding five calendar years. See the final rule issued on September 20 2017.

13. [Omitted. Discusses New York MECAs

Section 3: Definitions (Abridged)
12 CFR § 1003.2

Introduction

These are the definitions that appear in the regulation.

Application

Regulatory Text [12 CFR § 1003.2(b)]

(b) **Application.**

(1) **In general.** Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) **Preapproval programs.** A request for preapproval for a home purchase loan, other than a home purchase loan that will be an open-end line of credit, a reverse mortgage, or secured by a multifamily dwelling, is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

(i) Conditions that require the identification of a suitable property;

(ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and

(iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

Regulatory Commentary

1. ***Consistency with Regulation B***. *Bureau interpretations that appear in the official commentary to Regulation B (Equal Credit Opportunity Act, 12 CFR part 1002, Supplement I) are generally applicable to the definition of application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.*

2. ***Prequalification.*** *A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective loan applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely*

qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the loan/application register, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.

*3. **Requests for preapproval.** To be a preapproval program as defined in § 1003.2(b)(2), the written commitment issued under the program must result from a comprehensive review of the creditworthiness of the applicant, including such verification of income, resources, and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home. Regardless of its name, a program that satisfies the definition of a preapproval program in § 1003.2(b)(2) is a preapproval program for purposes of Regulation C. Conversely, a program that a financial institution describes as a "preapproval program" that does not satisfy the requirements of § 1003.2(b)(2) is not a preapproval program for purposes of Regulation C. If a financial institution does not regularly use the procedures specified in § 1003.2(b)(2), but instead considers requests for preapprovals on an ad hoc basis, the financial institution need not treat ad hoc requests as part of a preapproval program for purposes of Regulation C. A financial institution should, however, be generally consistent in following uniform procedures for considering such ad hoc requests.*

Closed-End Mortgage Loan

Regulatory Text [12 CFR § 1003.2(d)]

(d) **Closed-end mortgage loan** means an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under paragraph (o) of this section.

Regulatory Commentary

*1. **Dwelling-secured.** Section 1003.2(d) defines a closed-end mortgage loan as an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under § 1003.2(o). Thus, for example, a loan to purchase a dwelling and secured only by a personal guarantee is not a closed-end mortgage loan because it is not dwelling-secured.*

*2. **Extension of credit.** Under § 1003.2(d), a dwelling-secured loan is not a closed-end mortgage loan unless it involves an extension of credit. For example, some transactions completed* *pursuant to installment sales contracts, such as some land contracts, depending on the facts and circumstances, may or may not involve extensions of credit rendering the transactions closed-end mortgage loans. In general, extension of credit under § 1003.2(d) refers to the granting of credit only pursuant to a new debt obligation. Thus, except as described in comments 2(d)–2.i and .ii, if a transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a closed-end mortgage loan under § 1003.2(d) because there has been no new extension of credit. The phrase extension of credit thus is defined differently under Regulation C than under Regulation B, 12 CFR part 1002.*

i. ***Assumptions.*** *For purposes of Regulation C, an assumption is a transaction in which an institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. For purposes of Regulation C, assumptions include successor-in-interest transactions, in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the property. Under § 1003.2(d), assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. See also comment 2(j)–5.*

ii. ***New York State consolidation, extension, and modification agreements.*** *[Omitted]*

Covered Loan

Regulatory Text [12 CFR § 1003.2(e)]

(e) **Covered loan** means a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction under § 1003.3(c).

Regulatory Commentary

None.

Dwelling

Regulatory Text [12 CFR § 1003.2(f)]

(f) **Dwelling** means a residential structure, whether or not attached to real property. The term includes but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community.

Regulatory Commentary

1. ***General.*** *The definition of a dwelling is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and investment properties.*

2. ***Multifamily residential structures and communities.*** *A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or housing complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of § 1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. However, a loan related to a multifamily residential structure or community that is not a manufactured home community is not secured by a dwelling for purposes of § 1003.2(f) if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues.*

3. ***Exclusions.*** *Recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of § 1003.2(f), regardless of whether they are used as residences. Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are also excluded, regardless of whether they are used as residences. Also excluded are transitory residences such as hotels, hospitals, college dormitories, and recreational vehicle parks, and structures originally designed as dwellings but used exclusively for commercial purposes, such as homes converted to daycare facilities or professional offices.*

4. ***Mixed-use properties.*** *A property used for both residential and commercial purposes, such as a building containing apartment units and retail space, is a dwelling if the property's primary use is residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.*

5. ***Properties with service and medical components.*** *For purposes of § 1003.2(f), a property used for both long-term housing and to provide related services, such as assisted living for senior citizens or supportive housing for persons with disabilities, is a dwelling and does not have a non-residential purpose merely because the property is used for both housing and to provide services. However, transitory residences that are used to provide such services are not dwellings. See comment 2(f)-3. Properties that are used to provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, also are not dwellings. See comment 2(f)-3. If a property that is used for both long-term housing and to provide related services also is used to provide medical care, the property is a dwelling if its primary use is residential. An institution may use any reasonable standard to determine the property's primary use, such as by square footage, income generated, or number of beds or units allocated for each use. An institution may select the standard to apply on a case-by-case basis.*

Home Improvement

Regulatory Text [12 CFR § 1003.2(i)]

(i) **Home improvement loan** means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located.

Regulatory Commentary

1. ***General.*** *Section 1003.2(i) defines a home improvement loan as a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located. For example, a closed-end mortgage loan obtained to repair a dwelling by replacing a roof is a home improvement loan under § 1003.2(i). A loan or line of credit is a home improvement loan even if only a part of the purpose is for repairing, rehabilitating, remodeling, or improving a dwelling. For example, an open-end line of credit obtained in part to remodel a kitchen and in part to pay college tuition is a home improvement loan under § 1003.2(i). Similarly, for example, a loan that is completed pursuant to a New York State consolidation, extension, and modification agreement and that is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is a home improvement loan if any of the loan's funds are for home improvement purposes. See also comment 2(d)-2.ii.*

2. ***Improvements to real property.*** *Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).*

3. ***Commercial and other loans.*** *A home improvement loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to improve an apartment building originated in the commercial loan department.*

4. ***Mixed-use property.*** *A closed-end mortgage loan or an open-end line of credit to improve a multifamily dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space), or the real property on which such a dwelling is located, is a home improvement loan if the loan's proceeds are used either to improve the entire property (for example, to replace the heating system), or if the proceeds are used primarily to improve the residential portion of the property. An institution may use any reasonable standard to determine the primary use of the loan proceeds. An institution may select the standard to apply on a case-by-case basis. See comment 3(c)(10)–3.ii for guidance on loans to improve primarily the commercial portion of a dwelling other than a multifamily dwelling.*

5. ***Multiple-purpose loans.*** *A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home improvement loan under § 1003.2(i) may also be a refinancing under § 1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to improve a home. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)-3 provides details about how to report multiple-purpose covered loans.*

6. ***Statement of borrower.*** *In determining whether a closed-end mortgage loan or an open-end line of credit, or an application for a closed-end mortgage loan or an open-end line of credit, is for home improvement purposes, an institution may rely on the applicant's or borrower's stated purpose(s) for the loan or line of credit at the time the application is received or the credit decision is made. An institution need not confirm that the borrower actually uses any of the funds for the stated purpose(s).*

Home Purchase Loan

Regulatory Text [12 CFR § 1003.2(j)]

(j) **Home purchase loan** means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of purchasing a dwelling.

Regulatory Commentary

1. ***Multiple properties.*** *A home purchase loan includes a closed-end mortgage loan or an open-end line of credit secured by one dwelling and used to purchase another dwelling. For example, if a person obtains a home-equity loan or a reverse mortgage secured by dwelling A to purchase dwelling B, the home-equity loan or the reverse mortgage is a home purchase loan under § 1003.2(j).*

2. ***Commercial and other loans.*** *A home purchase loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to purchase an apartment building originated in the commercial loan department.*

3. ***Construction and permanent financing.*** *A home purchase loan includes both a combined construction/permanent loan or line of credit, and the separate permanent financing that replaces a construction-only loan or line of credit for the same borrower at a later time. A home purchase loan does not include a construction-only loan or line of credit that is designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time or that is extended to a person exclusively to construct a dwelling for sale, which are excluded from Regulation C as temporary financing under § 1003.3(c)(3). Comments 3(c)(3)–1 and –2 provide additional details about transactions that are excluded as temporary financing.*

4. ***Second mortgages that finance the down payments on first mortgages****. If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan or line of credit to the same purchaser to finance part or all of the home purchaser's down payment, both the first mortgage loan and the second mortgage loan or line of credit are home purchase loans.*

5. ***Assumptions.*** *Under § 1003.2(j), an assumption is a home purchase loan when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation to finance the new borrower's purchase of the dwelling securing the existing obligation, if the resulting obligation is a closed-end mortgage loan or an open-end line of credit.*

   A transaction in which borrower B finances the purchase of borrower A's dwelling by assuming borrower A's existing debt obligation and that is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an assumption and a home purchase loan. See comment 2(d)-2.ii.

   On the other hand, a transaction in which borrower B, a successor-in-interest, assumes borrower A's existing debt obligation only after acquiring title to borrower A's dwelling is not *a home purchase loan because borrower B did not assume the debt obligation for the purpose of purchasing a dwelling. See § 1003.4(a)(3) and comment 4(a)(3)-4 for guidance about how to report covered loans that are not home improvement loans, home purchase loans, or refinancings.*

6. ***Multiple-purpose loans.*** *A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home purchase loan under § 1003.2(j) may also be a home improvement loan under § 1003.2(i) and a refinancing under § 1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to purchase and improve a dwelling. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)-3 provides details about how to report multiple-purpose covered loans.*

Multifamily Dwelling

Regulatory Text [12 CFR § 1003.2(n)]

(n) **Multifamily dwelling** means a dwelling, regardless of construction method, that contains five or more individual dwelling units.

Regulatory Commentary

1. ***Multifamily residential structures.*** *The definition of dwelling in § 1003.2(f) includes multifamily residential structures and the corresponding commentary provides guidance on when such residential structures are included in that definition. See comments 2(f)-2 through -5.*

2. ***Special reporting requirements for multifamily dwellings.*** *The definition of multifamily dwelling in § 1003.2(n) includes a dwelling, regardless of construction method, that contains five or more individual dwelling units. Covered loans secured by a multifamily dwelling are subject to additional reporting requirements under § 1003.4(a)(32), but are not subject to reporting requirements under § 1003.4(a)(4), (10)(iii), (23), (29), or (30).*

3. ***Separate dwellings.*** *A covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve five or more dwellings, each with one individual dwelling unit, located in different parts of a town, and the loan is secured by those properties. The covered loan is not secured by a multifamily dwelling as defined by § 1003.2(n). Likewise, a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n). For example, assume that an investor purchases 10 individual unit condominiums in a 100-unit condominium complex using a covered loan. The covered loan would not be secured by a multifamily dwelling as defined by § 1003.2(n). In both of these situations, a financial institution reporting a covered loan or application secured by these separate dwellings would not be subject to the additional reporting requirements for covered loans secured by or applications proposed to be secured by multifamily dwellings under § 1003.4(a)(32). However, a financial institution would report*

the information required by § 1003.4(a)(4), (10)(iii), (23), (29), and (30), which is not applicable to covered loans secured by and applications proposed to be secured by multifamily dwellings. See comment 2(n)–2. In addition, in both of these situations, the financial institution reports the number of individual dwelling units securing the covered loan or proposed to secure a covered loan as required by § 1003.4(a)(31). See comment .

Open-End Line of Credit

Regulatory Text [12 CFR § 1003.2(o)]

(o) **Open-end line of credit** means an extension of credit that:

(1) Is secured by a lien on a dwelling; and

(2) Is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11).

Regulatory Commentary

1. ***General.*** *Section 1003.2(o) defines an open-end line of credit as an extension of credit that is secured by a lien on a dwelling and that is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11). Aside from these distinctions, institutions may rely on 12 CFR 1026.2(a)(20) and its related commentary in determining whether a transaction is an open-end line of credit under § 1003.2(o). For example, assume a business purpose transaction that is exempt from Regulation Z pursuant to § 1026.3(a)(1) but that otherwise is open-end credit under Regulation Z § 1026.2(a)(20). The business-purpose transaction is an open-end line of credit under Regulation C, provided the other requirements of § 1003.2(o) are met. Similarly, assume a transaction in which the person extending open-end credit is a financial institution under § 1003.2(g) but is not a creditor under Regulation Z, § 1026.2(a)(17). In this example, the transaction is an open-end line of credit under Regulation C, provided the other requirements of § 1003.2(o) are met.*

2. ***Extension of credit.*** *Extension of credit has the same meaning under § 1003.2(o) as under § 1003.2(d) and comment 2(d)-2. Thus, for example, a renewal of an open-end line of credit is not an extension of credit under § 1003.2(o) and is not covered by Regulation C unless the existing debt obligation is satisfied and replaced. Likewise, under § 1003.2(o), each draw on an open-end line of credit is not an extension of credit.*

Refinancing

Regulatory Text [12 CFR § 1003.2(p)]

(p) **Refinancing** means a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.

Regulatory Commentary

*1. **General.** Section 1003.2(p) defines a refinancing as a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower. Except as described in comment 2(p)-2, whether a refinancing has occurred is determined by reference to whether, based on the parties' contract and applicable law, the original debt obligation has been satisfied or replaced by a new debt obligation. Whether the original lien is satisfied is irrelevant. For example:*

i. A new closed-end mortgage loan that satisfies and replaces one or more existing closed-end mortgage loans is a refinancing under § 1003.2(p).

ii. A new open-end line of credit that satisfies and replaces an existing closed-end mortgage loan is a refinancing under § 1003.2(p).

iii. Except as described in comment 2(p)-2, a new debt obligation that renews or modifies the terms of, but that does not satisfy and replace, an existing debt obligation, is not a refinancing under § 1003.2(p).

*2. **New York State consolidation, extension, and modification agreements.** [Omitted.]*

*3. **Existing debt obligation.** A closed-end mortgage loan or an open-end line of credit that satisfies and replaces one or more existing debt obligations is not a refinancing under § 1003.2(p) unless the existing debt obligation (or obligations) also was secured by a dwelling.*

For example, assume that a borrower has an existing $30,000 closed-end mortgage loan and obtains a new $50,000 closed-end mortgage loan that satisfies and replaces the existing $30,000 loan. The new $50,000 loan is a refinancing under § 1003.2(p). However, if the borrower obtains a new $50,000 closed-end mortgage loan that satisfies and replaces an existing $30,000 loan secured only by a personal guarantee, the new $50,000 loan is not a refinancing under § 1003.2(p). See § 1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under § 1003.3(c).

*4. **Same borrower.** Section 1003.2(p) provides that, even if all of the other requirements of § 1003.2(p) are met, a closed-end mortgage loan or an open-end line of credit is not a refinancing unless the same borrower undertakes both the existing and the new obligation(s).*

Under § 1003.2(p), the "same borrower" undertakes both the existing and the new obligation(s) even if only one borrower is the same on both obligations. For example, assume that an existing closed-end mortgage loan (obligation X) is satisfied and replaced by a new closed-end mortgage loan (obligation Y). If borrowers A and B both are obligated on obligation X, and only borrower

B is obligated on obligation Y, then obligation Y is a refinancing under § 1003.2(p), assuming the other requirements of § 1003.2(p) are met, because borrower B is obligated on both transactions. On the other hand, if only borrower A is obligated on obligation X, and only borrower B is obligated on obligation Y, then obligation Y is not a refinancing under § 1003.2(p). For example, assume that two spouses are divorcing. If both spouses are obligated on obligation X, but only one spouse is obligated on obligation Y, then obligation Y is a refinancing under § 1003.2(p), assuming the other requirements of § 1003.2(p) are met. On the other hand, if only spouse A is obligated on obligation X, and only spouse B is obligated on obligation Y, then obligation Y is not a refinancing under § 1003.2(p). See § 1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under § 1003.3(c).

5. ***Two or more debt obligations.*** *Section 1003.2(p) provides that, to be a refinancing, a new debt obligation must satisfy and replace an existing debt obligation. Where two or more new obligations replace an existing obligation, each new obligation is a refinancing if, taken together, the new obligations satisfy the existing obligation. Similarly, where one new obligation replaces two or more existing obligations, the new obligation is a refinancing if it satisfies each of the existing obligations.*

6. ***Multiple-purpose loans.*** *A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a refinancing under § 1003.2(p) may also be a home improvement loan under § 1003.2(i) and be used for other purposes if the refinancing is a cash-out refinancing and the funds will be used both for home improvement and to pay college tuition. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)-3 provides details about how to report multiple-purpose covered loans.*

Transactions Involving Multiple Entities (from the HMDA Small Servicer Guide)

Only one Financial Institution reports the origination of a Covered Loan. If more than one institution is involved in the origination of a Covered Loan, the institution that makes the credit decision approving the Application before loan closing or account opening is responsible for reporting the origination of the Covered Loan. It is not relevant whether the loan closed in the reporting Financial Institution's name. If more than one institution approved an Application prior to loan closing or account opening and one of those institutions purchased the Covered Loan after closing or account opening, the institution that purchased the Covered Loan after closing or account opening is responsible for reporting the origination of the Covered Loan. Comment 4(a)-2.

If a Financial Institution reports a Covered Loan as an origination, it reports all of the information required to be reported for the origination of a Covered Loan, even if the Covered Loan was not initially payable to the Financial Institution that is reporting the Covered Loan as an origination. Comment 4(a)-2. When reporting a Covered Loan as an origination, a Financial Institution cannot rely on exceptions or exclusions that apply to purchased Covered Loans, but that do not apply to originations of Covered Loans.

If a Financial Institution and other parties review the same Application and the Financial Institution is not responsible for reporting the origination of the resulting Covered Loan, the Financial Institution reports the actions that the Financial Institution took on the Application.

For example, the Financial Institution is still required to report the Application if the Financial Institution denied the Application or if the Financial Institution approved the Application but the applicant did not accept the loan. The Financial Institution is also required to report the Application if the Financial Institution was reviewing the Application when it was withdrawn or the file was closed for incompleteness. Comment 4(a)-2.ii.

If a Financial Institution makes a credit decision on a Covered Loan or Application through the actions of an agent, the Financial Institution reports the Application or Covered Loan. State law determines whether one party is the agent of another party. Comment 4(a)-4.

The following examples illustrate when a Financial Institution reports certain transactions related to Covered Loans involving multiple entities.

Examples

Ficus Bank receives an Application for a Covered Loan from an applicant and forwards that Application to Pine Bank, which reviews and approves the Application prior to closing. The loan closes in Ficus Bank's name. Pine Bank purchases the loan from Ficus Bank after closing. Pine Bank is not acting as Ficus Bank's agent when it reviews and approves the Application. Because Pine Bank made the credit decision prior to closing, Pine Bank reports the transaction as an originated Covered Loan, not as a purchased Covered Loan. Ficus Bank does not report the transaction.

Ficus Mortgage Company receives an Application for a Covered Loan from an applicant and forwards that Application to Pine Bank, which reviews and denies the Application before the loan would have closed. Pine Bank is not acting as Ficus Mortgage Company's agent when it reviews and denies the Application. Because Pine Bank makes the credit decision, Pine Bank reports the Application as denied. Ficus Mortgage Company does not report the Application. If, under the same facts, the Application is withdrawn before Pine Bank makes a credit decision, Pine Bank reports the Application as withdrawn, and Ficus Mortgage Company does not report the Application.

Ficus Bank receives an Application for a Covered Loan from an applicant and approves the Application. Ficus Bank closes the loan in its name. Ficus Bank is not acting as Pine Bank's agent when it approves the Application or closes the loan. Pine Bank does not review the Application before closing. Pine Bank purchases the Covered Loan from Ficus Bank. Ficus Bank reports the loan as an originated Covered Loan. Pine Bank reports the loan as a purchased Covered Loan.

Pine Bank reviews an Application and makes a credit decision to approve a Covered Loan using the underwriting criteria provided by Ficus Mortgage Company. Pine Bank is not acting as Ficus Mortgage Company's agent, and no one acting on behalf of Ficus Mortgage Company reviews the Application or makes a credit decision prior to closing. Pine Bank reports the Application or, if the Application results in a Covered Loan, it reports the loan as an originated Covered Loan. If the Application results in a Covered Loan and Ficus Mortgage Company purchases it after closing, Ficus Mortgage Company reports the loan as a purchased Covered Loan.

Ficus Bank receives an Application for a Covered Loan and forwards it to Aspen Bank and Pine Bank. Ficus Bank makes a credit decision, acting as Elm Bank's agent, and approves the Application. Pine Bank makes a credit decision and denies the Application. Aspen Bank makes a credit decision approving the Application. The applicant does not accept the loan from Elm Bank. The applicant accepts the loan from Aspen Bank and credit is extended. Aspen Bank reports the loan as an originated Covered Loan. Pine Bank reports the Application as denied. Elm Bank reports the Application as approved but not accepted. Ficus Bank does not report the Application.

Compilation of Reportable Data

Regulatory Text § 1003.4(a)

(a) **Data format and itemization.** A financial institution shall collect data regarding applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in § 1003.2(b)(2), only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan. Except as provided in § 1003.3(d), the data collected shall include the following items:

Regulatory Commentary

1. ***General.*** *Except as otherwise provided in § 1003.3, § 1003.4(a) describes a financial institution's obligation to collect data on applications it received, on covered loans that it originated, and on covered loans that it purchased during the calendar year covered by the loan/application*

register.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which actions were taken–for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application register. A financial institution is required to report data regarding requests under a preapproval program (as defined in § 1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. If a financial institution acquires covered loans in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

iv. A financial institution reports the data for an application on the loan/application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

2. ***Originations and applications involving more than one institution.*** *Section 1003.4(a) requires a financial institution to collect certain information regarding applications for covered loans that it receives and regarding covered loans that it originates. The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are financial institutions as defined by § 1003.2(g). The same principles apply if any of the parties is not a financial institution. Comment 4(a)-3 provides examples of transactions involving more than one institution, and comment 4(a)-4 discusses how to report actions taken by agents.*

   i. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3. ***Examples - originations and applications involving more than one institution.*** *The following scenarios illustrate how an institution reports a particular application or covered loan. The illustrations assume that all of the parties are financial institutions as defined by § 1003.2(g). However, the same principles apply if any of the parties is not a financial institution.*

   i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the loan prior to closing. The loan closed in Financial Institution A's name. Financial Institution B purchased the loan from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, Financial Institution B reports the transaction as an origination, not as a purchase. Financial Institution A does *not report the transaction.*

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application for a covered loan from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (e.g., another financial institution, Fannie Mae, or Freddie Mac). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application or origination. If the third party purchased the loan and is subject to Regulation C, the third party reports the loan as a purchase whether or not the third party reviewed the loan after closing. Assume the same facts, except that Financial Institution A approved the application, and the applicant chose not to accept the loan from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party, assuming the third party is subject to Regulation C, does not report the application.

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and *denied the application. Financial Institution C reports the application as denied.*

4. ***Agents.*** *If a financial institution made the credit decision on a covered loan or application through the actions of an agent, the institution reports the application or origination. State law determines whether one party is the agent of another. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered loan was originated. Financial Institution A reports the loan as an origination.*

5. ***Purchased loans.***

   i. *A financial institution is required to collect data regarding covered loans it purchases. For purposes of § 1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year. For example, assume that Financial Institution A originates or purchases a covered loan and then sells it to Financial Institution B, who later requires Financial Institution A to repurchase the covered loan pursuant to the relevant contractual obligations. Financial Institution B reports the purchase from Financial Institution A, assuming it is a financial institution as defined under § 1003.2(g). Financial Institution A reports the repurchase from Financial Institution B as a purchase.*

   ii. *In contrast, for purposes of § 1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as "repurchase agreements," are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of § 1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under § 1003.2(g), it reports a purchase of the covered loan pursuant to § 1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.*

Preamble Additional Comments (Abridged)

None.

Section 5: The HMDA LAR Fields
12 CFR § 1003.4(a)

Introduction

This section contains the regulatory text, regulatory Commentary, and the HMDA Small Entity Compliance Guide text for each required item on the Loan Application Register.

For ease in understanding and presentation, each new item begins on a new page in the manual. Although there are 48 total fields, the regulation includes only 38 sections – 12 CFR § 1004.4(a)(1) through 12 CFR § 1004.4(a)(38).

Summary of Reportable HMDA Data – Regulatory Reference Chart[a]

This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rule issued on October 15, 2015. The relevant regulation and commentary sections are provided for ease of reference. This chart does not provide data fields or enumerations used in preparing the HMDA loan/application register (LAR). For more information on preparing the HMDA LAR, please see http://www.consumerfinance.gov/hmda.

Data Point	Status[b]	Description	Regulation C References
(1) Legal Entity Identifier (LEI)	Modified	Identifier issued to the financial institution (FI) by a utility endorsed by the Global LEI Foundation or LEI Regulatory Oversight Committee	§ 1003.4(a)(1)(i)(A)
(2) Universal Loan Identifier (ULI)	Modified	Identifier assigned to identify and retrieve a loan or application that contains the FI's LEI, an internally generated sequence of characters, and a check digit	§ 1003.4(a)(1)(i), Comments 4(a)(1)(i)-1 through -5, and appendix C
(3) Application Date	Existing	Date the application was received or the date on the application form	§ 1003.4(a)(1)(ii), Comments 4(a)(1)(ii)-1 through -3
(4) Loan Type	Existing	Whether the loan or application is insured by the Federal Housing Administration, guaranteed by the Veterans Administration, Rural Housing Service, or Farm Service Agency	§ 1003.4(a)(2), Comment 4(a)(2)-1
(5) Loan Purpose	Modified	Whether the transaction is for home purchase, home improvement, refinancing, cash-out refinancing, or another purpose	§ 1003.4(a)(3), Comments 4(a)(3)-1 through -5

Data Point	Status[b]	Description	Regulation C References
(6) Preapproval	Modified	Whether the transaction involved a preapproval request for a home purchase loan under a preapproval program	§ 1003.4(a)(4), Comments 4(a)(4)-1 and -2
(7) Construction Method	Modified	Whether the dwelling is site-built or a manufactured home	§ 1003.4(a)(5), Comments 4(a)(5)-1 through -3
(8) Occupancy Type	Modified	Whether the property will be used as a principal residence, second residence, or investment property	§ 1003.4(a)(6), Comments 4(a)(6)-1 through -5
(9) Loan Amount	Modified	Amount of the loan or the amount applied for	§ 1003.4(a)(7), Comments 4(a)(7)-1 through -9
(10) Action Taken and (11) Action Taken Date	Existing	Type and date of action the FI took on the loan, application, or preapproval request	§ 1003.4(a)(8), Comments 4(a)(8)(i)-1 through -14 and 4(a)(8)(ii)-1 through -6
(12) Property Address	New	Address of the property securing the loan (or proposed to secure a loan)	§ 1003.4(a)(9)(i), Comments 4(a)(9)-1 through -5 and 4(a)(9)(i)-1 through -3
(13), (14), and (15) Property Location	Existing	Location of the property securing the loan (or proposed to secure a loan) by state, county, and census tract	§ 1003.4(a)(9)(ii), Comments 4(a)(9)-1 through -5, 4(a)(9)(ii)(B)-1, and 4(a)(9)(ii)(C)-1
(16) Ethnicity, (17) Race, and (18) Sex	Modified	Applicant's or borrower's ethnicity, race, and sex, and if information was collected by visual observation or surname	§ 1003.4(a)(10)(i), Comments 4(a)(10)(i)-1 and -2 and appendix B
(19) Age	New	Applicant's or borrower's age	§ 1003.4(a)(10)(ii), Comments 4(a)(10)(ii)-1 through -5
(20) Income	Existing	If credit decision is made, gross annual income relied on in making the credit decision; Or, if a credit decision was not made, the gross annual income relied on in processing the application	§ 1003.4(a)(10)(iii), Comments 4(a)(10)(iii)-1 through -10
(21) Type of Purchaser	Modified	Type of entity that purchased the loan	§ 1003.4(a)(11), Comments 4(a)(11)-1 through -10
(22) Rate Spread	Modified	Difference between the annual percentage rate and average prime offer rate for a comparable transaction	§ 1003.4(a)(12), Comments 4(a)(12)-1 through -8
(23) HOEPA Status	Existing	Whether the loan is a high-cost mortgage under the Home Ownership and Equity Protection Act (HOEPA)	§ 1003.4(a)(13), Comment 4(a)(13)-1
(24) Lien Status	Modified	Whether the property is a first or subordinate lien	§ 1003.4(a)(14), Comments 4(a)(14)-1 and -2
(25) Credit Score	New	Credit score(s) relied on and the name and version of the credit scoring model	§ 1003.4(a)(15), Comments 4(a)(15)-1 through -7
(26) Reason for Denial	Modified	Reason(s) the application was denied	§ 1003.4(a)(16), Comments 4(a)(16)-1 through -4
(27) Total Loan Costs or Total Points and Fees	New	Either total loan costs, or total points and fees charged	§ 1003.4(a)(17), Comments 4(a)(17)(i)-1 through -3 and 4(a)(17)(ii)-1 through -2

Data Point	Status[b]	Description	Regulation C References
(28) Origination Charges	New	Total borrower-paid origination charges	§ 1003.4(a)(18), Comments 4(a)(18)-1 through -3
(29) Discount Points	New	Points paid to the creditor to reduce the interest rate	§ 1003.4(a)(19), Comments 4(a)(19)-1 through -3
(30) Lender Credits	New	Amount of lender credits	§ 1003.4(a)(20), Comments 4(a)(20)-1 through -3
(31) Interest Rate	New	Interest rate on the approved application or loan	§ 1003.4(a)(21), Comments 4(a)(21)-1 through -3
(32) Prepayment Penalty Term	New	Term in months of any prepayment penalty	§ 1003.4(a)(22), Comments 4(a)(22)-1 through -2
(33) Debt-to-Income Ratio	New	Ratio of the applicant's or borrower's total monthly debt to total monthly income relied on	§ 1003.4(a)(23), Comments 4(a)(23)-1 through -7
(34) Combined Loan-to-Value Ratio	New	Ratio of the total amount of debt that is secured by the property to the value of the property that was relied on	§ 1003.4(a)(24), Comments 4(a)(24)-1 through -5
(35) Loan Term	New	Number of months after which the legal obligation will mature or terminate	§ 1003.4(a)(25), Comments 4(a)(25)-1 through -5
(36) Introductory Rate Period	New	Number of months until the first date the interest rate may change	§ 1003.4(a)(26), Comments 4(a)(26)-1 through -4
(37) Non-Amortizing Features	New	Whether the transaction involves a balloon payment, interest-only payments, negative amortization, or any other type of non-amortizing feature	§ 1003.4(a)(27), Comment 4(a)(27)-1
(38) Property Value	New	Value of the property relied on that secures the loan	§ 1003.4(a)(28), Comments 4(a)(28)-1 through -4
(39) Manufactured Home Secured Property Type	New	Whether the covered loan is secured by a manufactured home and land or a manufactured home and not land	§ 1003.4(a)(29), Comments 4(a)(29)-1 through -4
(40) Manufactured Home Land Property Interest	New	Information about the applicant's or borrower's ownership or leasehold interest in the land where the manufactured home is located	§ 1003.4(a)(30), Comments 4(a)(30)-1 through -6
(41) Total Units	New	Number of individual dwelling units related to the property	§ 1003.4(a)(31), Comments 4(a)(31)-1 through -4
(42) Multifamily Affordable Units	New	Number of individual dwelling units related to the property that are income-restricted under federal, state, or local affordable housing programs	§ 1003.4(a)(32), Comments 4(a)(32)-1 through -6
(43) Application Channel (Submission of Application and Initially Payable to Your Institution)	New	Indicators of whether the application was submitted directly to the FI, and whether the obligation was initially payable to the FI	§ 1003.4(a)(33), Comments 4(a)(33)-1, 4(a)(33)(i)-1, and 4(a)(33)(ii)-1 through -2
(44) Mortgage Loan Originator NMLSR Identifier	New	National Mortgage Licensing System & Registry (NMLSR) identifier for the mortgage loan originator	§ 1003.4(a)(34), Comments 4(a)(34)-1 through -3
(45) Automated Underwriting System	New	Name of the automated underwriting system used by the FI to evaluate the application and the result generated by that system	§ 1003.4(a)(35), Comments 4(a)(35)-1 through -6
(46) Reverse Mortgage	New	Indicator of whether the transaction is for a reverse mortgage	§ 1003.4(a)(36)
(47) Open-End Line of Credit	New	Indicator of whether the transaction is for an open-end line of credit	§ 1003.4(a)(37), Comment 4(a)(37)-1
(48) Business or Commercial Purpose	New	Indicator of whether the transaction is primarily for a business or commercial purpose	§ 1003.4(a)(38), Comment 4(a)(38)-1

Servicemembers Civil Relief Act

Community Banker for Compliance

Third Quarter (Q3) 2024

This publication is designed to provide information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a professional competent in the area of special need should be sought.

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Table of Contents

Section 1: Introduction

Introduction

This presentation is based on the Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Servicemembers Civil Relief Act." It was prepared for use by OCC examiners in connection with their examination and supervision of banks and other entities that they supervise. The booklet provides background information and expanded examination procedures for the Servicemembers Civil Relief Act of 2003 (SCRA).

This booklet has been edited, and some additional Regulation Z material has been added. All footnotes have been removed.

Background

The purposes of the SCRA are

- to provide for, strengthen, and expedite the national defense through protections extended by the SCRA to servicemembers of the United States to enable them to devote their entire energy to the defense needs of the nation, and
- to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

Among other things, the SCRA establishes a maximum of 6 percent interest on financial obligations incurred by servicemembers before military service, restricts foreclosures on obligations held or guaranteed by servicemembers, provides protections against default judgments, and permits early termination of certain leases, including motor vehicle leases.

Section 2: Eligibility and Major Relief Provisions

Introduction

The SCRA protects servicemembers during periods of military service. Some of the benefits accorded to servicemembers by the SCRA also extend to servicemembers' dependents

For servicemembers who are members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, military service is defined as active duty. Active duty is full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned.

For members of the National Guard, military service includes service under a call to active service authorized by the President or Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by federal funds.

For citizens of the United States, military service includes service with forces of a nation with which the United States is allied in the prosecution of a war or military action.

Military service also includes

- servicemembers who are in active service as commissioned officers of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration .
- any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

The SCRA provides guidance on when a court may extend SCRA protections to persons who are secondarily liable for an obligation or liability. These include a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability.

The SCRA also provides guidance on codefendants who are not in military service. If the servicemember is a codefendant with others who are not in military service and who are not entitled to SCRA relief and protections, the plaintiff may proceed against those other defendants with the approval of the court.

The SCRA does not provide guidance on, or define types of, covered financial obligations, products, or services (collectively products). Thus, it is important to conduct a case-by-case analysis of bank products and services to determine whether they may fall within any of the SCRA's general protections.

Servicemembers may waive any of the SCRA protections. A waiver must be in writing if applied to

- the modification, termination, or cancellation of a contract, lease, or bailment, or an obligation secured by a mortgage, trust, deed, or lien, or
- the repossession, retention, sale, forfeiture, or taking possession of property that is security for any obligation, or was purchased or received under a contract, lease, or bailment.

A written waiver must be executed as a separate instrument from the obligation or liability to which it applies and must be executed during or after military service.

The SCRA is separate from the Military Lending Act (MLA). The MLA provides protections to servicemembers and their dependents that apply to consumer credit transactions entered into while serving on active duty. Consumer credit is credit that is offered or extended to a covered borrower primarily for personal, family, or household purposes, and is either subject to a finance charge or payable by a written agreement in more than four installments. For purposes of the MLA, consumer credit does not include residential mortgages; purchase money loans secured by a motor vehicle; purchase money loans secured by personal property; and credit transactions exempt from Regulation Z.

Regulation Z provides perhaps the best view of what is, or is not, a business purpose loan. We have inserted that portion of Regulation Z for purposes of this presentation.

Exempt Transactions (General) - 12 C.F.R § 1026.3

Regulatory Discussion

Regulation Z exempts certain transactions from coverage which are discussed in this section. There is also a dollar threshold for certain types of credit that are exempt transactions. Those thresholds are adjusted annually.

Regulatory Text (Introduction)

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

Regulatory Commentary

Section 1026.3 - Exempt Transactions

1. ***Relationship to §1026.12.*** *The provisions in §1026.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.*

Business, Commercial, Agricultural, or Organizational Credit - 12 CFR § 1026.3(a)

Regulatory Discussion

This section describes the exemptions for:

- Business or commercial, including specific examples for non-owner-occupied and owner-occupied rental property;
- Agricultural; or
- Organizational, including credit extended to trusts.

Regulatory Text

(a) **Business, commercial, agricultural, or organizational credit.**

(1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

Regulatory Commentary

3(a) Business, Commercial, Agricultural, or Organizational Credit

*1. **Primary purposes.** A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)-2, however, with respect to credit cards.)*

*2. **Business purpose purchases.***

i. Business-purpose credit cards - extensions of credit for consumer purposes. If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§1026.12(a) and 1026.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in §1026.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.

ii. Consumer-purpose credit cards - extensions of credit for business purposes. If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension *of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.*

3. ***Factors.*** *In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:*

   i. ***General.***

      A. *The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.*

      B. *The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.*

      C. *The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.*

      D. *The size of the transaction. The larger the transaction, the more likely it is to be business purpose.*

      E. *The borrower's statement of purpose for the loan.*

   ii. ***Business-purpose examples.*** *Examples of business-purpose credit include:*

      A. *A loan to expand a business, even if it is secured by the borrower's residence or personal property.*

      B. *A loan to improve a principal residence by putting in a business office.*

      C. *A business account used occasionally for consumer purposes.*

   iii. ***Consumer-purpose examples.*** *Examples of consumer-purpose credit include:*

      A. *Credit extensions by a company to its employees or agents if the loans are used for personal purposes.*

      B. *A loan secured by a mechanic's tools to pay a child's tuition.*

      C. *A personal account used occasionally for business purposes.*

4. ***Non-owner-occupied rental property.*** *Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (See comment 3(a)-5, however, for rules relating to owner-occupied rental property.)*

5. ***Owner-occupied rental property.*** *If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:*

   i. *Credit extended to acquire the rental property is deemed to be for business purposes if it* *contains more than 2 housing units.*

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)-3.

*6. **Business credit later refinanced.** Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.*

*7. **Credit card renewal.** A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.*

*8. **Agricultural purpose.** An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.*

*9. **Organizational credit.** The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. But see comment 3(a)-10 concerning credit extended to trusts.*

*10. **Trusts.** Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:*

*i. **Trusts for tax or estate planning purposes.** In some instances, a creditor may extend credit for consumer purposes to a trust that a consumer has created for tax or estate planning purposes (or both). Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.*

ii. ***Land trusts.*** *In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are primarily for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.*

Section 3: Protections and Requirements Governing Contracts

Introduction

The SCRA contains provisions that govern banks' and servicemembers' rights under contracts for mortgages and trust deeds, and purchases or leases of premises and motor vehicles. As detailed more fully in the subsequent sections of this booklet, the SCRA's provisions concerning contractual agreements provide procedures, rights, and remedies in the event of foreclosures, repossession, collections, terminations, evictions, and assignments of contractual rights. Several of these procedures, rights, and remedies are subject to timing, communication, and documentation requirements.

Maximum Rate of Interest on Debts Incurred Before Military Service

The SCRA sets a maximum rate of 6 percent interest per year on obligations or liabilities incurred by servicemembers, or the servicemember and their spouse jointly, before the servicemember entered military service. Because the provisions of the SCRA do not specify what types of financial obligations or liabilities are covered, a case-by-case analysis is necessary to determine the applicability of the 6 percent interest rate reduction. Generally, examiners should keep three factors in mind when evaluating the applicability of the 6 percent reduction to specific products:

- The time in which an obligation or liability was incurred.
- The date upon which the servicemember entered military service.
- The rate of interest for the obligation or liability as well as any service charges, renewal charges, fees, or any other charges.

The SCRA provides a basic framework for servicemembers to notify their lenders of their military status to receive an interest rate reduction. The statute also provides lenders with a safe harbor in the event that a servicemember does not provide proof of military service and the lender endeavors to independently ascertain the servicemember's military status. If under either of these frameworks a lender has notice that a servicemember is in military service, and the servicemember has a liability or obligation incurred before the date of such service with an interest rate in excess of 6 percent, the lender must reduce the interest rate in accordance with the SCRA. **The SCRA does not permit lenders to accelerate principal repayment for liabilities and obligations covered by the 6 percent interest reduction.**

Borrower Notice and Documentation

At any time during military service, or within 180 days after the end of military service, the servicemember may provide a written notice and a copy of the servicemember's military orders or any other appropriate indicator of military service, including a certified letter from a commanding officer, to the bank.

Independent Bank Verification

In lieu of notice and documentation provided by a servicemember, a bank may independently verify military service by using information retrieved from the Defense Manpower Data Center (DMDC) through the bank's normal business reviews of the DMDC for purposes of indicating that the servicemember is in military service. Such independent verification establishes a safe harbor for the SCRA's proof of military service requirement. A bank that uses the information retrieved from the DMDC with respect to a servicemember has not failed to treat the debt of the servicemember in accordance with the interest rate limitation if:

- the information indicates that, on the date the bank retrieves such information, the servicemember is not in military service; and
- the bank has not, by the end of the 180-day period, received the written notice and documentation required under that subparagraph with respect to the servicemember.

Implementation of Limitation

Upon receiving a written notice or any other appropriate indicator of military service, including verification using the DMDC database, banks must reduce the interest on debts incurred by the servicemember, or a servicemember and his or her spouse jointly, before entry into military service, to no more than 6 percent. The interest rate reduction is effective during a servicemember's period of military service (and for one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage), and must be applied retroactively to account for the entire period of military service.

The following are some important factors to keep in mind:

- Because the SCRA defines interest to include service charges, renewal charges, fees, or any other charges (except bona fide insurance), banks may need to decrease or eliminate fees and other charges, such as annual fees, to comply with the 6 percent interest rate cap, in addition to reducing the actual interest rate.
- A bank that reduces the interest rate on an obligation or liability of a servicemember that bears interest in excess of 6 percent must forgive interest in excess of 6 percent, and periodic payments must be reduced by the amount of interest forgiven.
- Because the SCRA prevents acceleration of principal, banks must reduce the amount of any periodic payment due from a servicemember by the amount of the interest forgiven.
- The bank also must account for any interest payments that have been made in excess of the 6 percent rate during the period in which the reduced rate applies. Banks should provide excess payments to the servicemember as a refund.

The reduced interest rate provision applies unless a creditor seeks relief in court, and the court finds the ability of the servicemember to pay interest on the debt at a higher interest rate is not materially affected by the servicemember's military service. In such cases, the court may grant a bank relief from the interest rate limitations.

Once the applicable protection period for servicemembers has concluded, banks may return to the initial terms of the liability or obligation.

Section 4: Servicemember Protections Under Installment Contracts for Purchases or Leases

Introduction

The SCRA prohibits lenders from rescinding or terminating a contract for the purchase of real or personal property (including motor vehicles), or the lease or bailment of such property, absent a court order. This protection applies only to contracts for which a deposit or at least one installment payment has been made by the servicemember before the servicemember entered military service. Lenders that knowingly violate this law by resuming possession of the property may be subject to fines and imprisonment.

The SCRA grants state and federal courts three remedial options when addressing a bank's request to repossess a property held by a servicemember that is collateral under an installment contract.

Courts may order repayment of prior installments or deposits to the borrower as a condition of terminating the contract and resuming repossession of the property.

On application of the servicemember when the servicemember's ability to comply with the contract is materially affected by military service, the court shall stay the proceedings for a period of time as, in the opinion of the court, justice and equity require. The court may also stay the proceedings on its own motion.

The court may make other disposition as is equitable to preserve the interests of all parties.

Mortgages and Trust Deeds

The SCRA extends protections to obligations on real or personal property owned by a servicemember that:

- originated before the servicemember's military service and the servicemember is still obligated to the debt, and
- is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

If a lender files suit to enforce an obligation meeting the above qualifications against a servicemember in military service or within one year of service, the SCRA grants servicemembers and courts a variety of protective options for the servicemember. A servicemember may request a hearing and a stay of the proceedings, or the court, on its own accord, may conduct a hearing and decide to grant a stay of proceedings. If a court decides that action is necessary to protect the interests of the parties, the SCRA provides courts with two options:

The court may stay the proceedings "for a period for time as justice and equity require," or:

- The court may "adjust the obligation to preserve the interest of all parties." If a lender seeks to compel or secure a sale, foreclosure, or seizure of property on a mortgage, trust deed, or other security obligation in the nature of a mortgage, the SCRA provides that such actions shall not be valid if made during, or within one year after, the period of the servicemember's military service except

- upon a court order granted before the sale, foreclosure, or seizure, or
- if made pursuant to a servicemember's written agreement to waive his or her rights or protections under the SCRA. This includes repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased or received under a contract, lease, or bailment.

Lease Terminations

The SCRA contains rights and procedural protections for servicemembers who lease residential or personal property. In certain circumstances, a servicemember or his or her spouse has the option to terminate leases of residential property and motor vehicles.

Leased Premises

To qualify for protections, a premises lease must meet the following requirements:

- The lease must be for a premise occupied or intended to be occupied by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose and meet one of the following additional qualifications:
  - The lease was executed by or on behalf of a person who enters military service during the term of the lease.
  - The lease was executed by a servicemember while in military service, and the servicemember subsequently received military orders for a permanent change of station (PCS) or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.
  - The lease was executed by a servicemember while in military service upon receipt of military orders for a PCS or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days; and thereafter the servicemember receives a stop movement order issued by the Secretary of Defense in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the servicemember or servicemember's dependents from occupying the lease for a residential, professional, business, agricultural, or similar purpose.

Motor Vehicle Leases

To qualify for protections, a motor vehicle lease must meet the following criteria:

- The lease must be for a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation and meet one of the following additional qualifications:

- The lease was executed by or on behalf of a person who subsequently and during the term of the lease enters military service under orders of not less than 180 days.
- The servicemember, while in military service, executed the lease and receives military orders for a PCS from a location inside the continental United States to a location outside of the continental United States, or a PCS from a state outside the continental United States to a location outside that state, or deployment with a military unit, or as an individual in support of a military operation, for a period of 180 days or more.
- The servicemember, while in military service, executed the lease and receives military orders for a PCS from a location inside the continental United States to a location outside of the continental United States, or a PCS from a state outside the continental United States to a location outside that state, or deployment with a military unit, or as an individual in support of a military operation, for a period of 180 days or more; and thereafter receives a stop movement order issued by the Secretary of Defense in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the servicemember, or the servicemember's dependents, from using the vehicle for personal or business transportation.

Lease Termination

To terminate a premises or a motor vehicle lease, the SCRA requires a lessee to deliver a written notice of termination and a copy of either the servicemember's official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military service.

Delivery of notice may be made by:

- hand delivery,
- private business carrier, or
- placing the written notice in an envelope with sufficient postage and return receipt requested, and
- addressing the envelope as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and
- depositing the envelope with the written notice in the U.S. mail.

Delivery of notice regarding termination of a motor vehicle lease also requires return of the automobile to the lessor within 15 days after delivery of the written notice of termination.

The spouse of a servicemember, or someone exercising power of attorney on the servicemember's behalf, may terminate the lease(s) of a premises or of a motor vehicle(s) in the event that the servicemember dies, or suffers catastrophic illness or injury, while in military service, performing full-time National Guard duty, on active National Guard or Reserve duty, or inactive-duty training. Additionally, a lessee's termination of a joint lease shall terminate any obligation a dependent of the lessee may have under the lease.

Life Insurance Assigned as Security

If a bank accepts a life insurance policy on the life of a servicemember as security for an obligation and that assignment was before military service, the bank may not exercise any right or option obtained under the assignment during the period of the servicemember's military service, or within one year thereafter, without a court order. This prohibition does not apply if the bank has written consent from the insured made during the period of military service or within one year thereafter. The prohibition does not apply if the assignee is an insurer, and the loan is a policy loan.

This prohibition also does not apply when the premiums on the policy are due and unpaid; however, premiums guaranteed by the United States are not considered due and unpaid.

No Penalization for Use of SCRA Protections

The fact that a servicemember applies for, or receives, a stay, postponement, or suspension of the servicemember's obligations or liabilities pursuant to the SCRA may not in itself provide the basis for

- a determination by a lender or other person that the servicemember is unable to pay the obligation or liability in accordance with its terms.
- a denial or revocation of credit by the creditor, change in terms of an existing credit arrangement, or refusal to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- an adverse report relating to the creditworthiness of the servicemember by or to a consumer reporting agency.
- a refusal by an insurer to insure the servicemember.
- an annotation in a servicemember's record by a bank or a person engaged in the practice of assembling or evaluating consumer credit information identifying the servicemember as a member of the National Guard or a Reserve component.
- a change in the terms offered or conditions required for the issuance of insurance.

Protections and Requirements in Judicial Proceedings

The SCRA contains several protections with respect to claims litigated against a servicemember while in military service, including

- Protection against the entry of default judgements
- stay of proceedings when the servicemember has notice of the proceeding.
- provisions concerning fines and penalties under contract.
- stay or vacation of execution of judgments, attachments, and garnishments.
- procedures and rights governing persons secondarily liable and codefendants not in military service.

The language of the SCRA states that the SCRA is generally applicable in any action or proceeding commenced in any court. The SCRA applies to all legal actions or proceedings to collect or enforce a liability or obligation held by the servicemember, including but not limited to state and federal court actions, and actions before a bankruptcy court. The SCRA also limits the accrual of certain fines and penalties during the period of the stay.

Protection Against Default Judgments

The SCRA establishes certain procedures that courts must follow in all civil proceedings in which the servicemember defendant does not make an appearance to protect servicemember defendants against the entry of default judgments. These procedures are as follows:

- If a defendant is in default for failure to appear in the action filed by the plaintiff, the plaintiff must file an affidavit with the court before a default judgment may be entered. The affidavit must state whether or not the defendant is in military service, or that the plaintiff was unable to determine whether the defendant is in military service. The requirement for an affidavit may be satisfied by a statement, declaration, verification, or certificate in writing subscribed and certified or declared to be true under penalty of perjury.
- If, based on the filed affidavits, the court cannot determine whether the defendant is in military service, it may condition entry of judgment against the defendant upon the plaintiff's filing of a bond in an amount approved by the court. If the defendant is later found to be in military service and the judgment is set aside in whole or in part, the bond would indemnify the defendant against any loss or damage incurred because of the judgment.
- The court may not order entry of judgment against the defendant if the defendant is in military service until after the court appoints an attorney to represent the defendant.
- If requested by counsel for a servicemember defendant, or upon the court's own motion, the court shall grant a stay of proceedings for no less than 90 days, if it determines that:
  - there may be a defense and the defense cannot be presented without the defendant's presence; or (2) after due diligence, the defendant's attorney has not been able to contact the defendant or otherwise determine if a meritorious defense exists.
  - If a default judgment is entered against the defendant, while he or she is in military service, or within 60 days of discharge from military service, the court entering the judgment must, upon application by or on behalf of the servicemember, reopen the judgment and allow the servicemember to defend the action if it appears that (1) the servicemember was materially prejudiced in making a defense by reason of his or her military service, and (2) the servicemember has a meritorious or legal defense to the action or some part of it. An application must be filed not later than 90 days after the date of the termination or release from military service.
  - If a court vacates, sets aside, or reverses a default judgment against a servicemember because of the SCRA, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

Evictions

In addition to protecting servicemembers from foreclosure or repossession of real property, the SCRA extends protections to servicemembers from evictions. Examiners should be mindful of these protections, particularly in connection with real estate obtained by a bank through foreclosure on a federally related mortgage loan, or dwelling, or residential real

property, or when a bank becomes a successor in interest in such a property, that is occupied by a servicemember tenant. The SCRA provides that a landlord or any person with paramount title may not evict a servicemember or the servicemember's dependents from certain dwellings during a period of military service except by court order or written waiver from the servicemember. The SCRA's eviction protections apply if the servicemember's lease meets the following criteria:

- The lease is for a property that is occupied or intended to be occupied as a residence.
- he monthly rent does not exceed a maximum housing rental amount that is adjusted for inflation and published annually in the *Federal Register* by the Secretary of Defense.
- Upon an application for eviction or distress, the court may on its own motion, or if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service, the court shall
  - stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or
  - adjust the obligation under the lease to preserve the interests of all parties.

If a stay is granted, the court may grant to the landlord such relief as equity may require and may require a rent allotment from pay of the servicemember, subject to certain restrictions.

Stay of Proceedings When Servicemember Has Notice

Outside the default context, and at any time before final judgment in a civil action, a person covered by the SCRA who has received notice of a proceeding may ask the court to stay the proceeding (50 USC 3932). The court shall grant the servicemember's stay application for at least 90 days, if the application includes (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the servicemember's ability to appear, along with a date when the servicemember will be able to appear; and (2) a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents the servicemember's appearance and that military leave is not authorized for the servicemember at the time of the letter. The court has discretion to grant additional stays upon further application. The court may also order a stay on its own motion.

Other considerations for granting a stay of proceedings include the following:

- The protections of 50 USC 3932 do not apply to evictions (50 USC 3932(f); refer to 50 USC 3951, which addresses evictions and distress).
- The servicemember must be in military service or within 90 days after termination of or release from military service.
- An application for a stay does not constitute an appearance and does not constitute a waiver of any substantive or procedural defense.

- If the court refuses to grant an additional stay of proceedings, the court shall appoint legal counsel to represent the servicemember.

Fines and Penalties Under Contracts

When an action for compliance with the terms of a contract is stayed, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay. If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if

- the servicemember was in military service at the time the fine or penalty was incurred; and
- the ability of the servicemember to perform the obligation was materially affected by such military service.

Stay or Vacation of Execution of Judgments, Attachments, and Garnishments

In the case of a judgment or order entered against a servicemember, if a court finds that a servicemember's ability to comply with the judgment or garnishment is materially affected by military service, the court may on its own motion and must upon application by the servicemember (1) stay the execution of any judgment or order entered against a servicemember and (2) vacate or stay any attachment or garnishment of the servicemember's property or assets, whether before or after judgment.

The stay of execution may be ordered for any part of the servicemember's military service or within 90 days after such service terminates. The court may order the servicemember to make installment payments during any stay ordered but not during a stay ordered under section 3932.

Persons Secondarily Liable and Codefendants Not in Service

Whenever a court grants a stay, postponement, or suspension to a servicemember of an obligation or liability, prosecution of a suit or proceeding, entry of enforcement of an order, writ, judgment, or decree, or the performance of any other act, the court may likewise grant such a stay, postponement, or suspension for a person primarily or secondarily liable are not entitled to the relief and protections provided under the SCRA, the plaintiff may proceed against those other defendants with the approval of the court. The law does not apply to other defendants when a servicemember is granted a stay of civil proceedings or is granted anticipatory relief from enforcement of real estate contracts or other contracts (e.g., any other obligation, liability, tax, or assessment). The court may, however, also grant a stay with respect to the servicemember's codefendants.

Section 5: Miscellaneous Issues

Notice of Default on Mortgages Insured by U.S. Department of Housing and Urban Development

All mortgage loans, including conventional mortgages and mortgages insured by the U.S. Department of Housing and Urban Development (HUD), are subject to a notification requirement to provide homeowners with notice of SCRA rights. The prescribed notice must

- be sent to all homeowners who are in default on a residential mortgage;
- include the toll-free Military OneSource number to call if servicemembers or their dependents require further assistance ((800) 342-9647); and
- be made within 45 days from the date a missed payment was due unless the homeowner pays the overdue amount before the expiration of the 45-day period.

Record Retention

The SCRA does not include specific record retention requirements; however, other compliance regulations do have record retention requirements. For example, the Real Estate Settlement Procedures Act (RESPA) requires that loan servicers retain certain records and maintain particular documents in a manner that facilitates compiling such documents and data into a servicing file (12 CFR 1024.38(c)). The creditor must retain evidence of compliance with Regulation Z for varying periods (refer to the "Record Retention 12 CFR 1026.25" section of "Truth in Lending Act" for a summary of the retention periods).

The bank should maintain records to demonstrate its compliance with the SCRA. The type and extent of documentation vary based upon the products and services used by the borrower and the bank's specific processes. For example, an effective record retention system might support the bank's eligibility for a safe harbor protection and might include documenting the basis of the bank's determination of an account's eligibility for SCRA benefits or protections, or of the bank's denial of such benefits of protections. In addition, procedures for maintaining documentation might include

- the dates of military service for servicemembers who request SCRA benefits or who are otherwise potentially entitled to SCRA protection.
- the method, date, and results of military status verifications before seeking or obtaining a default judgment on an account of a servicemember covered by the SCRA.
- dates of any correspondence with a servicemember covered by the SCRA.
- the calculation of benefits or protections provided to the servicemember pursuant to the SCRA.

Section 6: SCRA Risks

Risks Associated With SCRA Activities

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition and resilience. The OCC has defined eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. These categories are not mutually exclusive. Any product or service may expose a bank to multiple risks. Risks also may be interdependent and may be positively or negatively correlated.

A bank's SCRA activities can result in compliance, operational, strategic, and reputation risks.

There are many factors that can affect SCRA risk exposure (e.g., previous violations, geographic areas, concentrations, quality and availability of metrics, and third-party relationships). Quality metrics are measurements of the value and performance of products, quality control, and defect rates). In general, increased risk is associated with metrics indicating inadequate or deteriorating performance. Further, the root cause of low-quality metrics could factor into the quality of risk management.

When evaluating the quantity of compliance, operational, strategic, or reputation risks associated with a bank's SCRA activities, consider the following:

- Volumes of products and transactions (e.g., loans, leases, credit cards, student loans, and other services and accounts in the bank's portfolio) that could be subject to SCRA protections.
- Number of SCRA protection requests the bank receives as well as the volume of mortgage loan foreclosures and automobile repossessions at the bank.
- Trends, patterns, and volumes of SCRA-related violations, program weaknesses, litigation, remediation requirements, customer complaints, and whistleblower referrals.
- Effect of an increasing number of transactions on operational activities for determining whether a customer is eligible for SCRA protections and for processing SCRA protections.
- Volume of staff turnover and frequency of training about the SCRA and the operating systems and processes to control compliance risk.
- Strategic planning in relation to the volume of customers eligible for SCRA protections.
- Effect of potential legislative, regulatory, accounting, operational, and technological changes on managing SCRA compliance.
- Effect of SCRA-covered foreclosures, complaints, litigation, and violations on public opinion and on the bank's reputation.

Compliance Risk

Compliance risk is the risk to current or projected financial condition and resilience arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal bank policies and procedures, or ethical standards. This risk exposes a bank to potential fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can result in diminished reputation, harm to bank customers, limited business opportunities, and lessened expansion potential.

Banks must comply with all applicable laws and regulations, including the SCRA, regardless of whether activities are performed in-house or through a third party. Many other federal consumer protection laws are also relevant to lending to servicemembers, such as the Equal Credit Opportunity Act, Fair Housing Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Truth in Lending Act, RESPA, MLA, Protecting Tenants at Foreclosure Act, and laws prohibiting unfair or deceptive acts or practices.

Lenders that knowingly violate SCRA protections under installment contracts for purchases or leases and resume possession of the property may be subject to fines and imprisonment. Courts may order repayment to a servicemember of all or part of prior installments or deposits as a condition of terminating a contract and resuming possession of the property.

Operational Risk

Operational risk is the risk to current or projected financial condition and resilience arising from inadequate or failed internal processes or systems, human errors or misconduct, or adverse external events.

Operational risk in SCRA-covered lending is often elevated with higher volumes of loans, larger numbers of transactions processed, and more extensive use of automation and technology. Highly automated environments can pose heightened operational risk exposure that can result in compliance or reputation risk, as automated environments can compound errors. Operational risk can also result when a bank outsources operational functions (e.g., covered borrower verification, loan origination, account management, collections, payment processing, data input, and legal assistance) to third parties.

Strategic Risk

Strategic risk is the risk to current or projected financial condition and resilience arising from adverse business decisions, poor implementation of business decisions, or lack of responsiveness to changes in the banking industry and operating environment.

Incomplete or inadequate consideration of the SCRA when engaging in new, modified, or expanded products or services (collectively, new activities) covered by the SCRA can expose the bank to strategic risk. New activities should encourage fair access to financial services and fair treatment of consumers and must comply with applicable laws and regulations.

Reputation Risk

Reputation risk is the risk to current or projected financial condition or resilience arising from negative public opinion. This risk may impair a bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships.

Inadequate policies and procedures, operational breakdowns, or other weaknesses in the bank's SCRA-related lending activities can harm the bank's reputation when these weaknesses result in violations of consumer protection-related laws or regulations, particularly when consumers are harmed. Inappropriate delegation of activities to third parties without appropriate bank oversight or wrongful acts by third parties acting on the bank's behalf could also increase the bank's reputation risk exposure. Effective systems and controls to identify, measure, monitor, and control potential issues, such as appropriate oversight of sales, servicing, and collection practices, are important to managing reputation and other risks.

Risk Management

Each bank should identify, measure, monitor, and control risk by implementing an effective risk management system appropriate for the size and complexity of its operations. When examiners assess the effectiveness of a bank's risk management system, they consider the quantity and quality of risk management, including the bank's policies, processes, personnel, and control systems.

Examiners should draw conclusions on the quantity of a bank's SCRA risks and assess whether the bank's risk management practices are commensurate with the quantity of risk. When evaluating the quantity of the bank's SCRA risk, examiners should consider risk factors that could affect the level of SCRA risk. When evaluating the quality of risk management, examiners should determine how well the bank identifies, measures, monitors, and controls SCRA risk. Appendix C of this booklet includes risk indicators to consider when determining the quality of a bank's SCRA risk management.

An effective compliance management system (CMS) includes processes and practices designed to manage consumer compliance risk, support compliance with consumer protection-related laws and regulations, and prevent consumer harm. The primary components that examiners consider when evaluating a bank's CMS include board and management oversight and a compliance program.

When assessing the quality of risk management, examiners may consider:

- whether relevant policies and procedures provide appropriate and effective guidance for compliance with the SCRA.
- whether processes are effective for implementing policies.
- whether procedures are adequately communicated to appropriate staff and applicable third parties.
- whether bank and third-party personnel who perform activities involving SCRA compliance are qualified and competent, receive training, have clearly defined responsibilities, and are held accountable for their actions.
- whether bank or third-party personnel respond to regulatory, accounting, industry, and technological changes that could affect the SCRA compliance program.
- whether the bank's complaint resolution process considers complaints received from servicemembers or their spouses or dependents.
- whether deficiencies in the SCRA compliance program or violations of the SCRA are resolved satisfactorily and in a timely manner.

- the appropriateness of risk management systems for the complexity of operations. For example, the examiner might evaluate the effectiveness of the bank's risk management within the first, second, and third lines of defense. Control systems, such as internal and external audits, quality control, and quality assurance, are key components of a bank's consumer compliance program. Examiners should assess the extent to which control systems provide accurate and timely assessments of compliance with the SCRA. Effective monitoring and control systems include robust audit and compliance monitoring programs that conduct transaction testing covering relevant products and account documentation. For example, monitoring and audit scopes may cover
  - credit products and services.
  - the bank's processes to identify customers who are eligible for SCRA protections.
  - communications with servicemembers, including
  - requests for SCRA protection.
  - change of duty station orders.
  - termination of active service.
  - communications from a spouse or dependent(s), commanding officer, attorney, holder of power of attorney, or court officials.
  - interest rate calculations or reductions.
  - credit and lease descriptions.
  - court orders.
  - notices of delinquency, foreclosure, or lease termination.

Protecting Tenants at Foreclosure Act

Community Banker for Compliance

Third Quarter (Q3) 2024

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Section 1: Overview and Requirements

The Protecting Tenants at Foreclosure Act

Background

The Protecting Tenants at Foreclosure Act (PTFA) protects tenants from evictions resulting from foreclosure on the properties they occupy. The PTFA took effect on May 20, 2009, and was scheduled to expire on December 31, 2012. The Dodd–Frank Wall Street Reform and Consumer Protection Act extended the expiration date to December 31, 2014. The Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act) repealed the PTFA's sunset date as of 30 days after the Economic Growth Act's enactment. As a result, the PTFA is in effect permanently as of June 23, 2018.

Coverage

The PTFA applies to any foreclosure on a federally related mortgage loan, dwelling, or residential real property (collectively, PTFA-covered foreclosures).

"Federally related mortgage loan" has the same meaning as in section 3 of the Real Estate Settlement Procedures Act, which includes any loan secured by a lien on one- to four-family residential real property, including individual units of condominiums and cooperatives, that is, loans that are (1) made by any federally insured bank that is insured by a federal agency, (2) insured or guaranteed by a federal agency, (3) intended to be sold to certain government sponsored entities, or (4) made by a creditor that makes or invests in residential real estate loans aggregating to more than $1 million per year.

PTFA-covered foreclosures also include Section 8 housing and mortgage loans insured by the Federal Housing Administration.

Notice Requirements

The PTFA provides that any immediate successor in interest in such a foreclosed property, including a bank that takes complete title to a house upon foreclosure, assumes the interest subject to the rights of any bona fide tenant and needs to comply with certain notice requirements.

The PTFA specifies the date of a "notice of foreclosure" as "the date on which complete title to a property is transferred to a successor entity or a person as a result of a court order, or pursuant to provisions in a mortgage, deed of trust, or security deed."

"Complete title" is a matter of state law. There may be limitations or restrictions on a bank's ability to transfer or sell the foreclosed property for a set period of time after conclusion of foreclosure proceedings, whether the jurisdiction requires legal title to be recorded upon conclusion of a foreclosure proceeding to be complete, how judicial and nonjudicial foreclosure proceedings confer title, and the timing and legal effects of foreclosure redemption periods on legal title.

The immediate successor in interest of a dwelling or residential real property must provide tenants with a notice to vacate at least 90 days before the effective date of such eviction notice. The notice period starts when the tenant receives the notice to vacate. In some cases, state law may provide a longer notice period than 90 days.

The PTFA requires the landlord to permit bona fide tenants to stay in the residence until the end of their leases except when:

- the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence; or
- there is no lease or the lease is terminable at will under state law.

Even when these exceptions apply, the PTFA requires that tenants receive 90 days' notice to vacate (or longer, based on state law) for either of the exceptions to be valid before they may be evicted.

A lease or tenancy is "bona fide" only if:

- the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant,
- the lease or tenancy was the product of an arm's-length transaction, and
- the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

Consideration of Other Laws and Regulations

A bank's PTFA activities could raise issues pertaining to other applicable state or Federal laws or regulations, including provisions relating to the Servicemembers Civil Relief Act (SCRA).

If the tenant is a servicemember as defined in the SCRA and is in military service on active duty, a landlord may not evict the servicemember without either a court order or a written notice of termination from the servicemember.