DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket IDs OCC-2020-0033, OCC-2020-0008]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-1742, OP-1720]

RIN 7100-AG12

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064-ZA16

FARM CREDIT ADMINISTRATION

12 CFR Part 614

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133-AF31, RIN 3133-AF14

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

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

ACTION: Guidance.

SUMMARY: The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) are reorganizing, revising, and expanding the Interagency Questions and Answers Regarding Flood Insurance. This revised guidance will assist lenders in meeting their responsibilities under Federal flood insurance law and increase public understanding of the Agencies' respective flood insurance regulations. Significant topics addressed by the revisions include guidance related to major amendments to the flood insurance laws with regard to the escrow of flood insurance premiums, the detached structure exemption, force placement procedures, and the acceptance of flood insurance policies issued by private insurers. With this issuance, the Agencies are consolidating the Questions and Answers proposed by the Agencies in July 2020 and the Questions and Answers proposed by the Agencies in March 2021 into one set of Interagency Questions and Answers Regarding Flood Insurance.

DATES: The issuance date of this guidance is May 11, 2022.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

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

Congress expanded the NFIP by enacting the Flood Disaster Protection Act of 1973 (FDPA).[2] The FDPA made the purchase of flood insurance mandatory in connection with loans made by Federally-regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a special flood hazard area (SFHA). The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development

[1] Pub. L. 90–448, 82 Stat. 572 (1968).
[2] Pub. L. 93–234, 87 Stat. 975 (1973).

and Regulatory Improvement Act of 1994) comprehensively revised the Federal flood insurance statutes.[3] The Reform Act required the OCC, Board, FDIC, Office of Thrift Supervision (OTS), and NCUA to revise their flood insurance regulations, and required the FCA to promulgate a flood insurance regulation for the first time. The OCC, Board, FDIC, OTS, FCA, and NCUA[4] fulfilled these requirements by issuing a joint final rule in the summer of 1996.[5]

In October 2013, the Agencies jointly issued proposed rules[6] to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act).[7] In March 2014, Congress enacted the Homeowner Flood Insurance Affordability Act (HFIAA), which, among other things, amended the Biggert-Waters Act's requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the mandatory flood insurance purchase requirement for certain detached structures.[8] The Agencies finalized the regulations to implement provisions in the Biggert-Waters Act and HFIAA under the Agencies' jurisdiction, except for the provisions in the Biggert-Waters Act related to private flood insurance, with a final rule issued in July 2015 (2015 Final Rule).[9] In February 2019, the Agencies finalized regulations to implement the private flood insurance related provisions of the Biggert-Waters Act (2019 Final Rule).[10]

Interagency Questions and Answers Regarding Flood Insurance

[3] Pub. L. 103-325, 108 Stat. 2255 (1994).
[4] Throughout this document "the Agencies" includes the OTS with respect to events that occurred prior to July 21, 2011, but does not include OTS with respect to events thereafter. Sections 311 and 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred OTS's functions to other agencies on July 21, 2011. The OTS's supervisory functions relating to Federal savings associations were transferred to the OCC, while those relating to State savings associations were transferred to the FDIC. *See also* 76 FR 39246 (July 6, 2011).
[5] 61 FR 45684 (Aug. 29, 1996).
[6] 78 FR 65107 (Oct. 30, 2013).
[7] Pub. L. 112-141, 126 Stat. 916 (2012).
[8] Pub. L. 113–89, 128 Stat. 1020 (2014).
[9] 80 FR 43215 (July 21, 2015). Subsequently, on November 7, 2016, the Agencies re-proposed the private flood insurance provisions through a joint notice of proposed rulemaking (81 FR 78063).
[10] 84 FR 4953 (Feb. 20, 2019).

Since 1997, the Interagency Questions and Answers[11] have provided the lending industry and other interested parties with guidance addressing a wide spectrum of technical flood insurance-related compliance issues. In 2009, the Agencies comprehensively revised and reorganized the initial 1997 Interagency Questions and Answers (2009 Interagency Questions and Answers). In 2011, the Agencies further finalized two additional Q&As that were proposed in 2009, and re-proposed three Q&As that were never finalized.[12]

In light of the significant changes to flood insurance requirements pursuant to the Biggert-Waters Act and HFIAA, as well as the Agencies' regulations issued to implement these laws, the Agencies proposed new and revised Interagency Questions and Answers in July 2020 (July 2020 Proposed Questions and Answers) that covered a broad range of topics related to technical flood insurance-related issues, including the escrow of flood insurance premiums, the detached structure exemption to the mandatory purchase of flood insurance requirement, and force placement procedures.[13] This proposal also reorganized the Interagency Questions and Answers to provide a more logical flow of questions through the flood insurance process. The Agencies also committed in the July 2020 Proposed Questions and Answers to separately issuing for notice and comment additional proposed questions and answers relating to the 2019 Final Rule implementing the private flood insurance provisions of the Biggert-Waters Act. The Agencies published these proposed questions and answers in March 2021 (March 2021 Proposed Questions and Answers).[14]

[11] Throughout this document, "Interagency Questions and Answers" refers to the Interagency Questions and Answers Regarding Flood Insurance in its entirety; "Q&A" refers to an individual question and answer within the Questions and Answers.
[12] For additional information on the history of the Interagency Questions and Answers, please see the preamble to the July 2020 Proposed Interagency Questions and Answers at 85 FR 40442 (July 6, 2020).
[13] *See* 85 FR 40442 (July 6, 2020). The comment period for the July 2020 Proposed Questions and Answers was extended from Sept. 4, 2020 to Nov. 3, 2020. *See* 85 FR 54946 (Sept. 3, 2020).
[14] *See* 86 FR 14696 (Mar. 18, 2021).

With this *Federal Register* notice, the Agencies are consolidating the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one set of Interagency Questions and Answers Regarding Flood Insurance (2022 Interagency Questions and Answers), consisting of 144 Questions and Answers (including 24 private flood insurance questions and answers), revised as appropriate based on comments received. Specifically, the Q&As in the March 2021 Proposed Questions and Answers are now set forth as sections III, IV, and V in the 2020 Interagency Questions and Answers, and the remaining sections, with the exception of proposed Section III discussed below, are renumbered accordingly. The Agencies also are making non-substantive revisions to certain questions and answers to more directly respond to the question asked, provide additional clarity, or make technical corrections.

These 2022 Interagency Questions and Answers supersede the 2009 Interagency Questions and Answers (and the 2011 amendments to the 2009 Interagency Questions and Answers) and supplement other guidance or interpretations issued by the Agencies related to loans in areas having special flood hazards. In addition to guidance and interpretations issued by the Agencies, lenders should be aware of information related to the NFIP provided by FEMA that may address questions pertaining to NFIP requirements.

The issuance of these 2022 Interagency Questions and Answers responds to requests over the years from the lending industry, including at conferences and through interagency webinars, to provide additional guidance on flood insurance compliance issues. In addition, the 2022 Interagency Questions and Answers are responsive to requests made pursuant to the most recent review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), which directs some of the Agencies to conduct a joint review of their regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or

unduly burdensome.[15] As part of the most recent joint review, the Board, FDIC, OCC, and NCUA received comments on the Agencies' flood insurance rules. Several commenters asked for more guidance to the industry on flood insurance requirements, particularly with respect to renewal notices for force-placed insurance policies, the required amount of flood insurance, and flood insurance requirements for tenant-owned buildings and detached structures. One commenter specifically requested that the Agencies update the Interagency Questions and Answers. In the 2017 EGRPRA Joint Report to Congress issued by the Federal Financial Institutions Examination Council (FFIEC), the Board, FDIC, and OCC indicated that they agreed with commenters that the Interagency Questions and Answers should be updated and planned to address many of the flood insurance issues raised by EGRPRA commenters.[16] Accordingly, in issuing these 2022 Interagency Questions and Answers, the Agencies are addressing the commitment made in the 2017 EGRPRA Joint Report to Congress.

Reorganization of Interagency Questions and Answers

For ease of reference and in light of the increased number of subjects covered that address complex issues, the Agencies proposed to reorganize the Interagency Questions and

[15] Pub. L. 104-208, 110 Stat. 3001 (1996) (codified at 12 U.S.C. 3311). The most recent report to Congress required by EGRPRA was published by the Board, FDIC, OCC, and NCUA under the FFIEC in March 2017 and is available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.* The NCUA, although an FFIEC member, is not a "Federal banking agency" within the meaning of EGRPRA and so is not required to participate in the review process. Nevertheless, the NCUA elected to participate in the EGRPRA review and conducted its own parallel review of its regulations. The FCA is not subject to EGRPRA; however, as required by the Farm Credit System Reform Act of 1996 (*see* 12 U.S.C. 2252 note), FCA engages in periodic regulatory review. The Consumer Financial Protection Bureau (CFPB), although an FFIEC member, is not a "Federal banking agency" within the meaning of EGRPRA and so is not required to participate in the review process.

[16] Specifically, the OCC, Board, and FDIC stated in the EGRPRA report that they "agree with these EGRPRA commenters that additional agency guidance on flood insurance requirements would be helpful to the banking industry and that the Interagency Flood Q&As should be updated to address recent amendments to the flood insurance statutes. In fact, the agencies have begun work on revising the Interagency Flood Q&As to reflect the agencies' recently issued final rules implementing the Biggert-Waters Act and HFIAA requirements and to address other issues that have arisen since the last update in 2011. As part of this revision, the agencies also plan to address many of the flood insurance issues raised by EGRPRA commenters." FFIEC Joint EGRPRA Report to Congress, March 2017 at 56; available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

Answers to provide a more logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders. Moreover, the Agencies also proposed a new system of designation for the Q&As. Rather than numbering the Q&As successively through all the categories, each Q&A would be designated by the category to which it belongs and then designated in numerical order for that particular category. This numbering system enables the Agencies to add or delete Q&As in the future without needing to significantly renumber or reorganize all of the Q&As. Furthermore, the Agencies have added three new Q&As (Applicability 13, Amount 10, and Condo and Co-op 9) to better address commenters' questions and for organizational purposes, rather than adding information into existing Q&As.

As discussed below, commenters supported the proposed reorganization. Therefore, the Agencies are adopting this reorganization with the inclusion of three new categories related to the private flood insurance requirements, proposed in the March 2021 Proposed Questions and Answers. The table below sets forth the current categories and the corresponding new, reorganized categories for purposes of comparison:

Table of Contents

	Category from 2009 Interagency Questions and Answers	**Reorganized Category in 2022 Interagency Questions and Answers**
I.	Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation	Determining the Applicability of Flood Insurance Requirements for Certain Loans [**Applicability**]

II.	Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation	Exemptions From the Mandatory Flood Insurance Purchase Requirements [**Exemptions**]
III.	Exemptions From the Mandatory Flood Insurance Requirements	Private Flood Insurance – Mandatory Acceptance [**Mandatory**]
IV.	Flood Insurance Requirements for Construction Loans	Private Flood Insurance – Discretionary Acceptance [**Discretionary**]
V.	Flood Insurance Requirements for Non-residential Buildings	Private Flood Insurance – General Compliance [**Private Flood Compliance**]
VI.	Flood Insurance Requirements for Residential Condominiums	Required Use of Standard Flood Hazard Determination Form [**SFHDF**]
VII.	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA	Flood Insurance Determination Fees [**Fees**]
VIII.	Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights	Flood Zone Discrepancies [**Zone**]

IX.	Escrow Requirements	Notice of Special Flood Hazards and Availability of Federal Disaster Relief [**Notice**]
X.	Force Placement	Determining the Appropriate Amount of Flood Insurance Required [**Amount**]
XI.	Private Flood Insurance	Flood Insurance Requirements for Construction Loans [**Construction**]
XII.	Required Use of Standard Flood Hazard Determination Form (SFHDF)	Flood Insurance Requirements for Residential Condominiums and Co-Ops [**Condo and Co-Op**]
XIII.	Flood Determination Fees	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA [**Other Security Interests**]
XIV.	Flood Zone Discrepancies	Requirement to Escrow Flood Insurance Premiums and Fees – General [**Escrow**]
XV.	Notice of Special Flood Hazards and Availability of Federal Disaster Relief	Requirement to Escrow Flood Insurance Premiums and Fees –

		Small Lender Exception [**Escrow Small Lender Exception**]
XVI.	Mandatory Civil Money Penalties	Requirement to Escrow Flood Insurance Premiums and Fees – Loan Exceptions [**Escrow Loan Exceptions**]
XVII.		Force Placement of Flood Insurance [**Force Placement**]
XVIII.		Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights [**Servicing**]
XIX.		Mandatory Civil Money Penalties [**Penalty**]

For ease of reference, the following terms are used throughout this document: "Act" refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, Biggert-Waters Flood Insurance Reform Act of 2012, and Homeowner Flood Insurance Affordability Act of 2014 (codified at 42 U.S.C. 4001 *et seq*). "Regulation" refers to each Agency's current final rule.[17] References to the *NFIP Flood Insurance Manual* refer to the version published in April 2021.

[17] 12 CFR part 22 (OCC); 12 CFR 208.25 (Board); 12 CFR part 339 (FDIC); 12 CFR part 614, subpart S (FCA); and 12 CFR part 760 (NCUA).

Public Comments

The Agencies solicited comment on all aspects of the proposed Q&As and received a total of 22 substantive comment letters on the July 2020 Proposed Questions and Answers and 11 substantive comment letters on the March 2021 Proposed Questions and Answers. Many of the commenters supported the proposed organizational changes to the Interagency Questions and Answers and believed the new organization provided clarity, increased understanding, and was user-friendly. In addition, some commenters specifically found the grouping by topic to be very useful, noting this would improve accessibility and allow the Agencies to easily revise the Interagency Questions and Answers in the future. One commenter found the addition of references to the Regulation to be beneficial. Another commenter requested that the Agencies combine both sets of questions and answers into one set of final questions and answers. As indicated above, the Agencies are adopting the proposed reorganization of the Interagency Questions and Answers and combining both the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document.

One commenter requested that these Interagency Questions and Answers be made available to insurance agents, which would be helpful for lenders and make the process easier for borrowers. A few commenters also suggested that the NCUA add the finalized Interagency Questions and Answers to the Regulation as an Appendix. The commenters felt that this would ensure the Interagency Questions and Answers are easily located and used by credit union staff in years to come.

The Agencies note that the Interagency Questions and Answers are already publicly available, including to insurance agents, as the Interagency Questions and Answers are published in the *Federal Register* and readily accessible on the Agencies' websites. At this time, the

Agencies decline to add the Interagency Questions and Answers to the Regulation as an Appendix. Furthermore, the NCUA is committed to assisting credit unions comply with the flood insurance requirements.

In addition, the Agencies received several comments that urged the Agencies to provide periodic updates and review the Interagency Questions and Answers on a regular basis, as well as to allow the industry an adequate notice and comment period. Commenters stated that this would provide industry and other stakeholders predictable opportunities to provide feedback on compliance issues and questions as they arise. Commenters also felt this type of review would maintain the Interagency Questions and Answers in a more organized manner and would ensure the guidance keeps pace with the marketplace and the issues that arise with respect to compliance. One commenter emphasized that this review should take place more frequently than the 10-year EGRPRA cycle and recommended a formal review of the Interagency Questions and Answers every three to five years. Other commenters stated that additional issues may arise for credit unions, who planned to share these issues with the NCUA, and asked that the Interagency Questions and Answers be updated in the future to provide additional clarity.

The Agencies understand the value of the Interagency Questions and Answers to the industry and other stakeholders and will continue to review the Interagency Questions and Answers and update the guidance as necessary. The Agencies agree that the reorganization of the Interagency Questions and Answers will facilitate future updates. The Agencies expect to update the Interagency Questions and Answers as needed and will provide interested parties a sufficient notice and comment period.

Other commenters encouraged the Agencies to include in the final version of the Interagency Questions and Answers an explicit statement referencing the Interagency Statement

Clarifying the Role of Supervisory Guidance (Interagency Statement).[18] The commenters stated the Agencies should confirm that the Interagency Questions and Answers are guidance and failure to comply with the Interagency Questions and Answers are not grounds for matters requiring attention (MRAs), matters requiring immediate attention (MRIA), or any other adverse supervisory action. The Agencies confirm that the Agencies are providing the Interagency Questions and Answers as guidance only. The Agencies are not adding a reference to the Interagency Statement in the Interagency Questions and Answers because doing so is unnecessary.

One commenter asked the Agencies to specifically reference which Q&As apply only to an NFIP policy and which Q&As apply to a flood insurance policy issued by a private insurance company or both. In response to this comment, the Agencies note that all the Q&As apply to all policies, whether NFIP or a flood insurance policy issued by a private insurance company, unless otherwise noted in the Q&A.

The Agencies also received a general comment regarding climate change. The commenter noted that the Interagency Questions and Answers failed to discuss climate change risks. According to the commenter, climate change risks should serve as a "safe-harbor" for insurers to deny flood coverage. Further, the commenter suggested that the Agencies should explicitly require the insurers to consider climate risks and that flood insurance should be mandatory in high risk zones as a result of climate change. Climate change risk is outside the scope of the Agencies' Interagency Questions and Answers. The Agencies note that they are working individually and on an interagency basis to address financial risks associated with

[18] The OCC, Board, FDIC, and NCUA subsequently codified this statement. *See* 12 CFR part 4, Appendix A to subpart F (OCC); 12 CFR part 262, Appendix A (Board); 12 CFR part 302, Appendix A (FDIC); and 12 CFR part 791, Appendix A to subpart D (NCUA).

climate change consistent with the Agencies' regulatory and supervisory authorities. Therefore, the Agencies decline to make changes to any of the Q&As in response to this comment.

Comments on specific Q&As are discussed below in the Section-by-Section Analysis.

Section-by-Section Analysis

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

Section I includes questions and answers related to the applicability of the Regulation's flood insurance requirements to certain loans. This proposed general applicability section included existing Q&As 1 through 7 relating to residential buildings and, for organizational purposes, incorporated existing section V's Q&As 24 and 25, which address flood insurance requirements for non-residential buildings. The Agencies also proposed a streamlined heading for this section to provide greater clarity with no intended change in substance or meaning. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers.

Applicability 1. The Agencies proposed to redesignate existing Q&A 1 as Q&A Applicability 1 with only minor language modifications, and no intended change in substance or meaning. This Q&A discusses whether the Regulation applies to a loan where the building or mobile home securing the loan is located in a community that does not participate in the NFIP. The Agencies received no specific comments on this Q&A and are adopting Q&A Applicability 1 as proposed with minor non-substantive edits.

Applicability 2. The Agencies proposed to redesignate existing Q&A 24 as Q&A Applicability 2. This Q&A discusses whether a lender is required to mandate flood insurance for buildings with limited utility or value. The Agencies proposed to update this Q&A to indicate

that the answer depends on whether buildings with limited utility meet the detached structure exemption, which provides an exemption from the mandatory purchase requirements for certain detached structures. This exemption was added by HFIAA. The proposal also removed the existing language indicating that the lender should consider any local zoning issues or other issues that would affect its collateral. In addition, the Agencies made minor wording changes.

The Agencies received one comment on this Q&A. The commenter suggested an alternative "carve-out" approach that would permit a lender to include all buildings in the security instrument as a matter of convenience in closing the loan and in marketing the parcel of land if necessary, even if a structure could have been "carved out" as not necessary for collateral. The commenter suggested that buildings that are included as security for a loan as a matter of convenience, and not to protect the lender by providing material credit support for the loan, would not be considered to be buildings "securing the loan" that need to be covered by flood insurance. However, the approach suggested by this commenter is not legally possible because the Act[19] requires flood insurance on all improved property that secures a designated loan. The Agencies therefore are adopting Q&A Applicability 2 as proposed with an added cross-reference to Q&A Exemptions 1, which discusses the exemptions from the mandatory purchase requirement, for reader reference.

Applicability 3. The Agencies proposed to redesignate existing Q&A 25 as proposed Q&A Applicability 3. This Q&A discusses a lender's requirements under the Regulation for a loan secured by multiple buildings if only some of the buildings are located in an SFHA, or if some of the buildings are located in different communities and only some of the communities participate in the NFIP. The Agencies proposed to change the answer to emphasize when flood

[19] Pub. L. 93–234, 87 Stat. 975 (1973), codified at 42 U.S.C. 4012a.

insurance is required as opposed to when it is not required as in the existing Q&A. Further, the Agencies proposed to include an example in the answer. The Agencies proposed these changes to provide greater clarity and to improve readability and did not intend any change in substance or meaning.

The Agencies received two comments on this proposed Q&A. One commenter requested that the Agencies add a statement that the mandatory purchase requirement is only applicable to buildings with a physical footprint at least partially within the boundaries of an SFHA. This commenter stated that the extension of a plat or lot into the SFHA does not automatically trigger the mandatory purchase of flood insurance for buildings located on that plat or lot. The other commenter requested that the Agencies address situations when a portion of a property securing a loan is located in an SFHA but the improvements located on that same property are not located in the SFHA. The commenter recommends that if the structure is not located within an SFHA, then insurance should not be required.

The Agencies confirm that land itself is not subject to the mandatory flood insurance purchase requirement. To address these comments, the Agencies are clarifying in the final answer to this Q&A that 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. Further, the Agencies are revising the final answer to state that 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. With these amendments and some minor non-substantive edits, the Agencies are adopting Q&A Applicability 3.

Applicability 4. The Agencies proposed to redesignate existing Q&A 2 as Q&A Applicability 4. This Q&A discusses a lender's responsibility if a particular building or mobile home that secures a loan is no longer located within an SFHA due to a map change. The Agencies proposed to broaden this Q&A to also address a lender's responsibility if a building or mobile home that secures a loan is not located within an SFHA, even if not due to a map change. In addition, the Agencies proposed to reword for clarity the sentence in the answer indicating that a lender, by contract, may still require flood insurance on such buildings or mobile homes for safety and soundness purposes. The proposed sentence states that a lender may, at its discretion and taking into consideration appropriate State law, require flood insurance for property outside of SFHAs for safety and soundness purposes as a condition of a loan being made. Further, the Agencies proposed to add language to the answer to specifically note that each lender should tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. The Agencies intended no substantive changes with these revisions. The Agencies received no specific comment on this proposed Q&A and are adopting it as proposed with one technical change. The Agencies are removing the discussion of the NFIP Preferred Risk Policy because of changes made by FEMA in Risk Rating 2.0 - Equity in Action (Risk Rating 2.0).[20]

Applicability 5. The Agencies proposed to redesignate existing Q&A 3 as Q&A Applicability 5 and to revise it by making minor language modifications for greater clarity, with no intended change in substance or meaning. This Q&A discusses whether a lender's purchase of a designated loan triggers any requirements under the Regulation. The Agencies received positive comment on this Q&A and are adopting it as proposed.

[20] *See* https://www.fema.gov/flood-insurance/risk-rating.

Applicability 6. The Agencies proposed to redesignate existing Q&A 5, which addresses whether the Regulation applies to loans that are being restructured or modified, as proposed Q&A Applicability 6 with no changes. One commenter specifically stated that the clarification provided by Q&A Applicability 6 may be very helpful in light of the COVID-19 pandemic as more consumers may need to modify their mortgages. A few commenters requested that Q&A Applicability 6 include additional examples to clarify when flood compliance requirements are triggered in loan restructurings and modifications, and they provided specific language. As in the existing Q&A, proposed Q&A Applicability 6 states that if the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies. However, the Agencies agree that additional clarification on when loan restructurings and modifications trigger the Regulation's requirements would be helpful. Furthermore, the Agencies believe that rewording the question also would provide additional clarity. Therefore, the Agencies are revising the question in the final Q&A to ask whether a loan that is being restructured or modified constitutes a triggering event (making, increasing, renewing, or extending a loan) under the Regulation. In addition, the Agencies are revising the answer in the final Q&A to provide that if a loan modification or restructuring involves recapitalizing delinquent payments and other amounts due under the loan, or amounts that were otherwise originally contemplated to be part of the loan pursuant to the contract with the borrower, into the loan's outstanding principal balance 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. The revisions to the final answer also provide that, conversely, 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. With these amendments, the Agencies are adopting Q&A Applicability 6.

Applicability 7. The Agencies proposed to redesignate existing Q&A 6, which addresses whether table funded loans are treated as new loan originations, as Q&A Applicability 7. The Agencies proposed to update the answer to refer to the definition of "table funding" in the Regulation instead of to the obsolete definition of this term in the Department of Housing and Urban Development's (HUD) former Real Estate Settlement Procedures Act (RESPA) rule. The Agencies received no specific comment on this Q&A and are adopting it as proposed.

Applicability 8. The Agencies proposed to redesignate existing Q&A 7 as Q&A Applicability 8 and proposed only one minor wording change, with no intended change in substance or meaning. This Q&A addresses whether a lender is required to perform a review of its, or of its servicers', existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation. The Agencies received positive comment on this Q&A and are adopting it as proposed.

Applicability 9. The Agencies proposed to redesignate existing Q&A 4 as Q&A Applicability 9 and to make only minor language modifications for greater clarity, with no intended change in substance or meaning. This proposed Q&A addressed whether the mandatory purchase requirements apply to loan syndications or participations. The proposed answer provided that 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 but that, 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. The proposed answer also stated that 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, and that Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan. Further, the proposed answer provided that although the agreement among the lenders may assign compliance duties to a lead lender or agent, and may 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, under the proposed answer, the Agencies would 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. Lastly, the proposed answer stated that 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.

The Agencies received a number of comments on this Q&A. Some commenters requested that the Agencies offer further clarity on what constitutes sufficient "upfront due diligence" and "adequate controls to monitor the activities of the lead lender or agent for compliance with flood insurance requirements over the term of the loan." These commenters also stated that problems arise when lead lenders have different regulators employing different approaches for upfront due diligence as well as monitoring for flood compliance. One

commenter recommended the inclusion of an explicit statement in the Q&A that if a lead lender on a facility is not Federally regulated, and thus not subject to flood compliance requirements, any participating lenders on that facility also do not have flood compliance obligations with respect to that facility. Another commenter requested that the Agencies indicate in the Q&A that as long as a participating non-lead lender has adopted written policies, procedures, and processes for managing the risks of flood compliance that are reasonably within that participating lender's control, that lender generally would be viewed as having satisfied its flood compliance obligations. A third commenter stated that the answer was confusing since it appears to state that flood compliance requirements can be assigned to the lead lender but subsequently states that each individual lender remains responsible for compliance. The commenter suggested that, in instances where a lead lender is in charge of ensuring flood insurance requirements are met, participating lenders be allowed to rely on, as a safe harbor, documentation from the lead lender to limit their individual exposure.

The Agencies understand the compliance complications that may arise with loan syndications and participations. However, the requirements under the Act and the Regulation apply to each lender individually, even if they are part of a loan syndication or participation. The Agencies may not remove these requirements as suggested if the lead lender is not Federally-regulated nor create a safe harbor that allows a lender to rely on the lead lender's policies or procedures or on others' policies and procedures for compliance. Further, the Agencies believe it is more appropriate for lenders to determine specific due diligence procedures and controls to ensure compliance with the Act and Regulation based on the particular facts of each transaction. Therefore, the Agencies decline to include examples of such procedures and controls in the Q&A. However, to emphasize the particular concerns that may arise with lead lenders who are

not Federally-regulated, the Agencies are adding a statement in the final answer indicating that a non-lead lender's due diligence and monitoring of the lead lender is especially important when the lead lender itself is not subject to Federal flood insurance requirements. With this amendment, the Agencies are adopting Q&A Applicability 9.

Applicability 10. The Agencies proposed new Q&A Applicability 10 to address a lender's obligations when participating in a multi-tranche credit facility, specifically whether a lender is expected to consider any triggering event and any cashless roll of which it becomes aware in any tranche. The proposed answer provided that a multi-tranche credit facility is analogous to a loan syndication or participation and that the Agencies do not expect a lender participating in one tranche in a multi-tranche credit facility to be responsible for taking action to comply with flood insurance requirements in connection with a triggering event or cashless roll that occurs in a tranche in which the lender does not participate. Furthermore, the proposed answer clarified that the Agencies expect a lender participating in a multi-tranche credit facility to perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with flood insurance requirements. One commenter requested the same changes it suggested for proposed Q&A Applicability 9 regarding further clarification on what constitutes sufficient upfront due diligence and adequate controls and removal of flood compliance requirements if the lead lender is not Federally-regulated. For the reasons stated in the discussion of Q&A Applicability 9, the Agencies decline to accept these changes and are adopting Q&A Applicability 10 as proposed with the addition of a similar statement added to Q&A Applicability 9 regarding due diligence and non-Federal lead lenders.

Applicability 11. The Agencies proposed new Q&A Applicability 11 to clarify that an automatic extension of a credit facility agreed upon by the borrower and lender in the original

loan agreement would not constitute a triggering event for purposes of the Federal flood insurance requirements. The Agencies received no specific comment on this Q&A and are adopting it as proposed.

Applicability 12. The Agencies proposed new Q&A Applicability 12, based on guidance previously issued by the Agencies,[21] to address the applicability of the mandatory purchase requirement during a period of time when coverage under the NFIP is unavailable, such as due to a lapse in authorization or in appropriations. The proposed answer clarified that during a period when NFIP coverage is not available, lenders may continue to make loans subject to the Regulation without flood insurance coverage but must continue to make flood determinations, provide timely, complete and accurate notices to borrowers, and comply with other aspects of the Regulation. The proposed answer also indicated that lenders should evaluate the safety and soundness and legal risks, and prudently manage those risks, during such periods when the NFIP is unavailable. One commenter specifically commented on this proposed Q&A, stating that it provides helpful and appreciated clarity on how credit unions should proceed in the event of a lapse in authorization or appropriations. The Agencies are adopting this Q&A as proposed.

New Q&A Applicability 13. To address a number of comments regarding what is and is not a triggering event under the Regulation, and to further clarify the Interagency Questions and Answers Regarding Flood Insurance, the Agencies are adding a new Q&A Applicability 13 to the 2022 Interagency Questions and Answers to specifically address triggering events. This new

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

Q&A provides lenders with a quick reference of what constitutes a triggering event under the Regulation.

Specifically, Q&A Applicability 13 states that under the Regulation, a triggering event occurs when a designated loan is made, increased, extended, or renewed. If a triggering event occurs with respect to a designated loan, the lender is required to comply with certain requirements of the Regulation, 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 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. This Q&A also includes examples of events that are not considered triggering events for purposes of the Regulation, including the purchase of a loan from another lender (*see* Q&A Applicability 5); a loan 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).

Applicability 14 (Proposed as Q&A Coverage 2). The Agencies proposed to redesignate existing Q&A 64 as Q&A Coverage 2. As noted below, the Agencies are renumbering this Q&A as Q&A Applicability 14. This Q&A addresses when a lender may rely on an insurance policy providing portfolio-wide coverage, removes the reference to criteria set forth by FEMA, and

includes language addressing a lender's reliance on a policy that provides portfolio-wide coverage.

Several commenters suggested that the Agencies clarify the term "portfolio-wide" coverage to explain that the typical "master policy" that lenders obtain and use to force place flood insurance on individual loans is different than portfolio-wide coverage. The Agencies agree with the commenters and are clarifying that 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"). As stated in the Regulation, flood insurance coverage under the discretionary acceptance provision must cover both the mortgagor and mortgagee (*i.e*. lender and the borrower) 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 respective organization. However, the Agencies are adding language to the answer indicating that 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") because these policies provide coverage for the entire portfolio as well as individual coverage, and include the issuance of an individual policy or certificate.

A few commenters suggested that the answer be clarified to state that a portfolio-wide gap policy may be useful in some circumstances, such as when a property is newly mapped into an SFHA. Additionally, a few commenters suggested that lenders be allowed to rely on master policies for compliance purposes. The Agencies decline to make these revisions. As noted in the existing and proposed Q&A, master 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, such policies do not provide coverage for the borrower and cannot be used to satisfy the force placement requirement.

One commenter stated that using the term "private insurance policy" may be confused with a borrower-procured flood insurance policy issued by a private insurer. The Agencies agree and are making technical changes to remove the term "private" when referring to lender procured flood insurance policies in the Q&A.

The Agencies are adopting this Q&A as proposed with the amendments discussed above and an additional minor non-substantive change.

Applicability 15 (Proposed as Q&A Coverage 3). The Agencies proposed new Q&A Coverage 3 to address when mandatory flood insurance on a designated loan is required to be in place during the closing process. As noted below, the Agencies are renumbering this Q&A as Q&A Applicability 15. This proposed Q&A clarified that a lender should use the loan "closing date" to determine the date by which flood insurance should be in place for a designated loan, and that FEMA deems the "closing date" as the date the ownership of the property transfers to the new owner based on State law. The proposed answer further explained the difference between "wet funding" and "dry funding" States and how it impacts the "closing date" for purposes of flood insurance.

A few commenters suggested expanding the Q&A to clarify the "closing date" for refinances subject to rescission. One lender suggested that it would be helpful to add examples to illustrate when mandatory flood insurance needs to be in place on a designated loan. The Agencies agree and are expanding the answer to address 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. In these cases, the lender should use

the loan's consummation date, which is the date the borrower becomes contractually obligated on the loan, as the effective date for the flood insurance policy. As a result of this clarification, the Agencies do not believe adding examples is necessary. The Agencies are adopting this Q&A with the changes discussed above.

Section II. Exemptions from the Mandatory Flood Insurance Purchase Requirements (Exemptions)

Existing section III includes one Q&A related to the exemptions from the mandatory flood insurance purchase requirements. The Agencies proposed to redesignate existing section III as section II and proposed a streamlined heading for this section to provide greater clarity with no intended change in substance or meaning. As proposed, section II includes existing Q&A 18 and six new Q&As, Exemptions 2 through 7, pertaining to the exemption from the mandatory flood insurance purchase requirements for certain detached structures created by HFIAA. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. As noted in the proposal, this set of Q&As on the detached structure exemption responds to a request for more guidance related to this exemption, as documented in the EGRPRA report.[22]

Exemptions 1. The Agencies proposed to redesignate existing Q&A 18 as Q&A Exemptions 1. This Q&A discusses the exemptions from the mandatory flood insurance purchase requirement. The Agencies proposed to revise the Q&A to include the detached structure exemption in addition to the existing exemptions for State-owned property and loans with an original principal balance of $5,000 or less and an original repayment term of one year or less. The proposed Q&A also noted that although an exemption may apply, a borrower may still

[22] *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

elect to purchase flood insurance or a lender may still require flood insurance as a condition of making the loan for purposes of safety and soundness, depending on its risk analysis. One commenter requested further clarity and examples on what constitutes a detached structure. Another commenter requested clarification on "mixed use" property where detached buildings that may have been used for commercial purposes but no longer have a commercial use could fall under the residential exemption if the residence is using the structure for storage. The Agencies note that what constitutes a detached structure is a fact-based determination and that the lender, who is in the best position to consider all the facts and circumstances and with input from the borrower, has the responsibility to determine what constitutes a detached structure and its purpose or the primary use of a mixed use structure. The Agencies are not in a position to provide examples for all possible scenarios. The Agencies also are including a cross reference to Q&A Exemptions 2 to provide further guidance and therefore are adopting the Q&A with this addition.

Exemptions 2. The Agencies proposed new Q&A Exemptions 2 to address whether a lender must take a security interest in the primary residential structure for a detached structure to be eligible for the detached structure exemption. The proposed answer provided that although a lender does not have to take a security interest in the primary residential structure, it would need to evaluate the uses of the detached structures to confirm each is eligible for the exemption. One commenter suggested that the Agencies provide more examples of a primary residential structure. The Agencies decline to provide examples as the Agencies have indicated in the preamble to the 2015 Final Rule that whether a structure is defined as a primary residential structure is fact specific and that lenders would need to conduct good faith due diligence to make this determination. Another commenter suggested the Agencies separate this

Q&A into two discrete questions to highlight different aspects of the answer. The Agencies decline to adopt this suggestion because the example is intertwined with the principles being discussed in the answer. Accordingly, the Agencies are adopting the Q&A as proposed.

Exemptions 3. The Agencies proposed new Q&A Exemptions 3 to clarify that a flood hazard determination is required for a detached structure even though flood insurance coverage is not required on such a structure because the determination is used to identify the number and type of structures present on the property. One commenter noted that in practice, lenders first obtain a flood hazard determination as to the entire parcel of property to determine if any structures are located in an SFHA and then determine whether any detached structures on the property may be exempt under the Regulation, and therefore the proposed Q&A may imply that the presence or absence of exempt structures may affect whether a flood hazard determination is required. The Agencies agree that this Q&A may be confusing as proposed. As a result, the Agencies are revising the Q&A to clarify that a flood hazard determination is required even where detached structures are present. The revised answer provides that 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. The answer further provides that in order to determine whether the exemption for non-residential detached structures on 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. With these amendments, the Agencies are adopting Q&A Exemptions 3.

Exemptions 4. The Agencies proposed new Q&A Exemptions 4 to provide that a lender or its servicer may cancel its flood insurance requirement on an eligible detached structure that is currently insured, but that a lender alternatively may want to continue to require flood insurance

coverage for detached structures of relatively high value if such coverage would be beneficial to the borrower and the lender. The Agencies received no specific comments on this Q&A and are adopting the Q&A as proposed.

Exemptions 5. The Agencies proposed new Q&A Exemptions 5 to address whether a property being remapped into an SFHA triggers a review of the intended use of each detached structure. Specifically, the proposed answer stated that a lender must examine the status of a detached structure upon a qualifying triggering event and that a remapping is not a triggering event. The proposed answer also stated that although there is no duty to monitor the status of a detached structure following the lender's initial determination, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on properties securing loans in its portfolio. Further, the proposed answer notes that, consistent with existing obligations under the Regulation, if a lender determines at any time that a property, including a detached structure, has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is uninsured or underinsured, the lender has a duty to inform the borrower of the obligation to obtain or increase insurance coverage and to purchase flood insurance on the borrower's behalf, as necessary.

One commenter asked whether notification of a map change constitutes notice that the property may be subject to the mandatory flood insurance purchase requirement. Another commenter inquired whether this Q&A allows a lender to rely on the initial appraisal as to what the detached structure is being used for or whether the lender is responsible for determining the current use. One commenter noted that the answer reiterates the requirements for force placement which do not seem relevant to the answer. Based on the comments received, the Agencies are revising the question to focus instead on whether a triggering event requires a

lender to review the intended use of the detached structure. The answer remains unchanged, except for removing the language regarding remapping and force placement and non-substantive wording changes for clarification. In addition, the Agencies are including a reference to new Q&A Applicability 13, which explains what constitutes a triggering event. With these changes, the Agencies are adopting Q&A Exemptions 5.

Exemptions 6. The Agencies proposed new Q&A Exemptions 6 to discuss whether a lender, following a review of its loan portfolio, may determine to no longer require flood insurance on a detached structure in an SFHA if the structure does not provide contributory value. The Agencies proposed to clarify that, while a lender or servicer could initiate such a review, the Regulation does not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on their contributory value. Instead, a specific exemption must apply. The Agencies received no specific comments on this Q&A and are adopting the Q&A as proposed.

Exemptions 7. The Agencies proposed new Q&A Exemptions 7 to address whether a building would qualify as a detached structure if it is joined to another building by a stairway or covered walkway. The proposed answer provided that for purposes of the detached structure exemption, a structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure, and "stands alone." One commenter suggested that the Agencies allow lenders to defer to an insurer's definition for a structural connection as this term is not defined in the Regulation or statute, or that the Agencies define this term. As indicated in the proposed Q&A, the Agencies have interpreted this term to mean a structure is "detached" if it stands alone and that this interpretation is consistent with the coverage provision of the NFIP's Standard Flood Insurance Policy (SFIP) for additions and extensions to a dwelling

unit. The proposed answer also included a reference to the *NFIP Flood Insurance Manual* for additional information. However, the Agencies are amending the Q&A to track the language of the Regulation and are removing the FEMA example as it is unnecessary. Therefore, the Agencies are adopting the Q&A with these changes.

Proposed Section III. Coverage (NFIP/Private Flood Insurance)

The Agencies proposed in the July 2020 Questions and Answers to move existing section XI to section III. This section included two new Q&As (Coverage 1 and 3), and existing Q&A 64 redesignated as Coverage 2. Because the Agencies are consolidating the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers, for organizational purposes, in the 2022 Interagency Questions and Answers the Agencies are moving the three Q&As under Section III Coverage to other sections as noted below and reassigning section III.

The Agencies proposed new Q&A Coverage 1 in the July 2020 Proposed Questions and Answers to assist lenders in complying with the discretionary acceptance provision and mutual aid societies provision in the Agencies' 2019 Final Rule. The Agencies are redesignating this Q&A as Q&A Discretionary 4. Please refer to Section IV, Q&A Discretionary 4 for the Agencies response to comments.

The Agencies proposed to redesignate existing Q&A 64 as Coverage 2. This Q&A addresses when a lender may rely on an insurance policy providing portfolio-wide coverage, removes the reference to criteria set forth by FEMA, and includes language addressing a lender's reliance on a policy that provides portfolio-wide coverage. The Agencies are re-designating this Q&A as Q&A Applicability 14. Please refer to Section I, Q&A Applicability 14 for the Agencies response to comments.

The Agencies proposed new Q&A Coverage 3 in the July 2020 Proposed Questions and Answers to address when mandatory flood insurance on a designated loan is required to be in place during the closing process. The Agencies redesignated Q&A Coverage 3 as Q&A Applicability 15. Please refer to Section I, Q&A Applicability 15 for the Agencies response to comments.

Additionally, the Agencies proposed in the July 2020 Proposed Questions and Answers to delete existing Q&A 63 because it was inconsistent with the Agencies' final rule implementing the private flood insurance provision of the Biggert-Waters Act.[23] The Agencies received no specific comment on this proposed change and are deleting this Q&A as proposed.

Section III. Private Flood Insurance – Mandatory Acceptance (Mandatory)

The 2019 Final Rule requires lenders to accept "private flood insurance," as defined in the Biggert-Waters Act (mandatory acceptance). In order to assist lenders in evaluating whether a flood insurance policy meets the definition of "private flood insurance," the 2019 Final Rule also includes a compliance aid provision. Under the compliance aid provision, a lender may conclude that a policy meets the definition of "private flood insurance" without further review if the policy, or an endorsement to the policy, contains the compliance aid statement set forth in the rule.

The Agencies proposed a number of Q&As regarding mandatory acceptance and the compliance aid provision in the March 2021 Proposed Questions and Answers. As discussed in further detail below, the Agencies are combining proposed Q&A Mandatory 2 with proposed Q&A Discretionary 4 and renumbering the Q&A as Q&A Private Flood Compliance 11. The Agencies also are renumbering the other Q&As in this section accordingly.

[23] 84 FR 4953 (Feb. 20, 2019).

General Comments. The Agencies received some general comments regarding the Q&As related to the mandatory acceptance of private flood insurance policies. One commenter was supportive of the proposed Q&As, stating that the Agencies' implementation of the mandatory acceptance provisions and widespread use of a compliance aid assurance clause have allowed the private flood insurance market to thrive. This commenter believed the mandatory acceptance provisions facilitate private policy placements, ensure that consumers have access to affordable flood coverage, and provide security to lenders seeking to fulfill their compliance obligation.

Another commenter suggested the Q&As could incorporate language that clarifies digital transmission of relevant flood coverage documents, as well as physical transmission or use of paper documents, is permissible. As explained under Q&A Discretionary 2, the Regulation does not address the acceptability of electronic records, but lenders may accept electronic and digital records for recordkeeping purposes.

One commenter noted that a number of the mandatory acceptance Q&As refer to "reviews" of private flood insurance policies. This commenter stated that it would be helpful to clarify that a flood insurance policy issued by a private insurer is subject to two different reviews. According to the commenter, as with any flood insurance policy, including NFIP policies, the lender or servicer must conduct the mandatory purchase requirement review in connection with a triggering event. The commenter stated that this review would include, among other things, determining whether the policy contains the appropriate coverage limits, deductible, term of coverage, and mortgagee clause. In addition, the commenter stated that, the lender or servicer must determine whether a private flood insurance policy satisfies the definition of "private flood insurance" or could otherwise be accepted by a lender under the discretionary

acceptance criteria. The commenter requested this clarification throughout the Interagency Questions and Answers.

The Agencies understand the commenter's confusion regarding the term "review" as used in some of the Q&As in the mandatory acceptance section. The Agencies have generally clarified the type of review involved for relevant mandatory acceptance Q&As, either in the text of the Q&A or the preamble.

Mandatory 1. Proposed new Q&A Mandatory 1 addressed whether a lender may decide to only accept private flood insurance policies under the mandatory acceptance provision of the Regulation. The proposed answer confirmed that a lender may decide to only accept private flood insurance policies that the lender is required to accept under the mandatory acceptance provision because the policies meet the definition of "private flood insurance" under the Regulation. The proposed answer also clarified that 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 in the Regulation. The Agencies received no specific comments on this Q&A and are adopting it as proposed with minor non-substantive edits.

Mandatory 2 (Proposed as Q&A Mandatory 3). Proposed new Q&A Mandatory 3 addressed whether the private flood insurance requirements under the Regulation require a lender to change its policy of not originating a mortgage in non-participating communities or coastal barrier regions where the NFIP is not available. The proposed answer explained that the Regulation does not require a lender to originate a loan that does not meet the lender's underwriting criteria. Further, the proposed answer noted that 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. As stated in Q&A Applicability 1, as proposed

and as adopted by the Agencies, the mandatory flood insurance purchase requirement does not apply within non-participating communities where NFIP insurance is not available under the Act. Therefore, the proposed answer states that 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. The Agencies received no specific comments on this Q&A and are adopting it as proposed, with minor changes for clarity, and renumbered as Q&A Mandatory 2.

Mandatory 3 (Proposed as Q&A Mandatory 4). Proposed new Q&A Mandatory 4 addressed whether the compliance aid assurance clause could act as a conformity clause that would make a flood insurance policy issued by a private insurer conform to the definition of "private flood insurance" under the Regulation. The proposed answer clarified that the compliance aid assurance clause is not intended to act as a conformity clause but rather to facilitate the ability of lenders and borrowers to recognize policies that meet the definition of "private flood insurance" and promote the consistent acceptance of policies that meet this definition.

The Agencies received a few comments on this proposed Q&A. One commenter agreed in principle that the compliance aid language should not, and cannot, act as a conformity clause, due mainly to the unique legal status that the term "conformity clause" has in State insurance regulation and contract law. Another commenter noted that whether the compliance aid assurance clause acts as a conformity clause is best interpreted by State insurance regulation and contract law. The third commenter explained that interpretation of insurance contracts, including whether the compliance aid assurance clause acts as a conformity clause, should be a matter of State law. This commenter further stated that this Q&A is outside the scope of the Federal flood

insurance statutes and regulations, and is outside the Agencies' authority to interpret and apply those Federal statutes and regulations. The commenter recommended instead that the Agencies address this question by providing guidance that this is a matter of State insurance contract law. The Agencies disagree with this commenter's statement regarding the scope of the Act and Regulation and the Agencies' authority to interpret or apply the Act and Regulation. The Agencies adopted the compliance aid provision in the Regulation pursuant to the authority granted to the Agencies in the Act to issue the Regulation.[24] Therefore, the Agencies have the authority to interpret this provision in a Q&A.

Additionally, a few of the commenters recommended that the Agencies delete references to "assurance clause" in this Q&A and revert to prior language that simply refers to this clause as the compliance aid language or statement. The commenters noted that the addition of "assurance clause" in the current Q&A could infer a meaning beyond that intended by the Agencies because the term "assurance clause" has broad meaning under State insurance regulations and insurance laws. The Agencies agree with these comments. The Agencies are removing references to "assurance clause" in the final Q&A, as well as in the other Q&As, and will refer to this as the "compliance aid statement" per the Regulation. With this change, and a minor change for clarity, the Agencies are adopting this Q&A as proposed and renumbered as Q&A Mandatory 3.

Mandatory 4 (Proposed as Q&A Mandatory 5). Proposed new Q&A Mandatory 5 stated that a lender is not required to accept a flood insurance policy issued by a private insurer solely because the policy contains the compliance aid assurance clause if the lender chooses to conduct its own review and determines the flood insurance policy actually does not meet the mandatory acceptance requirements. The proposed answer noted that if a flood insurance policy issued by a

[24] 42 U.S.C. 4012a(b)(1).

private insurer does not include the compliance aid assurance clause, the lender must still review the policy to determine if it meets the requirements for private flood insurance as set forth in the Regulation before the lender may choose to reject the policy.

One commenter believed that a flood insurance policy issued by a private insurer that includes the compliance aid statement must be accepted and did not support Q&A Mandatory 5. The Agencies have been clear that a lender is not required to accept a flood insurance policy issued by a private insurer solely because it contains the compliance aid statement. Lenders may still, at their discretion, review a flood insurance policy issued by a private insurer that contains the compliance aid statement and reject the policy if they do not believe it meets the definition of "private flood insurance" or if it does not meet other requirements of the Regulation, such as providing the required amount of insurance.

Other commenters emphasized that Q&A Mandatory 5 is confusing and unclear. For example, commenters pointed out that a lender does not have to accept a flood insurance policy issued by a private insurer that does not meet the coverage requirements and a review is not required if a policy does not meet the coverage requirements. Commenters were unsure if the "required to accept" phrase in the question applies only to an assessment of whether the policy meets the definition of "private flood insurance" or if a lender could be required to accept the policy even if the policy is otherwise insufficient (such as the required dollar amount of coverage).

Some commenters believed the Agencies make an assumption about a given lender's processes by concluding that the lender would review a policy under mandatory acceptance criteria before the lender would review under discretionary acceptance criteria even though the Agencies make clear under proposed Q&A Mandatory 8 that a lender "may first review the

policy to determine whether it meets the criteria under the discretionary acceptance provision." One commenter emphasized that the Agencies go further than necessary in the proposed response and seem to dictate certain processes for the lender.

In addition, commenters suggested the Agencies consider alternative language for Q&A Mandatory 5. One commenter was confused by the Agencies' choice of language that did not align with the Regulation or the preamble discussion on the proposed Q&A. One commenter recommended the Agencies modify the answer to use plain language from the 2019 Final Rule and use consistent language to avoid confusion regarding key compliance concepts.

As explained in the preamble to the 2019 Final Rule, the Regulation does not permit lenders to reject a flood insurance policy issued by a private insurer solely because the policy is not accompanied by the compliance aid statement.[25] The Agencies stress that the compliance aid statement is meant to be an aid for lenders and it is not required for lenders to accept a flood insurance policy issued by a private insurer. In addition, lenders should remember that other aspects of the Regulation must be met for a lender to accept a flood insurance policy issued by a private insurer, even if the policy meets the definition of "private flood insurance."

However, the Agencies understand the commenters' concerns about Q&A Mandatory 5 as proposed and are incorporating suggested changes to address these issues. The final answer provides that 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." The final answer also makes clear, however, that 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

[25] 84 FR 4953, 4959 (Feb. 20, 2019).

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. In addition, if a flood insurance policy issued by a private insurer does not include the compliance aid statement, the final answer provides that the lender may not reject the policy solely because it does not include this statement. The final answer also states that a lender is not relieved from the requirement to accept a policy that meets the definition of "private flood insurance" and provides the required amount of insurance under the Regulation. The final answer also provides that the lender may determine the policy is acceptable under the discretionary acceptance or mutual aid criteria.

Lastly, as mentioned in Q&A Mandatory 3 in this section, the Agencies are changing the term "compliance aid assurance clause" throughout this Q&A to "compliance aid statement" to be consistent with the Regulation.

With these changes, the Agencies are adopting proposed Q&A Mandatory 5 and renumbering it as Q&A Mandatory 4.

Mandatory 5 (Proposed as Q&A Mandatory 6). Proposed new Q&A Mandatory 6 discussed whether a lender is required to conduct an additional review of a flood insurance policy issued by a private insurer under the mandatory acceptance provision if the policy includes the compliance aid assurance clause. The proposed answer stated that under the mandatory acceptance provision of the Regulation, if a policy or an endorsement to the policy contains the compliance aid assurance clause, a lender is *not* required to conduct any further review of the policy in order to determine that the policy meets the definition of "private flood insurance." The proposed answer also clarified that the language of the compliance aid assurance clause must be stated as set forth in the Regulation in order for the lender to rely on the

protections of the compliance aid assurance clause. However, a lender need not reject a policy containing the compliance aid assurance clause if the formatting, font, punctuation, and similar stylistic effects that do not change the substantive meaning of the clause are different from the compliance aid assurance clause set forth in the Regulation. The proposed answer included a cross-reference to proposed new Q&A Mandatory 7.

The Agencies received a specific comment on Q&A Mandatory 6 that was supportive. The commenter agreed that 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." Therefore, the Agencies are adopting this Q&A as proposed, other than amending the term "compliance aid assurance clause" throughout the Q&A to "compliance aid statement" to be consistent with the Regulation. The Agencies are also renumbering Q&A Mandatory 6 as proposed to Q&A Mandatory 5 and updating the included cross-reference.

Mandatory 6 (Proposed as Q&A Mandatory 7). Proposed new Q&A Mandatory 7 described additional reviews a lender must conduct when a flood insurance policy issued by a private insurer includes the compliance aid assurance clause, as the clause only assists a lender in making the determination that a flood insurance policy meets the definition of "private flood insurance" in the Regulation, and not other requirements specified in the Regulation. Specifically, under the proposed answer, the lender also must 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. The answer also included a cross-reference to proposed new Q&A Mandatory 6.

One commenter recommended that the Agencies revise Q&A Mandatory 7 and include a new Q&A under the Private Flood Compliance section. This commenter understood that the Agencies are attempting to reassure lenders who may be reluctant to accept a flood insurance policy issued by a private insurer merely because the policy includes the compliance aid statement. At the same time, the commenter believed that the Agencies do not want lenders to overlook the fundamental "requirements for coverage" review. Thus, the commenter suggested the Agencies simplify Q&A Mandatory 7 and move the language regarding coverage and other applicable requirements to a new Q&A under the Private Flood Compliance section. In addition, this commenter further recommended the Agencies include appropriate cross-references between Q&A Mandatory 7 and their suggested new Q&A, as well as to applicable questions under other sections. The Agencies disagree with this comment. Under the Regulation, lenders must determine whether a policy issued by a private flood insurance company meets both the definition of "private flood insurance" and the required amount of insurance under the Regulation. The intent of proposed Q&A Mandatory 7 is to remind lenders that they must review the policy to ensure that it meets the amount of insurance required under the Regulation even if the policy includes the compliance aid statement.

Many commenters had concerns with the sentence in the answer recommending that lenders ensure the accuracy of other key aspects of the policy, such as the borrower's name and address. These commenters specifically found the phrase "key aspects of the policy" to be ambiguous, open-ended, extraneous, and potentially problematic and recommended either its deletion or amendment. Specifically, one commenter noted that because there are no statutory or regulatory requirements or references regarding this phrase or the included examples, this sentence could confuse lenders. Another commenter stated that the Agencies should clearly

define the exact elements that lenders must review beyond the compliance aid statement. One commenter suggested that the Agencies instead instruct lenders to review the policy as they would review other insurance policies for safety and soundness. Further, one commenter explained that there are many valid reasons for differences between the named parties on a mortgage and a property insurance policy as well as for differences in the physical address of the property, especially if the mortgage system reflects the legal description for the property as opposed to a mailing address.

The Agencies agree with the commenters that the phrase "other key aspects of the policy" is unclear. Because this sentence is not necessary to answer the question, the Agencies are deleting it in the final answer. Using alternative language regarding safety and soundness, as suggested by one commenter, would not eliminate ambiguity. However, the Agencies note that this deletion does not eliminate the need for lenders to conduct other reviews of a policy pursuant to their internal processes.

One commenter requested that the Agencies use the term "limit" instead of the term "coverage" the first time it appears in the answer. The Agencies have considered this request and are changing this use of "coverage" to "amount of insurance," which is the phrase used in the Regulation.

Additionally, the Agencies are adding a reference to the Regulation in the question in this Q&A to avoid further confusion. The Agencies also are amending the term "compliance aid assurance clause" throughout the Q&A to "compliance aid statement" to be consistent with the Regulation.

With these changes, the Agencies are adopting this Q&A, renumbering it as Q&A Mandatory 6, and making a corresponding update to the included cross-reference.

Mandatory 7 (Proposed as Q&A Mandatory 8). Proposed new Q&A Mandatory 8 addressed whether a lender may use the criteria under the discretionary acceptance provision to decide whether to accept a policy that does not contain the compliance aid assurance clause without first reviewing the policy to determine if it meets the mandatory acceptance provision. The proposed answer clarified that a lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision. However, if the policy is not accepted under the discretionary acceptance provision, the lender still needs to determine whether it *must* accept the policy under the mandatory acceptance criteria. The proposed answer also reminded lenders to document that a policy provides sufficient protection of the loan if the lender accepts the policy under the discretionary acceptance provision of the Regulation.

The Agencies did not receive any specific comment on Q&A Mandatory 8. However, the Agencies are adding a cross reference to Q&A Discretionary 2 regarding the documentation of the sufficient protection of the loan, which provides that the lender may document this information electronically. The Agencies also are amending the term "compliance aid assurance clause" in the question to "compliance aid statement" to be consistent with the Regulation. The Agencies are adopting Q&A Mandatory 8 with minor clarifying edits and renumbering as Q&A Mandatory 7.

Mandatory 8 (Proposed as Q&A Mandatory 9). Proposed new Q&A Mandatory 9 noted that if the compliance aid assurance clause is included on the declarations page, a lender may accept the policy without further review to determine whether the policy meets the definition of "private flood insurance." However, a lender also must ensure that the policy provides the amount of insurance as required under the Regulation. One commenter pointed out that many private flood insurance policies do not include this representation on the declarations page, but

they do include it in the policy, and requested that the Agencies edit this Q&A to reflect this fact. The Agencies note that the Regulation provides that a lender may accept a flood insurance policy issued by a private insurer if the compliance aid statement is in the policy. The purpose of the proposed Q&A was to provide guidance when a lender receives only the declarations page and not the policy. Therefore, to clarify this Q&A, the Agencies are changing the question to refer to the lender only receiving a declarations page without receiving a copy of the policy.

Another commenter asked the Agencies to amend the response to make it clear that the lender may determine that the policy meets the definition of "private flood insurance" without further review. The Agencies agree and have revised the answer as suggested by this commenter, which better reflects the language in the Regulation.

One commenter stated that it would be helpful for the Agencies to identify in the answer the specific items that a lender must review to ensure compliance with the mandatory purchase requirement when the compliance aid assurance clause is included. The Agencies have addressed this issue in Q&A Mandatory 6 and included a cross-reference to Q&A Mandatory 6 in Q&A Mandatory 9. Therefore, the Agencies do not believe it is necessary to amend Q&A Mandatory 9 to include this information.

Lastly, the Agencies are amending the term "compliance aid assurance clause" throughout the Q&A to "compliance aid statement" to be consistent with the Regulation.

With the changes described above, the Agencies are adopting this Q&A, renumbering it as Q&A Mandatory 8, and making a corresponding update to the included cross-reference.

Mandatory 9 (Proposed as Private Flood Compliance 11). The Agencies are renumbering proposed Q&A Private Flood Compliance 11 as Q&A Mandatory 9 in the 2022 Interagency Questions and Answers because it more appropriately fits within the Mandatory

Acceptance Q&A section. As proposed, this Q&A addressed whether a lender may accept a private flood insurance policy that includes a compliance aid assurance clause, but that also includes a disclaimer that the "insurer is not licensed in the State or jurisdiction in which the property is located." The proposed answer explained circumstances under which lenders may accept a policy issued by an insurer that is not licensed in the State or jurisdiction in which the property is located. The proposed answer also included a cross-reference to proposed Q&A Private Flood Compliance 10, which addressed whether lenders may accept policies issued by private insurers that are surplus lines insurers[26] for noncommercial residential properties.

Some commenters suggested revising the answer to be more direct and to remove language that is addressed in Q&A Private Flood Compliance 10. The Agencies agree with the commenters that the answer can be worded more effectively and are adopting language similar to that recommended by one of the commenters. As revised, the answer provides that 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. However, the Agencies note that the language removed from the proposed answer that provided specific circumstances under which lenders may accept a policy issued by a surplus lines insurer is still relevant. Specifically, a lender may accept a policy issued by a surplus lines insurer recognized or not disapproved by the relevant State insurance regulator as protection for loan collateral that is a commercial property. Also, a

[26] The National Association of Insurance Commissioners (NAIC) notes, "[t]he surplus lines market (inclusive of U.S. and non-U.S. domiciled insurers) is a distinct segment of the industry consisting of non-admitted specialized insurers covering risks not available within the admitted market…Surplus lines insurers are subject to regulatory requirements and are overseen for solvency by their domiciliary [S]tate or country." *https://content.naic.org/cipr_topics/topic_surplus_lines.htm*. For specific definitions related to surplus lines insurers, lenders should review the State law in which the property is located.

lender may accept a policy issued by a surplus lines insurer as protection for loan collateral that is a noncommercial property as a policy issued by an insurance company that is "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."

The Agencies also are making one technical change to this question, amending the term "compliance aid assurance clause" to "compliance aid statement" to be consistent with the Regulation.

With the changes described above, the Agencies are adopting Q&A Mandatory 9.

Section IV. Private Flood Insurance – Discretionary Acceptance (Discretionary)

The 2019 Final Rule permits a lender, at its discretion, to accept a flood insurance policy issued by a private insurer even if the policy does not meet the statutory and regulatory definition of "private flood insurance," provided the policy meets certain requirements in the rule (discretionary acceptance). The 2019 Final Rule also permits a lender, at its discretion, to accept certain mutual aid plans that meet the conditions stated in the rule.

The Agencies proposed the Q&As in this section, except for Q&A Discretionary 4, in the March 2021 Proposed Questions and Answers. The Agencies originally proposed Q&A Discretionary 4, as adopted in these 2022 Interagency Questions and Answers, as Q&A Coverage 1 in the July 2020 Proposed Questions and Answers. The Agencies are combining proposed Q&A Discretionary 4 with proposed Q&A Mandatory 2 and renumbering this Q&A as Q&A Private Flood Compliance 11, as discussed in more detail below.

Discretionary 1. Proposed Q&A Discretionary 1 addressed whether lenders are required to accept flood insurance policies that meet the discretionary acceptance criteria. The proposed answer notes that the discretionary acceptance criteria in the Regulation set forth the minimum

acceptable criteria that a flood insurance policy must have for the lender to accept the policy under the discretionary acceptance provision. The proposed answer clarified that 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. The Agencies received no specific comments on this Q&A and are adopting Q&A Discretionary 1 as proposed.

Discretionary 2. Proposed Q&A Discretionary 2 addressed the requirements for documentation to demonstrate that a policy provides sufficient protection of a loan when a lender accepts that policy under the discretionary acceptance criteria. The proposed answer explained that the Regulation requires the lender to document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with safety and soundness principles. In addition, the proposed answer included a cross-reference to Q&A Discretionary 4 which discusses some factors to consider when determining whether a flood insurance policy issued by a private insurer provides sufficient protection of the loan, consistent with safety and soundness principles.[27] Furthermore, the proposed answer noted that 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.

One commenter on this Q&A suggested that the Agencies clarify that a lender's electronic records may serve as documentation that demonstrates that a policy provides sufficient protection of the loan. The Agencies note that specific provisions in the Regulation allow for the

[27] These factors include whether: (1) a policy's deductibles are reasonable based on a borrower's financial condition; (2) the insurer provides adequate notice of cancellation to the mortgagor and the mortgagee; (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 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 strength, solvency and ability to satisfy claims. *See* 85 FR 40442, 40458 (July 6, 2020).

use of electronic records. For example, the Regulation allows for the use of the Standard Flood Hazard Determination Form in an electronic format. Although there are no general provisions in the Regulation regarding the acceptability of electronic records, the Agencies agree that electronic and digital records are acceptable for a lender's recordkeeping purposes. In consideration of this comment, the Agencies are amending the Q&A by adding that a lender's review of a policy under the discretionary acceptance provision may be performed and recorded electronically.

The second commenter asked the Agencies to clarify whether in situations where a loan is secured by a building and land, and the value of the land securing a loan is greater than the loan amount, the lender could determine that flood insurance is not required or that the deductible may be higher than what the mandatory purchase criteria allows. The Agencies note that the Regulation requires that flood insurance 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, and that land is excluded from this analysis. Therefore, the lender cannot waive the flood insurance requirement based on the value of the land. Additionally, a flood insurance policy issued by a private insurer must provide sufficient protection of the designated loan, consistent with general safety and soundness principles. When evaluating higher deductibles, lenders should ensure the deductible is reasonable considering the borrower's financial condition. The Agencies believe that no change is needed in the Q&A to address this comment and that readers should refer to Q&A Private Flood Compliance 1.

With the amendment described above, the Agencies are adopting Q&A Discretionary 2.

Discretionary 3. Proposed Q&A Discretionary 3 addressed how a lender could evaluate concerns related to an insurer's solvency, strength, and ability to pay claims in order to

determine whether an insurance policy provides sufficient protection of a loan, consistent with general safety and soundness principles. The proposed answer provided that 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. The proposed answer further indicated that a lender could rely on the licensing or other processes used by the State insurance regulator for such an evaluation.

A number of commenters suggested that the Agencies provide additional examples for evaluating an insurer's solvency, including the use of third-party sources of information such as credit rating agencies. Although lenders could consider many sources of information to evaluate an insurer, the Agencies decline to provide examples other than those included in the proposed Q&A. Further, including credit rating agencies as an example would be inconsistent with the principle in Section 939A of the Dodd-Frank Act, which required the Agencies to remove references to, or requirements of reliance on, credit ratings in their regulations with regard to assessment of the creditworthiness of a security or money market instrument using credit rating agencies. Although this provision concerns regulations, and not guidance, and is focused on the creditworthiness of a security or money market instrument, and not the solvency of an insurer, the Agencies believe it would be inappropriate to endorse or reference the use of credit rating agencies in the Interagency Questions and Answers in light of Section 939A of the Dodd-Frank Act.

One commenter suggested that the Agencies remove the requirement for financial institutions to evaluate the solvency and strength of private flood insurers. The Agencies note that the Regulation does not require lenders to evaluate the solvency and strength of private flood insurers. Rather, it requires lenders to determine that the policy provides sufficient protection of

the designated loan, consistent with general safety and soundness principles. Evaluating the solvency and strength of private flood insurers is one factor, among others, that lenders could consider in making this determination, as detailed in Q&A Discretionary 4 as adopted, discussed below. For these reasons, the Agencies are adopting the Q&A as proposed, with an update to the included cross-reference to reflect Q&A renumbering.

Discretionary 4 (Proposed as Q&A Coverage 1). The Agencies proposed new Q&A Coverage 1 in the July 2020 Proposed Questions and Answers to assist lenders in complying with the discretionary acceptance provision and mutual aid societies provision in the Agencies' final rule implementing the private flood insurance provision of the Biggert-Waters Act. As noted above, the Agencies are renumbering this Q&A as Discretionary 4. The Q&A provides additional information on some factors to consider when determining whether a flood insurance policy issued by a private insurer provides sufficient protection of a loan.

The Agencies received several comments on this Q&A. One commenter supported the Q&A because it is not overly prescriptive and will likely enhance the development of the private flood insurance market. A few commenters recommended that the Agencies clarify that the sufficient protection of a loan requirement only applies to the discretionary acceptance provision. The Agencies agree and are clarifying the question so that it specifically references the discretionary acceptance and mutual aid acceptance provisions.

One commenter recommended that the Agencies expand the answer to explain that if a flood insurance policy issued by a private insurer or flood endorsement to an insurance policy issued by a private insurer states that the policy meets the definition of private flood insurance under 42 U.S.C. 4012a, or includes similar alternative language, such as that the coverage is at least as broad as the NFIP, the policy is explicitly acceptable. Additionally, the commenter

suggested that if the flood insurance policy issued by a private issuer is determined to be less than the coverage provided under an NFIP policy, and the policy states that coverage is amended to match the terms of an NFIP policy, that the policy is explicitly acceptable. The Regulation provides a specific compliance aid provision to assist lenders in determining if a policy meets the definition of private flood insurance. While lenders may consider the alternative language noted above when reviewing flood insurance policies issued by private insurers, making a policy acceptable based on such statements would not be consistent with the Regulation. Therefore, the Agencies are adopting proposed Q&A Coverage 1, renumbered as Discretionary 4, with the amendments discussed above.

Section V. Private Flood Insurance – General Compliance (Private Flood Compliance)

The Agencies proposed eleven new Q&As in this section in the March 2021 Proposed Questions and Answers. As discussed in more detail above, the Agencies are renumbering proposed Q&A Private Flood Compliance 11 from the March 2021 Proposed Questions and Answers as Q&A Mandatory 9. Q&A Private Flood Compliance 11, as adopted in these 2022 Interagency Questions and Answers, is a combination of proposed Q&A Mandatory 2 and proposed Q&A Discretionary 4 from the March 2021 Proposed Questions and Answers.

Private Flood Compliance 1. Proposed new Q&A Private Flood Compliance 1 addressed the maximum deductible permissible for a flood insurance policy issued by a private insurer on properties located in an SFHA. The proposed answer clarified that the analysis depends on whether the lender is accepting the flood insurance policy under the mandatory acceptance provision or the discretionary acceptance provision.

For a private flood insurance policy that the lender is accepting under the mandatory acceptance provision, the proposed answer stated that the Regulation provides that the policy

must contain a deductible that is "at least as broad as" the maximum deductible in the SFIP under the NFIP, which means that the deductible 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. Further, the proposed answer provided that a policy with a coverage amount exceeding that available under the NFIP may have a deductible exceeding the specific maximum deductible under an SFIP. However, the proposed answer also advised that for safety and soundness purposes, the lender should consider whether the deductible is reasonable based on the borrower's financial condition, consistent with guidance the Agencies proposed in Q&A Amount 9[28] and with how deductibles may be evaluated under the discretionary acceptance provision. The proposed answer also set forth examples to aid in compliance.

Further, the proposed answer provided that for purposes of compliance with the discretionary acceptance provision, the Regulation requires that the policy provide sufficient protection of the loan, consistent with general safety and soundness principles. The proposed answer stated that among other factors a lender could consider in determining whether the policy provides sufficient protection of the loan is whether the deductible is reasonable based on the borrower's financial condition. The proposed answer further provided that 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 general safety

[28] Proposed Q&A Amount 9 provided that 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 the lender.

and soundness provisions. Finally, the proposed answer provided that whether a 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.

The Agencies received several comments on this Q&A. One commenter asked for clarification of the flood insurance requirements for non-residential detached structures that are part of a commercial property and requested that the Agencies not limit the applicability of the detached structure exemption only to residential properties. The Agencies note that Congress established the detached structure exemption in HFIAA. This exemption provides that any structure that is part of a residential property but detached from the primary residential structure and does not serve as a residence is not required to be covered by flood insurance. As this statutory exemption only applies to a detached structure that is part of a residential property, the Agencies cannot create an exemption for detached structures that are part of a commercial property. Therefore, the Agencies do not have authority to revise the answer as requested.

One commenter requested clarification regarding the deductible when multiple buildings are insured on a single insurance policy. Some other commenters requested clarification on how the statement in Q&A Amount 9 referenced in the final paragraph of the proposed Q&A applies differently to a flood insurance policy issued by a private insurer covering multiple individual buildings versus an NFIP policy, which is limited to covering a single building. In response to these comments, the Agencies are amending the answer to add language that provides that 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. The Agencies also are adding cross-references to new Q&A

Amount 10 and Q&A Private Flood Compliance 2, which address related deductible issues, to assist the reader.

One commenter indicated that the Q&A should include guidance that directs private insurers to consider climate change risk when setting flood insurance deductibles. As discussed above, climate change risk is outside the scope of the Agencies' Interagency Questions and Answers. As indicated previously, the Agencies are working individually and on an interagency basis to address financial risks associated with climate change consistent with the Agencies' regulatory and supervisory authorities. Therefore, the Agencies decline to make any change to the Q&A in response to this comment. For clarity, the Agencies are rewording the reference to the deductible requirement in the Regulation. With this clarifying edit and the amendment as noted, the Agencies are adopting Q&A Private Flood Compliance 1.

Private Flood Compliance 2. Proposed new Q&A Private Flood Compliance 2 clarified that a lender may require that the deductible of any flood insurance policy issued by a private insurer be lower than the maximum deductible for an NFIP policy, under both the mandatory acceptance provision and the discretionary acceptance provision. The proposed answer further stated that for the mandatory acceptance provision, the Regulation requires that the private flood insurance policy be at least as broad as an NFIP policy, which includes a requirement that the private flood insurance policy contain a deductible *no higher* than the specified maximum deductible for an SFIP. Therefore, the proposed answer clarified that a lender may require a borrower's private flood insurance policy deductible to be lower than the maximum deductible for an NFIP policy 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. With respect to the discretionary

acceptance provision, the proposed answer noted that 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. The proposed answer also included a reference to proposed Q&A Private Flood Compliance 1, which also addresses deductibles.

A commenter requested that the Agencies include in the answer an example of when a lender is not required to accept a policy for safety and soundness reasons related to the deductible, such as when a deductible is too high based on the borrower's financial condition. The Agencies decline to include an example in the answer because the answer already makes clear that a lender can require, as a condition of accepting the policy, a lower deductible for safety and soundness reasons. The Agencies note that the issues of deductibles as they relate to flood insurance policies issued by private insurers are already discussed in Q&A Private Flood Compliance 1. Therefore, the Agencies are adopting this Q&A as proposed with some minor non-substantive edits.

Private Flood Compliance 3. Proposed Q&A Private Flood Compliance 3 provided guidance regarding whether a lender may charge fees to the borrower for the lender's use of a third party to review flood insurance policies. The proposed answer provided that the Act and the Regulation do not prohibit lenders from charging fees to borrowers for contracting with a third party to review flood insurance policies, including a policy issued by a private insurer, and, as provided in Q&A Fees 1 and Q&A Fees 2, lenders may charge limited, reasonable fees for flood determinations and life-of-loan monitoring.[29] The proposed answer reminded lenders that they should be aware of any other applicable requirements regarding fees and disclosures of fees.

[29] New Q&A Fees 1, which is adapted from current Q&A 69, lists the four instances in the Act and Regulation when a lender or servicer can charge the borrower a fee for making a flood determination. New Q&A Fees 2, adapted from current Q&A 70, provides that charges made for life-of-loan reviews by determination firms may be passed to the borrower under certain conditions.

A commenter suggested that the Q&A should be expanded to specifically speak to the lender's ability to condition its acceptance of a flood insurance policy issued by a private insurer on payment of a fee. The Agencies disagree. As provided in the Act and the Regulation, a lender is required to accept a flood insurance policy issued by a private insurer that meets the definition of "private flood insurance," as long as the policy meets the amount of insurance required under the Regulation. Therefore, a lender cannot condition the acceptance of such a policy on the payment of a fee by the borrower. Further, as stated above lenders should be aware of any other applicable requirements regarding fees and disclosures of fees. Therefore, the Agencies are adopting this Q&A as proposed with minor non-substantive edits.

Private Flood Compliance 4. Proposed new Q&A Private Flood Compliance 4 addressed the lender's responsibility to ensure a policy issued by a private insurer meets the private flood insurance requirements of the Regulation if the policy is not available prior to loan closing. The proposed answer stated that 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. The proposed answer also advised lenders to determine whether they have sufficient evidence to show the policy meets requirements under the Regulation and that if the lender does not have enough information to make this determination, then the lender should timely request additional information as necessary to complete its review. The proposed answer also suggested some optional steps that a lender could take to mitigate against closing delays.

The Agencies received a number of comments on this Q&A. Commenters asserted that lenders may not be able to obtain, before closing, a full policy or other information sufficient to determine whether a policy complies with the private flood insurance requirements of the Regulation. The commenters suggested revising the answer to provide that a lender may close a

loan without determining whether the policy satisfies these requirements and, if the lender later determines that the policy does not satisfy these requirements, the lender would then comply with the Act's force-placed insurance requirements. The commenters also noted that with NFIP policies, lenders often rely on paid applications as evidence of coverage and receive a declarations page only after loan closing.

The Agencies decline to make the changes the commenters request. If a borrower is obtaining a flood insurance policy issued by a private insurer, the lender must determine whether the policy meets the requirements under the Regulation. If the lender cannot make this determination before closing on the loan, it may need to delay the closing. As discussed in Q&A Private Flood Compliance 5, the declarations page, if available to the lender before closing, may provide enough information for the lender to determine whether the policy meets the mandatory acceptance provision or discretionary acceptance provision of the Regulation or may contain the compliance aid statement, in which case the lender may rely solely on the declarations page. Otherwise, the lender may choose to ask the borrower to obtain the necessary information from the private insurer to provide to the lender.

Further, with respect to the commenter's statement that with NFIP policies, lenders often rely before closing on paid applications for coverage and do not receive a declarations page until after closing, the Agencies note that an NFIP policy does not need to be evaluated to determine if it complies with the private flood insurance requirements of the Regulation. In contrast, flood insurance policies issued by private insurers may not necessarily satisfy the private flood insurance requirements of the Regulation. As indicated above, a lender must review such a policy to determine if it satisfies these requirements.

Finally, commenters also requested that the answer distinguish its applicability to the two forms of review: the review of sufficiency for compliance with the mandatory purchase requirement and the review of acceptability under the private flood insurance requirements of the Regulation. The intent of this Q&A is to remind lenders of their responsibility to ensure that a policy meets the private flood insurance requirements of the Regulation if the policy is not available prior to loan closing. It is not to address any of the other requirements in the Regulation. To clarify this, the Agencies are amending the Q&A so that it addresses only the private flood insurance requirements under the Regulation and does not address any other flood requirements that the Regulation imposes. The Agencies also are adding in this Q&A a reference to Q&A Private Flood Compliance 5, to direct readers to guidance on whether a declarations page provides sufficient information for a lender to determine whether the policy complies with the private flood insurance requirements of the Regulation.

With the exception of the changes discussed above, the Agencies are adopting this Q&A as proposed.

Private Flood Compliance 5. Proposed new Q&A Private Flood Compliance 5 addressed whether a declarations page provides sufficient information for a lender to determine whether a policy complies with the private flood insurance requirements of the Regulation. Under the proposed answer, the lender may rely on the declarations page if it provides sufficient information for the lender to determine whether the policy meets the mandatory acceptance provision or the discretionary acceptance provision of the Regulation or if the declarations page contains the compliance aid assurance clause. However, if the declarations page does not provide sufficient information, the proposed answer suggested that the lender should request additional information about the policy to aid its determination.

The Agencies received a number of comments on this Q&A. Similar to Q&A Private Flood Compliance 4, the commenters asserted that the information lenders receive before closing may not be sufficient to determine whether the policy complies with the private flood insurance requirements of the Regulation, even though it is sufficient to determine that the policy satisfies the mandatory purchase requirement, and they suggested revising the answer to provide that a lender may close a loan without determining whether the policy satisfies the private flood insurance requirements. If the lender later determined that the policy does not satisfy these requirements, the lender would then comply with the Act's force-placed insurance requirements. For the reasons discussed in Private Flood Compliance 4, the Agencies decline to make the requested changes.

Commenters further requested that the answer distinguish its applicability to the two forms of review: the review of sufficiency for compliance with the mandatory purchase requirement and the review of acceptability under the private flood insurance requirements of the Regulation. The Agencies note that the focus of this Q&A is on the private flood insurance requirements of the Regulation and not any other flood requirements imposed by the Regulation. To clarify this, the Agencies are revising the question to specifically refer only to the private flood insurance requirements under the Regulation.

Several of the commenters requested guidance about a lender's authority to request necessary information from the borrower or insurer. The Agencies affirm that lenders may seek necessary information from borrowers and insurers. As discussed above, if a lender is unable to obtain the necessary information about a policy issued by a private insurer before closing, it may need to delay the closing. Another commenter suggested that the Q&A is unnecessarily limited by references to the declarations page and that that the Agencies should revise the Q&A to focus

on the various forms of, and purposes for examining, evidence of coverage rather than emphasizing the declarations page. The Agencies note that this Q&A focuses on the declarations page because, prior to proposing this Q&A, the Agencies had received many questions requesting guidance on whether a declarations page provides sufficient information for a lender to determine whether a policy complies with the private flood insurance requirements of the Regulation. Q&A Private Flood Compliance 4 makes clear that the Act and Regulation do not specify the acceptable types of documentation on which a lender must rely when reviewing a flood insurance policy issued by a private insurer. If the necessary information is contained in other appropriate documentation, the lender need not rely on the declarations page.

The Agencies are adopting this Q&A as proposed, with the change to the question discussed above, and with one technical change to the answer that amends the term "compliance aid assurance clause" to "compliance aid statement" to be consistent with the Regulation.

Private Flood Compliance 6. The Agencies proposed new Q&A Private Flood Compliance 6 to provide guidance on a lender's ability to accept multiple-peril policies. Specifically, the proposed answer clarified that a lender may accept multiple-peril policies that cover the hazard of flood under the private flood insurance provisions of the Regulation, provided they meet the requirements of the Regulation.

A commenter requested that the Q&A clarify that lenders are permitted to accept both standalone multiple-peril policies that address flood risks and policies that insure against other risks and that have a flood-related endorsement, as long as the mandatory or discretionary provisions of the Regulation are otherwise satisfied. The Agencies agree that lenders may accept multiple-peril policies that either address flood risks in the policy itself or address flood risks as an endorsement to the policy, and have amended to answer to clarify this.

The Agencies are also making a technical correction to this Q&A by removing the phrase "provided the policy meets the requirements under the Regulation." This phrase is redundant because the private flood insurance provisions of the Regulation already require the policy to meet the Regulation's requirements.

The Agencies are adopting this Q&A with this amendment.

Private Flood Compliance 7. Proposed new Q&A Private Flood Compliance 7 addressed the question of how the private flood insurance requirements of the Regulation work in conjunction with requirements of secondary market investors, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). The proposed answer first reminded lenders that they must comply with the Federal flood insurance requirements. The proposed answer then noted that secondary market investor requirements are separate from the requirements of the Regulation, and that, if a lender plans to sell loans to such an investor, the lender should carefully review the investor's requirements and direct questions regarding these requirements to the appropriate entities. The Agencies did not receive any specific comment on proposed Q&A Private Flood Compliance 7. Therefore, the Agencies are adopting Q&A Private Flood Compliance 7 as proposed, with one technical change to the question. Specifically, the Agencies are amending the term "compliance aid assurance clause" to "compliance aid statement" to be consistent with the Regulation.

Private Flood Compliance 8. Proposed new Q&A Private Flood Compliance 8 provided guidance to servicers for loans covered by flood insurance mandated by the Act. Specifically, the proposed answer clarified that 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 or mutual aid provisions. However, for loans serviced on behalf of other entities not supervised by the Agencies, the proposed answer stated that the servicer should comply with the terms of its contract with such an entity. The proposed answer suggested that 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 included in the Regulation, the servicer should adhere to those servicing requirements. The Agencies did not receive any specific comment on proposed Q&A Private Flood Compliance 8. Therefore, the Agencies are adopting Q&A Private Flood Compliance 8 as proposed.

Private Flood Compliance 9. Proposed new Q&A Private Flood Compliance 9 provided guidance regarding optional methods lenders can use to address questions on whether an insurer is licensed, admitted, or otherwise approved to do business in a particular State, which is one of the factors lenders must evaluate under both the mandatory acceptance and discretionary acceptance provisions. Specifically, proposed new Q&A Private Flood Compliance 9 explained that a lender could determine whether an insurer is licensed, admitted, or otherwise approved in a particular State, or whether a surplus lines or nonadmitted alien insurer[30] is permitted to issue an insurance policy in a particular State, by reviewing the website of the State insurance regulator where the collateral property is located or by contacting the State insurance regulator directly. Further, the proposed answer noted that the information with respect to surplus lines insurer eligibility may be available in the Consumer Insurance Search (CIS) tool available on the

[30] The NAIC notes that "[w]hereas [S]tates monitor the eligibility of U.S. domiciled surplus lines insurers, alien insurers eligible to write surplus lines premium are listed on the NAIC Quarterly Listing of Alien Insurers [*https://www.naic.org/prod_serv_alpha_listing.htm#quarterly_alien*]...[Alien insurers] are prohibited from establishing a U.S. branch office." *https://content.naic.org/cipr_topics/topic_surplus_lines.htm*.

National Association of Insurance Commissioners (NAIC) website.[31] The proposed answer stated that lenders also may consult commercial service providers regarding the eligibility of surplus lines insurers in particular States as long as the lenders have a reasonable basis to believe that these service providers have reliable information. With regard to nonadmitted alien insurers in particular, the proposed answer suggested that lenders could review the NAIC's Quarterly Listing of Alien Insurers.[32]

The Agencies received one comment requesting that the Agencies allow financial institutions to rely on the regulated insurance companies to comply with the lender's regulatory requirement to use a licensed insurance company because it is difficult to identify the insurer that is behind a specific flood insurance policy when the policy is issued by a syndicate of an alien insurer. As indicated above, if there is a compliance aid statement, and the lender is accepting the policy under mandatory acceptance, no further review is required to determine the status of the insurer. *See* Q&A Mandatory 6. However, the Agencies do not agree that the lender can waive its duty to verify whether an insurer is licensed, admitted, or otherwise approved in a particular State, or whether a surplus lines or nonadmitted alien insurer is permitted to issue an insurance policy in a particular State, if there is no compliance aid statement or if the lender is choosing to conduct its own review of whether the policy must be accepted under the mandatory acceptance provision or may be accepted under the discretionary acceptance provision. The Agencies are adopting Q&A Private Flood Compliance 9 as proposed.

Private Flood Compliance 10. Proposed new Q&A Private Flood Compliance 10 addressed whether lenders may accept policies issued by private insurers that are surplus lines insurers for noncommercial residential properties. The proposed answer explained that if the

[31] *See https://content.naic.org/cis_consumer_information.htm*.
[32] *See https://www.naic.org/prod_serv_alpha_listing.htm#quarterly_alien*.

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. In addition, the proposed answer confirmed 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, which the Agencies noted in the preamble to the March 2021 Proposed Questions and Answers and in the proposed answer is consistent with the Act and the Regulation.[33] Specifically, the Agencies explained that 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." The proposed answer also noted that 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."

As the Agencies discussed in the preamble to the March 2021 Proposed Questions and Answers, if the surplus lines insurer is eligible or not disapproved to place insurance in the State or jurisdiction in which a property to be insured is located, the surplus lines insurer is deemed to

[33] During discussion of the Biggert-Waters Act on the Senate floor, Sen. Crapo noted that surplus lines insurers can provide flood insurance coverage for residential properties and asked for clarification regarding the inclusion of surplus lines coverage in the definition of "private flood insurance." In his response, Sen. Johnson stated, "[T]he definition of 'private flood insurance' includes private flood insurance provided by a surplus lines insurer and is not intended to limit surplus lines eligibility to nonresidential properties. While the Senator is correct that surplus lines insurance is specifically mentioned in that context, overall the definition accommodates private flood insurance from insurers who are 'licensed, admitted, or otherwise approved' in the State where the property is located." 158 Cong. Rec. S6051 (daily ed. Sept. 10, 2012).

be "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 Act and Regulation. Therefore, the proposed answer noted that 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 nevertheless would meet the criteria *only* for purposes of this provision of the Regulation if the insurer is eligible or not disapproved to place insurance in the State or jurisdiction in which a property to be insured is located.

In the preamble to the March 2021 Proposed Questions and Answers, the Agencies provided an example to illustrate this concept, noting that under section 1776 of the California Insurance Code, the permission granted to allow an insurance policy issued by a nonadmitted insurer to be placed in California, "shall not be deemed or construed to authorize any insurer to do business in [California]."[34] In addition, section 1776 of the California Insurance Code states that "[p]lacement activities of a licensed surplus line broker in accordance with [California law], including, but not limited to, policy issuance, shall not be deemed or construed to be business done by the insurer in [California]."[35] However, as discussed in the March 2021 Proposed Questions and Answers, it is the Agencies' understanding that these provisions of California law do not make ineligible or disapprove any individual surplus lines insurer from placing insurance in California if they meet all other applicable requirements in California law. Consequently, a surplus lines insurer that is eligible or not disapproved to place insurance in California is "otherwise approved" for purposes of the Regulation even though the surplus lines insurer is not authorized to do business in California for purposes of Section 1776 of the California Insurance Code.

[34] Cal. Ins. Code § 1776.
[35] *Id*.

Some commentors suggested that the Agencies consider removing or redrafting the Q&A because it suggests that lenders have an independent obligation to verify the eligibility of surplus lines insurers seeking to write flood coverage. The Agencies decline to make the suggested changes noting that, absent a compliance aid statement under the mandatory acceptance provision, the lender is required under the Regulation to verify the insurer's eligibility, as discussed above in connection with Q&A Private Flood Compliance 9. One commenter also suggested shortening the answer to only include the first sentence. The Agencies intentionally included the more detailed answer based on questions the Agencies have received and do not elect to shorten it. Therefore, the Agencies are adopting Q&A Private Flood Compliance 10 as proposed with one minor non-substantive edit to the question.

Private Flood Compliance 11 (Proposed as Q&As Mandatory 2 and Discretionary 4).

Proposed Q&A Mandatory 2 and proposed Q&A Discretionary 4 addressed lender requirements for reviewing flood insurance policies issued by private insurers. Because both proposed Q&As discussed similar issues, the Agencies are combining these two Q&As and renumbering them as Q&A Private Flood Compliance 11.

Proposed new Q&A Mandatory 2 addressed when a lender must review a flood insurance policy issued by a private insurer to make sure the policy meets the mandatory acceptance criteria, other than at loan origination. The proposed answer provided that other than at loan origination, a lender must review a flood insurance policy issued by a private insurer to determine whether it meets the mandatory acceptance criteria when the policy comes up for renewal, or any time the borrower presents the lender with any new flood insurance policy issued by a private insurer. The proposed answer clarified that a lender must review the policy in these

instances regardless of whether a triggering event occurred (making, increasing, extending or renewing a loan).

The proposed answer further explained that 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 assurance clause and clarified that 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. The proposed answer indicated that if the policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria, the lender must notify the borrower in accordance with the force placement provisions of the Regulation and further indicated that if the borrower does not purchase flood insurance that complies with the Regulation, the lender must purchase insurance on the borrower's behalf.

The proposed answer also clarified that if a lender previously reviewed the flood insurance policy under the discretionary acceptance provision to ensure that the policy meets the private flood insurance requirements of the Regulation, the lender may rely on its previous review, provided there are no changes to the terms of the policy. However, as required by the Regulation, the proposed answer indicated that the lender must document its conclusion regarding sufficiency of protection of the loan in writing.

Proposed Q&A Discretionary 4 addressed whether a lender is required to review a flood insurance policy upon renewal if that policy was issued by a private insurer and was originally accepted in accordance with the discretionary acceptance provision. The proposed answer provided that if a lender had accepted a flood insurance policy issued by a private insurer in accordance with the discretionary acceptance requirements and the policy is renewed, the lender

must review the policy upon renewal to ensure that it continues to meet the discretionary acceptance requirements. The proposed answer also stated that a lender would need to document its conclusion regarding sufficiency of the protection of the loan in writing upon each renewal to indicate that the policy continues to provide sufficient protection of the loan.

One commenter to proposed Q&A Mandatory 2 stated its belief that a private policy should be reviewed either at every policy renewal or when making, increasing, extending or renewing a loan but believes it would be best if the policy is reviewed when making, increasing, extending or renewing a loan. This commenter also stated that in connection with a renewal of a policy, a lender should be able to rely on its prior review in connection with mandatory acceptance to be consistent with the proposed answer to Q&A Mandatory 2 that allows a lender to rely on its prior review in connection with discretionary acceptance. Some commenters indicated that proposed Q&As Mandatory 2 and Discretionary 4 suggest that there is a distinction between the level of review required in connection with making, increasing, extending or renewing a loan (triggering event) and the level of review required to accept a new policy during the loan term or renewal of the policy that had initially been accepted, and recommended that the Agencies revise the answers to clarify the level of review required in connection with a triggering event and the renewal of coverage. Some commenters noted that in connection with private flood insurance, a private flood insurance policy must be reviewed for both the acceptability of the policy (*i.e.*, whether the policy meets the definition of "private flood insurance") and sufficiency (*i.e.*, the amount and term of coverage), and they requested guidance on whether there is a distinction between the review required in connection with a triggering event and upon renewal of the policy. One commenter appreciated the statement in proposed Q&A Mandatory 2 that "the lender may rely on its previous review, provided there are no

changes to the terms of the policy" and recommended that the Agencies provide additional detail as to what elements of the prior review may be relied on during review of the same policy at renewal. Other commenters stated that proposed Q&A Mandatory 2 conflicts with proposed Q&A Applicability 8, which stated that "[a]part 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." These commenters recommended that the Agencies clarify that a private policy must be reviewed upon the making, increasing, extending or renewing of a loan, and otherwise may be reviewed periodically consistent with safety and soundness principles. These commenters also suggested that the Q&A refer to acceptance "criteria" rather than "requirements" unless referring to a specific required action. The commenters noted that proposed Q&A Discretionary 4 draws a distinction between origination and renewal, yet there is no statutory requirement to review policies at renewal. The commenters suggested the Agencies remove the requirement that the lender must review the policy upon renewal, and instead state that the lender should have procedures to ensure that the policy continues to meet the discretionary acceptance criteria.

Based on the comments, the Agencies agree that a lender should be able to rely at renewal on a prior review of a private policy in connection with mandatory acceptance and discretionary acceptance. Accordingly, the Agencies are combining the guidance contained in proposed Q&A Mandatory 2 with proposed Q&A Discretionary 4 and are removing the language in the first paragraph of the proposed answer to Q&A Mandatory 2 that would have required a lender to review a private policy to determine whether it meets the mandatory acceptance criteria when the policy comes up for renewal. To improve readability, the Agencies are removing the

reference in proposed Q&A Mandatory 2 to "making, increasing, extending or renewing a loan" after the term "triggering event" in the first paragraph. Additionally, the Agencies are amending the term "compliance aid assurance clause" in the first paragraph of proposed Q&A Mandatory 2 to "compliance aid statement" to be consistent with the Regulation.

The Agencies also are revising and broadening the second paragraph of the answer to proposed Q&A Mandatory 2 to provide that if a lender has previously reviewed the flood insurance policy under any of the private flood provisions of the Regulation – the mandatory acceptance provision, the discretionary acceptance provision, or the mutual aid plan provision, the lender may rely on its prior review, provided there are no changes to the terms of the policy that would affect acceptance under the Regulation. The Agencies also are removing the phrase "to ensure that the policy meets the private flood insurance requirements of the Regulation" in this paragraph of proposed Q&A Mandatory 2 because it is redundant. The answer for Q&A Private Flood Compliance 11 provides that 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. The Agencies interpret the Regulation to provide that when there are no changes to the terms of the policy that would affect 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 and are amending the answer to address this issue. The Agencies believe that the answer properly distinguishes "criteria" from "requirements" under the Regulation and therefore decline to change this term as requested by the commenter.

Finally, a few commenters to proposed Q&A Mandatory 2 stated that references to force placement in the proposed Q&A seemed unnecessary and further complicate the message as to

the level of review needed upon the renewal of a private insurance policy. As the answer to Q&A Private Flood Compliance 11 provides that in connection with a policy renewal a lender may rely on a previous review of the policy provided that there are no changes to the terms of the policy that would affect acceptance under the Regulation, the Agencies are not including the language regarding force placement that was proposed in Q&A Mandatory 2.

With these amendments, the Agencies are adopting Q&A Private Flood Compliance 11.

Section VI. Standard Flood Hazard Determination Form (SFHDF)

Proposed section IV included questions and answers related to use of the Standard Flood Hazard Determination Form (SFHDF). The Agencies proposed to move existing section XII to section IV for organizational purposes. Accordingly, this proposal redesignated existing Q&As 65 through 68 as Q&As SFHDF 1 through 4, respectively. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one Interagency Questions and Answers document, the Agencies are renumbering this SFHDF section as Section VI in the 2022 Interagency Questions and Answers and streamlining the title.

SFHDF 1. The Agencies proposed to redesignate existing Q&A 65 as Q&A SFHDF 1 with only minor language modifications and no intended change in substance or meaning. This Q&A addresses whether the SFHDF replaces the borrower notification form. The Agencies received no specific comments on this Q&A and are adopting Q&A SFHDF 1 as proposed.

SFHDF 2. The Agencies proposed to redesignate existing Q&A 66 as Q&A SFHDF 2 with only minor language modifications and no intended change in substance or meaning. This Q&A addresses whether a lender may provide a copy of the SFHDF to the borrower. The

Agencies received two comments on this proposed Q&A. Both commenters suggested removing the phrase "so they can better understand their flood risk" from the answer as the lender need not contemplate a borrower's intended use of a flood determination and there may be other reasons for providing a flood determination to a borrower. One commenter suggested that references to FEMA's Letter of Determination Review (LODR) process be removed from the answer as it falls outside the scope of the question. In consideration of the comments received, the Agencies are removing the language regarding the borrower's understanding of their flood risk and limiting references to the LODR to note only that a lender would need to make a flood determination available to a borrower under this FEMA process. With these amendments and some minor non-substantive edits, the Agencies are adopting Q&A SFHDF 2.

SFHDF 3. The Agencies proposed to redesignate existing Q&A 67 as Q&A SFHDF 3 with only minor language modifications and no intended change in substance or meaning. This Q&A addresses the use of an SFHDF in electronic format. The Agencies received no specific comments on this Q&A and are adopting Q&A SFHDF 3 as proposed.

SFHDF 4. The Agencies proposed to redesignate existing Q&A 68 as Q&A SFHDF 4 with only minor language modifications and no intended change in substance or meaning. This Q&A addresses the circumstances when a lender may rely on a previous SFHDF. The Agencies received one specific comment on this proposed Q&A. The commenter suggested clarifying the Q&A to note that an SFHDF may be reused for the same collateral on a subsequent loan secured by the same collateral. The Agencies note that the existing Q&A states "if the same lender makes multiple loans to the same borrower secured by the same secured real estate, the lender may rely on its previous determination" if the other requirements referenced in the answer are

satisfied. Therefore, no changes to the Q&A are needed to address this comment and the Agencies are adopting Q&A SFHDF 4 as proposed.

Section VII. Flood Insurance Determination Fees (Fees)

The Agencies proposed in the July 2020 Proposed Questions and Answers to move existing section XIII, which contains questions and answers related to flood insurance determination fees, to proposed section V for organizational purposes. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Fees section as Section VII in the 2022 Interagency Questions and Answers.

Fees 1. The Agencies proposed to redesignate existing Q&A 69 as Q&A Fees 1 with only minor changes and no intended change in substance or meaning. This Q&A addresses when a lender or servicer can charge a borrower a fee for making a flood determination. The Agencies did not receive any specific comment on proposed Q&A Fees 1, and are adopting it as proposed.

Fees 2. The Agencies proposed to redesignate existing Q&A 70 as Q&A Fees 2 with only minor changes and no intended change in substance or meaning. This Q&A addresses whether charges made for life-of-loan reviews by flood determination firms may be passed along to the borrower. The Agencies did not receive any specific comment on proposed Q&A Fees 2 and are adopting it as proposed.

Section VIII. Flood Zone Discrepancies (Zone)

The Agencies proposed to redesignate the Q&As in existing section XIV, which addresses flood zone discrepancies, as section VI, and to redesignate current Q&As 71 and 72 as Q&As Zone 1 and 2. The Agencies also proposed to add new Q&A Zone 3 to address borrower

disputes of a lender's flood zone determination. The Agencies proposed these changes in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Zone section as Section VIII in the 2022 Interagency Questions and Answers.

One commenter said that it supported the changes to this section because it is frustrating for agents when lenders demand that specific flood zones appear on a declarations page; the commenter believes that lenders should be concerned only with whether the structure is in an SFHA and the limit on the policy. Another commenter stated that all three Q&As in this section provide consistent clarification that the SFHDF is the dominant form when discrepancies arise.

Zone 1. The Agencies proposed to redesignate existing Q&A 71 as Q&A Zone 1. Q&A 71 addresses what a lender should do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy declarations page. The Agencies proposed to revise the answer to Q&A 71 to reflect a change in the Agencies' expectations regarding a lender's obligation in the event of such a discrepancy. The proposal stated that a lender is no longer required to attempt to resolve the discrepancy but that the lender should consider documenting the discrepancy in the loan file. The proposal further stated that if the flood determination form indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage and is not otherwise required to attempt to resolve the discrepancy as previously indicated in current Q&A 71.

Since the Agencies proposed Q&A Zone 1 in July 2020, FEMA has begun to implement Risk Rating 2.0 effective October 1, 2021. [36] Under Risk Rating 2.0, the determination of

[36] *See* https://www.fema.gov/flood-insurance/risk-rating.

insurance premiums for NFIP policies no longer relies on the flood zone. As such, the flood zone is no longer included on the declarations page for NFIP policies issued under Risk Rating 2.0. Consistent with changes brought on by Risk Rating 2.0, and after additional review, the Agencies are further revising this question and answer. Specifically, the Agencies are removing references to the declarations page and simplifying the answer to state that a lender need not reconcile or otherwise be concerned with a flood zone discrepancy to be in compliance with the Act and the Regulation. Finally, the Agencies are replacing references to the flood zone "on the flood insurance policy declarations page" with the flood zone "associated with a flood insurance policy" as a clarifying change.

Several commenters stated that they appreciate the Agencies' change in position that a lender is no longer required to reconcile discrepancies between the SFHDF and the declarations page.

Some commenters sought clarification of this proposed Q&A; they believed its language erroneously suggested that force placement is appropriate to cover a loss that has already occurred when a premium deficiency is discovered during the claim handling process. One commenter stated that the force placement requirement should apply during the life of the loan, whenever a discrepancy arises (such as with a policy renewal or replacement or a remapping event), not just if a discrepancy arises in connection with the making, increasing, refinancing, or extending of a loan (a triggering event). Another commenter stated that if permitted by the security instrument, a lender could satisfy its statutory and regulatory obligations by advancing the funds necessary to pay the additional premium. This commenter suggested adding language to the Q&A that would expressly permit this alternative. The Agencies note that lenders no longer need to be concerned with potential misratings resulting from an incorrect flood zone for

NFIP policies due to changes made by FEMA in Risk Rating 2.0; therefore, the Agencies are revising the final Q&A to reflect this change.

A commenter asked if this Q&A should be understood to mean the lender is no longer required to send to the insurance agent and/or the underwriter a reminder of FEMA's letter of April 18, 2008 (W-08021).[37] Another commenter asked if the lender is allowed to continue the existing practice with respect to discrepancies, including providing notification to the insurance agent or company. A third commenter asked whether the guidance should speak to the lender addressing a discrepancy at the time it is discovered rather than at the time of a potential loss, which could benefit both the lender and the borrower. In response, the Agencies affirm that there is no expectation that lenders will continue the existing practice, or take any other action, with respect to discrepancies beyond what is described in this Q&A. The Agencies believe that Q&A 71, which sets forth expectations for resolving discrepancies, is unnecessarily burdensome. However, a lender is not prohibited from continuing the existing practice or otherwise attempting to resolve a discrepancy at any time. The Agencies are making no changes to the Q&A in response to these comments.

A few commenters asked the Agencies to clarify that before it initiates the force placement process, the lender or servicer must first receive notice that the borrower is not paying the additional premium and must determine that the coverage is inadequate. As noted above, for NFIP policies, lenders no longer need to be concerned with potential misratings resulting from an incorrect flood zone due to changes made by FEMA in Risk Rating 2.0; therefore, the

[37] FEMA letter W-08021, dated April 16, 2008, set forth procedures for insurance companies relating to flood zone discrepancies. FEMA's letter attached a Financial Institution Letter, FIL-114-2007, issued by the FDIC and dated December 21, 2007, regarding managing risks associated with lapses in flood insurance coverage. FEMA letter W-08021 was archived in April 2018, and FIL-114-2007 was deactivated on December 1, 2018.

Agencies are revising Q&A Zone 1 accordingly. In light of these revisions, there is no longer a need to address these comments regarding force placement in this context.

One commenter requested that the Agencies clarify that the reference to the "appropriate amount of insurance coverage" refers to the dollar limit of flood insurance required. The Agencies confirm that this language refers to the dollar amount of the required insurance coverage. The Agencies are making no changes to the Q&A in response to this comment.

One commenter sought clarification on how to handle zone discrepancies arising from flood insurance policies issued by private insurers, and another commenter stated that providing flexibility on how discrepancies are resolved with regard to flood insurance policies issued by private insurers is important. The Agencies note that companies that issue private flood insurance policies have discretion in how they may require lenders to handle flood insurance discrepancies. Accordingly, the Agencies are unable to provide clarification or guidance on this matter. Lenders may want to contact the insurers for information. The Agencies are making no changes to the Q&A in response to this comment.

One commenter asked the Agencies to add a statement regarding the acceptability of Newly Mapped rated policies that show a non-SFHA zone as the "rated" flood zone. The statement would provide that as long as the "current" flood zone matches the lender's determined zone, the policy satisfies the mandatory purchase requirement. The Agencies note that this request concerns FEMA policy, not Agency policy, and an Agency response to the request is beyond the scope of this Q&A.

The Agencies are adopting Q&A Zone 1 with the revisions discussed above.

Zone 2. The Agencies proposed to redesignate existing Q&A 72 as Q&A Zone 2. This Q&A addresses whether a lender is in violation of the Regulation if there is a discrepancy

between the flood zone on the flood determination form and the policy declarations page. The Agencies proposed to revise this answer to reflect a change in the Agencies' views on this question. The proposed Q&A clarified that a lender is not in violation of the Regulation if there is a discrepancy between the flood zone on the flood determination form and the flood zone on the policy declarations page. This proposed change is consistent with the change in the Agencies' expectations regarding a lender's obligation when there is a discrepancy between the flood determination form and the flood insurance policy, discussed in connection with Q&A Zone 1, above. The Agencies received no specific comments on proposed Q&A Zone 2 and are adopting it as proposed with two changes. First, as in Q&A Zone 1, the Agencies are replacing references to the flood zone "on the flood insurance policy declarations page" with the flood zone "associated with a flood insurance policy" to conform with changes made by FEMA in Risk Rating 2.0.[38] Second, the Agencies are removing the language on documentation to reflect the changes made to Q&A Zone 1.

Zone 3. The Agencies proposed new Q&A Zone 3 to explain what a lender should do when a borrower disputes the lender's flood zone determination that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage. One commenter was strongly in favor of this Q&A. Another commenter appreciated the guidance and suggested adding emphasis in the first paragraph to the possible role of the flood determination vendor in resolving a dispute so that the dispute does not need to be elevated to FEMA. The Agencies encourage the parties to take appropriate actions to try to resolve disputes, and in some situations the appropriate actions could include seeking assistance from the vendor. However, the Agencies do not endorse particular actions, as appropriate actions are specific to particular

[38] *See* https://www.fema.gov/flood-insurance/risk-rating.

situations. Accordingly, the Agencies are making no changes to this Q&A in response to this comment.

Another commenter said that although the Q&A is helpful, the statement that "sufficient coverage must be in place . . . until FEMA has determined that the building is not in an SFHA," may result in significant closing delays. The commenter requested that the Agencies carefully consider this potential delay and evaluate potential opportunities to mitigate these negative effects. As the Regulation requires and the proposed Q&A states, if 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 until FEMA has determined that the building is not in an SFHA. The Agencies are unable to mitigate the effects of any delays in the FEMA review process and are making no changes to the Q&A in response to this comment.

For the reasons discussed above, the Agencies are adopting Q&A Zone 3 as proposed, with one minor edit to remove the reference to Q&A Zone 1.

Section IX. Notice of Special Flood Hazards and Availability of Federal Disaster Relief (Notice)

The Agencies proposed moving existing section XV to the proposed new section VII. This proposed new section includes existing Q&As 73 through 75 and 78 through 80, which were redesignated as proposed Q&As Notice 1 through 3 and Notice 5 through 7, respectively. Existing Q&As 76 and 77 were combined into Q&A Notice 4. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Notice section as Section IX in the 2022 Interagency Questions and Answers.

Notice 1. The Agencies proposed to redesignate existing Q&A 73 as Q&A Notice 1, with minor language modifications for purposes of clarity with no change in meaning or substance. This Q&A explains that the Notice of Special Flood Hazards does not have to be provided to each borrower for a real estate related loan. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. The Agencies received one comment on this Q&A. The commenter asked the Agencies to clarify whether an electronic notice must meet the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). The Agencies find that the requirements of the E-Sign Act are outside the scope of the Q&As and are adopting Q&A Notice 1 as proposed.

Notice 2. The Agencies proposed to redesignate existing Q&A 74 as Q&A Notice 2. This Q&A discusses the notice requirement for lenders making loans on mobile homes. In the proposal, the Agencies proposed to amend the Q&A to conform more closely to the Regulation. Proposed Q&A Notice 2 states that a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction, even if the lender only learns where the mobile home will be located just prior to closing and delivery of the Notice of Special Flood Hazards would delay closing.

The Agencies received a number of comments for this Q&A. The majority of commenters to this Q&A asked the Agencies to further define "reasonable time." One commenter stated that proper compliance with the Regulation should not be dependent on an inconsistent interpretation of "reasonable time" from each of the Agencies. Another commenter believed lenders were frequently cited for not timely providing the Notice of Special Flood Hazards, even though no specific time frame is included in the Act or Regulation. This commenter cautioned the Agencies against using a time frame that would be unreasonable in

certain situations, such as a refinance. A third commenter stated that it is common for a lender to receive an updated flood determination less than 10 days before closing. In such a case, the commenter suggested that "reasonable" would be the time between the revised finding and closing.

The Agencies also received two comments requesting the addition of a new Q&A to address the timing of when a lender must provide the Notice of Special Flood Hazards to the borrower. One commenter pointed out that the same comment was made in 2009 and stated that there should be an explicit reference to the fact that a notice period of fewer or greater than 10 days may also be "reasonable" according to circumstances. Another commenter noted that while a ten-day notice period is not a requirement of the Regulation, the ten-day period appears to be a well-established and generally accepted time period. Therefore, this commenter recommended the Agencies incorporate a new Q&A and provided sample language.

The Agencies acknowledge the difficulties lenders face with no defined period in the Act or the Regulation and have decided to modify the final Q&A Notice 2 to further define "reasonable time." Therefore, in the final Q&A, the Agencies are incorporating language from the Interagency Examination Procedures for the Flood Disaster Protection Act[39] and the preamble to the 2009 Interagency Questions and Answers, both of which provided guidance on what constitutes a "reasonable" notice. This language is similar to the commenter's suggested language for a new Q&A.

Specifically, the Agencies are making three changes to the final Q&A Notice 2. First, the Agencies are revising the question to ask when a lender should provide the Notice of Special Flood Hazards to the borrower, and how this requirement applies in situations regarding mobile

[39] The Task Force on Consumer Compliance of the FFIEC adopted revised interagency examination procedures for the Flood Disaster Protection Act in 2019. All of the Agencies, except the FCA, are members of the FFIEC.

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. Second, the Agencies are amending the answer to state that 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 a 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. Lastly, the Agencies are revising the answer to state that the Agencies generally regard 10 calendar days before loan closing as a "reasonable" time interval.

In addition to comments regarding "reasonable time," one commenter asked the Agencies to amend their examination manuals to reflect how lenders and/or their servicers are frequently unaware of mobile home movement(s) and may only learn of changes afterwards. The commenter wanted the examination manuals to align examiner methods with the realities of the business processes. The commenter explained that "home only" transactions, where loans are secured by mobile homes not located on a permanent foundation, raise safety and soundness concerns for lenders. The Agencies do not believe this information is appropriate for their examination manuals. These types of situations are fact specific and cannot be addressed in the Interagency Questions and Answers or examination guidance.

Another commenter preferred the existing Q&A 74 as written, rather than the proposed Q&A Notice 2. This commenter believed that existing Q&A 74 gives the lender flexibility to provide the Notice of Special Flood Hazards to the borrower "as soon as practicable after determination that the mobile home will be located in an SFHA," and it further provided that "lenders should use their best efforts to provide adequate notice of flood hazards to borrowers"

as early as possible. The commenter stated that the existing Q&A 74 allows lenders the flexibility to incorporate their flood insurance compliance into the realities experienced in their business operations. The commenter recommended the Agencies revise this Q&A to retain this flexibility. As stated in the July 2020 Proposed Questions and Answers, the purpose of the proposed changes to existing Q&A 74 is to conform to the Regulation. The proposed answer, with the changes explained above, is consistent with the Regulation, and the Agencies decline to make any further changes that would be inconsistent with the Regulation.

Notice 3. The Agencies proposed to redesignate existing Q&A 75 as Q&A Notice 3 with no changes. This Q&A addresses when the lender is required to provide notice to the servicer of a loan that flood insurance is required. The Agencies received no specific comments on this Q&A and are adopting the Q&A as proposed.

Notice 4. The Agencies proposed to consolidate existing Q&As 76 and 77 for organizational reasons into Q&A Notice 4, with no substantive changes. This Q&A discusses the appropriate form of notice to the servicer and whether it is necessary to provide a notice to a servicer affiliated with the lender. The Agencies received no specific comments to this Q&A and are adopting the Q&A as proposed.

Notice 5. The Agencies proposed to redesignate existing Q&A 78 as Q&A Notice 5. This Q&A considers how long a lender must maintain the record of receipt by the borrower of the notice. The Agencies proposed amending this Q&A to list examples of what constitutes an acceptable record of receipt. The Agencies received one specific comment for proposed Q&A Notice 5. This commenter stated this proposed Q&A acknowledges that borrowers may be provided with an electronic notice. Therefore, this commenter recommended that for further clarity, the Agencies add an electronic example to the list in the answer. The Agencies agree

with the commenter and are revising the answer's list of examples to include the borrower's electronic signature that acknowledges receipt.

Notice 6. The Agencies proposed to redesignate existing Q&A 79 as Q&A Notice 6, with non-substantive edits to provide additional clarity. This Q&A addresses whether a lender can rely on a previous notice if it is less than seven years old and it is the same property, same borrower, and same lender. The Agencies received no specific comments on this Q&A and are adopting it as proposed with one minor non-substantive edit.

Notice 7. The Agencies proposed to redesignate existing Q&A 80 as Q&A Notice 7 with non-substantive edits to provide additional clarity. This Q&A discusses whether the use of the sample form notice is mandatory. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Section X. Determining the Appropriate Amount of Flood Insurance Required (Amount)

The Agencies proposed moving existing section II to a new section VIII and amending the section heading for streamlining purposes. The Agencies also proposed to redesignate existing Q&As 8, 9 and 11 through 17 as Amount 1, Amount 2, and Amount 3 through 9 respectively. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Amount section as Section X in the 2022 Interagency Questions and Answers.

Amount 1. The Agencies proposed to redesignate existing Q&A 8 as Q&A Amount 1. This Q&A addresses the maximum limit of coverage available for the particular type of property under the Act. The Agencies proposed to revise this Q&A to discuss NFIP coverage limits more

fully and to include coverage for condominiums and contents coverage. One commenter suggested that the Agencies address commercial condominiums in the listed examples of coverage amount calculations to clarify that the NFIP does not provide coverage for such units other than contents coverage. The Agencies agree that clarification is needed with respect to non-residential condominiums and have added a new Q&A in Section XII, Q&A Condo and Co-Op 9, to clarify that there is no mandatory purchase requirement for a loan secured by an individual non-residential condominium unit. The Agencies are adopting Q&A Amount 1 as proposed, with minor non-substantive edits.

Amount 2. The Agencies proposed to redesignate existing Q&A 9, which defines "insurable value," to Q&A Amount 2. The Agencies proposed to remove references in this Q&A to the rescinded FEMA *Mandatory Purchase of Flood Insurance Guidelines* and to provide greater clarity with no intended change in substance or meaning. One commenter requested clarification as to whether a lender or servicer may rely on the replacement cost value listed on the flood insurance policy declarations page to establish "insurable value." The Agencies are revising the final answer to clarify that a lender may rely on the replacement cost value stated on the declarations page if the declarations page includes such information. As noted in the proposed Q&A, the Agencies recognize that the "insurable value" of a building may be established by any reasonable approach, as long as such approach can be supported.

Several commenters noted that since most home hazard insurance policies do cover foundations, the insurable value on a home hazard insurance policy may align with a flood insurance policy without the need for an adjustment. Based on the comment received, the Agencies have revisited the proposed answer and are removing the language that stated that hazard policies do not cover foundations in the final answer.

Some commenters raised concerns about language in the second paragraph in this Q&A that indicated that it would be reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP or a flood insurance policy issued by a private insurer for the type of property being insured. These commenters noted that the settlement basis for an insurance policy is a separate and distinct concept from the insurable value of a building and has no impact on insurable value. While the Agencies had included such language in the answer to provide further background, the Agencies believe information on the extent of recovery allowed under the NFIP or a flood insurance policy issued by a private insurer is not necessary to answer the question. Accordingly, the Agencies are deleting this language in the final Q&A. The Agencies are adopting proposed Q&A Amount 2 with the revisions discussed above.

Amount 3. The Agencies proposed to redesignate existing Q&A 11, which provides examples of residential buildings, as Q&A Amount 3. The Agencies proposed to revise this Q&A to include more detailed definitions from the *NFIP Flood Insurance Manual* of the terms: single family dwelling, 2-4 family residential building, and other residential building. The Agencies did not receive any specific comment on proposed Q&A Amount 3. Additionally, the Agencies note that the proposed answer was based on language included in an earlier version of the *NFIP Flood Insurance Manual* and that the manual has since been revised. Accordingly, the Agencies are making some non-substantive edits to the final answer to be consistent with the terminology used in the most recent version of the *NFIP Flood Insurance Manual*. The Agencies are adopting this Q&A as proposed, subject to edits noted above.

Amount 4. The Agencies proposed to redesignate existing Q&A 12, which provides examples of non-residential buildings, as Q&A Amount 4. The Agencies proposed to revise this

Q&A to provide a more detailed definition of non-residential building based on the *NFIP Flood Insurance Manual*. A few commenters requested that the Agencies revise the answer to remove the language stating that a non-residential building is one in which the named insured is a commercial enterprise. To address this comment, the Agencies are adding language in the answer to clarify that the description of a non-residential building is based on language in the *NFIP Flood Insurance Manual* and are revising the answer to more clearly indicate that the building need not be one in which the named insured is a commercial enterprise. Another commenter requested that the Agencies clarify that the lender may rely on borrower or agent assertions as to percentage of residential and commercial usage of a given property. The Agencies note that although a lender may rely on borrower or agent assertions as to percentage of residential and commercial usage of a given property, such language is not included in the *NFIP Flood Insurance Manual*. Therefore, the Agencies do not believe it would be appropriate to add such language to the answer.

Additionally, the Agencies note that the language in the proposed answer was based on language included in an earlier version of the *NFIP Flood Insurance Manual* and that the manual has since been revised. Accordingly, the Agencies are revising the final answer to be consistent with the most recent version of the *NFIP Flood Insurance Manual*. The Agencies are adopting the Q&A as proposed, subject to the edits discussed above and minor non-substantive edits.

Amount 5. The Agencies proposed to redesignate existing Q&A 13 as Q&A Amount 5 and to revise it to provide greater clarity with no intended change in substance or meaning. This Q&A addresses how much insurance is required on a building located in an SFHA in a participating community. The Agencies received no specific comment on this Q&A and are adopting it as proposed, with a minor non-substantive edit.

Amount 6. The Agencies proposed to redesignate existing Q&A 14 as Q&A Amount 6 and to revise it to provide greater clarity with no intended change in substance or meaning. This Q&A addresses flood insurance requirements when the real estate security contains more than one building located in an SFHA in a participating community. The Agencies received no specific comment on this Q&A and are adopting it as proposed, with a minor non-substantive edit.

Amount 7. The Agencies proposed to redesignate existing Q&A 15 as Q&A Amount 7 and to revise it by making minor language modifications, with no intended change in substance or meaning. This Q&A addresses the flood insurance requirements where the insurable value of a building or mobile home securing a designated loan is less than the outstanding principal balance of the loan. The last sentence in this Q&A states that since the NFIP policy does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the improvements. One commenter suggested that the Agencies change "improvements" to "building" because "improvements" would include items that, like land itself, are not insurable under the NFIP for flood loss, such as fencing or paving. The Agencies agree with the commenter and are revising the final answer accordingly. The Agencies otherwise are adopting Q&A Amount 7 as proposed.

Amount 8. The Agencies proposed to redesignate existing Q&A 16 as Q&A Amount 8 and to revise it to provide greater clarity with no intended change in substance or meaning. This Q&A addresses whether a lender may require more flood insurance than the minimum required by the Regulation. The Agencies received no specific comment on this Q&A and are adopting it as proposed.

Amount 9. The Agencies proposed to redesignate existing Q&A 17 as Q&A Amount 9 and to revise it by making minor language modifications, with no intended change in substance or meaning. This Q&A addresses lender considerations regarding the amount of the deductible on a flood insurance policy purchased by a borrower. One commenter recommended that the Agencies add language to Q&A Amount 9 to clarify that the answer refers to the maximum deductible offered by the NFIP as some private insurers offer higher deductibles than are offered under the NFIP. The Agencies decline to make this change as Q&A Amount 9 is not limited to policies issued by the NFIP.

Related to the topic addressed in Q&A Amount 9, one commenter recommended that the Agencies include a new Q&A that describes the function of a deductible and explains the role of the deductible in a safety and soundness consideration rather than discussing the deductible as related to the adequacy of coverage in satisfaction of the mandatory purchase requirement. The Agencies decline to add a new Q&A to address this topic as the topic is outside the scope of these Interagency Questions and Answers. Another commenter raised an issue that is related to, but distinct from the issue addressed in Q&A Amount 9. To address the issue raised by this commenter, the Agencies have added new Q&A Amount 10, discussed below. The Agencies therefore are adopting Q&A Amount 9 as proposed.

New Amount 10. In response to a comment raised on proposed Q&A Amount 9 that is related to, but distinct from the issue addressed in Q&A Amount 9, the Agencies have added new Q&A Amount 10. This commenter noted that the Agencies originally based the answer included in Q&A Amount 9 on guidance which assumed that the property is a single building covered by a single flood insurance policy. However, this commenter noted that it is common for flood insurance policies issued by private insurers to include multiple buildings of varying value. The

commenter recommended that the Q&A clarify that it is acceptable to have buildings or structures included on the policy that have a value lower than the deductible amount of the policy. The commenter also recommended that the Agencies provide that the 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 for flood insurance. The Agencies recognize that many flood insurance policies issued by private insurers, such as blanket insurance policies purchased by some commercial borrowers, are single policies that provide coverage for: (i) two or more kinds of properties in the same location; (ii) the same kind of property in two or more locations; or (iii) two or more different kinds of properties in two or more locations. Blanket policies often cover multiple perils such as flood, earthquake, fire, etc. and are often used to insure commercial real estate such as multifamily housing, office buildings, hotels, or resorts. Such blanket multi-peril policies may also be used to insure a company's chain of locations or franchised properties.

The Agencies understand that generally, the deductible for a blanket flood insurance policy or multi-peril policy is in the form of a per-occurrence deductible that is applied to the covered loss arising from that occurrence. For example, a flood event that damages multiple buildings covered by this type of blanket flood insurance or multi-peril policy would incur the deductible once, not per building, and buildings covered under the terms of this type of policy are insured by the policy regardless of the policy deductible amount. The Agencies further understand that these types of private blanket flood insurance policies and blanket multi-peril policies provide coverage for each building covered by such a policy, without regard to the deductible and regardless of whether any individual building covered under the policy has a value that may be lower than the amount of the deductible.

Accordingly, the Agencies have included new Q&A Amount 10 to address the acceptability of a blanket flood insurance policy or blanket multi-peril policy that includes a deductible that may be higher than the insurable value of any individual building covered by the policy. The Q&A provides that a lender may accept a blanket flood insurance policy or blanket multi-peril policy that includes a per-occurrence deductible, regardless of whether any building covered by the policy has an insurable value lower than the amount of the deductible. The answer also provides that 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. In addition, the answer provides that 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 the lender.

Section XI. Flood Insurance Requirements for Construction Loans (Construction)

The Agencies proposed to move the prior section IV to the new section IX and redesignated prior Q&As 19 through 23 as Q&As Construction 1 through 5, respectively, and added a new construction-related Q&A, as Q&A Construction 6. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Construction section as Section XI in the 2022 Interagency Questions and Answers.

Construction 1. The Agencies proposed to redesignate existing Q&A 19 as Q&A Construction 1 and to make minor non-substantive wording changes for clarity. This Q&A addresses the applicability of the flood insurance requirements to a loan secured only by land

that will be developed into buildable lot(s). The Agencies did not receive any specific comment on Q&A Construction 1 and are adopting it as proposed.

Construction 2. The Agencies proposed to redesignate existing Q&A 20 as Q&A Construction 2 and to make minor wording changes for clarity. This Q&A addresses whether 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 is a designated loan. The Agencies did not receive any specific comment on Q&A Construction 2 and are adopting it as proposed.

Construction 3. The Agencies proposed to redesignate existing Q&A 21 as Q&A Construction 3 and to the revise the language by removing direct reference to the *NFIP Flood Insurance Manual* with no intended change in substance or meaning. This Q&A addresses whether a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act is eligible for coverage under an NFIP policy. The Agencies received two comments on this Q&A. One commenter suggested that the Agencies edit the question to clarify that it is describing when construction is covered against loss by an NFIP policy. The commenter explained that the word "eligible" as used in the question could refer to the obligation to obtain insurance under the rule or coverage being effective under the policy. The Agencies clarify that proposed Q&A Construction 3 is addressing eligibility for coverage and not the obligation to obtain coverage nor the effectiveness of the coverage. The Agencies are revising the answer in final Q&A Construction 3 to explain when the NFIP will insure a building in the course of construction based on when the building is walled and roofed as well as when materials or supplies are eligible for coverage.

A commenter suggested that the answer to this Q&A, which states that "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," does not accurately describe what happens to NFIP coverage when construction is halted. Specifically, this commenter requested that the Agencies clarify that NFIP coverage ceases on day 91 of halted construction, as provided in the *NFIP Flood Insurance Manual*, and not on the day construction is halted for a period exceeding 90 days. In response to this comment, the Agencies are revising the answer in final Q&A Construction 3 to include the specific language from the *NFIP Flood Insurance Manual* that details the effect of a halt in construction on NFIP coverage. Specifically, 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.

With these changes, the Agencies are adopting Q&A Construction 3.

Construction 4. The Agencies proposed to redesignate existing Q&A 22 as Q&A Construction 4. This Q&A addresses when a lender must 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. As in existing Q&A 22, the proposed answer provides that a lender may either require borrowers to have a flood insurance policy in place at the time of loan origination or 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, when flood insurance is deferred, the lender must require the borrower to have flood insurance in place before the lender disburses funds to pay for

building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials).

The Agencies proposed to revise the answer to incorporate the NFIP's removal of the waiver of the 30-day waiting period and to provide other clarifications. In particular, the Agencies proposed that if a lender requires a borrower to have flood insurance in place at the time of loan origination, a borrower should obtain a provisional rating based on the construction designs and intended use of the building to enable the placement of coverage prior to receipt of the Elevation Certificate (EC), based on FEMA guidance. The proposed Q&A further stated that in accordance with the NFIP requirement, it is expected that an EC will be secured and a full-risk rating completed within 60 days of the policy effective date. Under the proposed Q&A, failure to obtain the EC could result in reduced coverage limits at the time of loss. If the lender allows the borrower to defer the purchase of flood insurance, the lender should have adequate controls in place to ensure the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower in light of the NFIP 30-day waiting period requirement, instead of no later than when the foundation slab has been poured and/or an EC has been issued as under existing Q&A 22.

One commenter asked the Agencies to clarify at exactly what point in time insurance is required if the lender chooses to defer the purchase of flood insurance, or whether the timing of this purchase is in the lender's discretion. This commenter also stated that the proposed answer contradicts itself by stating that, 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, such as foundations, walls and roofs. Another commenter suggested that the Agencies clarify the phrase "as necessary" in the statement in the

proposed answer regarding exceptions to fund disbursement. The Agencies note that under both the existing and the proposed answer, a lender has the option to defer the requirement to purchase flood insurance until either one of the following events occur: 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. Further, the answer provides that pouring the slab or performing preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials is exempted from the requirement to have flood insurance in place before the disbursement of funds. To address the commenter's concern regarding the phrase "as necessary," the Agencies are replacing this phrase with "for funds to be used" in the final Q&A.

The Agencies also are revising the answer to specifically reference the NFIP 30-day waiting period to provide further explanation and are making minor wording changes for clarity.

With the changes described above, the Agencies are adopting Q&A Construction 4.

Construction 5. The Agencies proposed to redesignate existing Q&A 23 as Q&A Construction 5. This Q&A addresses the application of FEMA's 30-day waiting period when deferring the purchase of the flood insurance policy in connection with a construction loan. The Agencies proposed to revise this Q&A to reflect the NFIP's change in policy regarding the 30-day waiting period. Specifically, the proposed answer indicated that the 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. One commenter suggested that language should be added to allow lenders to rely on agent representations regarding the application of a waiting period, referencing the *NFIP Flood Insurance Manual*. The Agencies note that the *NFIP Flood Insurance Manual* permits insurers to rely on an insurance agent's representation that there is no waiting period in

connection with the insured's application for flood insurance on or before the closing date of the loan transaction. Therefore, reliance on an agent's representation would not apply in the context of a construction loan where the lender allows the borrower to defer the purchase of flood insurance after the closing date. Accordingly, the Agencies believe that permitting agent reliance in this Q&A is not appropriate and are not adding language to the Q&A to address this comment.

The Agencies also proposed to state in the answer that under the NFIP, a 30-day waiting period applies anytime a lender requires flood insurance not in connection with the making, increasing, renewing or extending of a designated loan. After further review, the Agencies have decided to amend this statement so that it more clearly answers the question being asked, specifically, the application of the NFIP waiting period when the purchase of the flood insurance policy is delayed. The final answer states that 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. Further, as noted in the *NFIP Flood Insurance Manual*, the answer states that 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. With these changes, the Agencies are adopting Q&A Construction 5.

Construction 6. The Agencies proposed new Q&A Construction 6 to explain when a lender must begin escrowing flood insurance premiums and fees if the borrower defers the purchase of flood insurance in connection with a construction loan. Specifically, this Q&A provides that if a lender allows a borrower to defer the purchase of flood insurance until either the foundation slab has been poured and/or an EC has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled

and roofed, the lender will need to begin escrowing flood insurance premiums and fees at the time of purchase of the flood insurance, unless one of the escrow exceptions applies. The Agencies received one comment requesting that the Agencies clarify that the question only applies to designated loans that do not otherwise qualify for an exception to the mandatory escrow requirement. The Agencies do not believe that further elaboration is necessary because the answer as proposed references the escrow exceptions. Accordingly, the Agencies are adopting Q&A Construction 6 as proposed with minor non-substantive clarifications.

Section XII. Flood Insurance Requirements for Residential Condominiums and Co-Ops (Condo and Co-Op)

The Agencies proposed moving existing section VI to the new section X and expanding the heading to section X to include other multi-family dwellings such as cooperatives. Proposed section X included existing Q&As 26 through 33, redesignated as proposed Q&As Condo and Co-Op 1 through 8, respectively and also one new Q&A. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Condo and Co-Op section as Section XII in the 2022 Interagency Questions and Answers.

Condo and Co-Op 1. The Agencies proposed to redesignate existing Q&A 26 as Q&A Condo and Co-Op 1, with minor revisions to provide greater clarity and accurate references with no intended change in substance or meaning. This Q&A discusses whether residential condominiums, including multi-story condominium complexes, are subject to the statutory and regulatory requirements for flood insurance. The Agencies received no specific comment on Q&A Condo and Co-Op 1 and are adopting it as proposed.

Condo and Co-Op 2. The Agencies proposed to redesignate existing Q&A 27, which describes an NFIP Residential Condominium Building Association Policy (RCBAP), as Q&A Condo and Co-Op 2 with no changes. The Agencies received no specific comment on Q&A Condo and Co-Op 2 and are adopting it as proposed.

Condo and Co-Op 3. The Agencies proposed to redesignate existing Q&A 28 as Q&A Condo and Co-Op 3, with minor revisions to provide greater clarity and accurate references with no intended change in substance or meaning. This Q&A addresses the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story condominium complexes, to comply with the mandatory purchase requirements under the Act and Regulation. The Agencies received no specific comment on Q&A Condo and Co-Op 3 and are adopting it as proposed with minor non-substantive edits.

Condo and Co-Op 4. The Agencies proposed to redesignate existing Q&A 29, which discusses the action a lender must take if there is no RCBAP coverage, as Q&A Condo and Co-Op 4. The Agencies proposed minor revisions to provide greater clarity and accurate references, with no intended change in substance or meaning. Two commenters addressed this Q&A. The first commenter requested that the Agencies address commercial condominiums and clarify that there is no mandatory purchase requirement for loans secured by individual commercial condominium units since the NFIP does not provide coverage for such units other than contents coverage. The Agencies agree with this commenter and are adding a new Q&A, Condo and Co-Op 9 that addresses the flood insurance requirements for loans secured by non-residential condominium units, described below.

The second commenter recommended that the Agencies clearly state that the mandatory purchase requirement only applies to non-residential condominium unit owners where the loan is also secured by condominium contents since contents coverage is the only coverage available from the NFIP. The Agencies disagree with this commenter. Flood insurance on condominium contents is only required when the loan is secured by a building in an SFHA in which flood insurance is available under the Act and the loan also takes a security interest in the contents. As indicated above, the NFIP does not provide coverage for non-residential condominium units located in either a residential or non-residential condominium building. Therefore, the mandatory purchase requirement does not apply.

However, in reviewing this Q&A, and in light of new Condo and Co-Op 9, the Agencies believe that rewording the question would provide additional clarity. Therefore, the Agencies are revising the question in the final Q&A to ask what action must a lender take for an individual residential unit owner in a residential condominium building with no RCBAP coverage. The Agencies also are replacing the term "individual unit owner/borrower" with "individual unit owner," for clarity. The Agencies are adopting Q&A Condo and Co-Op 4 as revised.

Condo and Co-Op 5. The Agencies proposed to redesignate Q&A 30 as Q&A Condo and Co-Op 5 with minor revisions to provide greater clarity and accurate references, with no intended change in substance or meaning. This Q&A discusses the action a lender must 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. The Agencies received one comment on this Q&A. The commenter expressed concern with the part of the answer that encourages lenders to apprise borrowers of an additional risk of loss that may arise when the unit owner purchases a separate policy because the RCBAP coverage is insufficient. The commenter

believes this adds a new expectation that is not required by the Act or Regulation. The commenter also stated that lenders are not in the best position, nor do they have the level of insurance knowledge, to communicate the risk of loss to the borrower and therefore suggested the Agencies remove this expectation from the Q&A. The Agencies disagree with this commenter. The Agencies are only encouraging lenders to provide this information, not requiring that they do so. The Agencies therefore are adopting this Q&A as proposed with minor non-substantive edits.

Condo and Co-Op 6. The Agencies proposed to redesignate existing Q&A 31 as Q&A Condo and Co-Op 6 with minor revisions to provide greater clarity and no intended change in substance or meaning. This Q&A addresses what a lender must do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse. The Agencies received no specific comment on proposed Q&A Condo and Co-Op 6 and are adopting it as proposed with minor non-substantive edits.

Condo and Co-Op 7. The Agencies proposed to redesignate existing Q&A 32 as Q&A Condo and Co-Op 7 with minor revisions to provide greater clarity and no intended change in substance or meaning. This Q&A addresses how the RCBAP's co-insurance penalty applies in the case of residential condominiums, including those located in multi-story condominium complexes. The Agencies received no specific comment on Condo and Co-Op 7 and are adopting it as proposed.

Condo and Co-Op 8. The Agencies proposed to redesignate existing Q&A 33 as Q&A Condo and Co-Op 8 with minor revisions to provide greater clarity and no intended change in substance or meaning. This Q&A addresses the major factors that are involved with coverage limitations of the individual unit owner's dwelling policy with respect to the condominium

association's RCBAP coverage. The Agencies received no specific comment on proposed Q&A Condo and Co-Op 8 and are adopting it as proposed.

New Condo and Co-Op 9. In response to public comment, as described above, the Agencies are adopting new Q&A Condo and Co-Op 9 to clarify the flood insurance requirements for non-residential condominium units as well as residential condominium units located in a non-residential condominium building. The answer provides that 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. The answer further provides that NFIP coverage also is 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.

Condo and Co-Op 10 (Proposed Condo and Co-Op 9). The Agencies proposed a new Q&A, designated as Q&A Condo and Co-Op 9 in the proposal, to address flood insurance requirements for loans secured by a unit in a cooperative building located in an SFHA. The proposed answer provided that a loan to a cooperative unit owner is not a designated loan subject to the Act or Regulation because the unit owner does not own a title to the building but simply the right to occupy a particular unit based on the cooperative ownership structure. One commenter asked the Agencies to clarify that since loans to cooperative unit owners secured by the owner's share in the cooperative are not designated loans, lenders do not need to verify building-level coverage. The Agencies agree that lenders do not need to verify coverage on a cooperative building when a loan is secured by a share in a cooperative because this is not a designated loan subject to the Act or Regulation. However, the Agencies do not believe it is

necessary to include this in the answer. The Agencies therefore are adopting this Q&A as proposed but renumbered as Q&A Condo and Co-Op 10 in the 2022 Interagency Questions and Answers and with a minor non-substantive change.

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

The Agencies proposed to amend the heading to this section for clarity. The Agencies also proposed to redesignate existing section VII, which addresses Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral, as section XI. This proposed section included current Q&As 34, 35 and 36-43, which were redesignated as Q&As Other Security Interests 1, Other Security Interests 2, and Other Security Interests 4 through 9 and 11 through 12, respectively. The Agencies also proposed to amend the heading to this section for clarity. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Other Security Interests section as Section XIII in the 2022 Interagency Questions and Answers.

Other Security Interests 1. The Agencies proposed to redesignate existing Q&A 34 as Q&A Other Security Interests 1 with no substantive changes. This Q&A addresses whether a home equity loan is considered a designated loan that requires flood insurance. The Agencies received one supportive comment for this Q&A and are adopting it as proposed.

Other Security Interests 2. The Agencies proposed to redesignate existing Q&A 35 as Q&A Other Security Interests 2, with no substantive changes. This Q&A addresses if 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, requires a flood determination under the Regulation. The Agencies received one supportive comment for this Q&A and are adopting it as proposed.

Other Security Interests 3. The Agencies proposed new Q&A Other Security Interests 3, which addresses flood insurance coverage requirements for a line of credit secured by improved real property located in an SFHA. The proposed answer provided alternative approaches depending on when the lender requires flood insurance to be in place. The Agencies received two specific comments for this proposed Q&A.

One commenter raised concerns about the language in the Q&A that indicated a lender may "actively review" its records "throughout the year" to determine if the appropriate amount of insurance is in place, and strongly recommended the Agencies define these terms for clarity. The commenter stated that while this review provides the lender flexibility, it could result in a different coverage requirement (assuming the loan balance is the lesser of the three components) and could result in force placement several times throughout the life of the loan. This commenter also stated that the Agencies should remove the Q&A's language about informing the borrower of insurance risks because it is a new expectation from the Agencies and because monitoring for insurance risks is not the lender's area of specialty. If such notice expectation is retained, the commenter requested more detail regarding the timing and content of such notice.

The Agencies emphasize that the answer lists alternative approaches. Lenders may choose the option that works best for them and are not obligated to choose the second option where the lender actively reviews its records throughout the year. The Agencies anticipate that

most lenders will choose the first option and believe that the answer provides enough guidance as proposed.

Another commenter recommended that the Agencies clarify that the active review applies only to the amount of coverage and does not trigger a new determination. The commenter explained that there are continuing concerns regarding the burdens the Regulation places on junior lienholders to obtain information and concessions from senior lienholders regarding flood insurance. The Agencies believe that the proposed answer clearly provides that the review is about the amount of coverage and is not a triggering event requiring a new determination. Therefore, the Agencies have decided not to make any changes in response to these comments and are adopting Q&A Other Security Interests 3 as proposed.

Other Security Interests 4. The Agencies proposed to redesignate Q&A 36 as Q&A Other Security Interests 4, with only minor changes and no intended change in substance or meaning. This Q&A considers how much flood insurance is required when a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA.

The Agencies received two specific comments for proposed Q&A Other Security Interests 4. One commenter recommended that the Agencies reconsider their approach to this question. The commenter believed that the Q&A continues to create practical challenges for the flood insurance operating model. For instance, the commenter explained that flood insurance administrators handling the junior lien are also required to monitor senior liens and corresponding coverage shortcomings to establish the proper amount of necessary coverage, even though the senior lien entity may not have a contractual relationship with the junior lien administrator. The commenter also explained that junior lien flood insurance administrators

and/or insurers direct claim payments to their insured policyholders, not senior lienholders with which they have no contractual arrangement. Therefore, the commenter recommended an approach that requires each lienholder (and any servicer or administrator) to assure sufficient flood insurance coverage for their respective exposure in their lien position.

The Agencies acknowledge that although following the guidance in Q&A Other Security Interests 4 may be difficult for the junior lienholder, the junior lienholder is responsible for making sure the collateral is covered by the proper amount of flood insurance. As previously stated in the preamble to the 2009 Interagency Questions and Answers, the Agencies believe that, given the provisions of an NFIP policy, a lender cannot comply with Federal flood insurance requirements when it makes, increases, extends, or renews a loan by requiring the borrower to obtain NFIP flood insurance solely in the amount of the outstanding principal balance of the lender's junior lien without regard to the flood insurance coverage on any liens senior to that of the lender.[40] A junior lienholder's failure to take such a step can leave that lienholder partially or even fully unprotected by the borrower's NFIP policy in the event of a flood loss.[41] As such, the Agencies decline to include this commenter's suggested changes.

Another commenter stated that this proposed Q&A addresses the amount of coverage required when a lender makes, increases, extends, or renews a second mortgage. This commenter also stated that junior lienholders are not subject to the escrow requirements in the Regulation, and that the Agencies should not create such requirements through the Interagency Questions and Answers. As noted below in the discussion related to proposed Q&A Escrow 6, junior lienholders are generally not subject to the escrow requirements. The junior lienholder qualifies for the escrow requirement exception if there is adequate flood insurance coverage with

[40] 74 FR 35913, 35923-35924 (July 21, 2009).
[41] 74 FR 35913, 35924 (July 21, 2009).

respect to the loan issued by the primary lienholder.[42] However, this Q&A Other Security Interests 4 explains the responsibilities of the junior lienholder when there is a triggering event under the Regulation. This Q&A does not create new requirements for junior lienholders, as explained above to the other commenter. Therefore, the Agencies are adopting Q&A Other Security Interests 4 as proposed.

Other Security Interests 5. The Agencies proposed to redesignate Q&A 37 as Q&A Other Security Interests 5, with no substantive changes. This Q&A discusses whether a lender has to make a new determination or adjust insurance coverage if a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Other Security Interests 6. The Agencies proposed to redesignate Q&A 38 as Q&A Other Security Interests 6, with no substantive changes. This Q&A addresses whether flood insurance is required 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. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Other Security Interests 7. The Agencies proposed to redesignate Q&A 39 as Q&A Other Security Interests 7. This Q&A considers if flood insurance is 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. The Agencies proposed to revise the Q&A to clarify the application of Federal flood insurance requirements when both a building and its contents secure a loan. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

[42] 12 CFR 22.5(a)(2)(ii) (OCC); 12 CFR 208.25(e)(1)(ii)(B) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

Other Security Interests 8. The Agencies proposed to redesignate Q&A 40 as Q&A Other Security Interests 8, with no substantive changes. This Q&A provides that flood insurance is not required on contents securing a loan when the contents are stored in a building that does not also secure the loan. One commenter asked for clarification, stating that proposed Q&A Other Security Interests 10 appears to contradict proposed Q&A Other Security Interests 8 and may cause some confusion on how to handle contents located in a building in an SFHA. Q&A Other Security Interests 10 provides that flood insurance is required if the lender takes a security interest in contents located in a building in an SFHA securing the loan regardless of whether that security interest is perfected. The Agencies believe that the answers in both Q&As clearly provide that the building must secure the loan in order for flood insurance to be required for the contents located in that building. In addition, the Agencies do not think the Q&As are contradictory but provide complementary guidance. As such, the Agencies are adopting Q&A Other Security Interests 8 as proposed, with minor non-substantive edits.

Other Security Interests 9. The Agencies proposed to redesignate Q&A 41 as Q&A Other Security Interests 9. This Q&A discusses whether the Regulation applies when the lender takes a security interest in a building or mobile home and contents located in an SFHA only as an "abundance of caution." The Agencies proposed to clarify the impact of including language regarding contents taken as security for a loan in the loan agreement. One commenter stated that it would be helpful if the Q&A provided further clarification with regard to the documentation that determines whether contents are taken as security for the loan. The commenter asked the Agencies to include language stating that the loan agreement, not the Uniform Commercial Code-1 or Deed of Trust, determines whether the contents are taken as security for the loan. The

Agencies note that the answer already states that the language in the loan agreement is determinative and decline to include references to other documents.

In connection with the proposed applicability Q&As, one commenter requested a change more relevant to Other Security Interests 9. Specifically, this commenter asked the Agencies to address situations where a lender obtains a security interest in contents when there is a cross collateralization clause or in an abundance of caution, specifically in situations in which the lender may not realize that a cross collateralization clause is in an old deed of trust, such as when the loan has been acquired from another bank as a result of a merger or if the security agreement is within the deed of trust instead of in a stand-alone document. The commenter recommended that contents coverage not be required under these situations. This commenter also asked the Agencies to exempt from the coverage requirements contents of limited value that might be included in a deed of trust out of an abundance of caution, and asked for additional clarification on this scenario. The Agencies note that under the Act and the Regulation, if a lender takes a security interest in a building and its contents located in an SFHA in which flood insurance is available under the Act, then flood insurance coverage is required for both the building and the contents.[43] Therefore, the Agencies cannot exempt the building and its contents from required coverage even if the lender takes a security interest in the contents out of an abundance of caution. Lenders should review loan agreements and security instruments to verify that if they include language that takes a security interest in building and contents, flood insurance is purchased to cover the building and contents. If the lender does not secure a loan with building and contents, the loan agreement or security instrument should not include language to this effect, and language regarding taking contents as collateral should not be included out of an

[43] 42 USC 4012a(b); 12 CFR 22.3(a); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

"abundance of caution." The Agencies decline to make amendments to proposed Q&A Other Security Interests 9 based on this comment.

Therefore, the Agencies are adopting Q&A Other Security Interests 9 as proposed with clarifying amendments. To be more inclusive, the Agencies have added references to security instruments when discussing loan agreements and added references to improved real estate when discussing contents.

Other Security Interests 10. The Agencies proposed new Q&A Other Security Interests 10, which addresses whether flood insurance is 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. As noted in the preamble discussion of Q&A Other Security Interests 8, above, the Agencies received one comment on this Q&A indicating that Q&As Other Security Interests 8 and 10 are in conflict. As previously stated, the Agencies do not think the two Q&As are contradictory and are adopting Q&A Other Security Interests 10 as proposed with one clarifying amendment. To be more inclusive, the Agencies have added a reference to a security instrument when discussing the loan agreement.

Other Security Interests 11. The Agencies proposed to redesignate Q&A 42 as Q&A Other Security Interests 11, with no substantive changes. This Q&A addresses whether a note on a single-family dwelling offered by a borrower as collateral for a loan is a designated loan that requires flood insurance if the lender does not take a security interest in the dwelling itself. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Other Security Interests 12. The Agencies proposed to redesignate Q&A 43 as Q&A Other Security Interests 12, with no substantive changes. This Q&A discusses whether 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 would be considered a designated loan requiring flood insurance. The Agencies received no specific comments on this Q&A and are adopting Q&A Other Security Interests 12 as proposed.

Section XIV. Requirement to Escrow Flood Insurance Premiums and Fees – General (Escrow)

HFIAA significantly revised the escrow requirements for flood insurance premiums by introducing new escrow requirements not dependent on whether other insurance or taxes are escrowed, lender and loan-related exceptions to the escrow requirements, and an escrow notice. Accordingly, the Agencies proposed in the July 2020 Proposed Questions and Answers a number of new escrow-related Q&As and revisions to the existing escrow-related Q&As. Further, the Agencies proposed to reorganize these Q&As into three separate sections addressing escrow considerations. Specifically, proposed section XII included Q&As covering the general escrow requirements for flood insurance premiums and fees. Proposed section XIII included Q&As related to the small lender exception to flood insurance escrow requirements. Proposed section XIV included Q&As related to loan-related exceptions to the requirement to escrow flood insurance premiums and fees. These three sets of Q&As on the escrow of flood insurance premiums and fees respond to a request for more guidance related to the escrow requirement, as documented in the EGRPRA report.

Proposed section XII included existing Q&As 51 and 52 and five new proposed Q&As pertaining to requirements to escrow flood insurance premiums and fees. In addition, the Agencies removed current Q&As 53 and 54 because they are no longer applicable.

Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are

renumbering these Escrow-related sections as Sections XIV, XV, and XVI in the 2022 Interagency Questions and Answers.

Escrow 1. The Agencies proposed to redesignate Q&A 52 as Q&A Escrow 1. This Q&A addresses the general question of when a lender or servicer must establish an escrow account for flood insurance premiums and fees. The Agencies proposed to significantly revise the current Q&A to explain that the new escrow requirement applies only upon a triggering event that occurs on or after January 1, 2016 and would not apply if either the small lender exception or any of the loan-related exceptions apply. The proposed answer also addressed a lender's escrow obligations if the lender no longer qualifies for the small lender exception. The Agencies received one comment on this Q&A. The commenter requested that the Agencies expand the answer to explain that, if there is contractual authority to escrow and it is otherwise permitted by law, the lender may escrow flood premiums for safety and soundness reasons, even if the lender is not required to escrow under the Act and Regulation. The Agencies agree with the commenter that lenders could consider taking additional steps to ensure safety and soundness. However, the Agencies do not believe it is necessary to include this information in the answer as it is not relevant to the question asked in this Q&A. The Agencies are adopting this Q&A as proposed.

Escrow 2. The Agencies proposed new Q&A Escrow 2 to clarify that a lender must escrow flood insurance premium payments even if it does not escrow for taxes or homeowner's insurance, and is not required by the Regulation to escrow for taxes or homeowner's insurance if it does escrow for flood insurance. The Agencies received no specific comments on this proposed Q&A and are adopting Q&A Escrow 2 as proposed with minor non-substantive edits.

Escrow 3. The Agencies proposed new Q&A Escrow 3 to clarify that a lender must escrow force-placed flood insurance premium payments because there is no exception for force-

placed insurance under the Act or Regulation. The Agencies received several comments on this Q&A. The commenters suggested the Agencies revise the answer to clarify that, if a lender is not eligible for the small servicer exemption, the RESPA requirements still apply.[44] Specifically, the commenter noted that under Regulation X, which implements RESPA,[45] the servicer must pay the borrower disbursements in a timely manner and the lender is required to continue to advance the funds from the escrow to pay the flood policy premium if the loan is current, even if the customer is not paying their escrow payments. As a result, the commenter noted that there would be no need to force place a flood insurance policy for a loan that has an escrow account as the premium for the borrower's policy would be paid. Another commenter noted that lenders that qualify for the small creditor exemption, in general, use provisions in a legal agreement or security document that allows the lender to make a protective advance to pay for insurance premiums to protect their collateral interest and therefore no escrow account would be required. The Agencies disagree with the commenters by noting that RESPA does not apply to flood insurance required under the Act.[46] Further, under the Act and Regulation, the lender must escrow force-placed flood insurance premiums and fees because there is no exception for force-placed insurance. Finally, another commenter suggested that the force placement of flood insurance is not a triggering event that would trigger escrow requirements. The Agencies have addressed this comment in proposed Q&A Applicability 13 above and Q&A Force Placement 10 discussed below. The commenter further recommended that the Agencies clarify that when a property is mapped in an SFHA, such event is not a triggering event that would trigger the

[44] 12 U.S.C. 2601 et seq.
[45] 12 CFR 1024.17(k)(1).
[46] 12 CFR 1024.37(a)(2)(i).

escrow requirements. The Agencies note that proposed Q&A Applicability 13 and Q&A Escrow 4 address this issue. The Agencies therefore are adopting this Q&A as proposed.

Escrow 4. The Agencies proposed new Q&A Escrow 4 to address whether flood insurance premium payments must be escrowed when a loan has not experienced a triggering event but it has experienced a non-triggering event, such as a loan modification, a FEMA remapping, or the assumption of the loan by a new borrower. The Agencies explained in the proposed answer that, subject to certain exceptions, until a loan experiences a triggering event, the lender is not required to escrow flood insurance premiums and fees unless: (i) a borrower requests the escrow in connection with the requirement that the lender provide an option to escrow for outstanding loans; or (ii) the lender determines that a loan exception to the escrow requirement no longer applies. The Agencies received one comment on this Q&A. The commenter stated that the Q&A is confusing as the question includes references to the loan being remapped into an SFHA but does not specify that remapping and assumptions of the loan by a new borrower are merely examples of non-triggering events. The commenter further noted that the answer does not address assumptions or remapping. The Agencies agree with the commenter that providing examples of non-triggering events in the question may lead to confusion. Therefore, the Agencies are revising the question in the final Q&A by removing the examples of non-triggering events.

Escrow 5. The Agencies proposed to redesignate Q&A 51 as Q&A Escrow 5. The Agencies also proposed to revise this Q&A to clarify that multi-family buildings or mixed-use properties are included in the definition of "residential improved real estate" and, therefore, are subject to the escrow requirement unless an exception applies. The Agencies received no

specific comments on this proposed Q&A and are adopting Q&A Escrow 5 as proposed, with a minor non-substantive edit.

Escrow 6. The Agencies proposed new Q&A Escrow 6 to address the situation in which a junior lienholder determines that the primary lienholder does not have sufficient flood insurance coverage in place and is also not escrowing for flood insurance. The proposed answer clarified that if the primary lienholder has not obtained adequate flood insurance, the junior lienholder would need to ensure adequate flood insurance is in place and also would need to escrow for that flood insurance premium. The proposed answer also indicated that the escrow requirements would not apply to a junior lien that is a home equity line of credit (HELOC), since HELOCs have a separate escrow exception under the Act and Regulation. The Agencies received two comments on this Q&A. The commenters noted that the answer assumes the junior lienholder is notified regarding any lapse in coverage, despite the primary lienholder having no obligation to inform the junior lienholder of a lapse in coverage. Further, the commenters noted that junior lienholders are not given notice if or when the first lien is paid off or in the event of failure to escrow. The commenters also noted that there is no specific requirement in the Act or Regulation that requires junior lienholders to escrow. Therefore, the commenters conclude that the Agencies should not imply an expectation to escrow in the Q&A. The Agencies disagree with the commenters. The junior lienholder qualifies for the escrow requirement exception if there is adequate flood insurance coverage with respect to the loan issued by the primary lienholder.[47] Therefore, to qualify for the exception not to escrow, the junior lienholder would need to ensure that the borrower has obtained an insurance coverage amount that meets the mandatory purchase requirement. The Agencies therefore are adopting this Q&A as proposed.

[47] 12 CFR 22.5(a)(2)(ii) (OCC); 12 CFR 208.25(e)(1)(ii)(B) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

Escrow 7. The Agencies proposed new Q&A Escrow 7 to address whether a lender or its servicer must escrow when real property securing the loan is not located in an SFHA, but the borrower chooses to buy flood insurance. The proposed answer clarified that a lender or its servicer is not required to escrow premium payments in this situation but may choose to do so. The Agencies received no specific comments on this proposed Q&A and are adopting it as proposed.

Section XV. Requirement to Escrow Flood Insurance Premiums and Fees – Small Lender Exception (Escrow Small Lender Exception)

Proposed new section XIII included seven new Q&As related to the small lender exception to the requirement to escrow flood insurance premiums. The Agencies proposed the Q&As in this section in the July 2020 Proposed Questions and Answers. As indicated above, the Agencies are renumbering this section as Section XV in the 2022 Interagency Questions and Answers.

Several commenters suggested that as this section consists of Q&As that are fundamentally escrow-related, the Agencies should combine them with the Escrow Q&As. One of these commenters said that this change would also reduce confusion with the Exemptions section of the Q&As. The Agencies decline to make this change because the Agencies believe that more specific topic categories make it easier for users to find relevant guidance. To clarify that this topic relates to escrows, however, the Agencies are changing the heading of this section from "Small Lender Exception" to "Escrow Small Lender Exception." This change also affects the name of each individual Q&A.

Escrow Small Lender Exception 1. The Agencies proposed this new Q&A to specify that the $1 billion threshold for the small lender exception is based on assets held at the regulated

financial institution level and not at the holding company level. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Escrow Small Lender Exception 2. The Agencies proposed this new Q&A to address whether a qualifying lender must escrow flood insurance premiums if it was previously required to escrow only under the Higher-Priced Mortgage Loan (HPML) rules[48] or under specific Federal housing programs prior to July 6, 2012. The proposed answer clarified that the applicability of the first criterion of the small lender exception is dependent on whether the Federal or State law requirement to escrow was for the entire term of the loan. The Agencies received no specific comments on this Q&A and are adopting it as proposed, with minor formatting changes.

Escrow Small Lender Exception 3. The Agencies proposed this new Q&A to address whether a lender is disqualified from the exemption if it escrowed funds on behalf of a third party. The Agencies' proposed answer drew a distinction based on whether the lender established an individual escrow account for the loan. Specifically, the proposed answer provided that if a lender collected escrow funds at closing and maintained servicing of the loan, the lender would not qualify for the small lender exception because the lender would have had a policy of consistently and uniformly requiring the deposit of funds in an escrow account by establishing escrow accounts that the lender would service. The proposed answer further provided that if the lender collected the escrow funds at closing at the behest of a third party and then transferred those funds to the third party servicing that loan, the lender would qualify for the

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

small lender exception under the answer, provided the lender did not establish an individual escrow account and the lender transferred the escrow funds to the third party as soon as reasonably practicable.

A commenter asked the Agencies to clarify what constitutes "establishing an individual escrow account." The commenter asserted that for lenders subject to the escrow requirements, RESPA requires the lender to create and provide an initial escrow statement and to collect the initial escrow deposit. The originating lender then holds this deposit until the loan is sold. If the sale of the loan is delayed and the first payment is received by the original lender, the lender also must hold this payment. The commenter asked the Agencies to provide direction on how these funds should be held so as not to constitute "establishing an individual escrow account." In response, the Agencies state that determining what constitutes an individual escrow account is beyond the scope of these Interagency Questions and Answers.

A commenter asked the Agencies to clarify or provide examples of the term "as soon as reasonably practicable." By this term, the Agencies mean that there were no unreasonable delays considering the facts and circumstances of the situation. Whether the lender transferred the funds to the third party "as soon as reasonably practicable" is not a bright-line determination, and the Agencies believe there is no meaningful way to provide further clarification or examples.

The Agencies are adopting this new Q&A as proposed.

Escrow Small Lender Exception 4. The Agency proposed this new Q&A to address whether a lender is eligible for the escrow small lender exception if it escrows only upon a borrower's request. The proposed answer reiterated the explanation in the preamble to the 2015 Final Rule that a lender maintaining escrow accounts only on a borrower's request does not constitute a consistent or uniform policy of requiring escrow and therefore a lender could be

eligible for the small lender exception if the other requirements are met. The proposed answer also explained that 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.

The Agencies believe that the proposed question and the first sentence of the proposed answer, as described above, are confusing because they are written in the present tense, even though under the Regulation a lender's current escrow policy – whether it is to escrow upon a borrower' request or whether it is to consistently and uniformly require escrow -- is not relevant to whether the small lender escrow exception applies to the lender. Rather, only a lender's escrow policy on or before July 6, 2012, is relevant.

Accordingly, in the final Q&A, the Agencies are revising the question to ask if a lender is eligible for the small lender exception if, on or before July 6, 2012, it offered escrow accounts only upon a borrower's request. The Agencies are revising the first sentence of the answer to state that if, on or before July 6, 2012, a lender offered escrow accounts only upon the request of borrowers, that 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 Agencies are retaining the second sentence of the answer as proposed. That sentence reiterates the Regulation, which provides that 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.

A commenter stated that while the Q&A provided helpful guidance, additional clarity regarding whether a policy "consistently and uniformly require[s]" the establishment of an escrow account would be helpful. The commenter asked for additional information to aid lenders in better understanding the intent of this language and suggested that the Agencies provide examples of policies that do and do not satisfy this provision.

Consistent with the Regulation, the revisions to the Q&A clarify that a lender's escrow policy after July 6, 2012 is not relevant to whether the escrow small lender exception applies. In addition, the final Q&A clearly states that a lender's policy, on or before July 6, 2012, of offering escrow accounts only upon the request of borrowers did not constitute a "consistent or uniform" policy of requiring escrow. In specific response to the commenter, for policies other than those in which a lender offered escrow accounts only upon the request of borrowers before July 6, 2012, the Agencies believe that whether a policy consistently and uniformly required escrow accounts is not a bright-line determination, and the Agencies do not believe they can provide meaningful examples. The Agencies are adopting this new Q&A with the revisions discussed above.

Escrow Small Lender Exception 5. The Agencies proposed this new Q&A to address whether the option to escrow notice is required for: (1) all outstanding loans not excepted from the escrow requirement and secured by residential real estate; and (2) outstanding loans not secured by buildings located in an SHFA. The proposed answer clarified that the option to escrow notice requirement only applies to lenders who have a change in status and no longer qualify for the small lender exception. Such lenders are required to provide the option to escrow notice by September 30 of the first calendar year in which the lender has had a change in status for all outstanding designated loans secured by residential improved real estate or a mobile home

as of July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception. The proposed answer also clarified that the option to escrow notice requirement does not apply to loans or lenders that are excepted by the Regulation from the escrow requirement, nor does it apply to loans not subject to the mandatory flood insurance purchase requirement. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Escrow Small Lender Exception 6. The Agencies proposed this new Q&A to explain that a lender must send to a borrower a notice of the option to escrow flood insurance premium payments when the borrower has previously waived escrow for flood insurance because it is possible the borrower's circumstances have changed and, if offered another chance to escrow, the borrower may desire to do so. The Agencies received no specific comments on this new Q&A and are adopting it as proposed.

Escrow Small Lender Exception 7. The Agencies proposed this new Q&A to clarify that lenders who qualify for the small lender exception are not required to provide borrowers with either the escrow notice or the option to escrow notice. The Agencies received no specific comments on this new Q&A and are adopting it as proposed.

Section XVI. Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Loan Exceptions (Escrow Loan Exceptions)

Proposed new section XIV included existing Q&As 55 and 56 and three new Q&As, all regarding the loan-related exceptions to the escrow requirement. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. The Agencies are changing the proposed heading of this section from "Loan Exceptions" to "Escrow Loan Exceptions" to provide further clarity. Further, in response to a comment on proposed Q&As Escrow Loan Exceptions 1 and 5, discussed below, the Agencies are reordering the

questions from general to specific, so that proposed Escrow Loan Exceptions Q&As 4 and 5 become Q&As Escrow Loan Exceptions Q&As 3 and 2, respectively, with the remaining Q&As renumbered accordingly. This reordering provides a more logical flow of the Escrow Loan Exception questions. As indicated above, the Agencies are renumbering this section as Section XVI in the 2022 Interagency Questions and Answers.

Escrow Loan Exceptions 1. The Agencies proposed to redesignate existing Q&A 55 as proposed Q&A Loan Exceptions 1. The Agencies revised this Q&A to address whether escrow accounts must be set up for commercial loans secured by residential buildings based on the new loan-related exceptions. Specifically, the proposed answer clarified that extensions of credit primarily for business, commercial, or agricultural purposes are not subject to the escrow requirement even if such loans are secured by residential improved real estate or a mobile home. The Agencies received a few comments on this Q&A. One commenter stated that this Q&A is helpful and appropriate. Another commenter noted that this proposed Q&A mirrors proposed Escrow Loan Exceptions 5 and suggested that the Agencies reorder the questions so that the two Q&As would appear in close sequence. As indicated above, the Agencies agree and are moving proposed Q&A Loan Exceptions 5 so that it directly follows Q&A Escrow Loan Exceptions 1. Further, the Agencies also are removing references to "multi-family" properties in Q&A Escrow Loan Exceptions 1 as the Q&A can apply to more than the "multi-family" context. Another commenter suggested providing the definition of "residential property" or clarify that lenders may rely on assertions from the borrower or insurance agent regarding the property's intended use. As noted in Q&A Exemptions 1, a structure that is part of a residential property is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. The Agencies are adding a cross

reference to Q&A Exemptions 1 in this Q&A to address this comment. With these changes, the Agencies are adopting Q&A Escrow Loan Exceptions 1.

Escrow Loan Exceptions 2 (Proposed Loan Exceptions 5). The Agencies proposed a new Q&A, designated as Q&A Loan Exceptions 5 in the proposal, to discuss whether there is an exception to the escrow requirement for loans secured by multi-family buildings. The Agencies clarified in the proposed answer that escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes, even if the loan is secured by residential real estate such as a multi-family building, nor would it apply to a loan secured by a particular unit in a multi-family residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense. Otherwise, under the proposed answer, the escrow requirements generally apply to loans for units in multi-family residential buildings.

As discussed above, and at the request of a commenter, the Agencies are re-numbering proposed Q&A Loan Exceptions 5 as Q&A Escrow Loan Exceptions 2 to ensure logical flow and clarity. The Agencies also are clarifying the question in this Q&A to ask whether escrow accounts for flood insurance premiums and fees are required for loans secured by particular units located in multi-family buildings by focusing this Q&A on escrow requirement for only loans secured by particular units located in multi-family buildings and removing the reference to the exception for commercial loans in the question. Q&A Escrow Loan Exceptions 1 would cover commercial loans secured by residential buildings. The Agencies are also adding a cross reference to Escrow Loan Exceptions 1 for reader reference. With these revisions, the Agencies are adopting renumbered Q&A Escrow Loan Exceptions 2.

Escrow Loan Exceptions 3 (Proposed Loan Exceptions 4). The Agencies proposed to redesignate existing Q&A 56 as proposed Q&A Loan Exceptions 4 in the proposal. The Agencies proposed to revise this Q&A to address an escrow account for insured real property covered by an RCBAP. The proposed answer noted that while escrow is not required for property covered by an RCBAP, if the RCBAP coverage is inadequate and the borrower obtains a separate dwelling policy, escrow would be required for such a policy unless an escrow exception applies. The Agencies received positive comment on this Q&A and are adopting it as proposed, but renumbering as Q&A Escrow Loan Exceptions 3.

Escrow Loan Exceptions 4 (Proposed Loan Exceptions 2). The Agencies proposed a new Q&A, designated as Q&A Loan Exceptions 2 in the proposal, to clarify that construction-permanent loans that have a construction phase before the loan converts into permanent financing do not qualify for the 12-month exception from escrow even if one phase of the loan is for 12 months or less. The Agencies received positive comment on this Q&A and are adopting it as proposed, but renumbered as Q&A Escrow Loan Exceptions 4.

Escrow Loan Exceptions 5 (Proposed Loan Exceptions 3). The Agencies proposed a new Q&A, designated as Q&A Loan Exceptions 3 in the proposal, to clarify that a subordinate lienholder must begin to escrow as soon as reasonably practicable after it becomes aware that it has moved into the primary lien position on a designated loan subject to the escrow requirement. The Agencies received one specific comment on this proposed Q&A. This commenter stated that this Q&A provides important clarification regarding escrow obligations and loan documentation regarding the payoff of a senior lien. The Agencies are adopting this Q&A as proposed, but renumbered as Q&A Escrow Loan Exceptions 5.

Section XVII. Force Placement of Flood Insurance (Force Placement)

The Agencies proposed to move current section X, which includes current Q&As 57 through 62, to proposed section XV, and add 10 new Q&As. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. As discussed in the preamble to the July 2020 Proposed Questions and Answers, this set of Q&As would respond to a request for more guidance related to force placement of flood insurance from commenters through the EGRPRA process.[49] Commenters were appreciative of the Agencies including Q&As on force placement and generally found these Q&As to be helpful. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Force Placement section as Section XVII in the 2022 Interagency Questions and Answers.

Force Placement 1. The Agencies proposed to redesignate current Q&A 57, re-proposed in 2011 but not finalized, as proposed Q&A Force Placement 1. This proposed Q&A discussed the requirements that must be fulfilled before force placement can occur, as well as the notice requirements a lender must follow prior to force-placing flood insurance. One commenter agreed with the Agencies' statement in the answer that neither the Act nor the Regulation require lenders to monitor flood insurance over the life of the loan. The commenter, however, stated its belief that a lender's safety and soundness is not protected by the lender monitoring for flood insurance but by contracting with lender-placed insurance providers to ensure that flood insurance is automatically and continuously provided on all collateral in the lender's portfolio upon any lapse or insufficiency in flood insurance coverage procured by the borrower. Consequently, the commenter recommended that the Agencies add language discussing the safety and soundness benefits of lender-placed insurance for lenders and the benefit provided to

[49] *See* FFIEC Joint EGRPRA Report to Congress, March 2017 at 6, 55-56, 124-25, https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

borrowers in the Q&As. The Agencies decline to add the suggested language as the Agencies believe this statement is outside the scope of the force-placed flood insurance requirement in the Regulation.

Another commenter noted that the proposed answer states that the lender may provide the amount of flood insurance needed in the force placement notice and that if the lender or servicer is aware that the borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should inform the borrower that an additional amount of insurance is needed to comply with the Regulation. Because the amount of the insurance is not required to be included in the force placement notice, the commenter requested that the Agencies remove from the answer all references to including the amount in the force placement notice. However, the Agencies note that the answer does not require inclusion of this information. The Agencies continue to believe this information may be helpful to borrowers to the extent a lender chooses to include it in the force placement notice. Therefore, the Agencies are continuing to include this recommendation in the final Q&A Force Placement 1.

A few commenters suggested that the Agencies amend the last sentence of the proposed answer, which provided that 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 before force-placing flood insurance. Specifically, these commenters expressed concern about the use of the phrase "is aware" and suggested the Agencies use "determines" instead. The Agencies disagree and believe that the use of the word "determines" would suggest that there is a new force placement determination necessitating a

new force placement notice, and as discussed in detail below in connection with Q&A Force Placement 6, potentially could be interpreted as allowing lenders to "restart" the clock that would extend the time period beyond the 45 days permitted under the Regulation in which the lender or its servicer must force place flood insurance. Thus, the Agencies' use of a term other than "determines" is deliberate, and the Agencies are not modifying the language as suggested.

For the reasons discussed above, the Agencies are adopting Q&A Force Placement 1 as proposed.

Force Placement 2. The Agencies proposed new Q&A Force Placement 2 to clarify when a lender must provide a force placement notice to a borrower. The proposed answer provided that the Regulation requires the lender, or its servicer, to send the borrower the force placement notice upon making a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation. The proposed answer also stated that if there is a brief delay in providing the notice, the Agencies would expect the lender or servicer to provide a reasonable explanation for the delay and provided as an example for the delay the lender using batch processing to send the force placement notice to its borrowers. Several commenters requested that the Agencies amend the language from "brief delay" to "reasonable delay." The Agencies disagree with these commenters and are retaining "brief delay" to emphasize to lenders that the delay should not be long. Another commenter also suggested that the Agencies provide additional examples of explanations for delays in providing the force placement notice other than batch processing of force placement notices. In response to this commenter, the Agencies are amending the proposed answer to include manual exception

processing as another example. The Agencies are adopting Q&A Force Placement 2 with this change.

Force Placement 3. The Agencies proposed to redesignate existing Q&A 58 as proposed Q&A Force Placement 3 without any change. Proposed Q&A Force Placement 3 discussed whether a servicer could force place flood insurance on behalf of a lender. The Agencies did not receive any specific comment on Q&A Force Placement 3, and are adopting it as proposed.

Force Placement 4. The Agencies proposed new Q&A Force Placement 4, which discussed whether a lender can satisfy its notice requirement by sending the force placement notice to the borrower prior to the expiration of the flood insurance policy. Proposed Q&A Force Placement 4 was based on proposed Q&A 60 from 2011, which the Agencies did not finalize. The Agencies received one specific comment on this proposed Q&A, agreeing that the Agencies' wording reflects the intent of the Act and Regulation that lenders ensure that notice be provided upon determining that the flood insurance policy has actually lapsed or is insufficient. Therefore, the Agencies are adopting Q&A Force Placement 4 as proposed.

Force Placement 5. The Agencies proposed to redesignate existing Q&A 61 as proposed Q&A Force Placement 5 with minor revisions for clarity and no change in meaning or substance. This Q&A addresses when a lender must have flood insurance in place if the borrower has not obtained adequate insurance within 45 days of notification. A commenter recommended that the answer be updated to reflect information on the effective date of coverage, the timing for placing coverage, and the process for placing coverage. Given that lenders' particular processes may differ in force-placing flood insurance, the Agencies believe that amending the answer to include details on these additional steps would be confusing and that it is unnecessary to discuss how the

lender complies with the Regulation. Therefore, the Agencies are adopting Q&A Force Placement 5 as proposed.

Force Placement 6. The Agencies proposed new Q&A Force Placement 6 to clarify that, once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after the original notice, the lender must purchase coverage on the borrower's behalf and may not extend the period for obtaining force-placed coverage by sending another force placement notice during that time. Some commenters suggested that the Agencies reconsider the answer to permit subsequent determinations within the force placement process. As discussed above in connection with Q&A Force Placement 1, however, the Agencies do not believe that the answer should be amended to essentially permit lenders to extend the time to force place beyond the 45 days allowed by the Act and the Regulation, which would put both the borrower and the lender at greater risk of the property not being covered by sufficient flood insurance for longer periods of time. Therefore, the Agencies are adopting Q&A Force Placement 6 as proposed.

Force Placement 7. The Agencies proposed new Q&A Force Placement 7, which addressed when a force-placed policy should begin to provide coverage after an existing policy expires. The proposed answer also gave an example of the timing for the new policy. A few commenters stated that the Agencies' proposed example was not consistent with how policies expire and become effective in practice and that the answer needs to specifically include the time of day that the existing policy expires and the new policy becomes effective. One of these commenters noted that an expiring policy expires and a newly effective policy generally takes effect at 12:01 am on the same date. As recommended by these commenters, the Agencies are

revising the answer in Q&A Force Placement 7 to include an example that provides if a policy expires at 12:01 am on a certain day, the new policy should be effective as of 12:01 am of the same day.

Force Placement 8. The Agencies proposed to redesignate existing Q&A 59 as proposed Q&A Force Placement 8. In the July 2020 Proposed Questions and Answers, the Agencies significantly revised this Q&A to discuss more fully the minimum amount of flood insurance coverage that is statutorily required and to illustrate this point through a hypothetical example. The proposed answer stated that if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premiums and fees that will be added to the loan balance.

Several commenters recommended that the Agencies revise proposed Q&A Force Placement 8, as well as Q&A Force Placement 10, to consistently use the term "outstanding principal balance," which is the term used in the Regulation to determine the amount of minimum flood insurance coverage required. The proposed answer used "outstanding principal balance" interchangeably with "loan balance." Similarly, commenters stated that the Agencies should amend the answer to use the term "capitalized" rather than "added." These commenters stated that, consistent with accounting standards, fees, secured advances, interest and other amounts authorized by a loan agreement are treated distinctly from the outstanding principal balance of the loan unless they are capitalized into the outstanding principal balance. As a result, these commenters contended that fees that have not been capitalized into the outstanding principal balance should not be taken into account when determining the minimum amount of required flood insurance.

The Agencies agree with these commenters and are revising Q&A Force Placement 8 as suggested to consistently use the term "outstanding principal balance" and provide that if the outstanding principal balance is used as the basis for determining the minimum amount of required flood insurance, then the lender should take into account any premiums and fees that have been capitalized into the outstanding principal balance in determining the required minimum amount. For consistency, the Agencies also are making these changes in terminology in Q&A Force Placement 10, as discussed below. With the changes discussed above, the Agencies are adopting Q&A Force Placement 8, with a minor non-substantive change.

Force Placement 9. The Agencies proposed to redesignate existing Q&A 62 as proposed Q&A Force Placement 9. This Q&A addresses when a lender or its servicer may charge the borrower for the cost of force-placed flood insurance. The proposed answer clarified that a lender or servicer may charge a borrower for the cost of force-placed flood insurance beginning on the date of lapse or insufficient coverage, and would not need to wait 45 days after providing notification to force place insurance. As the Agencies stated in the preamble to the July 2020 Proposed Questions and Answers, lenders that monitor loans secured by property located in an SFHA for continuous coverage of flood insurance help ensure that they complete the force placement of flood insurance in a timely manner and minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. The proposed answer further explained that if a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, it may charge for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf, including premiums and fees incurred for coverage

beginning on the date of lapse or insufficient coverage, if the lender has purchased a policy on the borrower's behalf and that policy was effective as of the date of the insufficient coverage.

Several commenters suggested that the Agencies include an example with specific dates in the answer to Q&A Force Placement 9 to illustrate when it may be appropriate for a lender to "backdate" a force-placed flood insurance policy and charge the borrower. However, the Agencies note that evaluating such actions by a lender depends on the specific facts and circumstances. As a result, the Agencies believe that including a particular example in the answer that would not be broadly applicable would not provide helpful guidance.

Although the Regulation states that a lender may charge a borrower for the cost of force-placed insurance beginning on the date of lapse or insufficient coverage, the Agencies note that significant "backdating" of flood insurance policies could indicate that there are weaknesses with the lender's compliance management system. Therefore, rather than providing an example, which would be of limited utility, the Agencies are adding language stating that 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. The Agencies believe that the addition of this language to Q&A Force Placement 9 would provide guidance on the Agencies' supervision of such practices and would be more helpful than a specific example.

Some commenters suggested that the Agencies amend the last sentence of the proposed answer, which stated that 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. These commenters noted that a policy may provide coverage effective to a date that precedes the date purchased. The Agencies decline to make this change. If there is no coverage for the borrower prior to purchase of the policy, such as coverage that may be provided under a dual interest master policy, then it would be inappropriate for a lender to charge a borrower for coverage the borrower did not have.

With the addition discussed above, the Agencies are adopting Q&A Force Placement 9.

Force Placement 10. The Agencies proposed new Q&A Force Placement 10 to discuss various methods of charging a borrower for the amount of force-placed flood insurance policy premiums and fees and when such methods would constitute an "increase" that would trigger the applicability of certain flood insurance regulatory requirements. Proposed Q&A Force Placement 10 described three options that the Agencies understand lenders may use to charge a borrower for force-placed flood insurance: adding the premium and fees to the "mortgage loan balance;" adding premiums and fees to an unsecured account; or billing the premium and fees directly to the borrower.

As discussed above with respect to Q&A Force Placement 8, several commenters requested that the Agencies consistently use the term "outstanding loan balance" and to distinguish between instances when fees from force-placed flood insurance are "capitalized" into the outstanding loan balance and when they are not. For the reasons discussed in connection with Q&A Force Placement 8, the Agencies are revising Q&A Force Placement 10 to incorporate these changes in terminology. The Agencies also are revising the discussion of the second method to refer more generally to adding premiums and fees to an account, rather than an "unsecured" account, as the Agencies understand that amounts advanced to cover premiums and

fees that have not been capitalized into the outstanding principal balance may still be secured by the property.

One of these commenters also noted that lenders may advance funds to cover force-placed flood insurance premiums and fees through an advance of the borrower's escrow account. The commenter further stated that such a method also would not cause an increase in the outstanding principal balance, and as a result, should not be considered an "increase" that would trigger the applicability of certain flood insurance regulatory requirements. The Agencies agree and are including this method as another example in Q&A Force Placement 10. With the changes discussed above, the Agencies are adopting Q&A Force Placement 10.

Force Placement 11. The Agencies proposed new Q&A Force Placement 11, which addressed the sufficiency of evidence of flood insurance in connection with refunding premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance. The proposed answer provided that, as stated in the Regulation, a lender is required to refund premiums paid by a borrower for force-placed flood insurance during any period of overlap with borrower-purchased flood insurance. The proposed answer stated that in that scenario, a lender must accept a policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent and that the Regulation does not require that the declarations page include any additional information. The proposed answer also discussed documentation with respect to situations not involving a lender's refund of premiums for force-placed insurance.

Several commenters requested guidance on whether and how Q&A Force Placement 11 applies to reviewing flood insurance policies issued by private insurers to determine whether they meet the private flood insurance requirements of the Regulation. In response, the Agencies

are clarifying that the answer in Q&A Force Placement 11 relates to ascertaining the sufficiency of the policy to meet the mandatory flood insurance purchase requirement to determine whether a refund is required. In addition, the Agencies are including a cross-reference to Q&A Private Flood Compliance 5 for guidance relating to evaluating whether the policy meets the private flood insurance requirements of the Regulation.

Another commenter suggested that the Agencies require that the declarations page also include the coverage amount, deductible, and term of the policy. However, as noted, for the refund provision of the force placement requirement, the Act and the Regulation state that for purposes of confirming a borrower's existing flood insurance coverage, a lender 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 its agent. Therefore, the Agencies cannot mandate that the declarations page include any additional information.

Force Placement 12. The Agencies proposed new Q&A Force Placement 12 to address whether a lender is required to refund any premiums to the borrower if the lender cannot obtain a refund from the insurance company because the borrower did not provide proof of coverage in a timely manner or the insurance company fails to provide the lender the refund within 30 days. The proposed answer clarified that the lender must refund any premiums and fees paid by the borrower for force-placed insurance that overlaps with a borrower-purchased flood insurance policy within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage. The lender must provide this refund to the borrower within the specified time period under the Regulation without exception, even when the lender has not yet received a refund from the insurance provider of the force-placed flood insurance policy. One commenter agreed with

the proposed answer but thought the question proposed by the Agencies for Q&A Force Placement 12 was confusing and suggested that the Agencies reword the question. The Agencies agree with the commenter and are revising the question in Q&A Force Placement 12 to be similar to the language suggested by the commenter. Thus, the question, as adopted, asks if a lender receives confirmation of a borrower's existing flood insurance coverage evidencing an overlap in coverage 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 obligated to refund any premiums for overlapping coverage to the borrower within 30 days. The Agencies are adopting Q&A Force Placement 12 with the change to the question discussed above.

Force Placement 13. The Agencies proposed new proposed Q&A Force Placement 13 to explain that a lender can rely on a force-placed flood insurance policy to satisfy the mandatory purchase requirement for a refinance or loan modification if the borrower does not purchase his or her own policy. The proposed answer also suggested that lenders could encourage the borrower to purchase his or her own policy, likely at a reduced cost, prior to the loan closing. One commenter specifically agreed with the Agencies' proposed answer to the question. Another commenter suggested that the Agencies amend the answer to clearly note that the lender's encouragement of the borrower to purchase his or her own policy is at the lender's discretion. The Agencies are amending the answer in Q&A Force Placement 13 to include the phrase "at its discretion" to make clear that this suggested encouragement is optional. This same commenter also noted that stating that a borrower-purchased flood insurance policy would "likely" be at a reduced cost compared to the force-placed flood insurance policy may not always be true. In response, the Agencies are amending the language in Q&A Force Placement 13 to

state that a borrower-purchased flood insurance policy "may be available at a lower premium amount" to soften the language and also make it consistent with similar language in Q&A Force Placement 14.

Another commenter suggested that the Agencies remove the term "refinances" from the proposed answer because the commenter did not believe that a refinancing is always a triggering event. The Agencies do not agree with this commenter's characterization of a refinancing. A refinancing is the termination of an old loan contract and the making of a new loan in its place; as a result, a refinancing is the "making" of a loan and does trigger flood insurance requirements under the Regulation. The Agencies are adding language to the Q&A to make this position clear. In addition, based on this comment, the Agencies reexamined the references to loan modifications in Q&A Force Placement 13 and are making revisions to the answer to clarify that the loan modifications discussed in the answer are only those that would result in the increase, renewal, or extension of a loan; in other words, those loan modifications that would constitute a triggering event under the Regulation. The Agencies are also adding cross references to Q&As Applicability 6 and Applicability 13. Finally, the Agencies are making a minor non-substantive change to the answer.

Force Placement 14. The Agencies proposed new Q&A Force Placement 14 in response to an issue raised by EGRPRA commenters.[50] Under the proposed answer, a lender is not required to send a notice prior to force-placing insurance at the expiration of a force-placed policy, but the lender or its servicer, at its discretion, may notify the borrower about its plan to renew the force-placed policy. Commenters to the July 2020 Proposed Questions and Answers appreciated the flexibility and clarity provided in the proposed answer and noted that lenders

[50] *See* FFIEC Joint EGRPRA Report to Congress, March 2017 at 124, https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

typically choose one of two methods to notify borrowers of renewal of a lender-placed policy: (1) renewal with a pre-expiration notice; or (2) renewal with a post-expiration notice. One of these commenters suggested language to expand the answer to explain these notice cycle methods. However, the Agencies note that the proposed answer already states that 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. Therefore, the answer already contemplates both notice cycle methods, and the Agencies are adopting Q&A Force Placement 14 as proposed.

Force Placement 15. The Agencies proposed new Q&A Force Placement 15 to indicate that, although there is no explicit duty to monitor flood insurance coverage over the life of the loan in the Act or Regulation, for purposes of safety and soundness, many lenders obtain "life-of-loan" monitoring. One commenter agreed with the Agencies' statement that neither the Act nor the Regulation require lenders to monitor flood insurance over the life of the loans but recommended that the answer be combined into the answer for Q&A Force Placement 1. The commenter also stated that the term "life-of-loan" monitoring is generally associated only with monitoring changes in flood zone maps. The Agencies believe that it is important to distinguish the guidance provided in Q&A Force Placement 15 from the general discussion on force placement in Q&A Force Placement 1. Consequently, the Agencies are keeping Q&A Force Placement 15 as a separate Q&A. However, to clarify that the "life of loan" monitoring referenced in Q&A Force Placement 15 is "life of loan" monitoring related to continuous coverage rather than monitoring for map changes, the Agencies are amending the question to denote that the Q&A concerns "life of loan" monitoring for continuous coverage of designated loans. With this change, the Agencies are adopting Q&A Force Placement 15.

Force Placement 16. The Agencies proposed new Q&A Force Placement 16 to address what a lender or its servicer must do if it receives a notice indicating that a property will be remapped into an SFHA as of a future effective date. Many commenters stated that lenders do not always receive advance notice of a remapping and requested that the Agencies also provide guidance to lenders when they receive notice that a property already has been remapped. In response to commenters' suggestions, the Agencies are expanding Q&A Force Placement 16 to include guidance on a lender's or servicer's responsibility when it receives notice after a property securing a designated loan has been remapped. In those cases, lenders should follow the requirements outlined in Q&A Force Placement 1. The adopted answer also adds a cross-reference to Q&A Force Placement 9 to address questions regarding when the lender or servicer may charge the borrower for a force-placed flood insurance policy.

One commenter was confused by the proposed answer's statement that the effective date of future remap is the date the lender or servicer must determine sufficiency of flood insurance coverage, but also providing that the lender or servicer may immediately force-place flood insurance as of the remapping effective date. The commenter stated that as written, the proposed answer seemed to suggest that two different effective dates are possible. To clarify, the Agencies' are amending the answer to state that 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 policy.

With the changes described above, the Agencies are adopting Q&A Force Placement 16.

Other Comments. One commenter stated that the Q&As on force placement should generally reflect a consistent treatment of the sequence of the force placement process beginning

with determination of absent or insufficient coverage, then notice, and finally placement of flood insurance throughout the duration of the loan. The Agencies have reviewed the force placement Q&As generally to ensure that they reflect this sequence. This commenter also requested that the Agencies define what lender actions constitute making a "determination" that flood insurance is absent or inadequate and whether that determination is conditional. The Agencies do not believe it is possible to define all instances of when a lender "determines" flood insurance is absent or inadequate and that determination is not necessarily "conditioned" on any specific actions or events.

Another commenter urged the Agencies to clarify when the insufficiency or inadequacy of a flood insurance policy necessitates starting the force placement process, such as when a lender receives a new flood insurance policy or when a flood insurance policy is renewed and coverage is determined insufficient or inadequate. The Agencies decline to limit determination of insufficiency or inadequacy of a flood insurance policy to the instances described by the commenter. Under the Regulation, this determination can occur at any point during the life of the loan.

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

The Agencies proposed to move current section VIII, which provides guidance on flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights, to proposed section XVI, and to redesignate current Q&As 44 through 50 as Q&As Servicing 1 through 7, respectively. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. The Agencies proposed to revise these questions and answers to account for the change in the title of the head of FEMA from

"Director" to "Administrator" and received no specific comment on that proposed revision, which is included in the final Interagency Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Servicing section as Section XVIII in the 2022 Interagency Questions and Answers.

One commenter recommended that the Agencies clarify whether all Q&As in this section apply to flood insurance policies issued by private insurers. In response, the Agencies are revising the Q&As where appropriate to clarify that the requirement that a regulated lender must provide notice of a new servicer's identity to the Administrator of FEMA (or the Administrator's designee) applies to NFIP policies. In the case of a flood insurance policy issued by a private insurer, the lender should provide notice of a new servicer's identity to the flood insurance provider, as FEMA does not accept these notices for policies issued by private insurers. If the lender did not provide notice of a new servicer's identity to the flood insurance provider, the provider would be unable to properly administer the policy, such as by providing notice to the servicer about the expiration of the flood insurance policy. The burden of such notification should be minor because exchanges of information between the lender and the insurance provider ordinarily occur as a matter of routine. Where appropriate, the final Servicing Q&As contain revisions that incorporate this clarification. These revisions are discussed below.

Servicing 1. The Agencies proposed to redesignate existing Q&A 44 as proposed Q&A Servicing 1. This proposed Q&A explained how the flood insurance requirements under the Regulation apply to lenders under two scenarios involving loan servicing. The Agencies received no specific comments on Q&A Servicing 1. However, the Agencies are clarifying in the final Q&A the applicability of the notice requirements to flood insurance policies issued by

private insurers, as discussed above. The Agencies are adopting Servicing 1 with this change and with other minor non-substantive revisions.

Servicing 2. The Agencies proposed to redesignate existing Q&A 45 as proposed Q&A Servicing 2. This proposed Q&A addressed the question of when a lender must provide notice to FEMA or its designee when that lender will be the servicer of the loan. Several commenters recommended that the Agencies clarify in the answer that the notice requirement does not apply where the flood insurance policy is issued by a private insurer. The commenter stated that there appears to be no reason to notify FEMA or its designee that the lender is the servicer of the loan when the property securing the loan is not insured by an NFIP policy. In the alternative, a commenter suggested that the Agencies could add a new Q&A to the Private Flood Compliance Q&As that provides this clarification. This commenter also asserted that the Agencies should make a technical change to the Regulation to remedy the situation. Another commenter also identified this concern but did not provide specific suggestions or recommendations.

In response to these comments, the Agencies are clarifying the answer to provide that in the case of a flood insurance policy issued by a private insurer, the lender should provide notice of a new servicer's identity to the flood insurance provider. The Agencies also state in the revised answer that if the lender does not provide this notice to the flood insurance provider, the provider will be unable to properly administer the policy, such as by providing notice to the servicer about the expiration of the flood insurance policy. Revising the Regulation to address this point is beyond the scope of the Interagency Questions and Answers.

One commenter interpreted the Regulation to indicate that the process of acquiring or revising a flood insurance policy will fulfill the initial notification requirement. The commenter noted that the Regulation provides no exception for the notice when dealing with a scenario

where an RCBAP provides sufficient coverage (*i.e.,* no additional individual flood insurance policy is required). The commenter stated that in this scenario, the Administrator of FEMA or the Administrator's designee would not receive notice, since a flood insurance policy is not purchased or updated. The commenter asked for clarification of the Agencies' expectation in this scenario. In response to this comment, the Agencies clarify that if a unit owner does not purchase or update a separate policy, then no notice is required. However, notice would be required if the unit owner purchases or updates a separate dwelling policy. The Agencies are not changing the Q&A in response to this comment.

The Agencies are adopting this Q&A with the changes discussed above, along with minor technical, non-substantive changes.

Servicing 3. The Agencies proposed to redesignate existing Q&A 46 as proposed Q&A Servicing 3. This proposed Q&A explained that a RESPA Notice of Transfer sent to the Administrator of FEMA (or the Administrator's designee, *i.e.*, the insurance provider) satisfies the requirements of the Act. The Agencies received no specific comments on Q&A Servicing 3 and are adopting it with a minor non-substantive change to the question but otherwise as proposed.

Servicing 4. The Agencies proposed to redesignate existing Q&A 47 as proposed Q&A Servicing 4. This proposed Q&A explained that delivery of the notice can be delivered electronically, including by batch transmission. The Agencies received no specific comments on Q&A Servicing 4 and are adopting it as proposed.

Servicing 5. The Agencies proposed to redesignate existing Q&A 48 as proposed Q&A Servicing 5. This proposed Q&A addressed the question of whether a lender is required to provide notice to the Administrator or the Administrator's designee (*i.e.*, the insurance provider)

if a loan and its servicing rights are sold by the lender. The Agencies received no specific comments on Q&A Servicing 5. In the final Q&A, the Agencies are clarifying the applicability of the notice requirement to flood insurance policies issued by private insurers, as discussed above. With this change, the Agencies are adopting Q&A Servicing 5 otherwise as proposed.

Servicing 6. The Agencies proposed to redesignate existing Q&A 49 as proposed Q&A Servicing 6. This proposed Q&A addressed the question of whether a lender is required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer. The proposed answer provided that after servicing rights are sold or transferred, the subsequent notification obligations applicable in connection with NFIP policies are the responsibility of the new servicer. The Agencies received no specific comments on Q&A Servicing 6. In the final Q&A, the Agencies are clarifying that in connection with a flood insurance policy issued by a private insurer the Agencies do not expect the lender to provide notice to the private insurance provider of any subsequent sale or transfer of the servicing rights because the new servicer should provide this notice. With this change, and a minor non-substantive edit, the Agencies are adopting Q&A Servicing 6 otherwise as proposed.

Servicing 7. The Agencies proposed to redesignate existing Q&A 50 as proposed Q&A Servicing 7. This proposed Q&A addressed the responsibilities of the parties for notifying the Administrator's designee (*i.e.,* the insurance provider) in the event of a merger or acquisition of one lender with another. The Agencies received no specific comments on Q&A Servicing 7. In the final Q&A, the Agencies are clarifying the applicability of the notice requirement to flood insurance policies issued by private insurers, as discussed above. With this change, the Agencies are adopting Q&A Servicing 7 otherwise as proposed.

Section XIX. Mandatory Civil Money *Penalties (Penalty)*

Section XVII includes questions and answers related to mandatory civil penalties. For organizational purposes, the Agencies proposed to move existing section XVI to proposed section XVII and redesignated existing Q&As 81 and 82 as proposed Q&A Penalty 1 and 2, respectively. The Agencies proposed changes to the Q&As in this section in the July 2020 Proposed Questions and Answers. Because the Agencies are combining the July 2020 Proposed Questions and Answers and the March 2021 Proposed Questions and Answers into one document, the Agencies are renumbering this Penalty section as Section XIX in the 2022 Interagency Questions and Answers.

Penalty 1. The Agencies proposed to redesignate existing Q&A 81 as proposed Penalty 1. This Q&A discusses which violations of the Act can result in a mandatory civil money penalty. The Agencies proposed to update this Q&A to reflect, as provided in the Biggert-Waters Act: (1) the increased maximum civil money penalty that the Agencies may impose per violation when there is a pattern or practice of flood violations; and (2) the elimination of the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year.[51] Specifically, proposed Q&A Penalty 1 provides that the civil money penalty amount cannot exceed $2,000 per violation and that there is no ceiling on the total penalty amount that a Federal supervisory agency can assess for a pattern or practice of violations. This Q&A also notes that each Agency adjusts the limit pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. For purposes of clarity and accuracy, the Agencies also proposed minor revisions with no intended change in substance or meaning. The Agencies received no specific comments on this Q&A and are adopting Q&A Penalty 1 as proposed, with

[51] *See* 42 U.S.C. 4012a(f)(5). *See also* Pub. L. 112–141, 126 Stat. 916 (2012).

the addition of more specific citations to the Federal Civil Penalties Inflation Adjustment Act of 1990.

Penalty 2. The Agencies proposed to redesignate existing Q&A 82 as proposed Q&A Penalty 2 with only minor revisions, with no intended change in substance or meaning. This Q&A addresses what constitutes a "pattern or practice" of violations for which civil money penalties must be imposed under the Act. The Agencies received no specific comments on this Q&A and are adopting it as proposed.

Redesignation Table

The following redesignation table is provided as an aid to assist the public.

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation	Section I. Determining the Applicability of Flood Insurance Requirements for Certain Loans
Section 1, Question 1	Section I, Applicability 1
Section 1, Question 2	Section I, Applicability 4
Section 1, Question 3	Section I, Applicability 5
Section 1, Question 4	Section I, Applicability 9
Section 1, Question 5	Section I, Applicability 6
Section 1, Question 6	Section I, Applicability 7
Section 1, Question 7	Section I, Applicability 8

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation	Section X. Determining the Appropriate Amount of Flood Insurance Required
Section II, Question 8	Section X, Amount 1
Section II, Question 9	Section X, Amount 2
Section II, Question 10	Deleted
Section II, Question 11	Section X, Amount 3
Section II, Question 12	Section X, Amount 4
Section II, Question 13	Section X, Amount 5
Section II, Question 14	Section X, Amount 6
Section II, Question 15	Section X, Amount 7
Section II, Question 16	Section X, Amount 8
Section II, Question 17	Section X, Amount 9
Section III. Exemptions from the Mandatory Flood Insurance Requirements	Section II. Exemptions from the Mandatory Flood Insurance Purchase Requirements
Section III, Question 18	Section II, Exemptions 1

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section IV. Flood Insurance Requirements for Construction Loans	Section XI, Flood Insurance Requirements for Construction Loans
Section IV, Question 19	Section XI, Construction 1
Section IV, Question 20	Section XI, Construction 2
Section IV, Question 21	Section XI, Construction 3
Section IV, Question 22	Section XI, Construction 4
Section IV, Question 23	Section XI, Construction 5
Section V. Flood Insurance Requirements for Non-Residential Buildings	
Section V, Question 24	Section I, Applicability 2
Section V, Question 25	Section I, Applicability 3
Section VI. Flood Insurance Requirements for Residential Condominiums	Section XII. Flood Insurance Requirements for Residential Condominiums and Co-Ops
Section VI, Question 26	Section XII, Condo and Co-Op 1
Section VI, Question 27	Section XII, Condo and Co-Op 2
Section VI, Question 28	Section XII, Condo and Co-Op 3
Section VI, Question 29	Section XII, Condo and Co-Op 4
Section VI, Question 30	Section XII, Condo and Co-Op 5
Section VI, Question 31	Section XII, Condo and Co-Op 6
Section VI, Question 32	Section XII, Condo and Co-Op 7
Section VI, Question 33	Section XII, Condo and Co-Op 8

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA	Section XIII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA
Section VII, Question 34	Section XIII, Other Security Interests 1
Section VII, Question 35	Section XIII, Other Security Interests 2
Section VII, Question 36	Section XIII, Other Security Interests 4
Section VII, Question 37	Section XIII, Other Security Interests 5
Section VII, Question 38	Section XIII, Other Security Interests 6
Section VII, Question 39	Section XIII, Other Security Interests 7
Section VII, Question 40	Section XIII, Other Security Interests 8
Section VII, Question 41	Section XIII, Other Security Interests 9
Section VII, Question 42	Section XIII, Other Security Interests 11
Section VII, Question 43	Section XIII, Other Security Interests 12
Section VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights	Section XVIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights
Section VII, Question 44	Section XVIII, Servicing 1
Section VII, Question 45	Section XVIII, Servicing 2
Section VII, Question 46	Section XVIII, Servicing 3
Section VII, Question 47	Section XVIII, Servicing 4
Section VII, Question 48	Section XVIII, Servicing 5

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section VII, Question 49	Section XVIII, Servicing 6
Section VII, Question 50	Section XVIII, Servicing 7
Section IX. Escrow Requirements	Section XIV-XVI. Requirement to Escrow Flood Insurance Premiums and Fees
Section IX, Question 51	Section XIV, Escrow 5
Section IX, Question 52	Section XIV, Escrow 1
Section IX, Question 53	Deleted
Section IX, Question 54	Deleted
Section IX, Question 55	Section XVI, Escrow Loan Exceptions 1
Section IX, Question 56	Section XVI, Escrow Loan Exceptions 4
Section X. Force Placement	Section XVII. Force Placement of Flood Insurance
Section X, Question 57	Section XVII, Force Placement 1
Section X, Question 58	Section XVII, Force Placement 3
Section X, Question 59	Section XVII, Force Placement 8
Section X, Question 60	Section XVII, Force Placement 4
Section X, Question 61	Section XVII, Force Placement 5
Section X, Question 62	Section XVII, Force Placement 9
Section XI. Private Flood Insurance	Section III-V. Private Flood Insurance
Section XI, Question 63	Deleted
Section XI, Question 64	Section I, Applicability 14

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section XII. Required Use of Standard Flood Hazard Determination Form (SFHDF) Section XII, Question 65 Section XII, Question 66 Section XII, Question 67 Section XII, Question 68	Section VI. Standard Flood Hazard Determination Form (SFHDF) Section VI, SFHDF 1 Section VI, SFHDF 2 Section VI, SFHDF 3 Section VI, SFHDF 4
Section XIII. Flood Determination Fees Section XIII, Question 69 Section XIII, Question 70	Section VII. Flood Insurance Determination Fees Section VII, Fees 1 Section VII, Fees 2
Section XIV. Flood Zone Discrepancies Section XIV, Question 71 Section XIV, Question 72	Section VIII. Flood Zone Discrepancies Section VIII, Zone 1 Section VIII, Zone 2
Section XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief Section XV, Question 73 Section XV, Question 74 Section XV, Question 75 Section XV, Question 76 Section XV, Question 77 Section XV, Question 78 Section XV, Question 79	Section IX. Notice of Special Flood Hazards and Availability of Federal Disaster Relief Section IX, Notice 1 Section IX, Notice 2 Section IX, Notice 3 Section IX, Notice 4 Section IX, Notice 4 Section IX, Notice 5 Section IX, Notice 6

2009 & 2011 Interagency Q&A	2022 Interagency Q&A
Section XV, Question 80	Section IX, Notice 7
Section XVI. Mandatory Civil Money Penalties Section XVI, Question 81 Section XVI, Question 82	Section XIX. Mandatory Civil Money Penalties Section XIX, Penalty 1 Section XIX, Penalty 2

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of flood insurance law and regulations. For ease of reference, the following terms are used throughout this document: "Act" refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised. "Regulation" refers to each Agency's current final rule.[1] "Lenders" refers only to regulated lending institutions as defined in the Act.[2] "Designated loan" means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area (SFHA) in which flood insurance is available under the Act. The Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA) (collectively, "the Agencies") are providing answers to questions pertaining to the following topics:

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

II. Exemptions from the Mandatory Flood Insurance Purchase Requirements

III. Private Flood Insurance – Mandatory Acceptance

[1] 12 CFR part 22 (OCC); 12 CFR 208.25 (Board); 12 CFR part 339 (FDIC); 12 CFR part 614, subpart S (FCA); and 12 CFR part 760 (NCUA).
[2] 42 U.S.C 4003(a)(10).

IV. Private Flood Insurance – Discretionary Acceptance

V. Private Flood Insurance – General Compliance

VI. Standard Flood Hazard Determination Form (SFHDF)

VII. Flood Insurance Determination Fees

VIII. Flood Zone Discrepancies

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

X. Determining the Appropriate Amount of Flood Insurance Required

XI. Flood Insurance Requirements for Construction Loans

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

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

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

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

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

XVII. Force Placement of Flood Insurance

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

XIX. Mandatory Civil Money Penalties

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

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

Yes, the Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in 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.[3] If the building or mobile home is determined to be located in an SFHA, a lender is required to mail or deliver a written notice to the borrower.[4] In this case, a lender, generally, may make a conventional loan without requiring flood insurance. However, because Federal agencies such as the Small Business Administration, Veterans Administration, or Federal Housing Administration are prohibited from guaranteeing or insuring a loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP, a lender would not be able to make a Federally guaranteed or insured loan. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to avoid making a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would pose an unacceptable risk to the lender.

[3] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).
[4] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

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

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

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

A lender must determine whether a building securing the loan is in an SFHA.[7] In cases in which the loan is secured by multiple buildings and some of the buildings are located in an

[5] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[6] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).
[7] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

SFHA in which flood insurance is available under the Act, but other buildings are not located in an SFHA (or are located in an SFHA, but not in a participating community), a lender is required to obtain flood insurance only on the buildings securing the loan that are located in an SFHA in which flood insurance is available under the Act.[8] For example, assume a loan is secured by five buildings as follows:

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

In this scenario, the lender is required to obtain insurance only on buildings 1 and 2. As a matter of safety and soundness, however, a lender may decide to require the purchase of flood insurance (from a private insurer) on buildings 4 and 5 because these buildings are located in an SFHA. In addition, depending on the risk factors of building 3, the lender may elect to require flood insurance as a matter of safety and soundness, even if the building is not located in an SFHA.

Further, if any portion of a building is located in an SFHA in which flood insurance is available under the Act, the flood insurance requirement applies even if the entire structure is not located in the SFHA. However, a building located on a portion of a plat or lot that is not in an SFHA is not subject to the mandatory flood insurance purchase requirement even if a portion of the plat or lot not containing a building extends into an SFHA.[9]

[8] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[9] *See* 42 U.S.C. 4012a(b); FEMA Standard Flood Hazard Determination Form.

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

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

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

No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation are triggered when a lender makes, increases, extends, or renews a designated loan.[10] 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.[11] Depending on the circumstances, the lender may need to conduct due

[10] 12 CFR 22.2(e), 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (c)(1) (Board); 12 CFR 339.2, 339.3(a) (FDIC); 12 CFR 614.4925, 614.4930 (FCA); and 12 CFR 760.2, 760.3(a) (NCUA).
[11] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.[12]

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

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

In contrast, if the loan modification or restructuring changes terms of the loan such as by increasing the outstanding principal balance beyond what was contemplated as part of the loan under the contract with the borrower, or by extending the maturity date of the loan, the Regulation would apply because the lender increased or extended the terms of the loan beyond what was originally contemplated to be part of the loan.[13]

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

Yes. Table funding, as defined in the Regulation, means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person

[12] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).
[13] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).

advancing the funds.[14] A loan made through a table funding process is treated as though the party advancing the funds has originated the loan.[15] The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

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

No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed,[16] 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.[17] Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

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

The acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of the Act or the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.

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[14] 12 CFR 22.2(m) (OCC); 12 CFR 208.25(b)(11) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[15] 12 CFR 22.3(b) (OCC); 12 CFR 208.25(c)(2) (Board); 12 CFR 339.3(b) (FDIC); 12 CFR 614.4930(b) (FCA); and 12 CFR 760.3(b) (NCUA).
[16] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).
[17] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.[18] Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan.[19] 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.

[18] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[19] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

No. Consistent with Q&A Applicability 9, the Agencies expect that a lender participating in a multi-tranche credit facility will perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with the flood insurance requirements. 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.

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

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

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

During a period when coverage under the NFIP is not available, such as due to a lapse in authorization or in appropriations, lenders may continue to make loans subject to the Regulation without requiring flood insurance coverage. However, lenders must continue to make flood determinations,[20] provide timely, complete, and accurate notices to borrowers,[21] 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

[20] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).
[21] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

will be obtained for these loans, including, if necessary, by force placement.[22] 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.

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

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).[23] 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.[24]

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

[22] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[23] 12 CFR 22.3(a); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[24] *See* 12 CFR part 22 (OCC); 12 CFR part 208.25 (Board); 12 CFR part 339 (FDIC); 12 CFR part 614 (FCA); and 12 CFR part 760 (NCUA).

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).

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

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,[25] 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.

[25] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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

The Regulation states that a lender cannot "make" a loan secured by a property in an SFHA without adequate flood insurance coverage being in place.[26] 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.*

[26] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

II. *EXEMPTIONS FROM THE MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS (EXEMPTIONS)*

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

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.[27] 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.[28] 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.[29] *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.

[27] 12 CFR 22.4(a) (OCC); 12 CFR 208.25(d)(1) (Board); 12 CFR 339.4(a) (FDIC); 12 CFR 614.4932(a) (FCA); and 12 CFR 760.4(a) (NCUA).
[28] 12 CFR 22.4(b) (OCC); 12 CFR 208.25(d)(2) (Board); 12 CFR 339.4(b) (FDIC); 12 CFR 614.4932(b) (FCA); and 12 CFR 760.4(b) (NCUA).
[29] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

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

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.[30] 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.[31] In this example, only the garage is serving a residential use, so it could qualify for the exemption. The barn, equipment storage shed, and silo, which are used for farm production, would not qualify for the exemption.

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

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

[30] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).
[31] 12 CFR 22.4(c)(1) (OCC); 12 CFR 208.25(d)(3)(i) (Board); 12 CFR 339.4(c)(1)(FDIC); 12 CFR 614.4932(c)(1) (FCA); and 12 CFR 760.4(c)(1) (NCUA).

In order to determine whether the exemption for non-residential detached structures that are part of a residential property may apply, a flood hazard determination must be conducted first, without regard to whether there may be any detached structures that could be exempt.[32]

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

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

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

Yes, a lender must examine the status of a detached structure upon a qualifying triggering event to determine whether the detached structure exemption still applies.[34] *See* Applicability 13. There is no duty to monitor the status of a detached structure following the lender's initial determination unless a triggering event occurs. However, regardless of the absence of a duty to monitor the status of a detached structure in the Regulation, sound risk management practices

[32] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).
[33] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).
[34] 12 CFR 22.3(a) and 22.4(c) (OCC); 12 CFR 208.25(c)(1) and 208.25(d)(3) (Board); 12 CFR 339.3(a) and 339.4(c) (FDIC); 12 CFR 614.4930(a) and 614.4932(c) (FCA); and 12 CFR 760.3(a) and 760.4(c) (NCUA).

may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

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

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.[35] 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.[36] 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.[37]

EXEMPTIONS 7. If a loan is secured by a residential property and the primary residential structure is joined to another building by a stairway or covered walkway, for

[35] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).
[36] *Id*.
[37] 12 CFR 22.4(a) and (b) (OCC); 12 CFR 208.25(d)(1) and (2) (Board); 12 CFR 339.4(a) and (b) (FDIC); 12 CFR 614.4932(a) and (b) (FCA); and 12 CFR 760.4(a) and (b) (NCUA).

purposes of Federal flood insurance requirements, would the other building qualify as a detached structure?

For purposes of the detached structure exemption, a structure is "detached" from the primary residential structure if it is not joined by any structural connection to that structure.[38] 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.

III. *PRIVATE FLOOD INSURANCE – MANDATORY ACCEPTANCE (MANDATORY)*

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

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

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

The Regulation does not require that a lender originate a loan that does not meet the lender's underwriting criteria. The flood insurance purchase requirement only applies to loans

[38]12 CFR 22.4(c)(2) (OCC); 12 CFR 208.25(d)(3)(ii) (Board); 12 CFR 339.4(c)(2) (FDIC); 12 CFR 614.4932(c)(2) (FCA); and 12 CFR 760.4(c)(2) (NCUA).

secured by structures located or to be located in an SFHA in which flood insurance is available under the Act.[39] The flood insurance purchase requirement does not apply within non-participating communities, where NFIP insurance is not available under the Act. *See* Q&A Applicability 1. Therefore, the lender does not need to change its policy of not originating mortgages in areas where NFIP insurance is unavailable solely because of the private flood insurance requirements under the Regulation.

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

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

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

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

[39] Pub. L. 93–234, 87 Stat. 975 (1973).

However, the lender is not required to accept this policy based upon inclusion of the compliance aid statement alone and may choose to make its own determination about whether the policy meets the definition of "private flood insurance" or whether the policy is acceptable under the discretionary acceptance or mutual aid criteria.[40]

If a flood insurance policy issued by a private insurer does not include the compliance aid statement, the lender may not reject the policy solely because it does not include this statement. The lender is not relieved from the requirement to accept a policy that meets the definition of "private flood insurance," as long as the policy meets the amount of insurance required under the Regulation.[41] Further, the lender may determine the policy is acceptable under the discretionary acceptance or mutual aid criteria.

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

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

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[40] *See* 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c)(3) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).
[41] 12 CFR 22.3(c)(1) (OCC); 12 CFR 208.25(c)(3)(i) (Board); 12 CFR 339.3(c)(1) (FDIC); 12 CFR 614.4930(c)(1) (FCA); and 12 CFR 760.3(c)(1) (NCUA).
[42] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25(c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).
[43] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25(c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).

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.

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

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

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

Yes, the lender may first review the policy to determine whether it meets the criteria under the discretionary acceptance provision.[45] However, if the policy does not meet the

[44] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[45] 12 CFR 22.3(c)(3) (OCC); 12 CFR 208.25(c)(3)(iii) (Board); 12 CFR 339.3(c)(3) (FDIC); 12 CFR 614.4930(c)(3) (FCA); and 12 CFR 760.3(c)(3) (NCUA).

discretionary acceptance criteria, the lender will still need to determine whether it must accept the policy under the mandatory acceptance criteria.[46]

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

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

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

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

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

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[46] 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c)(3) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).

[47] 12 CFR 22.3(c)(3) (OCC); 12 CFR 208.25(c)(3)(iii) (Board); 12 CFR 339.3(c)(3) (FDIC); 12 CFR 614.4930(c)(3) (FCA); and 12 CFR 760.3(c)(3) (NCUA).

IV. PRIVATE FLOOD INSURANCE – DISCRETIONARY ACCEPTANCE (DISCRETIONARY)

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

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.

DISCRETIONARY 2. If the lender determines that a flood insurance policy meets the discretionary acceptance criteria and accepts that policy, what documentation will demonstrate that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles?

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. S*ee 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.

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

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.

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

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.

V. *PRIVATE FLOOD INSURANCE – GENERAL COMPLIANCE (PRIVATE FLOOD COMPLIANCE)*

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

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.[48] 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.

[48] 12 CFR 22.2(k) (OCC); 12 CFR 208.25 (b)(9) (Board); 12 CFR 339.2 (FDIC): 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

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.[49] 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.[50] 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.

[49] 12 CFR 22.3(c)(3)(iv) (OCC); 12 CFR 208.25(c)(3)(iii)(D) (Board); 12 CFR 339.3(c)(3)(iv) (FDIC); 12 CFR 614.4930(c)(3)(iv) (FCA); and 12 CFR 760.3(c)(3)(iv) (NCUA).
[50] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

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.[51] 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.[52] *See also* Q&A Private Flood Compliance 1.

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

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

[51] 12 CFR 22.2(k)(2)(iii) (OCC); 12 CFR 208.25(b)(9)(ii)(B) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[52] 12 CFR 22.3(c)(3)(iv)(D) (OCC); 12 CFR 208.25(c)(3)(iii)(D) (Board); 12 CFR 339.3(c)(3)(iv) (FDIC); 12 CFR 614.4930(c)(3)(iv) (FCA); and 12 CFR 760.3(c)(3)(iv) (NCUA).

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

A lender may refer to the website of the State insurance regulator where the collateral property is located to determine whether a particular insurer is licensed, admitted, or otherwise permitted to issue an insurance policy in a particular State. If the lender cannot determine this information from the website, the lender could contact the State insurance regulator directly. Further, information with respect to surplus lines insurer eligibility also may be available in the Consumer Insurance Search (CIS) tool available on the National Association of Insurance Commissioners (NAIC) website. Lenders may consult commercial service providers regarding the eligibility of surplus lines insurers in particular States provided the lenders have a reasonable

basis to believe that these service providers have reliable information. With regard to nonadmitted alien insurers in particular, lenders could review the NAIC's Quarterly Listing of Alien Insurers.[53]

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

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."[54] 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."[55]

[53] https://www.naic.org/prod_serv_alpha_listing.htm#quarterly_alien.
[54] *See* 84 FR 4953, 4955-4956 (Feb. 20, 2019). *See also* 12 CFR 22.2(k)(1)(i) (OCC); 12 CFR 208.25(b)(9)(i)(A) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[55] *See* 84 FR 4953, 4962 (Feb. 20, 2019). *See also* 12 CFR 22.3(c)(3)(ii) (OCC); 12 CFR 208.25(c)(3)(iii)(B) (Board); 12 CFR 339.3(c)(3)(ii) (FDIC); 12 CFR 614.4930(c)(3)(ii) (FCA); and 12 CFR 760.3(c)(3)(ii) (NCUA).

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.

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

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.[56] 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.[57] 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

[56] *See* 12 CFR 22.3(c)(1) (OCC); 12 CFR 208.25(c)(3)(i) (Board); 12 CFR 339.3(c)(1) (FDIC); 12 CFR 614.4930(c)(1) (FCA); and 12 CFR 760.3(c)(1) (NCUA).
[57] 12 CFR 22.3(c)(2) (OCC); 12 CFR 208.25 (c)(3)(ii) (Board); 12 CFR 339.3(c)(2) (FDIC); 12 CFR 614.4930(c)(2) (FCA); and 12 CFR 760.3(c)(2) (NCUA).

the policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria, the lender may not accept the policy.[58]

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.

VI. *STANDARD FLOOD HAZARD DETERMINATION FORM (SFHDF)*

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

No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act.[59] 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.[60]

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

[58] 12 CFR 22.3(c) (OCC); 12 CFR 208.25(c) (Board); 12 CFR 339.3(c) (FDIC); 12 CFR 614.4930(c) (FCA); and 12 CFR 760.3(c) (NCUA).
[59] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6 (FDIC); 12 CFR 614.4940 (FCA); and 12 CFR 760.6 (NCUA).
[60] 12 CFR 22.9 (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9 (FDIC); 12 CFR 614.4955 (FCA); and 12 CFR 760.9 (NCUA).

Yes. Although not a statutory requirement, a lender may provide a copy of the flood determination to the borrower. 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.

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

Yes.[61] In the final rule adopting the SFHDF, FEMA stated: "If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form." It should be noted that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

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

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

[61] 12 CFR 22.6(b) (OCC); 12 CFR 208.25(f)(2) (Board); 12 CFR 339.6(b) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(b) (NCUA).

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.

VII. *FLOOD INSURANCE DETERMINATION FEES (FEES)*

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

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

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

- When the determination results in force placement of insurance.[62]

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

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

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

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.[63] 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.[64]

VIII. *FLOOD ZONE DISCREPANCIES (ZONE)*

[62] 12 CFR 22.8(b) (OCC); 12 CFR 208.25(h)(2) (Board); 12 CFR 339.8(b) (FDIC); 12 CFR 614.4950(b) (FCA); and 12 CFR 760.8(b) (NCUA).
[63] 12 CFR 22.8 (OCC); 12 CFR 208.25(h) (Board); 12 CFR 339.8 (FDIC); 12 CFR 614.4950 (FCA); and 12 CFR 760.8 (NCUA).
[64] 12 U.S.C. 2607. *See* 12 CFR 1024.14(c).

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

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), [65] 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.[66] 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.[67] For disputes regarding whether a property is located in an SFHA, *see* Q&A Zone 3.

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

[65] *See* https://www.fema.gov/flood-insurance/risk-rating.

[66] New NFIP policies starting October 1, 2021 have been issued under Risk Rating 2.0. NFIP policies that renew between October 1, 2021, and March 31, 2022, may or may not be renewed under Risk Rating 2.0. All NFIP policies that renew on or after April 1, 2022 will be renewed under Risk Rating 2.0.

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

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.

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

If a borrower disputes a lender's determination that the building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, the parties involved in making the determination are encouraged to resolve the flood zone discrepancy before contacting FEMA for a final determination. If the flood zone discrepancy cannot be resolved, an appeal may be filed 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.[68]

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

IX. *NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF (NOTICE)*

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

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.[69] In a transaction involving multiple borrowers, the lender need only provide the Notice of Special Flood Hazards to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the Notice of Special Flood Hazards will be provided.

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

As required by the Regulation, a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction.[70] What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. A lender should bear in mind, however, that a borrower should receive timely notice to ensure that (1) the borrower has the opportunity to become aware of the borrower's responsibilities under the Act; and (2) where applicable, the borrower can purchase

[69] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).
[70] 12 CFR 22.9(c) (OCC)12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

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.[71] If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force-place the insurance.[72]

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

[71] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[72] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.[73]

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

Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.[74]

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.[75]

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

The record of receipt provided by the borrower must be maintained for the period of time that the lender owns the loan.[76] 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

[73] 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).
[74] 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).
[75] 12 U.S.C. 4104a(a)(1); 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).
[76] 12 CFR 22.9(d) (OCC); 12 CFR 208.25(i)(3) (Board); 12 CFR 339.9(d) (FDIC); 12 CFR 614.4955(d) (FCA); and 12 CFR 760.9(d) (NCUA).

may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

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

The Regulation does not 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.[77]

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

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,[78] 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.[79] Therefore, lenders should consult the Act and Regulation to determine the information needed.

[77] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).
[78] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).
[79] 12 U.S.C. 4104a(a)(3); 12 CFR 22.9(b) (OCC); 12 CFR 208.25(i)(1) (Board); 12 CFR 339.9(b) (FDIC); 12 CFR 614.4955(b) (FCA); and 12 CFR 760.9(b) (NCUA).

X. *DETERMINING THE APPROPRIATE AMOUNT OF FLOOD INSURANCE REQUIRED (AMOUNT)*

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

The maximum limit of coverage available for the particular type of property under the Act depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available for buildings located in a participating community under the Regular Program. For single-family and two-to-four family dwellings and individually owned condominium units insured under the Dwelling Form policy, the maximum limit is $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.[80] The NFIP does not insure land; therefore, land values are not included in the calculation.[81]

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

[80] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[81] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

insurance to cover the value of the structure if it is located in a participating community's SFHA).[82]

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

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

AMOUNT 3. What are examples of residential buildings?

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

The NFIP provides the following definitions:

- A *single family* dwelling is either a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's

[82] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

- A *2-4 family residential building* is a residential building, containing 2–4 residential units and in which non-residential uses are limited to less than 25 percent of the building's total floor area. This category includes apartment buildings and condominium buildings. It excludes hotels and motels with normal room rentals for less than six months.
- An *other residential building* is a residential building containing five or more residential units or a mixed-use building in which the total floor area devoted to non-residential uses is less than 25 percent of the building's total floor area. This category includes condominium and apartment buildings as well as hotels, motels, tourist homes, and rooming houses where the normal occupancy of a guest is six months or more. Additional examples of other residential buildings include dormitories and assisted-living facilities.

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

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

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*.

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

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

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
    - The maximum limit available for the type of structure; or
    - The "insurable value" of the structure.[83]

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.

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

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

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

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

Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together.[84] 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.[85]

[84] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[85] *See* 42 U.S.C. 4012a; 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

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

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

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

No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act.[86] 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. [87] Since the NFIP policy

[86] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[87] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the building.

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

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

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

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

AMOUNT 10. Can a lender accept a blanket flood insurance policy or blanket multi-peril policy covering multiple buildings that includes a per-occurrence deductible, regardless of

[88] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

whether any single building covered by the policy has an insurable value lower than the amount of the deductible?

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.

XI. *FLOOD INSURANCE REQUIREMENTS FOR CONSTRUCTION LOANS (CONSTRUCTION)*

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

No. A designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act.[89] 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.

[89] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

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

Yes. A lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act.[90] 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.[91] The lender must then comply with the mandatory purchase requirement under the Act and Regulation.[92]

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

Yes. 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).

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[90] 12 CFR 22.6(a) (OCC): 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).
[91] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).
[92] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

The *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.

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

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

[93] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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,[94] the lender must require the borrower to have flood insurance for the security property in place before the lender disburses funds to pay for building construction (except for funds to be used to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials). If the lender elects this approach and does not require the borrower to obtain flood insurance at loan origination, then it should have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower in light of the NFIP 30-day waiting period requirement. (*See NFIP Flood Insurance Manual*). *See also* Q&A Construction 5.

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

Yes. A 30-day waiting period will apply if a lender allows a borrower to delay the purchase of flood insurance in connection with a construction loan after making, increasing, renewing, or extending the loan. A borrower must apply for flood insurance on or before the

[94] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

closing date of a loan transaction for the NFIP 30-day waiting period to be waived. *See NFIP Flood Insurance Manual*. *See also* Q&A Construction 4.

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

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

XII. *FLOOD INSURANCE REQUIREMENTS FOR RESIDENTIAL CONDOMINIUMS AND CO-OPS (CONDO AND CO-OP)*

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

Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act.[96] The mandatory purchase requirements also apply to loans secured by

[95] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).
[96] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

other residential condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

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

The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

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

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

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
    - The maximum limit available for the residential condominium unit; or

- The "insurable value" allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.[97]

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.[98] 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

[97] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[98] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

- 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.

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

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.[99]

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

[99] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

flood insurance purchase requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

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

If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner 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.[100] 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:

[100] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

- 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.

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

If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements.[101] 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. S*ee* 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.[102]

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

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

[101] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[102] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.

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

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

Example 1: RCBAP

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

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

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

Example 2: No RCBAP

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

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

CONDO AND CO-OP 9. What 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?

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*.

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

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.

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

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

Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.[103]

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

No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations.[104] However, a request made for an increase in an approved line of credit may require a new determination, depending upon whether a previous determination was done. *See* Q&A SFHDF 4.

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

A lender may take the following alternative approaches:

- For administrative convenience in complying with the flood insurance requirements, upon origination, a lender may require the purchase of flood insurance for the total amount of all loans or the maximum amount of flood insurance coverage available, whichever is less;[105] or

[103] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[104] 12 CFR 22.2(e) and 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (c)(1) (Board); 12 CFR 339.2 and 339.3(a) (FDIC); 12 CFR 614.4925 and 614.4930(a) (FCA); and 12 CFR 760.2 and 760.3(a) (NCUA).
[105] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

- A lender may 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.[106]

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

The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for most residential buildings and $500,000 for other buildings), or the insurable value of the building or mobile home.[107] 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

[106] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[107] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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.

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

It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be "making" a new loan.[108] 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.

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

No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is, a loan secured by a building or mobile home located or to be located in an SFHA, "unless the building or mobile home and any personal property securing the

[108] 12 CFR 22.3(a), 22.6(a) (OCC); 12 CFR 208.25(c)(1) and (f)(1) (Board); 12 CFR 339.3(a), 339.6(a) (FDIC); 12 CFR 614.4930(a), 614.4940(a) (FCA); and 12 CFR 760.3(a), 760.6(a) (NCUA).

loan is covered by flood insurance for the term of the loan."[109] In this example, the loan is not a designated loan because it is not secured by a building or mobile home; rather, the collateral is the inventory alone.

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

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

[109] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[110] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $100,000.

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

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.

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

Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate and contents located in an SFHA, then flood insurance is required.[111]

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

[111] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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

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

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

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

OTHER SECURITY INTERESTS 12. If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?

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

[112] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[113] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

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.[114]

XIV. *REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – GENERAL (ESCROW)*

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

A lender, or a servicer acting on its behalf, must escrow all premiums and fees for any flood insurance required under the mandatory purchase of flood insurance requirement for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The escrow must be payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan, unless the loan or lender is subject to one of the exceptions.[115]

A lender is not required to escrow for flood insurance if it qualifies for the small lender exception[116] or the loan qualifies for one of the following loan-related exceptions[117] 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;

[114] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[115] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).
[116] 12 CFR 22.5(c) (OCC); 12 CFR 208.25(e)(3) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).
[117] 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

- 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.[118] 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.[119]

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

[118] 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC); 12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).
[119] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

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.[120] A lender or servicer is not, however, obligated to escrow for taxes and other insurance solely because it must escrow for flood insurance pursuant to the Regulation, though there may be other laws or regulations that require that additional escrow.

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

Yes, the Regulation requires lenders or their servicers to escrow flood insurance premiums for any residential designated loan made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for an exception from the escrow requirement.[121] The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

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

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.[122] 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

[120] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).
[121] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).
[122] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(NCUA).

escrow for outstanding loans;[123] or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.[124]

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

Yes. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied.[125] 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.[126]

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

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[123] 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).
[124] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).
[125] 12 CFR 23.2(j) (OCC); 12 CFR 208.25(b)(8) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).
[126] 12 CFR 22.5(a)(2)(i) (OCC); 12 CFR 208.25(e)(1)(ii)(A) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

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.[127] 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.[128] 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.[129]

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

Under the Regulation, lenders and servicers are only required to escrow for loans that are secured by residential improved real estate or a mobile home located or to be located in SFHAs where flood insurance is available under the NFIP and that experience a triggering event (made, increased, extended, or renewed) on or after January 1, 2016, unless either the lender or the loan qualifies for an exception.[130] If the property securing the loan is not located in an SFHA, it is not

[127] 12 CFR 22.5(a)(2)(ii) (OCC); 12 CFR 208.25(e)(1)(ii)(B) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).
[128] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[129] 12 CFR 22.5(a)(2)(iv) (OCC); 12 CFR 208.25(e)(1)(ii)(D) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).
[130] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

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.

XV. *REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – ESCROW SMALL LENDER EXCEPTION (ESCROW SMALL LENDER EXCEPTION)*

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

By its own terms, the small lender exception to the flood insurance escrow requirement applies to lenders rather than holding companies.[131] Therefore, the $1 billion requirement is calculated based on the assets held at the lending institution level, rather than at the holding company level.

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

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

[131] 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.[132]

- 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.

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

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

[132] 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

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.[133]

- 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.

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

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

[133] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(B)(*2*) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c)(1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).

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.[134]

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

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.[135] 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.[136] 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.[137] The requirement to provide the option to

[134] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(B)(*2*) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c)(1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).
[135] 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).
[136] 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC); 12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).
[137] 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

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.

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

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.[138] 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.

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

[138] 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

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.[139]

XVI. *REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – ESCROW LOAN EXCEPTIONS (ESCROW LOAN EXCEPTIONS)*

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

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

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

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

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[139] 12 CFR 22.5(d)(1) (OCC); 12 CFR 208.25(e)(4)(i) (Board); 12 CFR 339.5(d)(1) (FDIC); 12 CFR 614.4935(d)(1) (FCA); and 12 CFR 760.5(d)(1) (NCUA).
[140] 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).
[141] 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).

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

An RCBAP (Residential Condominium Building Association Policy) is a policy purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. Typically, a portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and RCBAP premiums are paid by the condominium association as a common expense, an escrow account is not required.[142] 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.[143] Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

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

Generally, no. Construction-permanent loans (or C-P loans) are loans that have a construction phase of approximately one year before the loan converts into permanent financing. During the construction phase, the loan is typically interest-only, so the borrower does not start paying principal until the permanent phase. After the construction phase, the borrower generally comes in to sign papers to start the permanent phase, but this is not a true closing. Given that C-

[142] 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).
[143] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

P loans are generally 20- to 30-year term loans, a C-P loan would not qualify for the 12 month-exception from escrow, even if one phase of the loan is for 12 months or less.

ESCROW LOAN EXCEPTIONS 5. Although a lender is not required to monitor whether a subordinate lien moves into first lien position for the purpose of the mandatory escrow requirement, if the lender becomes aware that the subordinate lien exception no longer applies, when must the lender begin to escrow?

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).[144] 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.

XVII. *FORCE PLACEMENT OF FLOOD INSURANCE (FORCE PLACEMENT)*

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

When a lender makes a determination that the collateral securing the loan is uninsured or underinsured, it must begin the force placement process. Specifically, the Act and the Regulation provide that if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan that a building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation, the lender or its servicer must notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the Regulation. If the borrower fails to

[144] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

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.[145]

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.

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

The Regulation requires the lender, or its servicer, to send notice to the borrower upon making a determination that the building or mobile home and any personal property securing the

[145] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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

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

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

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

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

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[146] 42 U.S.C. 4012a(e); 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[147] 12 U.S.C. 4012a(e)(1). *See also* 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[148] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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

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

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

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

[149] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[150] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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

The Regulation provides that the lender or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage, beginning on the date on which flood insurance lapsed or did not provide a sufficient coverage amount.[151]

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.[152]

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.

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

The Regulation states that the minimum amount of flood insurance required "must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act."[153]

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[151] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[152] 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).
[153] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

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.[154]

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.[155]

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.

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

[154] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA)
[155] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

A lender, or 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.[156] 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.

[156] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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

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.[157] 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.[158]

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

[157] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[158] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

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.

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

With respect to when a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance, the Regulation specifically addresses the documentation requirements. The Regulation provides that, for purposes of confirming a borrower's existing flood insurance coverage, a lender must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent.[159] 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.

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

[159] 12 CFR 22.7(b)(2) (OCC); 12 CFR 208.25(g)(2)(ii) (Board); 12 CFR 339.7(b)(2) (FDIC); 12 CFR 614.4945(b)(2) (FCA); and 12 CFR 760.7(b)(2) (NCUA).

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.[160]

FORCE PLACEMENT 13. Is a lender permitted to increase, renew, or extend a designated loan that is currently insured by force-placed insurance? More specifically, if the borrower is undergoing a refinance or a loan modification, can the lender rely on the existing force-placed insurance to meet the mandatory purchase requirement?

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."[161] 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

[160] 12 CFR 22.7(b)(1) (OCC); 12 CFR 208.25(g)(2)(i) (Board); 12 CFR 339.7(b)(1) (FDIC); 12 CFR 614.4945(b)(1) (FCA); and 12 CFR 760.7(b)(1) (NCUA).
[161] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

the loan.[162] 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.

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

No. The Regulation does not require the lender to send a notice to the borrower prior to renewing a force-placed policy. However, the lender or its servicer, at its discretion, may notify the borrower that the lender is planning to renew or has renewed the force-placed policy. Such a notification may encourage the borrower to purchase his or her own policy, which may be available for a lower premium amount.

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

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

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

[162] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

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.[163] 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.[164] 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.[165] 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.[166]

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[163] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[164] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[165] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).
[166] 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).

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.[167] *See also* Q&A Force Placement 9.

XVIII. *FLOOD INSURANCE REQUIREMENTS IN THE EVENT OF THE SALE OR TRANSFER OF A DESIGNATED LOAN AND/OR ITS SERVICING RIGHTS (SERVICING)*

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

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity

[167] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

of the new servicer to the Administrator of FEMA or its designee if the policy is an NFIP policy.[168] In the case of a flood insurance policy issued by a private insurer, the lender should provide notice of the identity of the new servicer to the private insurer. Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a nonregulated party, and the policy is an NFIP policy, the regulated lender must notify the Administrator of FEMA or its designee of the identity of the new servicer.[169] In the case of a flood insurance policy issued by a private insurer, the lender should provide notice of the identity of the new servicer to the private insurer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards

[168] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).
[169] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities and must take adequate steps to ensure that the loan servicer maintains compliance with the flood insurance requirements.

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

A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers certain requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.[170] Those requirements only are triggered when a regulated lender makes, increases, extends, or renews a designated loan.[171] A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required,[172] then the regulated lender must comply with the Regulation, including force placing insurance, if necessary.[173] Depending upon the circumstances, as a matter of safety and soundness, the lender may undertake due diligence upon the purchase of a loan, which would make the lender aware of the lack of adequate flood insurance and trigger flood insurance

[170] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[171] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[172] 42 U.S.C. 4012a(e)(1).
[173] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

compliance requirements. Further, if the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.[174]

When a regulated lender purchases only the servicing rights to a loan originated by a nonregulated lender, the regulated lender is obligated to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify the Administrator of FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.[175]

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

Under the Regulation, the Administrator's designee is the insurance company issuing the flood insurance policy.[176] The borrower's purchase of an NFIP policy (or the lender's force placement of an NFIP policy) will constitute notice to the Administrator of FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.[177]

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[174] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).
[175] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).
[176] 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).
[177] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

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

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

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

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

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

Yes. The Regulation specifically permits transmission by electronic means.[178] A timely batch transmission of the notice would also be permissible, if it is acceptable to the Administrator's designee, *i.e.*, the insurance provider.

[178] 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).

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

Yes, in the case of an NFIP policy.[179] Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

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

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

No. After servicing rights are sold or transferred, the subsequent notification obligations applicable in connection with NFIP policies are the responsibility of the new servicer.[180] The obligation of the lender to notify the Administrator or the Administrator's designee (*i.e.*, the insurance provider) of the identity of the servicer transfers to the new servicer. The duty to notify the insurance provider of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer.[181] For example, if a lender makes and services a loan and then sells the loan in the secondary market and also sells the servicing rights to a mortgage company, then the lender must notify the insurance provider of the identity of the new servicer

[179] 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).
[180] 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).
[181] 12 U.S.C. 4104a(b)(1).

and the other information requested by FEMA so that flood insurance transactions can be properly administered by the insurance provider. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the lender, is responsible for notifying the insurance provider of the identity of the new servicer.

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

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

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

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

XIX. *MANDATORY CIVIL MONEY PENALTIES (PENALTY)*

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

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

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));

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

The Act provides that any regulated lending institution found to have a pattern or practice of the violations "shall be assessed a civil penalty" by its Federal supervisory agency in an amount not to exceed $2,000 per violation (42 U.S.C. 4012a(f)(5)). There is no ceiling on the total penalty amount that a Federal supervisory agency can assess for a pattern or practice of violations. Each Agency adjusts the limit pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).[182] As required by the Act, the penalties must be paid into the National Flood Mitigation Fund.[183]

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

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

[182] Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890. This act was amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599. Please refer to 12 CFR 19.240(b) & 12 CFR 109.103(c)(2) (OCC); 12 CFR 263.65(b) (Board); 12 CFR 308.132(d)(18) (FDIC); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001 (NCUA) for the Agencies' current civil penalty limits.
[183] 42 U.S.C. 4012a(f)(8).

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.

Michael J. Hsu,
Acting Comptroller of the Currency.

Ann E. Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
Dated at Washington, DC, on_____.

Debra Decker,
Deputy Executive Secretary.

Dated at McLean, VA, this — day of _____2022.

Ashley Waldron,
Secretary,
Farm Credit Administration Board.

Melane Conyers-Ausbrooks,
Secretary of the Board,
National Credit Union Administration.

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