National Flood Insurance Program

Mandatory Purchase of Flood Insurance Guidelines

September 2007

FEMA

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PREFACE

The Federal Emergency Management Agency (FEMA) is pleased to provide you with this revised 2007 edition of the *Mandatory Purchase of Flood Insurance Guidelines.*

The *Mandatory Purchase of Flood Insurance Guidelines* booklet provides guidance to the federally regulated lending industry for implementing the mandatory purchase provisions of the National Flood Insurance Reform Act of 1994 and other key legislation that governs the National Flood Insurance Program (NFIP). The mandatory purchase law directed the Federal agency lender regulators and Government-Sponsored Enterprises (GSEs) to develop and adopt regulations requiring lenders subject to their jurisdiction not to make, increase, renew, or extend any loan on applicable property unless flood insurance is purchased and maintained to protect that property securing loans in high flood risk areas.

This document was designed to promote greater uniformity and understanding of the requirements of the law among Federal agency lender regulators, GSEs, Federal agency lenders, and applicable lending institutions. These guidelines are intended to augment, not replace, a review of the applicable statutes and regulations, and are not intended to provide legal guidance.

Implementation of the mandatory flood insurance purchase requirements as explained in these guidelines is the responsibility of the various Federal agencies that oversee lenders. Each Federal lending regulator and GSE has the responsibility to issue its own regulations to implement the statutory requirements.

The authority of FEMA is limited to administering the NFIP, which enables property owners in participating communities to purchase federally backed flood insurance. FEMA does not have statutory responsibility for enforcing the mandate to purchase flood insurance.

This 2007 edition of the guidelines clarifies some of the complex issues that have arisen since the 1999 edition and incorporates industry best practices and lessons learned for implementing statutory requirements. A supplement may be added to capture subsequent changes that may result from future legislation.

Some of the highlights of this edition are described on page ix.

HIGHLIGHTS OF THE 2007 EDITION

Includes discussion of the legislative history of the NFIP and describes the federally regulated lending agencies and the types of lending institutions they each supervise. Incorporates flowchart illustrating mandatory purchase process at loan origination. (Section A)

Includes link to information about the NFIP and levees. Clarifies processing information for Letters of Map Change. (Section B)

Explains options for purchasing coverage for buildings in the course of construction. Specifies that there is no 30-day waiting period for this coverage. (Section C)

Includes the Program change that effective October 1, 2007, the Declarations Page of each Residential Condominium Building Association Policy (RCBAP) issued or renewed must show the building's Replacement Cost Value (RCV) and the number of units within that building. (Section D)

Recommends 100-percent RCV for RCBAP coverage. Clarifies application of coinsurance penalties and loss assessments. Updates deductible information for Government-Sponsored Enterprises. (Section D)

Incorporates flowchart describing tripwires during the life of loan. Expands discussion of regulatory penalties. (Section E)

Updates language referencing NFIP history and legal citations. (Appendix 1)

Provides version of federally regulated agency lender regulations. (Appendix 2)

Includes most current Standard Flood Hazard Determination Form. (Appendix 3)

Provides two separate Sample Notices of Special Flood Hazard and Availability of Federal Disaster Relief Assistance – one for participating communities and one for non-participating communities. (Appendix 4)

Provides contact information for federally regulated lending agencies, GSEs, and flood-related resources. (Appendix 5)

Expands waiting period discussion to correspond with the NFIP *Flood Insurance Manual*. (Appendix 6)

Updates the Mortgage Portfolio Protection Program information. (Appendix 7)

Updates the Glossary for consistency with the *Flood Insurance Manual*. (GLS)

Expands the Index. (IND)

SECTION A
INTRODUCTION

1. Background of the National Flood Insurance Program

a. History

Flooding has long been the costliest and most devastating disaster in the United States. For decades, the national response to flood disasters was generally limited to constructing flood-control works such as dams, levees, seawalls, and the like, and providing disaster relief to flood victims. This approach did not reduce losses, nor did it discourage unwise development. In addition, building techniques to reduce flood damage were often overlooked. To compound the problem, the public generally could not buy flood coverage from insurance companies, which were largely unwilling to underwrite and bear the risk of flood because of its catastrophic nature.

In the face of mounting flood losses and escalating costs of disaster relief to the general taxpayers, the U.S. Congress created the National Flood Insurance Program (NFIP). The intent of Congress was to reduce future flood damage through community floodplain management ordinances, and provide protection for property owners against potential losses through a Federal insurance mechanism that requires a premium to be paid for the protection.

b. Statutory Authority

Key legislation that governs the NFIP includes:

- The National Flood Insurance Act of 1968 (established the NFIP)
- The Flood Disaster Protection Act of 1973 (introduced the mandatory purchase provisions)
- The National Flood Insurance Reform Act of 1994 (strengthened the mandatory purchase provisions of the 1973 Act)
- The Flood Insurance Reform Act of 2004 (focused on severe repetitive loss properties and miscellaneous topics that did not affect the requirement to purchase flood insurance).

Citations referring to the statutory authority of the program are found in Appendix 1, Legal References.

c. Administration

The NFIP is administered by the Mitigation Division of the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security (DHS).

2. Establishment of the NFIP — National Flood Insurance Act of 1968

Through the National Flood Insurance Act of 1968 (42 U.S.C. §4001), Congress authorized the NFIP, which provided an opportunity for property owners to purchase flood insurance protection made available by the Federal Government for buildings and their contents. The NFIP combines the concepts of insurance protection and hazard mitigation. This program provides an incentive for communities to adopt floodplain management ordinances to mitigate the effects of flooding on new and existing construction.

a. Insurance Protection

The 1968 Act made federally backed flood insurance available to owners of improved real estate or manufactured (mobile) homes located in low-to-moderate and high flood risk areas if their community participated in the NFIP.

The Act defined improved real estate as real estate upon which a building is located. Under the NFIP, this means a walled and roofed building or a building in the course of construction that qualifies for insurance coverage. The term "improved real property," as used throughout these guidelines, includes manufactured (mobile) homes, as defined in the NFIP's Standard Flood Insurance Policy (SFIP).

b. Hazard Mitigation

The 1968 Act adopted a community approach to flood hazard mitigation. The law described two ways for a community to establish its eligibility to participate in the NFIP:

- By adopting minimum regulatory standards in accordance with FEMA floodplain management guidelines, which help to save lives and reduce flood damage to property.

- By enforcing its own regulations to ensure that new construction and substantial improvements to existing buildings within identified high flood risk areas called Special Flood Hazard Areas (SFHAs) are designed to minimize future flood damage.

If a community does not participate in the program, property owners in that jurisdiction are not able to purchase federally backed flood insurance. Also, Federal grants, loans, disaster assistance, and Federal mortgage insurance are unavailable for the acquisition or construction of structures located or to be located in SFHAs shown on the Flood Insurance Rate Maps (FIRMs).

Similarly, if a community does not participate in the program, property owners are not subject to Federal requirements of mandatory flood insurance. However, a lender is still required to inspect any flood maps to determine flood hazard risk and provide notice of such risk. A lender may require a borrower to obtain non-federally backed private flood insurance, if available, even in the absence of a Federal mandatory purchase requirement.

An eligible community is a political subdivision with the authority to enact regulations in SFHAs. An SFHA is an area within a floodplain that has a 1-percent or greater chance of a flood occurring in any given year. SFHAs are delineated on flood maps issued by FEMA for individual communities. These high flood risk zones are represented on the flood maps by the darkly shaded areas with zone designations that include the letter A or V. Eligible communities that take the steps outlined above become NFIP participating communities.

The 1968 Act laid a solid foundation for community mitigation of flood risks. However, most property owners still were not buying flood insurance protection, and expensive disaster assistance payouts continued.

3. Introduction of the Mandatory Flood Insurance Purchase Requirement — Flood Disaster Protection Act of 1973

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. However, the 1973 Act mandated flood insurance coverage for many properties. For the first time, federally regulated lending institutions could not make, increase, extend, or renew any loan secured by improved real property located in an SFHA in a participating community unless the secured building and any personal property securing the loan were covered for the life of the loan by a flood insurance policy. This measure was necessary because, after major flooding disasters, it became evident that relatively few individuals in eligible communities who sustained flood damage had purchased flood insurance.

This general low level of coverage persisted for various reasons, including the following:

- Some homeowners believed that they simply could not afford the cost of flood insurance in addition to mortgage payments and homeowners insurance.

- Federally regulated lending institutions often were relaxed in complying with the mandatory purchase provision without the sanction of a penalty.

- Homeowners who purchased flood insurance at the origination of their mortgages often allowed their policies to lapse.

4. Strengthening of the Mandatory Purchase Requirement — National Flood Insurance Reform Act of 1994

The National Flood Insurance Reform Act of 1994 (the 1994 Reform Act) is part of Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 and amended 42 U.S.C. §4001 et seq. The 1994 Reform Act imposed significant new obligations on lenders and servicers and tightened the requirement for the receipt of disaster assistance.

After the multibillion-dollar flood damage in the Midwest during the summer of 1993, Congress revisited the mandatory purchase law and enacted the 1994 Reform Act. The reasons for the Reform Act included the NFIP's low reserves, resulting from a series of storms, as well as a low level of participation among eligible property owners. At that time, it was estimated that slightly more than 2 million of the 10 million households then identified in SFHAs were covered by flood insurance.

The 1994 Reform Act amended the previous law to strengthen compliance and ensure that flood insurance is purchased and maintained for the term of the loan by adding the following requirements:

- Established the requirement to escrow flood insurance premiums when escrowing for other purposes;

- Provided statutory authority and requirement for lenders and servicers to force place coverage when it is determined that flood insurance is inadequate or non-existent;

- Provided enhanced flood hazard notice requirements;

- Set forth new authority for lenders to charge reasonable fees for determining whether a property is located in an SFHA; and

- Established other provisions necessary to implement the 1994 Reform Act.

The 1994 legislation contained important reforms to improve the financial condition of the NFIP. A primary objective was to strengthen compliance with the mandatory purchase requirements by lenders, servicers, and secondary-market purchasers, and thus increase participation nationwide by owners of eligible properties in high flood risk areas. The ultimate goals were to provide additional income for the National Flood Insurance Fund and decrease the financial impact of flooding to the Federal Government, taxpayers, and citizens in areas most prone to flooding.

a. Entities Encompassed by the Law

The 1994 Reform Act amended §4012a of 42 U.S.C. to address flood insurance purchase and strengthen compliance by adding the five requirements listed above.

The essential part of the compliance provision is contained in §4012a(b), which addresses three kinds of lenders:

- Federally Regulated Lenders
- Government-Sponsored Enterprises (GSEs) for Housing
- Federal Agency Lenders.

The law focuses on compliance with the mandatory purchase requirement as the responsibility of federally regulated private lenders and GSEs that purchase loans in the secondary market. These entities must ensure that a building or manufactured (mobile) home and any applicable personal property securing a loan in an SFHA are covered by adequate flood insurance for the term of the loan.

b. Lending Agency Regulations

Although the intent of the law is to require borrowers to purchase flood insurance, the requirements are directed to federally regulated and federally insured lenders and to secondary-market entities involved in mortgage loan transactions. Agencies that supervise federally regulated lenders include:

- Board of Governors of the Federal Reserve System (FRS) (State-chartered banks that are members of the FRS)
- Office of the Comptroller of the Currency (OCC) (Nationally chartered banks)
- Office of Thrift Supervision (OTS) (Nationally chartered thrift institutions)
- Federal Deposit Insurance Corporation (FDIC) (State-chartered banks that are not members of the FRS)
- National Credit Union Administration (NCUA) (Nationally chartered credit unions)
- Farm Credit Administration (FCA) (Institutions that make up the Farm Credit System).

The flood insurance requirements do not apply to lenders or servicers that are not federally regulated and that do not sell loans to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) or other GSEs.

The law requires Federal financial regulatory agencies to develop regulations that direct their federally regulated lenders not to make, increase, extend, or renew any loan on applicable property unless flood insurance is purchased. The affected agencies issued substantially similar joint final regulations in 1996; a version of the regulations is included in Appendix 2, FDIC Regulations.

c. Designated Loans

The 1994 Reform Act's mandatory purchase requirement applies to all federally related loans outstanding on or after the date of the legislation's enactment, September 23, 1994. Each instance of making, increasing, extending, or renewing a "designated loan"—a loan secured by a building or manufactured (mobile) home located or to be located in an SFHA, where flood insurance is available under the 1968 Act—serves as a tripwire of sorts for compliance with the mandatory flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes compliance by lenders increasingly more likely, as borrowers obtain new loans on existing buildings or refinance existing loans.

At each tripwire in the mortgage process, the lender or servicer must ensure that flood insurance is purchased and maintained.

(See Section E of these guidelines, beginning on page 53, for more information on tripwires during the life of the loan.) The flowchart on the following page illustrates the mandatory purchase process.

d. Insurance Required at Loan Closing

A designated loan must have flood insurance as a condition of closing. If a borrower will not voluntarily obtain coverage, the lender must deny the loan. A lender cannot accept a borrower's assurance that he or she will obtain coverage in the future or grant the lender indemnity while he or she seeks coverage. Closing a designated loan without coverage in place constitutes a violation of the regulation.

e. Life-of-Loan Insurance Coverage

A key clarification of the 1994 Reform Act is that flood insurance must be obtained and maintained during the term of the loan. Regulated lending institutions and GSEs are responsible for providing notice of and requiring flood insurance coverage for the term of the loan on buildings located or to be located in any SFHA in participating communities. Flood insurance will be required even if the SFHA designation is first identified after settlement, but during the term of the loan. This requirement is designed to combat coverage lapses allowed to occur by individuals who believe they will not be flooded, and therefore discontinue payment of flood insurance premiums during the term of the loan.

f. Lender Responsibilities

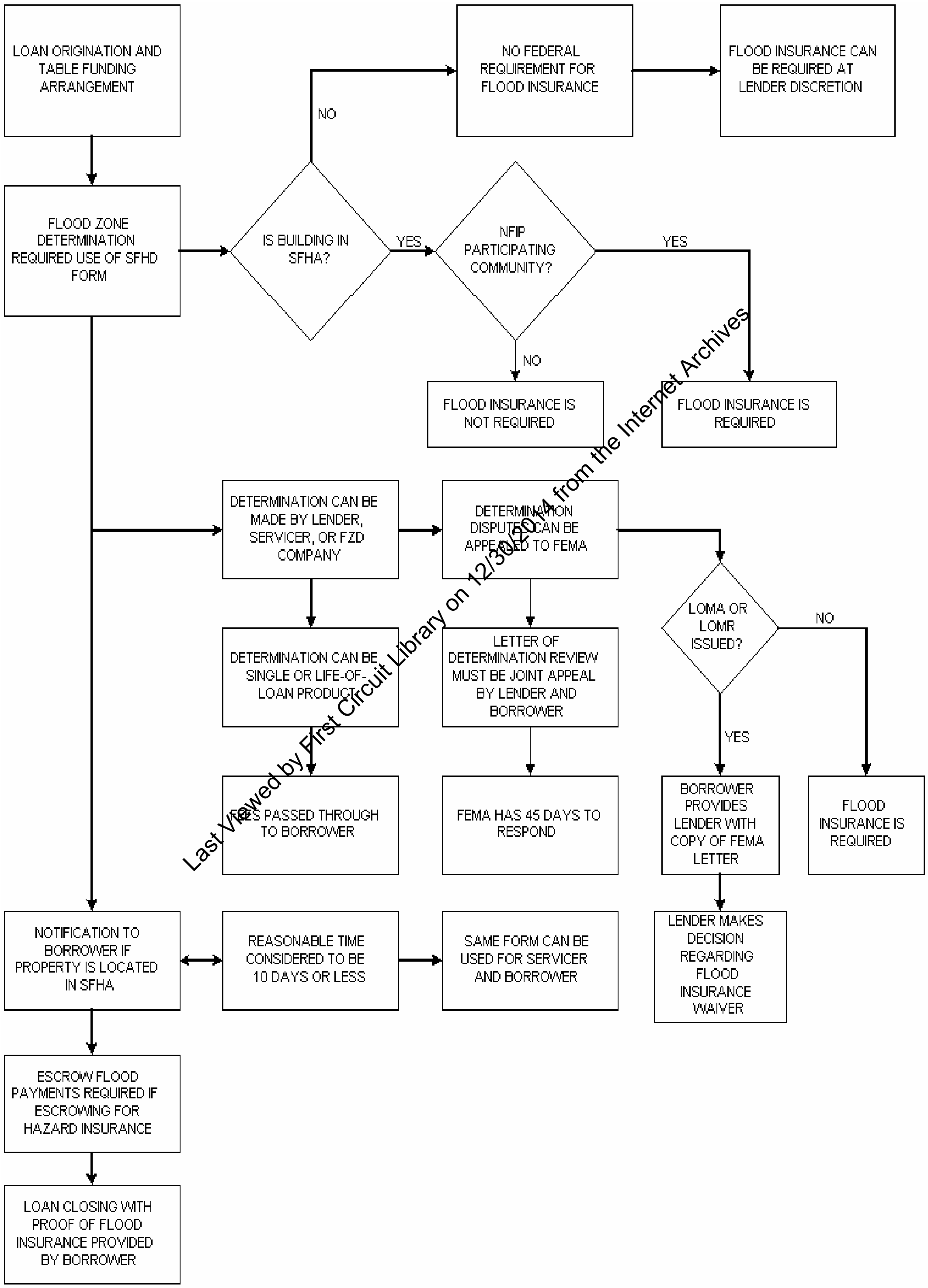
The statutory requirements apply when improved real property (that is, a building) or manufactured (mobile) home is taken as security for a loan. A lender's responsibilities include the following actions:

- Determine whether the building or manufactured (mobile) home offered as security for a loan is, or will be, located in an SFHA;
- Document the determination of flood hazard status, whether the building is in a low-to-moderate flood risk area or in an SFHA, on the Standard Flood Hazard Determination Form (SFHDF) shown in Appendix 3;
- Provide notice to the borrower if collateral is, or will be, in an SFHA per the appropriate sample Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance, the two versions of which are shown in Appendix 4;
- Require that adequate flood insurance is obtained for buildings in SFHAs;
- Require the escrow of flood insurance premiums if escrow is required for other items, such as hazard insurance and taxes;
- During the term of the loan, ensure that flood insurance is maintained or obtained if the lender becomes aware that the building involved subsequently becomes part of an SFHA; and
- Force place flood insurance if the borrower allows the policy to lapse or if insurance is inadequate.

While the mandatory purchase requirement applies only to buildings located in SFHAs of participating communities, NFIP flood insurance is available and highly encouraged in low-to-moderate flood risk areas of NFIP participating communities. This is especially significant because, historically, about 25 percent of the NFIP claims paid have actually been outside of SFHAs.

Lenders and property owners may wish to exercise additional caution and consider flood insurance in areas subject to flooding due to storm water, in areas where

MANDATORY PURCHASE AT LOAN ORIGINATION
(Making, increasing, renewing, or extending a loan)



the NFIP has used approximate methods to map SFHAs, or in remote locations where no SFHAs have been designated by FEMA. A requirement for flood insurance on secured property that is not subject to the mandatory purchase requirement is a matter of contract between the lender and borrower.

Some buildings in a participating community may be ineligible for Federal flood insurance because of statutory restrictions or NFIP underwriting rules. (See pages 20-22 of these guidelines for a discussion of the unavailability of Federal flood insurance in such instances.)

g. Disaster Assistance

Federal disaster assistance, including disaster assistance loans from the U.S. Small Business Administration (authorized under Section 408 of the Stafford Act, discussed on page 20), generates the requirement to purchase flood insurance. The flood insurance requirement applies to disaster assistance for repair or replacement of buildings or manufactured (mobile) homes and/or personal property in SFHAs. Disaster assistance for temporary housing is not affected by this provision.

Removing the availability of Federal disaster assistance to previous recipients of such assistance who live in SFHAs and have not yet purchased their own flood insurance, achieves two goals:

- Encourages individuals to fund their own recovery, rather than relying upon taxpayer funded State or Federal disaster assistance;
- Encourages the use of flood insurance, which is a more efficient vehicle for funding flood loss recovery.

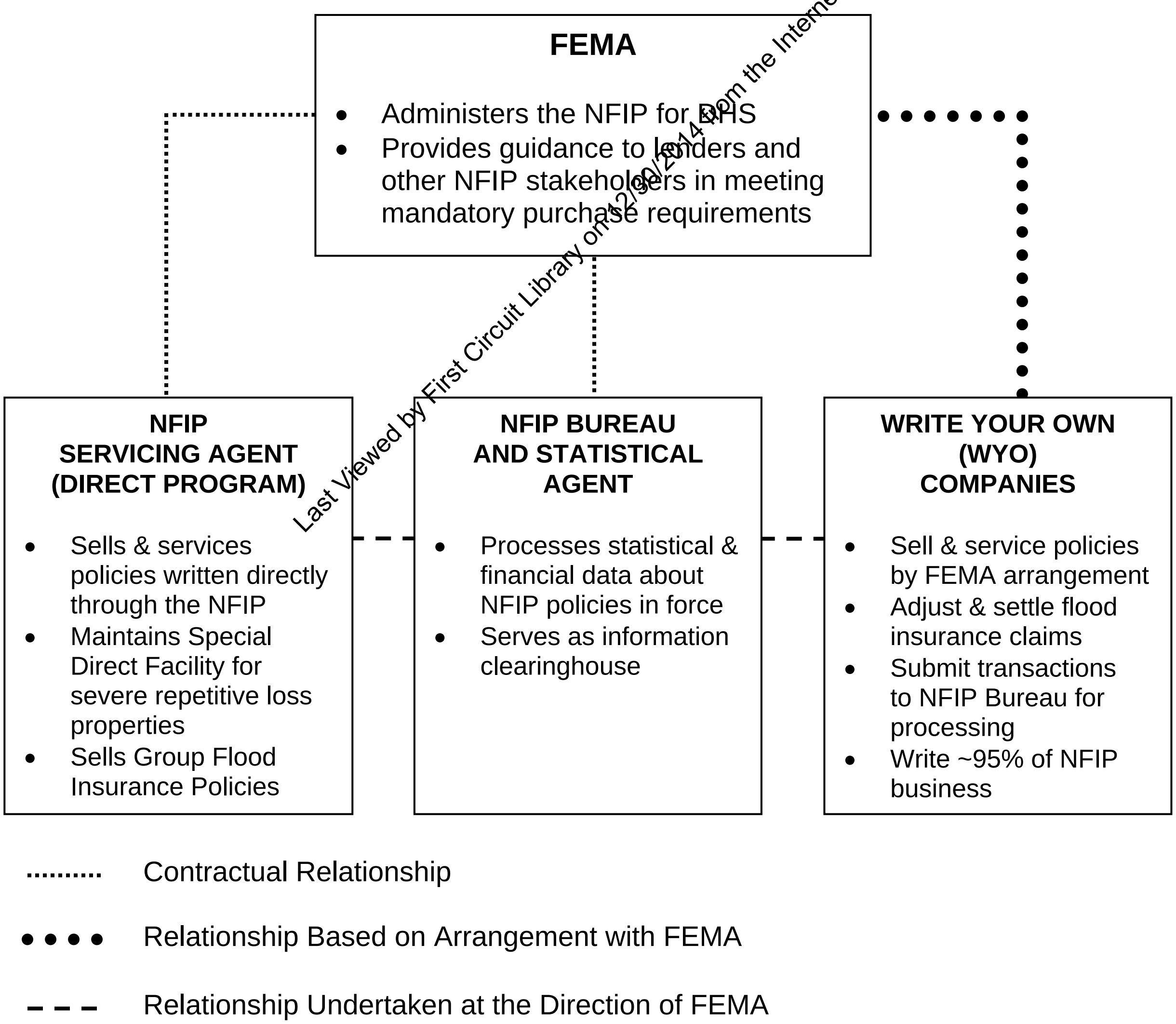
5. Operation of the NFIP

In 1983, the Federal Government decided to partner with the insurance industry to increase the sale of flood insurance. These private insurance industry carriers participating in the NFIP are called Write Your Own (WYO) companies because they write and service federally backed SFIPs under their own names. A list of these WYO companies can be found online at http://www.fema.gov/nfipInsurance/companies.jsp.

The chart on the following page provides a snapshot of current NFIP operations and the functional relationships among major participants in the NFIP.

As shown below, the NFIP makes federally backed flood insurance available to consumers in two ways. One is through NFIP Direct Program agents who deal directly with FEMA. The other is through the Write Your Own (WYO) Program, which allows consumers to purchase flood insurance from their regular insurance agents and/or companies.

Under the WYO Program, private property and casualty insurance companies that enter into an arrangement with FEMA can write Federal flood insurance and adjust claims under their own names. These WYO companies receive an expense allowance and transfer premium income in excess of claims to the Federal Government. FEMA funds the losses in excess of premiums and sets the rates, coverage, limitations, and eligibility requirements. The flood insurance premium charged by a WYO company is the same as that charged by the NFIP Direct Program.



SECTION B
COVERAGE AVAILABILITY

As discussed in the Introduction, the National Flood Insurance Program (NFIP) takes a community approach to mitigating flood hazards and to offering flood insurance. This section describes the availability of Federal financial assistance, including NFIP coverage in specific types of communities.

1. Participating Communities

a. Community Ordinances

The Federal Emergency Management Agency (FEMA) conducts Flood Insurance Studies throughout the United States, in cooperation with community officials, to determine the location of high flood risk areas, called Special Flood Hazard Areas (SFHAs), in each community. On the basis of these studies, FEMA notifies each community of its SFHAs and issues Flood Insurance Rate Maps (FIRMs) for communities.

To participate in the NFIP, the community enters into an agreement with FEMA. Under this agreement, the community adopts and enforces ordinances designed to reduce the risk of flood damage to buildings in that community. These ordinances restrict development and limit imprudent building within SFHAs, identified on the FIRMs as Zones A or V. In exchange, NFIP flood insurance becomes available for most residential and commercial buildings in the community. Flood insurance also is available in low-to-moderate flood risk areas identified on the FIRMs as Zones B, C, or X, although not mandated by law. Historically, about one-quarter of all NFIP flood claims have been paid in these lower-risk areas.

The community's floodplain management ordinances must require building permits for all development within the SFHA. New and substantially improved residential buildings must be constructed with the lowest floor at or above the Base Flood Elevation (BFE), if the BFE is shown on the FIRM. Non-residential buildings can be either elevated or floodproofed (made watertight) to the BFE.

Participating communities that fail to adequately enforce their floodplain management ordinances may be placed on probation if they do not take corrective actions within a specified time. NFIP policyholders in that community will be notified that probation is pending and that their flood insurance policies may become subject to a premium surcharge. If a community fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, which would terminate its status as a participating community. In that event, NFIP policies would not be renewed for property owners in that community, no new policies would be issued, and Federal disaster assistance would be limited.

Most suspended communities quickly enforce the ordinances and become participating again. The success of the NFIP's growth can be credited in part to the incentive that promotes the receipt of Federal benefits contingent upon the implementation of land use controls at the local level.

The NFIP also has special provisions for those communities whose floodplain management activities go beyond the minimum required by law. The Community Rating System (CRS), codified in the National Flood Insurance Reform Act of 1994, provides incentives in the form of reduced insurance premiums to policy-holders in communities that voluntarily adopt and enforce measures exceeding minimum program criteria to reduce the risk of flood damage.

b. Studies and Maps

As of this edition, more than 20,300 communities participate in the NFIP. The NFIP *Community Status Book*, available online at http://www.fema.gov/fema/csb.shtm, lists the status of NFIP participating and non-participating communities. It further identifies NFIP Regular Program communities, where most renters, homeowners, and businesses are eligible to purchase the maximum amount of flood insurance available under the NFIP for their type of building, or the replacement cost value of their building and/or its contents, whichever is less. This protection is available for buildings located inside and outside of SFHAs, subject to NFIP underwriting guidelines.

The *Community Status Book* also identifies NFIP Emergency Program communities and communities that have been suspended.

Lenders should be aware that a few NFIP participating communities remain in the Emergency Program, where only limited amounts of insurance are available. The applicable map for Emergency Program communities is the Flood Hazard Boundary Map (FHBM). Early in the evolution of the NFIP, all participating communities received FHBMs, which provided limited flood risk information. Once a FIRM, which is a more detailed map than the FHBM, was issued, it replaced the FHBM. At that time, these communities became eligible for conversion to the Regular Program.

The official FIRM for a Regular Program community delineates the SFHAs and the applicable flood insurance risk zones. SFHAs are those areas within the floodplain that have a 1-percent chance of being flooded in any given year (base flood). Over a 30-year period (the life of most residential mortgages), there is at least a 26-percent chance that a building within an identified SFHA will be flooded.

SFHAs are represented on FIRMs by darkly shaded areas designated with the letter A or V. FEMA generally performs engineering studies to determine the delineation of SFHAs. SFHAs are defined as Zones A, AO, A1-A30, AE, AR, AR/AO, AR/A1-A30, AR/AE, AR/AH, AR/A99, A99, AH, VO, V1-V30, VE, and V. These zones are highly susceptible to flooding; V-lettered zones are also subject to wave action.

Older FIRMs show numbered A Zones (e.g., A1, A2, A30) and numbered V Zones (e.g., V1, V2, V30). On newer FIRMs, Zone AE represents former Zones A1-A30, and Zone VE represents former Zones V1-V30. As with other SFHAs, buildings located in the temporarily designated flood restoration zone (Zone AR) are subject to the mandatory purchase requirement.

Older maps use Zones B and C to represent areas of moderate and low flood risk. Newer maps have replaced these designations with Zone X (shaded) and Zone X (unshaded), respectively.

Areas for which FEMA has made no flood hazard evaluation, but for which flooding is considered possible, are designated as Zone D. Although these areas typically were undeveloped and sparsely populated when designated as Zone D, lenders should be aware that any new development in such areas may have increased the possibility of property damage from flooding.

On the East Coast and Gulf Coast, and along the Great Lakes, the FIRM might also show Coastal Barrier Resources System (CBRS) areas. As explained in the discussion of the Coastal Barrier Resources Act and Coastal Barrier Improvement Act on pages 21-22 of these guidelines, the availability of Federal flood insurance is limited in CBRS areas.

FEMA is responsible for identifying flood risks in areas behind levees through flood analysis and flood hazard mapping projects. FEMA has criteria for recognizing levees as providing protection against the 1-percent-annual-chance flood. These criteria are located in Title 44 of the Code of Federal

Regulations, Section 65.10. More information about the NFIP and levees is located at http://www.fema.gov/txt/plan/prevent/fhm/fq_pal.txt.

Finally, certain communities with no SFHAs indicated do not have published maps, and the entire area is considered to be in Zone X (unshaded). Although these areas may not be subject to the base flood, local drainage problems may cause damage to certain buildings. If a lender extends a loan in an unmapped participating community and has reason to believe there is a possibility of flood loss to the secured building, then safety and soundness dictate that flood insurance coverage should be in place.

For buildings located outside the SFHAs, the statutory requirements do not obligate lenders to impose the mandatory flood insurance purchase requirement. However, in accordance with most mortgage documents, a mortgage lender is free to require a borrower to carry flood insurance, even if the building serving as security for a loan is located outside an SFHA. Flood insurance is available and encouraged for all eligible buildings in participating communities, whether inside or outside an SFHA.

In the late 1990s, FEMA began developing a plan to modernize FIRMs, and Congress in the early 2000s authorized the first in a series of appropriations for FEMA to carry out this plan. Flood Map Modernization ("Map Mod") is FEMA's multi-year effort to update and transform flood maps into more reliable, easy-to-use, and readily available digital products. Map Mod enables communities and citizens across the country to more efficiently obtain flood hazard data, learn their flood risk, and make informed decisions about development, floodplain management, and mitigation projects that limit damages in future flooding events.

Additional information about Map Mod is available at http://www.fema.gov/plan/prevent/fhm/index.shtm.

c. Determining Location of a Building

(1) Significance of a Building's Location

As stated earlier, the statutory requirement to purchase flood insurance applies only when a loan is extended on improved real property (i.e., a building or manufactured [mobile] home) that is located or will be located in an SFHA in a participating community. The requirement is accomplished by completing the Standard Flood Hazard Determination Form (SFHDF), as discussed on pages 36-38. The current SFHDF and instructions for completing it are shown in Appendix 3. Any future revisions to the form will be available online at http://www.fema.gov/business/nfip/sfhdform.shtm.

Even though a portion of real property on which a building is located may lie within an SFHA, the purchase and notice requirements do not apply unless the building itself, or some part of the building, is in the SFHA. However, even if that part of the building within the SFHA is not subject to coverage (e.g., a deck), the entire building is considered to be in the SFHA.

Lenders, on their own initiative, may require the purchase of flood insurance even if a building is located outside an SFHA. A decision to require coverage under such circumstances is not compelled by the statute, but is founded on the contractual relationship between the parties. Lenders have the prerogative to require flood insurance to protect their investments, provided that they have reserved that option in their mortgage loan document.

(2) Responsibility in Determining a Building's Location

Section 42 of U.S.C. §4012a sets the ultimate responsibility to place flood insurance on the applicable lender, yet allows for limited reliance on third parties to the extent that the information they provide is guaranteed. The lender, servicer, or a third-party vendor may conduct the determination of a building's location.

Under any alternative, the lender, using such evidence as is reasonable, must take the responsibility for making determinations and redeterminations. A financial institution cannot rely on the statements of a borrower that the structure in question is either inside or outside an SFHA.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent that "such person guarantees the accuracy of the information."

Some third-party flood zone determination companies also provide a form of life-of-loan service that monitors the flood hazard status of the secured structure for the term of the loan. Third-party life-of-loan service is designed to discover a change in flood hazard status, thereby minimizing the administrative burden for the lender or servicer. The law does not require a lender to subscribe to a tracking service that provides life-of-loan monitoring.

The determination of a building's location must be made using the FIRM or FHBM and may be supplemented with other reliable information. If the flood zone designation noted on the SFHDF differs from the zone designation noted on the flood insurance policy, the lender should resolve it and document the reasons. There may be some legitimate reason for the discrepancy, such as the NFIP "grandfather" rules. In some cases, certain buildings may be grandfathered into previous zone designations using older maps, as described in the next subsection. This will manifest as an apparent zone discrepancy, although it may actually be correct. Lenders can use third-party resources to resolve zone disagreements and ensure proper documentation of discrepancies.

In many instances, community officials, insurance company personnel, insurance agents, real estate agents, surveyors, or appraisers may be helpful and knowledgeable resources. However, to the extent that such parties cannot or will not grant guarantees, reliance upon the information they provide cannot be used for exculpatory purposes if the lender is confronted with a regulatory violation or a civil claim for damages.

Regardless of how the determination is reached, the nondelegable obligation of the determination remains the responsibility of the lender.

A lender may rely on a previous determination, not more than 7 years old, when increasing, extending, renewing, or purchasing a loan, but only when the previous determination was recorded on an SFHDF. This rule does not apply when a new loan is made, or if a map revision causes a building to be located within an SFHA, or if a map change occurs after the date of the previous determination.

The law places the regulatory onus on the Federal financial regulatory agencies and GSEs to ensure that the lending institutions under their jurisdiction meet all requirements. Included in the statutory requirements are the lender's determination of whether the security is located in an SFHA, the lender's notice to the borrower of the SFHA, and the borrower's requirement to purchase and maintain flood insurance as a condition for granting the loan.

(3) Effect of Grandfathering on Flood Zone Determinations

New flood maps sometimes identify larger areas of high flood hazard than do older maps. FEMA recognizes that property owners might not have built in high flood risk areas if the risks had been identified at the time. However, funding for new FIRMs has historically been inadequate, and development contributes to changes in flood risk within communities.

Therefore, in fairness to policyholders who built in compliance with the existing floodplain management standards for their flood zones and/or have continuously maintained Federal flood insurance, FEMA developed grandfather rules to avoid penalizing these policyholders with higher rates. These rules allow policyholders to benefit in the premium rating of their buildings.

For example, if a new policy is applied for, the rates can be based on the FIRM zone and the BFE on the old map in effect on the date the building was constructed provided that:

- The building was built in compliance with the map in effect at the time of construction; and

- The building has not been altered in any way that has resulted in a lowest floor, for rating purposes, situated lower than the BFE on that FIRM (e.g., enclosing the area below an elevated building); and

- The building has not been substantially improved.

The property owner or insurance producer must provide proper documentation to the Write Your Own (WYO) company or NFIP Servicing Agent. The documentation must include: the date of construction; the date of the FIRM; the zone on that FIRM in which the property is located; the BFE, if any, for that zone; a copy of the map panel showing the location of the building; and the rating element that is to be grandfathered (e.g., zone, BFE, elevation difference). A letter from a community official verifying this information also is acceptable.

(4) Flood Determination Fee Charged by Lender

The 1994 Reform Act gave lenders and servicers authority to pass on a "reasonable fee" to borrowers when a determination is made in conjunction with either the:

- Making, increasing, extending, or renewing of a loan initiated by the borrower; or

- Revision or updating of a map; or

- Required force placement of coverage.

Passing along a fee to the borrower is not allowed on a routine portfolio review unless the review results in discovery of a loan for which coverage is specifically required. When a flood map is revised, or in a situation when the Administrator (formerly Director) of FEMA determines that an area requires a review, a lender is permitted to conduct a search on its loan portfolio in the affected area and pass through the flood determination fee to all borrowers in these areas. The pass-through fee is permitted whether or not it is ultimately shown that coverage is required or already in existence on any of the affected buildings.

The commentary that accompanied the 1994 Reform Act states that the determination fee may include the life-of-loan charge assessed to monitor the loan for its term. The Act does not specifically define what constitutes reasonableness in evaluating the fee. Also unspecified is whether incidental expenses, cost, or profit margin may be factored into the fee. The amount of the fee remains subject to review on a case-by-case basis by the applicable regulator.

Where an extension of credit is secured by an interest in real property, the Truth in Lending Act and its implementing regulation, Regulation Z, specifically provide that certain costs and fees, if bona fide and reasonable in amount, need to be *disclosed*, but need not be included in the calculation of the finance charge. The Truth in Lending statute provides that a flood zone determination charge is excludable as a finance charge only if it is imposed in connection with the initial decision to grant credit. Therefore, a flood zone search fee that does not contain a charge for life-of-loan monitoring need not be included as part of the finance charge. The fee charged for the initial determination must appear on the HUD Good Faith Estimate, and the actual fee must be disclosed on the HUD-1 Settlement Statement.

The Truth in Lending law also requires that a fee for services to be performed periodically during the loan term (for example, the life-of-loan component that is charged to monitor continued compliance) may not be excluded in the calculation of the finance charge regardless of when paid. If a consolidated flood determination fee includes a life-of-loan component, which cannot be apportioned between an initial credit decision or future services, the entire charge is to be considered a finance charge. If a lender is uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Regulation Z does not come into play if a lender incurs flood zone determination expenses subsequent to the closing of the loan, such as expenses arising from a remapping or the transfer of a fee to the borrower.

The 1994 Reform Act also contains an express provision that preempts other Federal or State law with respect to flood determination fees charged by lenders.

d. Letters of Map Change (LOMCs) and Appeal Options

Flood map questions may arise because the location of a building with respect to an SFHA is central to determining the applicability of the mandatory purchase provision, as well as the insurance premium rate. In theory, the area on a map encompassing a building's location should reflect its susceptibility to flood. In practice, FIRMs cannot possibly reflect every nuance in the physical geography of an area.

If a lender encounters a discrepancy in the flood zone designation, the parties involved in making the determination are encouraged to resolve the discrepancy before contacting FEMA for a final determination.

This subsection discusses the options for a FEMA review to appeal flood zone determinations and the kinds of Letters of Map Change available:

- Letters of Determination Review
- Letters of Map Change (Letter of Map Amendment, Letter of Map Revision).

Detailed information about the different types of Letters of Map Change, including a link to the fee schedule for Letters of Map Revision Based on Fill (discussed below) is available at http://www.fema.gov/hazard/map/lomc.shtm.

The subsection concludes with discussions of:

- Community-Initiated Map Revisions
- Map Availability.

Borrowers who seek personalized assistance may call a FEMA Map Specialist toll free at 877-336-2627.

(1) Letter of Determination Review (LODR)

Determining whether a building is located in an SFHA requires an examination of the location of the building in relationship to the SFHA shown on the FIRM. However, despite FEMA's efforts to make the maps as useful as possible, the boundary location of some SFHAs may be difficult to determine precisely. This creates a problem in deciding whether a building is subject to the mandatory purchase requirement.

When a borrower disputes a lender's determination that a property is in an SFHA and requires flood insurance, the 1994 Act allowed for the LODR review process. The borrower and lender may jointly submit a review request to the Administrator of FEMA during the 45-day period after the borrower is notified that flood insurance is required. The Administrator of FEMA will rule on the determination, provided the review request meets the stipulated criteria.

The determination must have been conducted or obtained by a lender using the current printed map panel. The review process is intended to confirm or disprove the accuracy of the original determination. It is not intended to result in the initiation of a Letter of Map Amendment or Letter of Map Revision or resolve questions concerning the elevation of a building.

FEMA will assess a flat fee to cover a majority of the costs associated with reviewing, recording, processing, and dispatching FEMA determinations. The fee will also apply to a finding of insufficient information. Requests submitted more than 45 days after borrower notification will not be reviewed, will be returned with the fee, and should not be resubmitted.

Because the fee is not imposed or required by the lender, it is not required to be included in the finance charge. The lender and borrower must decide who will pay the fee. Payment for the LODR must be by check or money order, payable to the National Flood Insurance Program. The amount of the fee will be reviewed bi-annually and, if changed, FEMA will publish a notice in the *Federal Register*.

LODR requests should be mailed to the following address:

Federal Emergency Management Agency
Determination Review Coordinator
3601 Eisenhower Avenue, Suite 600
Alexandria, VA 22304-6439

The request for a determination review must be an original (not photocopied) and signed by at least one of the borrowers' legal representatives for the loan. The lender also must sign the request. To ensure the involvement of all appropriate parties, FEMA will *not* accept the signature of a third-party determiner as a representative for either the borrower or the lender. If both parties' signatures are not included in the request, the request will be returned without review. The requester will be notified that the data submitted with the request does not meet the requirements of the law; therefore, the lender's obligation to require the purchase of flood insurance remains in effect.

The law states that FEMA shall respond to review requests within 45 days on disputes arising out of loan originations. The 45-day time period begins on the day that FEMA receives the package. Delay may be minimized by submitting the request for review immediately after the lender notifies the borrower that flood insurance is required, and by making sure that the data package sent to FEMA is complete. Packages that have insufficient information will be returned with the fee, and the parties will be advised of the information needed for the review to be accomplished. The borrower will have 14 days to resubmit the package with the fee or until the end of the original 45 days, whichever is longer. There is no additional charge.

A building found to be in an SFHA is required to have flood insurance coverage. However, if the Administrator of FEMA fails to respond to the review request before the later of 45 days after receipt or the closing of the loan, then there is no obligation for flood insurance coverage until the Administrator provides a determination. Apart from the law, it is industry practice for a lender to contractually require the prospective borrower to obtain flood insurance coverage as a condition of granting the loan. If FEMA subsequently determines that flood insurance coverage is not required, there is an NFIP procedure that allows cancellation with refund of premium for the current policy term.

Supporting Materials for LODR Requests

Under the determination review process, the requesting parties must present supporting materials to the Administrator of FEMA for review. These materials include the completed SFHDF (see Appendix 3), copies of the lender's notification to the borrower and the applicable FIRM panel, and all other technical documentation used in making the flood zone determination. The copy of the FIRM used to make the determination will be examined to assess whether it is the most current panel. The title block, including map date, scale bar, and north arrow, and the portion of the map including the property location (with that property location annotated) are the only portions of the FIRM that must be provided. If the submitted data does not include all relevant information, FEMA will return the request.

As noted previously, the request must include all technical documentation used by the lender or third-party flood zone determination company to make the determination. Items to complete this requirement typically include:

- A copy of the tax assessor's map showing the property; or
- A property survey map showing the location of the building as related to the property; or
- A copy of the plat for the subdivision/tract or similar document; or
- Information showing the relationship of the building and FIRM or FHBM.

Buildings located in rural areas, or areas where the FIRM or FHBM shows few physical features, may need additional reference data to definitively locate the property and the building on the property. For multiple-unit buildings, data must be submitted for all of the building(s) located within the same SFHA. Properties with multiple buildings must show data for all structures. A building porch or deck should be indicated in detail.

FEMA's Response to LODR Requests

After reviewing the required supporting technical documentation, FEMA will issue a written determination, the Letter of Determination Review (LODR), indicating its concurrence or disagreement with the original determination made by the lender or third party and stating whether the FIRM indicates that the subject building or manufactured (mobile) home is in the SFHA.

If the issue is whether the FIRM was read correctly, the administrative determination review procedures described below are appropriate. If the issue is whether the FIRM should be amended or revised, a Letter of Map Change is appropriate. Letters of Map Change (LOMCs) include Letters of Map Amendment (LOMAs) and Letters of Map Revision (LOMRs). Letters of Map Revision include Letters of Map Revision Based on Fill (LOMR-Fs). If the determination review process indicates that the building is in the SFHA, FEMA will notify the requester of the determination review that LOMC procedures are available to individuals under Parts 70 and 65 of the NFIP regulations.

In conducting the review to determine the accuracy of a map, FEMA will check its Community Information System database for LOMAs, LOMR-Fs, and LOMRs that would affect the determination. If the original determination overlooked a LOMA, LOMR-F, or LOMR, FEMA's final response will so state and will provide the date of the letter. LOMAs, LOMR-Fs, and LOMRs are available through the community's map repository or the FEMA Map Service Center.

In addition, the Administrator of FEMA will review contested determinations dealing with remapping, map revision, or routine portfolio review. The law does not require the agency to respond to these inquiries within the 45-day time period.

Any determination that the building is not subject to the mandatory purchase requirement can be relied on until a new map becomes effective for the community. The statute states that a determination of the Administrator of FEMA shall be final.

(2) Letter of Map Amendment (LOMA)

Occasionally, a parcel or individual structure may be incorrectly determined to be located within the SFHA because of imprecise map delineations. Other times, a flood map will show property as clearly being in an SFHA, even though the building on the property is actually above the BFE. Because FIRMs cannot reflect every rise in terrain, there will be instances of "natural islands" of high ground that are inadvertently included in the SFHAs.

A mechanism is available, however, for resolving such a situation. A property owner may submit property and elevation materials in support of a request for a LOMA to remove the property from the SFHA. This process involves the property owner and FEMA.

Nevertheless, until the map is physically amended or revised, lenders are bound by the information shown on FEMA maps unless a LOMA has been issued by FEMA for the building. Lenders may not close a loan on the basis of a guarantee or indemnification from a flood vendor or other third party as a substitute for a LOMA.

(3) Letter of Map Revision (LOMR)

A different, but related, situation is presented when a property owner, whose land is within an SFHA below the BFE, grades and fills the site to raise the level of the land above the BFE. In the LOMA situation described previously, the natural level of the land at the time the map was issued was above the BFE, and no artificial improvement was needed to accomplish that level. In cases where physical changes were necessary to raise the structure above the BFE, FEMA will not issue a LOMA. However, with the community's concurrence, FEMA will issue a Letter of Map Revision Based on Fill (LOMR-F) that, for the purposes of the property owner, will accomplish the same objective.

The request for a LOMR-F must be approved by the community because changes in land level may impact other property owners. Submission of a request for a LOMR-F by the community confirms that the community has reviewed the change in land level and found it compatible with the community's planning. A LOMR-F must be based on the BFE presented on the FIRM.

A unique situation arises when a building is initially constructed at a level below the BFE in an SFHA, and its lowest floor is subsequently elevated or raised above the BFE by supporting walls or pilings. Such a structure is then considered an elevated building by the NFIP.

In this situation, there is no basis for the issuance of either a LOMA or LOMR-F. The building is still in the designated SFHA, and its foundation, supporting walls, and pilings can come into direct contact with floodwaters. When an owner of property below the BFE elevates a building so that the lowest floor is above the BFE, the flood insurance purchase requirement continues to apply. Insurance is required because the foundation on which the house is elevated is still below the BFE, where it remains exposed to the action of floodwaters. However, because of its reduced exposure to damage, the newly elevated building will be subject to a lower insurance rate and premium.

A lender may never waive the flood insurance requirement if the eligible building is determined to be in an SFHA. Only FEMA can amend or revise an official flood map to remove the location of an insurable building from an SFHA, add it to a designated SFHA, change the SFHA boundary or flood insurance risk zone designation, or modify a BFE. Until a property owner has received a LOMA or LOMR-F removing the building from the SFHA, the information shown on the effective FIRM must be used. Questions concerning the correctness of the map or the proper zone designation of a building's location in accordance with a LOMA or LOMR-F are matters beyond the authority of the lender. If a lender chooses to close a loan while a LOMA or LOMR-F is pending, the lender must require flood insurance until the LOMA or LOMR-F has been obtained.

LOMRs also may be granted in situations where physical changes have been constructed to protect areas from flooding. A LOMR has the effect of revising the BFEs, SFHA, and/or regulatory floodway presented on the FIRM. In regulatory floodways, which include the channel of a river and the adjacent floodplain that must be kept unobstructed, the placing of fill or other development is not allowed if it will result in any increase in the flood level for the SFHA.

Requests for LOMAs, LOMR-Fs, and LOMRs should be mailed to:

FEMA Map Assistance Center
3601 Eisenhower Avenue
Alexandria, VA 22304-6425

After the issuance of a LOMR that impacts the subject property or after obtaining a separate LOMA or LOMR-F, the property owner may submit the letter to the lender, requesting a waiver. However, even though lenders are not required to compel the purchase of flood insurance on buildings removed from the SFHA by a LOMA, LOMR-F, or LOMR, they have the discretionary right to continue to require flood insurance in accordance with their lending documents. Many floods occur outside of designated SFHAs, and about 25 percent of NFIP flood insurance claims are for buildings located in these low-risk areas.

For this reason, owners who are considering seeking a LOMA or LOMR-F should first consult their lending institutions to determine if flood insurance will still be required. Further, lenders are encouraged to advise LOMA and LOMR-F recipients and those affected by LOMRs that floods more severe than the base flood can and do occur. Property owners should be encouraged to contact their property insurance agent to voluntarily buy flood insurance coverage for their building and its contents. Some property owners may be eligible for the NFIP's low-cost Preferred Risk Policy after the issuance of a LOMA, LOMR-F, or LOMR.

(4) Community-Initiated Map Revisions

A physical map revision is an official republication of a map to effect changes to flood insurance risk zones, floodplain and floodway boundary delineations, flood elevations, and other mapping and boundary features within a community. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or corrections of BFEs or flood insurance risk zones. A notice of any change in BFEs on flood map panels will be published in the *Federal Register* and in local newspapers, as these changes are subject to a statutory appeal period.

(5) Map Availability

FEMA has specific responsibilities for making flood map information available, including the following:

- FEMA must make FIRMs and related information dealing with the various changes discussed above available free of charge to the Federal entities for lending regulation (Federal lenders and certain other governmental entities), and at a reasonable cost to all other parties.

The maps and other NFIP publications are available through FEMA's Map Service Center, which can be contacted toll free by telephone at 800-358-9616 or online at http://msc.fema.gov. (See Appendix 5 for additional resources.)

- FEMA also must provide notice of any change to flood insurance map panels, including changes effected by a LOMA, LOMR-F, or LOMR not later than 30 days after the map amendment or revision becomes effective. FEMA's Map Service Center offers a subscription service for this notification.

- Finally, every 6 months, FEMA must publish a compendium of all changes to FIRM panels, all new FIRM panels, and all LOMAs, LOMR-Fs, and LOMRs published during the preceding 6 months. The compendium will show the various changes in which some areas are removed from the SFHA while others are included. This compendium is made part of the public record as published in the *Federal Register*. A lender should review its loans located within the geographic area(s) impacted by the changes noted in the compendium. If a lender becomes aware that any buildings on which it has loans are brought within an SFHA, the mandatory purchase requirements must be met.

2. Non-Participating Communities and Restricted Coverage Areas

a. Regulated Lending Permitted

A community may decide not to participate in the NFIP even after it is mapped and receives notification from FEMA that it has high flood risk areas. Non-participating communities are not eligible for Federal flood insurance, and federally backed loans in these communities may be made only outside of SFHAs. However, conventional loans can be made anywhere in non-participating communities.

A conventional loan is a loan by a private lender, as distinguished from a loan either made, secured, insured, or guaranteed by a Federal government agency. Lenders regulated by, or whose deposits are insured by, Federal regulatory agencies may make conventional loans secured by mortgages on buildings and manufactured (mobile) homes in SFHAs in non-participating communities.

The lender must notify the purchaser that the property is located in an SFHA. See the two versions of the sample Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance in Appendix 4.

Lenders are still required to observe the laws related to making determinations and providing notice, even though the requirement to purchase flood coverage does not apply. However, because of the lack of NFIP coverage and limited Federal disaster assistance, lenders should carefully evaluate the financial risk involved in making such loans. In non-participating communities, a lender may require the borrower to have in place private flood insurance, if available.

In those communities where Federal flood insurance is not available, the inability of the property owner to purchase NFIP coverage does not prevent a lender from making a conventional loan with respect to that structure. The statute mandates coverage only when the sale of flood insurance has been made available. A lender may exercise discretion and decline to make a loan in an SFHA where Federal flood insurance is not available. Also, lenders with significant lending in non-participating communities should establish procedures to ensure that loans on buildings in SFHAs where flood insurance is not available do not constitute an unacceptably large portion of the institution's loan portfolio.

Although a conventional loan may be extended in a non-participating community, a lender may not be able to pass such a loan on to a regulated lending institution or to the secondary market. Some GSEs, such as

Fannie Mae and Freddie Mac, have stated that they will not buy mortgages secured by properties in non-participating communities if they are located in an SFHA. To ensure that such loans are not delivered to them, Fannie Mae and Freddie Mac now require lenders to monitor, on an ongoing basis, changes in a community's status under the NFIP.

b. Federal Financial Assistance and Disaster Assistance Limited

In the event of a federally declared disaster, property owners in a non-participating community, which has had its high flood risk areas identified for at least a year, will not be eligible for Federal disaster relief assistance. To prevent the Federal Government's financial exposure to potential loss from flood damage to uninsured buildings located in SFHAs in non-participating communities, Federal officers and agencies are specifically prohibited from providing financial assistance for acquisition or construction of buildings in these areas. This means that non-participating community residents and developers are ineligible to obtain direct Federal loans to construct buildings within the floodplain. However, they do remain eligible for conventional loans from federally insured banks.

FEMA administers Federal Emergency Assistance authorized under Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to comply with the National Flood Insurance Reform Act of 1994. Therefore, mandatory flood insurance requirements must be followed for recipients whose damaged property is located in SFHAs in order for the recipients to be eligible for future assistance.

The law precludes Federal disaster assistance related to repair of buildings, including U.S. Small Business Administration disaster assistance loans, if previously received flood disaster assistance was conditioned on carrying flood insurance and no policy is in effect.

c. Notification of the Unavailability of Federal Disaster Assistance

When lending on secured improved real property in an SFHA in a non-participating community, lending institutions must notify the borrower of the unavailability of disaster relief assistance in the event of a disaster caused by flood.

The notice requirements do not apply to unsecured loans, or to loans secured by buildings that are not located in an SFHA. Under the requirements, affected lenders must provide borrowers with written notice about whether Federal disaster relief will be available on the building.

For the convenience of lenders, Appendix 4 provides two versions of a sample notice—the first for use in NFIP participating communities; the second for use in non-participating communities—that incorporates the language prescribed by law, for use when applicable, into the notice a lender must provide to the borrower.

d. Buildings Ineligible for NFIP Coverage

(1) Underwriting Restrictions

Most buildings are eligible for coverage under the NFIP, but there are exceptions. For example, a building (or boathouse) built completely over water cannot be insured if the building (or boathouse) was newly constructed or substantially improved on or after October 1, 1982. The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete, current list of coverages and exclusions may be found in the Standard Flood Insurance Policy (available online at http://www.fema.gov/business/nfip/sfip.shtm) issued under the NFIP. Lenders may share information such as photos and appraisals of the building with the property insurance agent or company underwriter, who can help determine whether the building was constructed in compliance with building codes and is eligible for coverage.

For certain categories of properties located in participating communities, flood insurance coverage may be restricted. This includes manufactured (mobile) homes that do not meet NFIP insurability requirements. In special situations, such as those described below, Congress or FEMA has chosen to deny eligibility for flood insurance, and treats the buildings similarly to those in non-participating communities. Therefore, the mandatory purchase requirement does not apply. Lenders should consider requiring private flood insurance for these types of risks.

(2) CBRS Areas and OPAs

Boundaries of Coastal Barrier Resources System (CBRS) areas and Otherwise Protected Areas (OPAs) are established and mapped by the U.S. Department of Interior's Fish and Wildlife Service. Lenders should exercise special care with properties in or near these areas, which are identified on FIRMs by patterns of backward slanting diagonal lines, both solid and broken.

Lenders can determine whether a property is located in a CBRS area or OPA by logging onto the CBRS page of the FEMA website (http://www.fema.gov/business/nfip/cbrs/cbrs.shtm). Assistance may also be available from insurance agents and companies and from community officials.

While FEMA mitigation measures, such as the elevation of buildings in high-risk areas, serve to protect buildings, damage to fragile coastlines that comes with development is unavoidable. Buildings can be repaired. However, if damaged by development, aquatic habitats (including adjacent wetlands, marshes, estuaries, and inlets that are the habitat for wild life and ecosystems that support local fisheries and provide recreational areas) can be lost forever. Coastal barriers are unique landforms that also serve as the mainland's first line of defense against the impacts of coastal storms and erosion.

Therefore, by law, federally regulated mortgage lending and Federal disaster assistance may not be available in these areas. Federally backed flood insurance is not generally available for new construction or substantial improvements in CBRS areas or OPAs. However, there are a few exceptions.

Eligibility for Federal flood insurance depends on whether the CBRS areas or OPAs in the community in which the building is located were designated by the Coastal Barrier Resources Act (CBRA) of 1982 or the Coastal Barrier Improvement Act (CBIA) of 1990.

Under the 1982 Act, a building in a CBRS area is eligible for coverage if all of the following requirements are met:

- A legally valid building permit for the construction of the building was issued prior to October 1, 1983; **and**
- The building was built (walled and roofed) prior to October 1, 1983; **and**
- The building was not substantially improved or substantially damaged on or after October 1, 1983.

Eligibility under the 1990 Act for buildings in a CBRS area or OPA requires that:

For CBRS areas:

- A legally valid building permit for the construction of the building was issued prior to November 16, 1990; **and**
- The actual start of construction of the building was prior to November 16, 1990: **and**
- The building was not substantially improved or substantially damaged on or after November 16, 1990.

For OPAs:

- A legally valid building permit for the construction of the building was issued prior to November 16, 1991; **and**

- The building was built (walled and roofed) no later than November 16, 1991; **and**
- The building was not substantially improved or substantially damaged after November 16, 1991.
- **Or**, the building is used in a manner consistent with the purpose for which the area is protected, regardless of the date of construction.

The CBRA of 1982 and CBIA of 1990 do not prevent private development, private financing, or private flood insurance, if available, in CBRS areas and OPAs. Any such development is subject to all applicable state and local laws, regulations, and building codes.

Detailed background information about CBRS areas and OPAs is available online at the web address given on page 21.

Buildings already located in the designated areas and walled or roofed prior to the designation remain eligible for coverage. If a building constructed in a designated area prior to its being designated sustains substantial damage as a result of a fire, flood, hurricane, or other causes, the restored building is not eligible for flood insurance coverage.

Lenders are required to notify borrowers that the building is in an SFHA, and that federally backed flood insurance is not available for the building. However, this situation does not prevent the making of a conventional loan. As with loans in non-participating communities, lenders would be well advised to assess the flood risk in deciding whether to grant the conventional loan.

(3) Buildings in Violation of State or Local Laws

In accordance with Section 1316 (42 U.S.C. 4023) of the National Flood Insurance Act of 1968, a conventional loan may be made when the building is located in an SFHA of a participating community but is not eligible for Federal flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Nevertheless, compliance with the provision for notifying the borrower that the building is in an SFHA is especially important. Because of violations relating to protection against flooding, buildings that come under the provisions of Section 1316 usually will be highly susceptible to flood damages, and are a far greater risk to the lender than buildings compliant with floodplain management ordinances.

With respect to both CBRS/OPA properties and Section 1316 properties, the lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. The statute mandates coverage only when the sale of flood insurance has been made available. The lender may require private flood insurance coverage for buildings declared in violation of state or local laws under Section 1316.

SECTION C
GENERAL MANDATORY PURCHASE PROVISIONS

This section describes the statutory requirements, the exceptions, and the practice of the lending industry in meeting its compliance requirement. It explains flood insurance availability and coverage options under the National Flood Insurance Program (NFIP). Appendix 1, Legal References, provides additional legal citations.

1. Entities Encompassed by the Law

The Flood Disaster Protection Act of 1973 required the purchase of flood coverage for the term of the loan. The National Flood Insurance Reform Act of 1994 requires flood insurance at any time during the term of the loan when the lending institution determines that the building or manufactured (mobile) home is or will be located in a Special Flood Hazard Area (SFHA).

Section 4012a(b) of the 1994 Reform Act subdivides its treatment of the entities regulated, yet imposes similar requirements on the three types of affected lenders. Essentially, the statute mandates flood insurance coverage even if the SFHA designation is first identified after settlement, but during the term of the loan, because of remapping or other reasons.

The statutory requirements apply to both consumer and commercial loans, whether they are new loans, refinances, consolidations, or renewals of existing extensions of credit. The mandatory purchase requirement attaches to any type of secured loan—fixed rate, variable rate, or balloon loan. It also applies regardless of the type of security interest taken (e.g., a mortgage indenture, judgment note, cognovit note, or any other type of security or trust agreement). The mandatory purchase provisions apply even on those loans where real estate is secured out of "an abundance of caution."

The duties of a regulated lender with respect to Federal flood insurance requirements for a particular loan cease upon the sale of the loan. An exception would be if the seller of a loan agrees to retain responsibility for complying with the statutory requirements under a loan-servicing agreement with the transferee. For example, if a regulated lender sells the loan to an unregulated lender while retaining servicing rights, the regulated lender will retain mandatory flood insurance purchase obligations under the service contract.

Most of the provisions of the 1994 Reform Act became effective on September 23, 1994, and apply prospectively to all new loans and regulated activity, but not to existing loans for which no changes have occurred since that time. Review of existing loans is encouraged, but not required.

The following entities are *not* currently covered by the 1994 Reform Act:

- Unregulated private financial institutions that engage primarily in the purchase of mortgage loans
- Unregulated mortgage bankers or brokers who serve only as loan originators
- Private mortgage lenders
- State regulated lending institutions not subject to Federal oversight.

a. Federally Regulated Lenders

The most significant mandatory purchase provision is found in Title 42 U.S.C. 4012a(b)(1). That subsection directs Federal regulators to adopt regulations requiring the lenders under their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or a mobile home" located or to be located in an SFHA, if the building, manufactured (mobile) home, or any applicable personal property is to be security for the loan. This provision is the crux of the law around which the other requirements of the 1994 Reform Act have been structured.

The flood insurance provisions of the 1994 Reform Act required the following Federal agencies to revise their flood insurance regulations to reflect the changes in the law:

- Board of Governors of the Federal Reserve System (FRS)
- Office of the Comptroller of the Currency (OCC)
- Office of Thrift Supervision (OTS)
- Federal Deposit Insurance Corporation (FDIC)
- National Credit Union Administration (NCUA)
- Farm Credit Administration (FCA).

These six Federal entities for lending regulation have issued a joint regulation to fulfill the statutory requirements. All six agencies coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC) in developing their joint regulation. The final regulation was published in the *Federal Register* on August 29, 1996, and appears in each agency's regulations. Citations to the various CFR sections can be found in Appendix 1.

The institutions supervised by the six agencies are referred to collectively as regulated lending institutions or lenders, 42 U.S.C. §4003(a). These lenders include any bank, savings and loan association, credit union, Farm Credit System Institution, or similar institution that is supervised, regulated, or insured by a Federal entity for lending regulation.

The regulatory agencies interpret the 1994 Reform Act's definition of "regulated lending institution" to include subsidiaries of institutions that are service corporations. This definition includes the phrase, "similar institutions subject to the supervision of a Federal entity for lending regulations," as defined in §4003(a)(10). Federal lending regulators deem subsidiaries of the institutions they regulate as subject to the rules applicable to the operations of the parent. Therefore, although a subsidiary entity that engages in mortgage brokering or servicing may not be directly regulated, it is considered subject to the statutory requirements. This also may apply to lending syndicates and their managing entities.

As noted in the Supplementary Information section of the final regulations, the agencies believe that the purpose of the Federal flood insurance statutes is best served by treating loans made by a subsidiary service corporation in the same way as loans made by others in the corporate structure. For example, the FDIC's portion of the joint final rule makes subsidiaries of insured nonmember banks subject to flood insurance requirements by defining the term "bank" to include a subsidiary of any such institution.

This provision was intended to increase compliance with the mandatory purchase requirements among regulated lenders. This practice also ensures uniform and consistent treatment for "regulated" financial institutions.

The 1994 Reform Act required the applicable Federal regulator to develop regulations that direct institutions under their jurisdiction not to make, increase, extend, or renew any loan on a building or manufactured (mobile) home located or to be located in an SFHA unless flood insurance is purchased and maintained for the term of the loan. Therefore, refinancing an existing loan is to be considered as the making of a new loan for purposes of the mandatory flood insurance purchase requirements.

b. Government-Sponsored Enterprises

Government-Sponsored Enterprises (GSEs) for Housing include the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). These entities are privately owned, federally chartered corporations whose sole business is to support residential housing by providing a secondary market for mortgages. GSEs are required to implement procedures reasonably designed to ensure that designated loans have flood insurance at the time of origination and at any time during the term of the loan.

The variation in the compliance wording from that found in the regulated lender provision can be attributed to the fact that GSEs have a contractual, not a regulatory, relationship with their sellers. The GSE requirements are imposed upon the primary lender as a condition of purchasing the loan. Thus, borrowers not directly covered by the mandatory purchase law ultimately will be required to satisfy the statutory flood insurance requirements if their lenders sell their loans to Fannie Mae or Freddie Mac. The mandatory purchase requirements flow from the original transaction.

Also, under the guidelines of Fannie Mae and Freddie Mac, servicers of loans sold to those agencies are required to assume responsibility for compliance with the mandatory flood insurance requirements. However, no existing flood insurance requirements cover lenders or servicers that are not federally regulated and that do not sell loans to Fannie Mae, Freddie Mac, or other GSEs.

As secondary market agencies, GSEs have no direct contact or dealings with borrowers, but do have the ultimate exposure on the loan. Consequently, the GSE guidelines are designed to ensure that any "covered loan" they buy has flood insurance for the life of the loan. Freddie Mac and Fannie Mae now require lenders and servicers to keep flood insurance up to date, monitor publication of all future map and community changes, and impose or relieve the mandatory purchase requirement during the term of the loan.

The GSEs have the ability to establish their own requirements to protect their interest in the loans they purchase. These standards can be more stringent than those found under the Federal regulations. For example, although the Federal regulators do not require monitoring for map changes, the GSEs do, thereby providing the impetus for monitoring.

As of this printing, Fannie Mae accepts flood insurance deductibles up to the current NFIP maximum deductible limit for a single-family structure, which is $5,000. The maximum NFIP deductible for residential condominium buildings is $25,000. The most current Selling and Servicing Guides and Announcements (if applicable) should be consulted to reference Fannie Mae's existing flood insurance requirements. These documents may be accessed online at http://www.efanniemae.com. Lenders who have additional questions regarding flood insurance requirements may contact their Customer Account Manager, Servicing Consultant, or Portfolio Manager.

Freddie Mac states that any private flood insurance policy must contain terms and conditions at least equivalent to the terms and conditions of coverage provided under the NFIP.

For one- to four-unit properties (including properties within a Planned Unit Development or ground lease community) in an SFHA, Freddie Mac requires that the flood insurance coverage on insurable premises equals at least the lowest of the following:

- The unpaid principal balance of the mortgage (if the mortgage is a second mortgage, the insurance must be calculated on the aggregate unpaid principal balance of the second mortgage and all superior liens); or

- The maximum amount of coverage sold under the NFIP; or

- The replacement cost of the insurable improvements.

See Chapter 58 of the Freddie Mac Single Family Seller/Servicer Guide at http://www.allregs.com/fhlmc.

c. Federal Agency Lenders

The statute in §4012a(b)(2) broadened the flood insurance requirement to specifically include loans on applicable real property and mobile homes secured by Federal agencies. Federal agency lenders may not subsidize, insure, or guarantee any loan if the building securing the loan is in an SFHA of a community not participating in the NFIP. For the most part, Federal agency lenders follow the same standards set by the Federal regulators, although some exceptions can be found. The Federal agency lenders are:

- Federal Housing Administration (FHA)

- Small Business Administration (SBA)

- Department of Veterans Affairs (VA)

- U.S. Department of Agriculture (USDA), Rural Development

  - Rural Housing & Community Service

  - Rural Business & Cooperative Service

  - Rural Utilities Service.

2. Specific Provisions of the Law

a. Limits Available

As of this edition, the maximum limits of flood insurance coverage available under the NFIP are as follows:

NFIP Maximum Limits of Coverage

Coverage Type	Emergency Program	Regular Program
Building		
Single-family dwelling	$ 35,000	$250,000
2- to 4-family dwelling	$ 35,000	$250,000
Other residential	$100,000	$250,000
Non-residential	$100,000	$500,000
Contents		
Residential	$ 10,000	$100,000
Non-residential	$100,000	$500,000

Special limits apply in Alaska, Hawaii, Guam, and the Virgin Islands. For details, and future changes to NFIP coverage limits, refer to page RATE 1 in the NFIP *Flood Insurance Manual* at www.fema.gov/business/nfip/manual.shtm.

As shown in the table above, the current maximum limit of coverage for residential properties is $250,000 for building and $100,000 for contents; and for non-residential properties, $500,000 for building and $500,000 for contents. Whenever the Federal Emergency Management Agency (FEMA), which administers the NFIP, changes the amounts of coverage available or amends the policy form, the change is published in the *Federal Register* and the *Flood Insurance Manual*.

Acceptable proof of coverage may be a copy of the Flood Insurance Application and premium payment, or a copy of the Declarations Page. The NFIP does not recognize binders or certificates of insurance.

(1) Land and Land Values Not Insurable

The statutory requirements apply to improved real property—that is, land with a building on it, including a manufactured (mobile) home. Raw land is not insurable under the NFIP. The building must be insurable under NFIP requirements in order to qualify for coverage.

Inasmuch as the NFIP does not provide insurance coverage for land, only for buildings, the location of a building in relation to the SFHA determines the applicability of the mandatory purchase provisions. Some portion of the building itself, and not just a portion or portions of the land, must be located in an SFHA for the mandatory purchase provisions to apply. Buildings located inside and outside of the SFHA on the Flood Insurance Rate Map (FIRM) are insurable in NFIP participating communities.

(2) Calculating Coverage

To meet compliance requirements, the amount of flood insurance must at least be, but is not limited to, the lowest of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of coverage available under the NFIP for the particular type of building; or
- The full insurable value of the building and/or its contents, which is the same as 100-percent replacement cost value (RCV). (Unlike the practice in other lines of property insurance, building RCVs under the NFIP do not include market values or the value of the land.)

To protect collateral interests, a lender should consider whether its collateral is adequately insured against flood damage. A sound flood insurance risk management approach follows the insurance industry practice of insuring buildings to full RCV. Such a risk management strategy meets or exceeds the minimal compliance requirements and is the easiest approach for lenders to implement. Security interests in SFHAs should be protected with flood insurance to the full insurable value, to the extent possible under the NFIP. Further, FEMA recommends that lenders seek guidance from regulatory authorities.

The maximum amount of flood insurance coverage available under the NFIP is the lesser of the insurable value of the building or the maximum amount of coverage available for that type of property under the NFIP. This is especially significant in cases where the loan exceeds the value of the insurable building(s). Where the outstanding principal balance of the loan exceeds the insurable value of the building, the insurance amount should be the insurable value of the building rather than the outstanding principal balance of the loan. If the lender does not take into account separate valuations of uninsurable land and property improvements, the insured may be paying for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders should avoid creating such a situation.

Lenders should follow the same general business practice in calculating the flood insurance coverage amount on a building as they do in placing other hazard coverage, e.g., homeowners insurance. The terms and conditions of the hazard clause contained in the loan document fully describe the rights and conditions of the parties.

Although the statute requires the lender's interest to be protected by flood insurance, a lender may need to consider other factors, such as Fannie Mae's and Freddie Mac's requirements, in determining the amount of insurance required. Depending on the practice of the mortgagee, the policy may not be sufficient to protect the full equity amount held in the property by the mortgagor in the event of a loss. If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the cost of repairing the building.

By insuring buildings to the full RCV, the lender and borrower are both better protected.

For multiple buildings, the lender must ensure that a separate flood insurance policy is provided for each building requiring coverage. The NFIP allows one policy per building.

(3) Loss Payments

Lenders should seek the assistance of property insurance agents or companies when determining the appropriate flood insurance coverage amounts, as they do for other lines of insurance. The borrower's financial interest should also be taken into account. Further, agents can help identify and consider the extent of recovery allowed under the three forms of the NFIP's Standard Flood Insurance Policy (SFIP), which are described below:

- General Property Form
  - Designed for use on non-residential risks
  - Limits recovery to actual cash value (i.e., the cost to repair or replace an insured item of property at the time of loss, less the value of its physical depreciation).
- Dwelling Form
  - Designed for use on residential risks
  - Pays losses to most building elements on the replacement cost basis, only if:
    - The building was the primary residence for at least 80 percent of the preceding 365 days or the period of ownership; and
    - At the time of loss, the building insurance amount represented at least 80 percent of the replacement cost immediately before the loss, or the maximum available under the NFIP. ("Replacement cost" means that the settlement is not subject to a deduction for depreciation.)
  - Otherwise, the Dwelling Form pays on the actual cash value basis, which involves a deduction for depreciation. This is also the case for contents coverage.
  - Special loss settlements apply to manufactured (mobile) homes.
- Residential Condominium Building Association Policy (RCBAP)
  - Designed for residential condominium associations
  - Has its own loss settlement provisions.

NFIP policies include Increased Cost of Compliance (ICC) coverage for the increased cost to rebuild, or otherwise alter, a flood-damaged property to bring it into conformance with state or local floodplain management laws.

ICC coverage is mandatory for all SFIPs except for (1) those sold in Emergency Program communities, (2) contents-only policies, (3) Dwelling Forms on individual condominium units, and (4) Group Flood Insurance. For these four cases, ICC coverage is not available. In a condominium building, ICC coverage is available only through the Condominium Association's flood policy.

The current ICC coverage limit is $30,000 per building or, for non-condominium townhouse construction, per unit, per policy. This coverage amount is in addition to the Building Amount of insurance purchased. However, for any one flood event, the amount of combined loss payment received from Building coverage and ICC coverage cannot exceed the maximum program limits of $250,000 for residential structures and $500,000 for non-residential structures.

ICC coverage should not be considered in determining the amount of flood insurance required.

(4) Deductible

The standard deductible is $500 for new construction, for all buildings constructed after the community adopted its initial Flood Insurance Rate Map (Post-FIRM), and for buildings rated in Zones A99, B, C, D, or X. The standard deductible for older buildings (Pre-FIRM) is $1,000. Deductibles are applied separately to buildings and again to contents.

The maximum optional deductible, if acceptable to the lender, for a single-family building is $5,000. Deductibles of $10,000 to $50,000 are available for non-residential buildings. Optional deductibles are not available for Preferred Risk Policies.

Standard practice in the financial industry is for the lender to dictate the amount of the deductible according to the authority found in the loan document hazard clause. A modification in the deductible can be accomplished at renewal or by endorsement mid-term with the lender's written request.

Lenders may exercise their business judgment prerogative by requiring only the standard deductible to be carried as a safeguard in protecting their interest in the improved real estate. The GSE secondary-market members designate what they consider as the proper deductible. Freddie Mac's guide states the deductible may not exceed the maximum deductible currently allowed under the NFIP for the type of improvements insured. Fannie Mae's guide states that they will accept deductibles up to the maximum deductible available under the NFIP for all policy types.

(5) No Coverage if Land Loan Only

The NFIP does not insure land, and the law does not address mortgages secured by land alone. Acquisition and development loans are not subject to the regulation because they do not meet the definition of a designated loan as defined by the 1994 Reform Act.

Therefore, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any building (structure) on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement.

(6) Low-Value Building on High-Value Land

Lenders are sometimes confronted with a situation where a building is located on land whose value alone would be sufficient to secure the loan without regard to the value of the building. However, the lender cannot waive the flood insurance requirement, even though the value of the land would provide more than adequate security for the amount of the loan. If the land has a building on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest.

The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required flood insurance coverage is the least of the principal balance of the loan(s), the insurable value of the building, or the maximum coverage available under the NFIP. The NFIP policy does not provide coverage for losses in excess of the value of the insurable building. By requiring adequate coverage, the lender also is protecting the Federal Government's interests by preserving the assets of agencies that insure the lender's deposits.

The question of limits on relatively low-value buildings can be an issue, especially in agricultural areas where the buildings are included as part of the loan collateral. The law does not differentiate agriculture from other areas of lending, and no exception by regulated lenders can be made without legislative action.

The value of the land should not be considered when calculating the required limits.

(7) Buildings in the Course of Construction

If a building to be constructed in an SFHA will become eligible for coverage when completed, flood insurance may be purchased to provide coverage during the construction period. Therefore, when a development or interim loan is made for construction of insurable improvements on land, flood insurance coverage can be purchased, even though construction has not begun.

While the NFIP statutes require flood insurance at loan closing, they do not specifically address the subject of buildings in the course of construction. For that reason, each regulatory agency or lender must determine at what point in the construction process coverage is required. One option for implementing the mandatory flood insurance coverage is to require the purchase of the policy at the time that the development loan is made, in an amount adequate to meet the mandatory purchase requirement.

Another option would be for the lender to require flood insurance at the time of a specified drawdown of the loan for actual construction of the building (see Appendix 6, B.9). This would require the lender to monitor the loan more closely to determine when actual construction begins. A policy obtained under either option would not be subject to the standard 30-day waiting period. The policy would be effective at the time of the flood insurance application and presentment of premium.

Material to be used on a building in the course of construction, but yet to be walled and roofed, is eligible for flood insurance, subject to certain underwriting restrictions. Materials or supplies intended for use in such construction, alteration, or repair are insurable if they are contained within an enclosed building on the premises or adjacent to the premises. The NFIP, to the extent possible, conforms its practices with those of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place.

Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE).

Additionally, for a condominium building in the course of construction to be eligible under the RCBAP form, the building must be owned by a condominium association, which the NFIP defines as the entity made up of the unit owners responsible for the maintenance and operation of:

- Common elements owned in undivided shares by unit owners; and
- Other real property in which the unit owners have use rights;

where membership in the entity is a required condition of unit ownership.

For new construction in Regular Program communities, the NFIP Elevation Certificate and the premium will be based on an elevation figure derived from construction drawings. However, the policy will not be renewed until a new Elevation Certificate, based on actual construction, has been submitted. Coverage under the policy becomes available immediately when the construction starts and is not delayed until the building has reached a walled and roofed condition.

However, if the lowest floor, including a basement floor, of a building under construction in any A Zone or V Zone will be below the BFE, the building must be walled and roofed before coverage is available.

The Elevation Certificate must be completed by a surveyor, engineer, or architect. Lenders who wish to gain familiarity with the Elevation Certificate and its uses may benefit from the NFIP video "Insuring a Dream." The video can be accessed at http://training.nfipstat.com/portal2/default.asp.

(8) Manufactured (Mobile) Homes/Travel Trailers

To be eligible for coverage under the NFIP, a manufactured (mobile) home/travel trailer must be on a permanent foundation and meet specific anchoring requirements for its location.

A manufactured (mobile) home is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation. Manufactured (mobile) homes, referred to as "mobile homes" for brevity in the remainder of this subsection, do not include recreational vehicles.

Under the NFIP, a travel trailer can be considered a building only if it is without wheels, built on a chassis and affixed to a permanent foundation, and regulated under the community's floodplain management and building ordinances or laws.

The statutory requirements apply to a loan securing mobile homes that are, or will be, located in an SFHA. NFIP coverage is available only with respect to a building or mobile home and not the land on which the building or mobile home sits. A chattel mortgage on a mobile home will trigger the mandatory purchase requirements.

In instances where the location of the mobile home has not been established by the time of closing, the bank should notify the borrower that flood insurance must be obtained if the mobile home will eventually be located in an SFHA (in a participating community) and must be permanently affixed to a foundation to be eligible for coverage under the NFIP. In order to make this determination, the bank should require borrowers to provide notice to the bank when the mobile home is permanently anchored. A flood determination must then be made by the bank, and if the mobile home is located in an SFHA, the bank must notify the borrower that flood insurance must be purchased within 45 days of notice.

Although the Real Estate Settlement Procedures Act (RESPA) does not require escrowing on a loan where land is not part of the security, the scope of the 1994 Reform Act includes escrowing on a designated loan secured by a mobile home. Section 10 of RESPA, which pertains to the escrow rules, applies only to mobile homes that are also secured by the real estate upon which they are situated; however, the 1994 Reform Act is broader in scope. A mobile home lender is required to escrow even if the loan is on the mobile home only.

A substantial number of mobile homes have the peril of flood included under a private contract of insurance. A lender should review the private flood insurance coverage in light of the mandatory purchase requirement and FEMA criteria (see pages 57-58 of these guidelines).

(9) Personal Property

Flood insurance coverage for contents is not required by law unless personal property, in addition to a building, secures the loan. Because residential mortgages rarely include personal possessions as part of the loan security, lenders are not required to compel borrowers to purchase contents coverage, as this is not a designated loan. When a commercial loan on a building includes inventory and other trade or business movable property as security for a loan, that property must be covered by a separate policy under the General Property form.

On the other hand, flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. Lenders are encouraged to advise borrowers to discuss their contents coverage needs with their agents. Obtaining contents coverage for personal property or inventory located in high flood risk areas is prudent, even when not mandated by law.

b. Underinsured Buildings

The 1994 Reform Act repealed Title 42 U.S.C. §4013(b)(6), which contained a statutory limit for coverage required to be purchased. The Act requires coverage that is "in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available." Therefore, to meet minimum compliance requirements, lenders must see to it that flood insurance coverage on a building is at least the lowest of the following:

- The maximum amount of NFIP flood insurance coverage available; or
- The outstanding principal balance of the loan(s); or
- The insurable value (RCV) of the building.

Lenders should consider whether minimum required coverage amounts will be adequate to protect their interests and those of their borrowers. Borrowers should be urged to seek assistance from their agents regarding their flood insurance needs. To the extent allowed by the maximum limits available under the NFIP, flood insurance coverage amounts should include the cost of the foundation and correspond to the coverage amounts provided by homeowners insurance, which typically are purchased at the level of insurance to value.

To address the underinsurance deficiency, §4012a(e) of the 1994 Reform Act specifies a lender's notification and placement requirements for a building that is covered by less flood insurance than required by the Act. When a lender (or a servicer acting on the lender's behalf) discovers that a building used as security is covered by an inadequate amount of flood insurance, it must first provide notice and opportunity for the borrower to obtain the required amount of flood insurance. If the borrower fails to purchase insurance, the lender then must purchase flood insurance in the appropriate amount on the borrower's behalf. The statute designates the same steps to be followed in the event additional insurance is required as when no insurance exists.

c. Home Equity and Second Mortgages

Flood insurance is required on designated home equity or second mortgage loans made by regulated lenders if the loans are secured by a building or a manufactured (mobile) home/travel trailer, regardless of the lien priority. Lenders also need to be cognizant that GSEs have specific provisions in their sales guides that mandate flood insurance on designated home equity and secondary mortgages. The location of the secured property, not the use of funds received on a home equity or second mortgage, governs whether flood coverage is required.

Even though home equity and second mortgage loans are subordinate to a primary loan, the terms of the mandatory purchase law apply with equal force. No matter what priority its loan may be, a lender remains subject to the various provisions of the 1994 Reform Act, including the notification, Standard Flood Hazard Determination Form

(SFHDF), and force placement requirements. The standard 30-day waiting period (see pages 38-39 and Appendix 6) does not apply on home equity loans and second mortgages. Coverage is effective at the time of application and presentment of premium.

Subject to the limit on insurance available and the requirement cap, a home equity lender must protect its interests by having coverage in place at the time the loan is extended. The lender must make a determination about the flood insurance requirement when the application for the loan is made. If the first mortgagee otherwise complied with the mandatory purchase requirements and no remapping has occurred, then no new determination is needed for the second mortgage or home equity loan.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan because the borrower will be drawing down differing amounts on the line of credit at different times. In those instances where there is no policy on the collateral, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. Drawing against an approved line of credit does not require further determinations to be made. For administrative convenience in ensuring compliance with the requirements, a lender may take the following alternative approaches:

- Review its records periodically (at least annually) so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or

- Upon origination, require the purchase of flood insurance for the total amount of all loans or the maximum amount of flood insurance coverage available, whichever is less.

If a secondary lienholder determines that a first mortgagee has neglected to obtain flood insurance coverage, the secondary lienholder must be assured that coverage is purchased on the entire outstanding loan amount in order to comply with the statutory requirements as well as to protect its priority as to insurance proceeds. Similarly, if the first mortgage has insufficient coverage, the borrower must cure this deficiency by purchasing additional coverage sufficient to protect all outstanding loans. If not, the loan should not be made. Apart from the provisions of the 1973 Act, the lender can rely on the hazard clause of the home equity or second mortgage loan document in requiring coverage in any underinsured situation.

Because only one NFIP policy can be issued on a building, no matter how many loans exist, a secondary lienholder must verify that any required escrow of premium is being undertaken by the primary lienholder (see the escrow discussion on pages 39-40). Accordingly, the lienholder must coordinate coverage through its borrower and the insurance agent of record. A home equity and secondary lienholder's interest is accomplished by endorsement to the policy.

Evidence of coverage can be confirmed by receipt of a copy of the flood insurance application and premium payment from the agent or a revised declarations page from the insurer. A secondary lienholder should ensure that its interest is protected by having its name appear on the policy or by other appropriate means. If the existence of a home equity loan or a second mortgagee is not made known to the insurer, appropriate renewal notices may not be sent.

The 1994 Reform Act provides an exemption from the mandatory purchase requirements for any loan made with an original outstanding principal balance of $5,000 or less, and with a repayment term of 1 year or less. The dual criteria must be met in order for this exemption to apply. There is no exemption for home equity or second mortgage loans unless they meet these exceptions.

d. Notification Requirements

Under the 1994 Reform Act, all regulated lenders and Federal agency lenders must provide the following notices:

- Notification to Borrower, otherwise known as "Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance"

- Notification of Change of Servicer.

In addition, the lender should receive an Expiration Notice from the insurer. These three notices are discussed below (also see Appendix 4, Notice Requirements).

A lender also must complete the SFHDF (see Appendix 3, Standard Flood Hazard Determination Form) prior to concluding loan processing.

(1) Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance

Lenders must provide written notification to those prospective borrowers whose loans secure a building located in an SFHA. The purpose of the notice is to advise the borrower about the Federal flood insurance coverage requirements and whether Federal disaster relief assistance is available in that location. In the case of multiple applicants on a single loan, the lender and borrowers typically designate the borrower to whom the notice will be provided. Lenders may provide multiple notices at their discretion.

Two sample notices are included in Appendix 4 of these guidelines. These samples inform the borrower of the flood insurance requirements in an NFIP participating community and the implications when a community does not participate. A lender may comply with the notice requirement by using a sample form, or using the required language. Even if the format of the sample form is personalized and changed, it must still provide the borrower with the minimum information required by law.

The notice must be provided a reasonable time before completion of the loan transaction to ensure that a flood zone determination is made as a condition of a loan being closed. The regulations do not establish a fixed time period in which a lender must provide the notice. What constitutes a reasonable time will necessarily vary according to the circumstances of the particular transaction. Timely completion and delivery of the notice serves both to inform the borrower and to protect the lender.

In lieu of giving direct notice, a financial institution may obtain adequate assurances in writing, from the seller or lessor of the building, that the borrower has been advised of all required information by the lender prior to settlement. However, even if the notice is handled by a third party, the lender remains responsible for determining the building's location in the flood zone and whether it is subject to the mandatory purchase requirements, and providing further notification to the borrower.

The regulations also require a lender to extend this notification to any servicer of the loan. A lender must notify the servicer as promptly as possible after notifying the borrower, and in any event not later than the time that loan data such as hazard insurance and tax information is transmitted to the servicer. The notice may be provided in the same form as the notice to the borrower. This provision applies even if the servicer is affiliated with the lender.

The text of the Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance must include the following:

- A general warning with respect to the chance of flooding

- A description of the mandatory purchase requirements

- An explanation of the eligibility requirements to receive disaster relief
- A discussion of the availability of flood coverage through:
  - An insurance agent from the NFIP Direct Program (NFIP Servicing Agent)
  - A WYO Program insurer
  - A private flood insurer.

The forms also reference the review or appeal process through which a disputed flood hazard determination may be jointly submitted to FEMA for a final determination on whether a building or manufactured (mobile) home is located in an identified SFHA. The appeal process is explained more fully on pages 14-19, under Letters of Map Change (LOMCs) and Appeal Options.

The notice form for loans in non-participating communities is designed to advise borrowers whose property is located in an SFHA in those communities where NFIP flood insurance is unavailable. As stated earlier, a lender may choose to make a conventional loan in an SFHA in a nonparticipating community. However, loans guaranteed or insured by the government (e.g., SBA, VA, and FHA loans) are not permitted to be made in those communities.

Lenders must retain a record or evidence of the borrower's receipt of the notice throughout the period the lender owns the loan. This record can be the borrower's statement or initials that the notice was received directly, or the U.S. Postal Service return receipt in either hard copy or electronic format. The lender need not retain a hard copy version of the notice to the borrower and loan servicer.

The applicability of this notice requirement to manufactured (mobile) homes is discussed on page 31.

(2) Notification of Change of Servicer

If a loan on a secured property in an SFHA is sold or transferred, a regulated lender must notify FEMA's designee of the identity of the new loan servicer. FEMA's designee is the flood insurance company listed on the policy.

When a policy is written, the agent fulfills the notice requirement by indicating on the policy application the name of the mortgagee who is to receive notices. The obligation on the part of the seller of the loan to inform FEMA's designee is also triggered each time the loan is assigned or transferred to another lender or servicer. The notice is to be sent to either the WYO insurer (directly or through the agent of record) or to the NFIP Servicing Agent if that entity is the insurer.

This notice requirement may be accomplished by utilizing whatever electronic or hard copy format the parties generally use. The regulators acknowledge the use of the RESPA Notice of Transfer of Servicing form, designed to advise a borrower of the replacing servicer's identity, as sufficient to meet this requirement if it contains all relevant information.

The information needed by the FEMA designee includes:

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

The notification of the identity of the servicer is accomplished through a "general change endorsement," which is completed and submitted to the WYO insurer or NFIP Servicing Agent by the insurance agent of record.

The law requires this notification to be sent by the incumbent lender or servicer to the insurance company or agent not later than 60 days after the effective date of such change. This duty to notify is, in turn, passed along to the new (transferee) regulated lender or servicer upon subsequent change of servicer.

This notice procedure accomplishes several objectives:

- It makes the insurer aware of the identity of the party designated to receive mailings such as expiration and policy renewal premium notices, which the insurer must mail 45 days prior to the expiration date.
- It eliminates any failure on the part of subsequent lenders or servicers to notify the insurance agent or insurer of a change in a mortgagee (or servicer) in order to enable renewal and/or expiration notices to be sent to the proper lender or servicer of the loan.
- This requirement is designed to combat the high nonrenewal rate that occurs after the first year of the loan. For example, when the insurance payments are not escrowed, without the updated information the mortgagee or servicer could not verify whether the borrower continued to renew the policy or allowed it to lapse.

The regulations make no provisions as to recordkeeping of the change of servicer form; however, the lender and servicer have the burden to demonstrate the notice was given.

If one institution acquires or merges with another, the successor institution must provide notice for the loans being serviced by the former institution if the former institution did not provide notice prior to the effective date of the acquisition or merger.

Although the statute requires the Administrator of FEMA or the Administrator's designee to be notified when servicing is transferred, neither the statute nor the regulations require notice when a loan is paid off.

(3) Expiration/Renewal Notice

The 1994 Reform Act and the SFIP both require the Administrator of FEMA (regarding NFIP Direct business) and the Administrator's designee (i.e., a WYO carrier on WYO policies) to send a notice of the date of expiration of the policy contract. This expiration/renewal notice must be sent by first-class mail, not less than 45 days prior to expiration, to the last known address of the insured, any known mortgagees, servicer, and the owner of the property. FEMA interprets the term "owner of the property" as used in the statute to mean the party insuring the risk. An expiration/renewal notice is also mailed to the insurance producer. The law does not require proof of receipt of the notice. The statutory notice provisions are in addition to any applicable terms and conditions provided in the SFIP, as well as any obligation found in the mortgage or lending document between the borrower and lender.

Under the provisions of the SFIP, the WYO insurer and the NFIP Servicing Agent also must notify the lender, or servicer acting on behalf of the lender, along with the borrower, when the insurance contract is due for renewal.

e. Standard Flood Hazard Determination Form

Independent of the notice requirements, a separate provision was added in Section 528 of the 1994 Reform Act, 42 U.S.C. §4104b, requiring the lender to document a loan by entering information on the SFHDF. The SFHDF has been designed to facilitate notification of special flood hazards. However, the law requires the form to be used for all loans, not only those for which the building or manufactured (mobile) home is in an SFHA.

The authorizing regulation is found at 44 CFR §65.16. The regulation requires that the flood zone determination—Zones A or V (SFHAs), or Zones B, C, or X (low-to-moderate flood risk areas)—and community status be entered on the most recent version of the SFHDF. The current form, and instructions for completing it, are provided in Appendix 3. These materials are also available at http://www.fema.gov/business/nfip/sfhdform.shtm, where any future updates to them will be posted.

A building's location and its community's participation in the NFIP may mandate the purchase of flood insurance. If the building or manufactured (mobile) home offered as security for a loan is located in Zones A or V (SFHAs), mandatory flood insurance purchase requirements are triggered. If the community participates in the NFIP, federally backed flood insurance is available and federally backed mortgages may be issued. Private flood insurance may also be available on a limited basis.

Lenders should consult their Federal regulatory authorities for procedures applicable to these and other outcomes, such as buildings in Zones B, C, or X (low-to-moderate flood risk) or communities not participating in the NFIP. Mortgage documents may reserve the rights of lenders to require flood insurance protection that exceeds the minimum requirements under the law.

Lenders will use the SFHDF to document the process of determining whether or not flood insurance should be required in connection with a given mortgage loan transaction, while Federal banking entities will use it to monitor compliance by lenders. The form will document that a determination was made for a building or mobile home, whether it is in or out of the SFHA, whether flood insurance is required, and whether Federal flood insurance is available.

GSEs, such as Fannie Mae and Freddie Mac, also require the use of the SFHDF. See links to announcements and guidelines at http://www.efanniemae.com and http://www.allregs.com/fhlmc/.

(1) Determination Process

The lender must take the responsibility for making flood zone determinations, either by making the determination internally or acquiring determination services from a third party (see pages 11-12). FEMA does not perform individual property flood hazard determinations. The 1994 Reform Act states that the lender may provide for the acquisition or determination of flood hazard information to be made by a person other than the lender only to the extent that such person guarantees the accuracy of the information. Neither FEMA nor the lending regulators have designated standards for what constitutes an adequate guarantee of the information provided to justify reliance upon the data.

A previous determination may not be reused when making a new loan. If the loan is not new, i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan, the determination can be reused if:

- It is less than 7 years old; and
- No new or revised FIRM or FHBM has been issued in the interim; and
- It was initially recorded on the SFHDF.

If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a secondary lien position, and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred. The regulators will impose no penalty if the prior determination meets the above requirements. Once a new map has been issued, a lender must use that map as a guide, and a new determination is required for a triggering event. Any disputes that arise between the lender and borrower concerning the location of a building in relation to an SFHA are eligible to be resolved in accordance with the review process described on pages 14-19.

(2) Instructions for Using the SFHDF

The reverse side of the SFHDF has detailed section-by-section instructions for completing the form. A separate SFHDF is required for buildings on adjacent properties. However, if a single property contains multiple buildings, a listing of buildings on the parcel can be attached to the SFHDF. Only one building may be insured under one NFIP policy. Each building securing a loan must be covered by a separate policy.

The SFHDF may be used in a printed, computerized, or electronic manner and must be retained for the life of the loan in either hard copy or electronic format. Any alternative electronic format used by lenders must contain all mandatory fields indicated on the SFHDF.

The form need not be kept in the loan file, but a lender is expected to be able to retrieve the record within a reasonable time period upon being requested by its Federal supervisory agency. Lenders are neither required to provide nor prohibited from providing the WYO insurer, insurance agent, or the borrower with a copy of the form.

Lenders and servicers cannot accept some form of self-certification or assurance from the mortgagor-borrower that the building is not in an SFHA. If the lender wishes to change its original determination of the building's location based on information submitted by the mortgagor, the lender/servicer must conclude that its original determination was in error and make any change on the basis of its review of that new information. The ultimate responsibility for making such determinations about a building's flood zone location rests with the mortgagee, not the mortgagor. As previously noted, contested determinations are subject to the FEMA review process.

f. Waiting Period and Exceptions

The 1994 Reform Act requires a 30-day waiting period to effect coverage under a new contract for flood insurance and any modification to coverage under an existing flood insurance contract. The express intent of Congress in mandating a 30-day waiting period was to prevent the purchase of flood insurance at times of imminent flood loss. Exceptions to this standard 30-day wait are as follows:

(1) Coverage Obtained in Conjunction with a Loan

Exceptions to the standard 30-day waiting period apply when coverage is placed in conjunction with loan activity or the remapping of a community. The 1994 Reform Act's "initial purchase" provision states that the 30-day waiting period does not apply to the following instances:

- "The initial purchase of flood insurance . . . when the purchase is in connection with the making, increasing, extension, or renewal of a loan"; or
- "The initial purchase of flood insurance . . . pursuant to a [map] revision or updating of floodplain areas of flood zones" within a 1-year period.

The effective date of coverage is 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of premium.

It is significant to note that the first exception described above to the 30-day waiting period (when the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan) is much broader than it appears. FEMA has interpreted the exception to the 30-day waiting period to apply in situations pertaining to refinancing, placement of second mortgages, and modification of existing mortgages. This exception also applies to force placement, increased limits at renewal, and map revisions. For a detailed description of the waiting period rules, refer to Appendix 6, 30-Day Waiting Period.

(2) Assignment of Policy

There is a 30-day waiting period before coverage can go into effect when an NFIP policy is assigned from a seller to a buyer where the buyer does not obtain a mortgage. If the buyer obtains a mortgage, the waiting period does not apply.

g. Escrow Requirements

The escrow requirement of the 1994 Reform Act is limited to instances where a lender establishes an escrow account for a loan for another purpose. If financial institutions and their servicers require the escrow of taxes, insurance premiums, or any other fees or charges for covered loans, they must also escrow for premiums and fees for flood insurance.

(1) Real Estate Settlement Procedures Act

The mandatory purchase law expressly states that escrow accounts established under the 1973 Flood Disaster Protection Act are subject to the escrow account provisions of Section 10 of the Real Estate Settlement Procedures Act (RESPA) of 1974, which imposes accounting and notice obligations on a lender for consumer loans. Lenders must escrow premiums and fees for any required flood insurance if the lender requires escrow for other purposes such as hazard insurance or taxes.

RESPA, which generally limits the amount that may be maintained in escrow accounts, and requires notices containing escrow account statements for those accounts, applies primarily to escrow of consumer loans. Generally, this means that only loans on one- to four-family dwellings will be subject to the RESPA escrow rules. Loans on multi-family dwellings of five or more units are not covered by these RESPA requirements.

Although the escrow provision applies only to residential loans, lenders are encouraged to escrow on all loans, including those on non-residential improved real estate.

(2) Applicability

Unlike the RESPA escrow requirements, the escrow of flood insurance includes not only single-family buildings, but also multi-family properties containing five or more residential units. Consequently, escrow on certain residential real estate is required, even though the property may be secured under a commercial or business loan. The 1994 Reform Act's escrow provision applies to both home mortgage loans and commercial loans (including, for example, mortgages on apartment buildings or construction loans secured by residential buildings), but only if the lender requires the escrow of other charges for those loans.

The mandatory purchase provisions make no distinction between single or multi-family dwellings or owner or renter occupancy. The lender is to consider the primary use of the building in making its determination. For example, if a building is a mixed-use property, i.e., part residential and part commercial, the primary use of the building controls.

Escrowing on all manufactured (mobile) home designated loans is required under the 1994 Reform Act, even though RESPA requires escrowing only if the loan encompasses the land upon which the home is situated.

The 1994 Reform Act's escrow provisions apply to financial institutions and their servicers, but do not apply to mortgage company originators over whom a Federal regulator has no jurisdiction.

Regulators will examine the loan practices of the lender to determine if the escrow is required. If a lender's loan practices indicate that escrow is normally required and the loan documents permit escrow accounts to be established, the regulators presume that an escrow account for flood insurance premiums also should be established in the event flood insurance is mandated. Various escrow-type accounts established for loans involving multi-family properties that are substantially different in purpose from single-family residences (e.g., interest reserve accounts and compensating balance accounts) do not constitute escrow accounts under the mandatory purchase requirements. The law stipulates that, if an escrow account is required, it must be set up "in a manner sufficient to make payment as due for the duration of the loan."

The flood escrow requirement facilitates the lender making payments as due for the life of the loan. In the past, a significant number of lenders did not require escrowing of flood insurance coverage; in these situations, NFIP coverage was susceptible to lapse.

The escrow practices are designed to balance the need to increase participation with the desire to prevent significant burdens on lenders and borrowers. Requiring lenders to escrow for flood insurance premiums may significantly improve participation in the NFIP and reduce the probability of lapsed coverage.

(3) Escrow Exclusions

The escrow provision for flood insurance is not triggered in the following situations:

- Voluntary escrowing for credit life insurance
- Establishing accounts in connection with commercial loans for such items as interest or maintenance reserves or compensating balances. (Generally, accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself, rather than to the protection of the property, would not trigger the escrow requirements for flood insurance premiums.)
- Voluntary escrowing for other expenses (Escrowing is not required, but established at the borrower's request.)
- Lender termination of an escrow account for a loan.

h. Force Placement

(1) Authority

Similar to the requirements concerning the issuance of the various notices and escrow, the 1994 Reform Act places responsibility to force place on lenders as well as servicers. The Act requires the force placement of flood insurance if a servicer or lender determines that the building securing the loan is not adequately insured. The 1994 Reform Act also grants statutory authority to a lender or servicer to purchase flood insurance for the building and charge a premium to the borrower if the building is in an SFHA.

By enacting this portion of the law, Congress intended lenders to have clear authority to force place; under certain circumstances, they are obligated to force place. The force placement of coverage is designed for use at any time during the term of a loan in uninsured and underinsured situations; it is not intended for use at loan origination. If a borrower refuses to obtain flood insurance coverage as a condition of obtaining a loan, the loan is deficient and is not to be made.

If at any time during the term of a covered loan, the lender or servicer determines that the building securing the loan is not covered by flood insurance, or is covered by such insurance in an amount less than that required by law, the lender or servicer must first notify the borrower of the need to carry adequate flood insurance coverage. The law does not specify the precise wording of this notice, so lenders and servicers should give a close reading to the statute and regulations for guidance. The notice must state that the borrower should, at the borrower's expense, obtain flood insurance that is not less than the amount required by law.

If the borrower fails to purchase such flood insurance within 45 days after such notification, the lender or servicer shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer. In an underinsured situation, when the borrower and/or agent of record refuse to cooperate with the new lender, the loan should not be made. If the loan has already been extended, the lender should exercise recourse as provided under the terms of the loan document.

The standard 30-day waiting period established by the 1994 Reform Act does not apply to force-placed policies; instead, the 45-day period from time of notification that a lender must grant to a borrower to voluntarily obtain coverage is the only time delay that controls.

The 1994 Reform Act contains preemption language stating that the NFIP force placement provisions prevail over state and local law. The language is significant because many of the state laws that cover force placement are vague and open to interpretation. In addition, the language responds to those state laws that prohibit or limit force placement, or require the borrower's contractual agreement in order to force place coverage.

(2) Applicability

The terms of the force placement law are broader in scope than the escrow requirement. Force placement applies to any borrower of a designated loan, commercial or residential, whether or not escrow of expenses is required. On any type of force-placed policy, a lender should keep evidence of the determination that the loan is in an SFHA, including information concerning the FIRM panel and method by which the determination was made.

Home equity and second mortgage loans also are included under the requirement. A secondary lienholder that force places coverage only to the extent of its loan will not protect its interest if a first mortgagee claims priority to any insurance proceeds. Force placement by a second mortgagee will require coordination with the first mortgagee, as well as with the insurance producer and insurer on the first mortgage, if one exists.

The 1994 Reform Act requires a lender to carry out the force placement as a matter of law, independent of the contractual provisions of the loan. Force placement is not limited to those situations provided for under the mandatory purchase law.

The standard Fannie Mae and Freddie Mac documents provide that the lender may obtain the force-placed insurance at the borrower's expense.

The amount of insurance coverage must be at least the lowest of the outstanding principal balance of the loan(s), the insurable value of the structure, or the maximum limit available under the NFIP. If the lender opts to protect only its security in the loan (loan balance), the insurance proceeds may be inadequate.

Force placement of flood insurance is intended only as a last resort, and on mortgages whose mortgagors have failed to respond to the notifications required by law.

The 1994 Reform Act provides that a lender must inform its borrowers that they have a free choice of an insurer from whom to purchase coverage. That free-choice purchase option also applies to a lender when dealing with force-placed coverage. If, within 45 days from the initial notice, a borrower fails to comply by voluntarily obtaining coverage, a lender or servicer must obtain either:

- A Mortgage Portfolio Protection Program (MPPP) policy through a WYO insurer; or

- An SFIP through either a WYO insurer or the NFIP Servicing Agent; or

- Non-NFIP flood coverage from a private industry insurer if such coverage is available.

(3) MPPP Method of Placement

Most loans for which flood insurance is force placed must be processed with a limited amount of underwriting information. Therefore, placement is appropriate through the MPPP, where only limited underwriting information is required.

The MPPP is an optional program designed for lenders to force place flood insurance coverage under the NFIP with WYO insurers that have agreed to comply with the requirements of the MPPP. A list of companies that write MPPP coverage is available at http://www.fema.gov/nfip/wyo.shtm. The NFIP Direct Program does not offer the MPPP. The procedure for using the MPPP is part of the regulations. Questions and answers about the MPPP are included in Appendix 7.

The MPPP is an annual policy and, although it cannot be renewed, it can be rewritten each year if the required procedures are followed. Rating under the MPPP policy is based on the flood map in effect at the time the policy is written. Because adequate underwriting data seldom is available, the rates allowed to be charged for force-placed policies are considerably higher than rates for voluntary policies. The MPPP policy is a dual-interest contract covering both the borrower and the lender.

(4) Standard NFIP Policy

A lender may be able to force place flood insurance protection via the Standard Flood Insurance Policy (SFIP). This requires adequate underwriting information, possibly from the lapsed flood policy, or with help from the former insurance agent. The SFIP is generally less costly than the MPPP.

The borrower has 45 days, after initial notification of the need to obtain flood insurance, to purchase a policy. After that time, if the lender has sufficient information to produce a policy, it may place a policy with an agent of its choice. This method of insuring the risk does not require the use of any specific notice to the borrower.

(5) Private Flood Insurance

A lender has the option of force placing flood insurance through a private (non-NFIP) insurer. If private insurance is available, the lender also must consider whether the policy, as well as the insurer, is acceptable to its regulator by meeting the criteria established by FEMA. The FEMA criteria for acceptance of private flood insurance are fully described on pages 57-58.

i. Exceptions

(1) State-Owned Property

If the security property is state-owned and covered by adequate policies of self-insurance, flood insurance is not required. A list of states with adequate self-insurance programs can be found at 44 CFR, Chapter 1, Part 75. This exemption, by its terms, applies only to state-owned property, and not county- or city-owned property.

(2) Small Loan

The 1994 Reform Act provides an exemption from the mandatory purchase requirements for any loan made with an *original* outstanding principal balance of $5,000 or less, **and** with a repayment term of 1 year or less. The dual criteria must be met in order for this exemption to apply. There is no exemption for home equity or second mortgage loans unless they meet these exceptions.

SECTION D
CONDOMINIUMS, COOPERATIVES, TIMESHARES

The mandatory purchase of flood insurance requirements apply with equal force to condominium, cooperative, and timeshare units. Placing and monitoring coverage on units within multi-unit buildings presents special circumstances to lenders and merits particular care. The statutory requirements can be explained through a review of how the various National Flood Insurance Program (NFIP) policies correspond to the forms of ownership as follows:

- The Residential Condominium Building Association Policy was designed for eligible residential condominium associations, and timeshares that are of the fee or real estate ownership type, in Regular Program Communities.
- The General Property Form policy applies to residential cooperatives and timeshares that are non-fee interest and residential condominium buildings not eligible for the Residential Condominium Building Association Policy. The General Property Form policy also applies to non-residential condominiums and unit owners.
- The Dwelling Form policy may be issued on an individual residential unit.

For eligibility requirements and limits available on the various coverages under these policies, refer to the Condominiums section of the NFIP *Flood Insurance Manual*, or consult property insurance professionals for assistance.

1. Condominium Association Responsibilities and Statutory Requirements

Condominium association board members have a fiduciary responsibility to unit owners to protect the common property by assuring that appropriate insurance coverage is in place. This responsibility often includes providing adequate flood insurance to protect buildings located in Special Flood Hazard Areas (SFHAs). Options for placing flood insurance on condominium buildings are described below.

a. Residential Condominium Building Association Policy (RCBAP)

The RCBAP is the policy specifically designed for condominium associations to insure residential condominium buildings. Under the RCBAP, the association is able to manage flood insurance needs and by-law requirements without relying on the actions of the unit owners.

Although the statutory requirements apply with equal force to condominium unit owners and their lenders, the practice of the lending industry, as followed under the RCBAP, is to defer to the association to ensure compliance. While the association does not bear mortgage responsibility on the individual units, its interest springs from the obligation to maintain and repair the premises for the community benefit and unit owners as tenants in common. A key feature of the condominium insurance format is the separate ownership and mortgaging of individual units, yet the insuring of the building as a whole with a policy issued to the association only. It should be noted that lenders are still responsible to meet their compliance requirements under the law.

A unit owner's mortgage lender has no direct interest in an RCBAP and is not to be listed as an additional named insured on the policy declaration page.

The 30-day waiting period applies to the RCBAP, unless the condominium association is purchasing flood insurance required by the association's mortgage company.

Because the RCBAP provides flood insurance protection for both the building elements within the unit and the common building elements, the security interests of individual unit owner mortgagees should be protected, so long as coverage amounts reflect insurance to value, as with other forms of property insurance. Although unit owners have a shared interest in the common areas of the condominium building, as well as in their own unit, unit owners are unable to individually protect such common areas. Therefore, the RCBAP, insured to its full replacement cost value (RCV) to the extent possible under the NFIP, is the correct way to insure a residential condominium building against flood loss. A properly placed RCBAP protects the financial interests of the association, unit owners, and lenders and also satisfies the statutory requirements.

The premium for the RCBAP is assessed as part of the unit owner's association dues. Proportionately, the RCBAP costs each unit owner less than if each unit owner were to purchase his or her own flood insurance policy that would cover the unit. An eligible condominium association should purchase flood insurance coverage under the RCBAP, even though individual owners may not have mortgages on their units.

(1) Statutory Requirements

The flood insurance amount required by statute for an applicable loan on a condominium unit must be at minimum the lowest of, but may exceed, the following:

- The outstanding balance of the loan(s); or
- The insurable value (replacement cost value) of the unit; or
- The maximum amount of insurance available under the NFIP for the type of property.

Once the minimum amount required to fulfill the statutory requirement is identified from the above example, it is compared to the portion of the RCBAP limit attributable to the unit. If the unit's portion of the RCBAP equals or exceeds the minimum amount required by law, the loan is compliant, but not necessarily adequately insured against flood loss. If the unit's portion of the RCBAP is less than the minimum amount required by statute, the association should be asked to increase its limits. If the association refuses, the unit owner may purchase flood insurance under the Dwelling Form for the difference, if acceptable to the lender. Meeting the compliance requirement via this combination of coverages (RCBAP and Dwelling Form) does not fill gaps in coverage nor ensure that the security is adequately protected against flood loss.

If there is no RCBAP, the unit owner can meet the minimum statutory requirement by purchasing a Dwelling Form policy at least equaling the minimum required amount, if acceptable to the lender.

(2) Evidence of Compliance

As a condition of making, increasing, extending, or renewing a loan on the residential condominium unit and as frequently as required, a mortgagee must obtain:

- A copy of the RCBAP documenting the amount of insurance—ideally, insured to RCV, or at least the unit's portion equaling the statutory requirement. (Effective October 1, 2007, the Declarations Page of each RCBAP issued or renewed must show the building's replacement cost value and the number of units within that building.); or
- A copy of the RCBAP and Dwelling Form (or application and paid receipt) jointly equaling at least the minimum

statutorily required amount of insurance; or

- A copy of the Dwelling Form equaling the minimum amount required to meet statutory requirements.

While any of these insurance methods might meet the statutory requirements, an RCBAP not insured to full value and/or a Dwelling Form policy could expose the lender and borrower to unknown risk.

FEMA suggests the following simple way to address both compliance requirements and flood insurance needs for safety and soundness of collateral interests. Lenders may apply a risk management strategy, as a condition to granting loans secured by condominium units in high-flood-risk areas, by requiring that condominium buildings be insured under the RCBAP to their full RCV or the maximum amount available, whichever is less. The compliance requirement is then equaled or exceeded with no additional calculation necessary.

(3) Coverage

The entire residential condominium building is covered under the RCBAP, including both common building elements and individually owned building elements within the units, improvements within the units, and personal property owned in common if contents coverage is carried. The RCBAP does not protect the individual owner from loss to personal property owned exclusively by the unit owner.

The NFIP prohibits duplication of NFIP policies on the same risk. As described below, both an association and a unit owner may obtain NFIP coverage, but the unit owner's coverage is proscribed in that it is in excess of the association policy. The combined coverage of the RCBAP and the unit owner Dwelling Form policy cannot exceed the statutory limits or insurable value, whichever is less. The RCBAP is primary in relation to the unit owner's policy.

(4) Policy Limits

As of this edition, the maximum amount of building coverage that can be purchased on a high-rise or low-rise condominium under the RCBAP is the replacement cost value of the building or the total number of units in the condominium building multiplied by $250,000, whichever is less. The maximum coverage limit under the NFIP for contents is $100,000 or the replacement cost value of the contents, whichever is less. Contents coverage losses under the NFIP are settled on the basis of actual cash value.

(5) Valuation

FEMA encourages lenders to seek the assistance of insurance agents and companies to determine the replacement cost values of residential condominium buildings, including the foundations.

Any building at risk of flooding should be protected to the same degree as it is for fire and wind perils, to the extent possible under the NFIP policy limits, which are established by Congress.

(6) Coinsurance Provision

Under the RCBAP, associations have an incentive to purchase and maintain coverage in an amount equal to the cost of replacing the building and its foundation, to the extent possible under the NFIP limits. FEMA encourages condominium associations to insure their building to 100 percent of the full replacement cost value, because construction costs continue to increase while the RCBAP limits do not automatically increase over time. At the time of loss, the amount of insurance should represent at least 80 percent or more of the replacement cost or the maximum amount of coverage available under the NFIP, in order to avoid the coinsurance penalty. The 80 percent referenced here is an insurance tool that may apply at the time of loss; it is not a compliance tool.

If the 80 percent threshold is met, the NFIP will pay compensable partial losses up to the limits of the policy minus any deductible. When an association carries limits to full replacement cost value, the unit owner does not need to obtain supplemental building coverage to offset a potential assessment in a total loss situation. The RCBAP's policy limits exclusively, and no additional separate policy limits (such as the unit owner's coverage), can apply to avoid the coinsurance penalty. For example, a Dwelling Form policy limit does not increase the RCBAP limit and would not avoid the coinsurance penalty.

Coverage under the RCBAP is on an RCV basis so that no deduction for depreciation is taken for building elements at loss settlement. However, condominium associations are encouraged to insure their buildings to full replacement cost value, or to the maximum available limit of $250,000 per unit multiplied by the number of units, whichever is less.

Example of
RCBAP Coinsurance Penalty

Building RCV at time of loss	$12,500,000
80% of RCV at time of loss	10,000,000
Actual amount of insurance carried	6,000,000
Amount of loss	6,000,000
Loss settlement (before deductible)	3,600,000

The amount of insurance carried ($6,000,000) represents only 60 percent of the 80-percent required amount ($10,000,000) that avoids the coinsurance penalty. A shortage of $2,400,000 therefore results, which represents the coinsurance penalty.

RCBAP
Loss Settlement Formula

$$\frac{\$6{,}000{,}000 \text{ (ins. amt.) X } \$6{,}000{,}000 \text{ (loss)}}{\$10{,}000{,}000 \text{ (80\% of RCV at time of loss)}} = \$3{,}600{,}000$$

Example of Adequate Amount of Insurance, Avoiding RCBAP Coinsurance Penalty

Building RCV at policy purchase	$11,000,000
80% of RCV at policy purchase	8,800,000
Amt. insurance purchased (RCV)	11,000,000
Building RCV at time of loss	12,500,000
80% of RCV at time of loss	10,000,000
Amount of loss	6,000,000
Loss settlement (before deductible)	6,000,000

In the preceding example, insurance was purchased to the full RCV of the building at $11,000,000. At the time of loss, the RCV of the building had risen to $12,500,000. Because the actual amount of insurance is within 20 percent of the replacement value of the building, there is no coinsurance penalty. Purchasing insurance to full RCV, rather than to 80 percent of the replacement cost, should go a long way toward protecting the insurable interests of the lender, the association, and the unit owner.

(7) Assessments

Assessments can be costs that are passed on to unit owners by a condominium association to cover losses to the common areas of the building containing the units when the losses are not covered by hazard or flood insurance. For more information about assessment coverage, see the examples of flood loss assessment against unit owners and settlement outcomes; examples begin on the next page.

b. Dwelling Form Policy

(1) Unit Owner's Building Coverage

A unit owner can acquire supplemental building coverage to the RCBAP by purchasing building coverage for the unit under a Dwelling Form that is written in excess of the association policy. The policies are coordinated such that the Dwelling Form policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured or to assessments. It should be noted that the Dwelling Form does not extend the RCBAP limits, nor does it enable the association to fill gaps in coverage.

Combined loss payments under the RCBAP and Dwelling Form, including assessment coverage, cannot exceed the insurable value or maximum NFIP limits for building coverage. Assessment coverage applies, up to the building coverage limits of the Dwelling Form policy purchased, when there is no association policy (RCBAP). Assessment coverage under the Dwelling Form applies when there is an RCBAP, but only to that part of the loss that exceeds 80 percent of the building replacement cost value.

(2) Unit Owner's Personal Property Coverage

Personal property owned by individual unit owners must be insured under an individual unit owner's Dwelling Form policy.

With the exception of the non-condominium timeshare unit owner, unit owners may apply up to 10 percent of their personal property coverage limit to flood damage to improvements made at the unit owner's expense. However, this 10 percent of the contents coverage limit does not apply if the association's General Property Form policy maximum limit of $250,000 has been reached and/or if the improvements in the unit are covered by an RCBAP or a private flood insurance policy. Additionally, use of the personal property coverage limit is at the discretion of the unit owner and reduces the contents limit.

(3) Loss Assessment Coverage

The following examples demonstrate how the unit owner's Dwelling Form policy will respond in certain loss situations.

Example A—No RCBAP:

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

- However, if there is damage to the building elements of the unit as well, the building coverage limit under the Dwelling Form policy may not be exceeded by the combined settlement of unit building damages, which would apply first, and the loss assessment.

Example B—RCBAP insured to at least 80 percent of building replacement cost:

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

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

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

Example C—RCBAP insured to less than 80 percent of building replacement cost:

- If the unit owner purchases building coverage under the Dwelling Form and there is an RCBAP that was insured to less than 80 percent of the building RCV at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its coinsurance penalty.

- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building RCV at the time of loss before the loss assessment becomes available. Covered repairs to the unit, if applicable, would have priority over loss assessments under the Dwelling Form.

c. General Property Form Policy

To purchase coverage under the NFIP on a nonresidential condominium building, a condominium association must use the General Property Form. Both building and contents coverages are available separately, with building and contents limits up to $500,000 each per nonresidential building. The nonresidential unit owner also may purchase contents coverage using this policy. A Dwelling Form policy is not available to the nonresidential unit owner.

In addition, a condominium association must use the General Property Form to purchase coverage on a residential condominium building not eligible for the RCBAP or when the building is located in an Emergency Program community.

2. Cooperative Associations

Because cooperatives are not in the condominium form of ownership, they cannot be insured under the RCBAP. Residential or nonresidential cooperative buildings must be insured by the association or corporation under the General Property Form. A unit owner in a cooperative building does not receive a real estate interest in a unit, but rather a share of stock in a corporation with the right to occupy a particular unit. The entity that owns the cooperative building, not the various unit members, is the named insured.

Cooperative buildings where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. Such residential building owners can insure the building under the General Property Form for a maximum building coverage limit of $250,000 in a Regular Program community.

3. Timeshares

Timeshare buildings basically fall into two categories: those where a real estate ownership interest has been conveyed, and those where just the right to the use of a unit has been conveyed.

Timeshare buildings in the condominium form of ownership (fee or real estate) are eligible for coverage under the RCBAP. These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums, including the requirement that 75 percent of the area of the building be used for residential purposes.

Timeshare buildings not in the condominium form of ownership (right-to-use) where at least 75 percent of the area of the building is used for residential purposes are considered residential occupancies under the NFIP. They can be insured by the owner of the building under the General Property Form for a maximum building coverage amount of $250,000 in a Regular Program community.

4. Homeowners Associations

Individually titled town homes and single-family buildings, whose owners belong to a non-condominium homeowners association, can be insured by the individual owners under the Dwelling Form and not by the homeowners association. The homeowners association may purchase coverage for a building it may own, such as a clubhouse, under the General Property Form.

5. Secondary Market

In their selling guides for purchase of mortgages on condominium units, Fannie Mae and Freddie Mac specifically address the requirement of property coverage. These Government-Sponsored Enterprises recognize flood coverage carried by the association as complying with the mandatory purchase requirements.

a. Fannie Mae

Fannie Mae, which purchases loans on the secondary market that are secured by condominiums located in high-flood-risk areas, may have specific requirements. As of this printing, Fannie Mae will accept building coverage provided under a Dwelling Form policy to supplement inadequate coverage carried by an association. If a condominium association declines to carry any flood insurance coverage, then each unit owner may purchase an individual policy to comply with Fannie Mae's requirements.

As of this printing, Fannie Mae accepts flood insurance deductibles up to the maximum deductible available under the NFIP, which for residential condominium buildings is $25,000. The Selling and Servicing Guides and Announcements may be accessed through the website at http://www.efanniemae.com. Lenders who have additional questions regarding flood insurance requirements may contact their Fannie Mae Customer Account Manager, Servicing Consultant, or Portfolio Manager.

b. Freddie Mac

As of this printing, Freddie Mac requirements specify the following.

For condominium units (other than detached unit projects) in which all or part of the building is in an SFHA, the association must maintain building coverage on the building for at least the lower of:

- The building's replacement cost; or
- $250,000 multiplied by the number of residential units in the building.

The association must maintain contents coverage on the building for the lower of:

- The actual cash value of the contents in the building that are owned in common by the association members; or
- The maximum amount of contents coverage sold by the NFIP for a condominium building.

If the association does not maintain the required coverage, then the unit owner must maintain building coverage on the unit in an amount at least equal to the amount required on a one- to four-unit property.

Freddie Mac states that the deductible of the condominium association's coverage may not exceed the maximum deductible amount currently allowed under the NFIP for condominium association building coverage. The deductible for association building contents may not exceed the maximum deductible amount currently allowed under the NFIP for association building contents.

See Chapter 58 of the Freddie Mac Single Family Seller/Servicer Guide at http://www.allregs.com/fhlmc.

SECTION E
IMPLEMENTATION OF KEY PROVISIONS

The preceding sections of these guidelines discuss specific provisions of the National Flood Insurance Reform Act of 1994 and regulations as they apply to an individual borrower or policyholder. This section describes how certain key provisions of the 1994 Reform Act are to be implemented within the lending industry.

1. Tripwires

a. Loan Activity

The making, increasing, extending, or renewing of a loan is a "tripwire" for compliance with the mandatory flood insurance purchase requirements. This tripwire occurs most frequently upon loan origination, e.g., when a lender knows or has reason to know whether the mandatory purchase requirements apply. Another tripwire occurs in any situation that alerts a lender or servicer to a change in circumstances, e.g., a known map change, or the receipt of a notice to pay the premium to avoid policy expiration.

If a borrower executes a note on improved real estate as collateral for a personal loan, and the lender does not perfect a security interest or mortgage in the building itself, the loan is not a designated loan and, therefore, is not subject to the mandatory purchase requirement.

b. Loan Transfer or Purchase

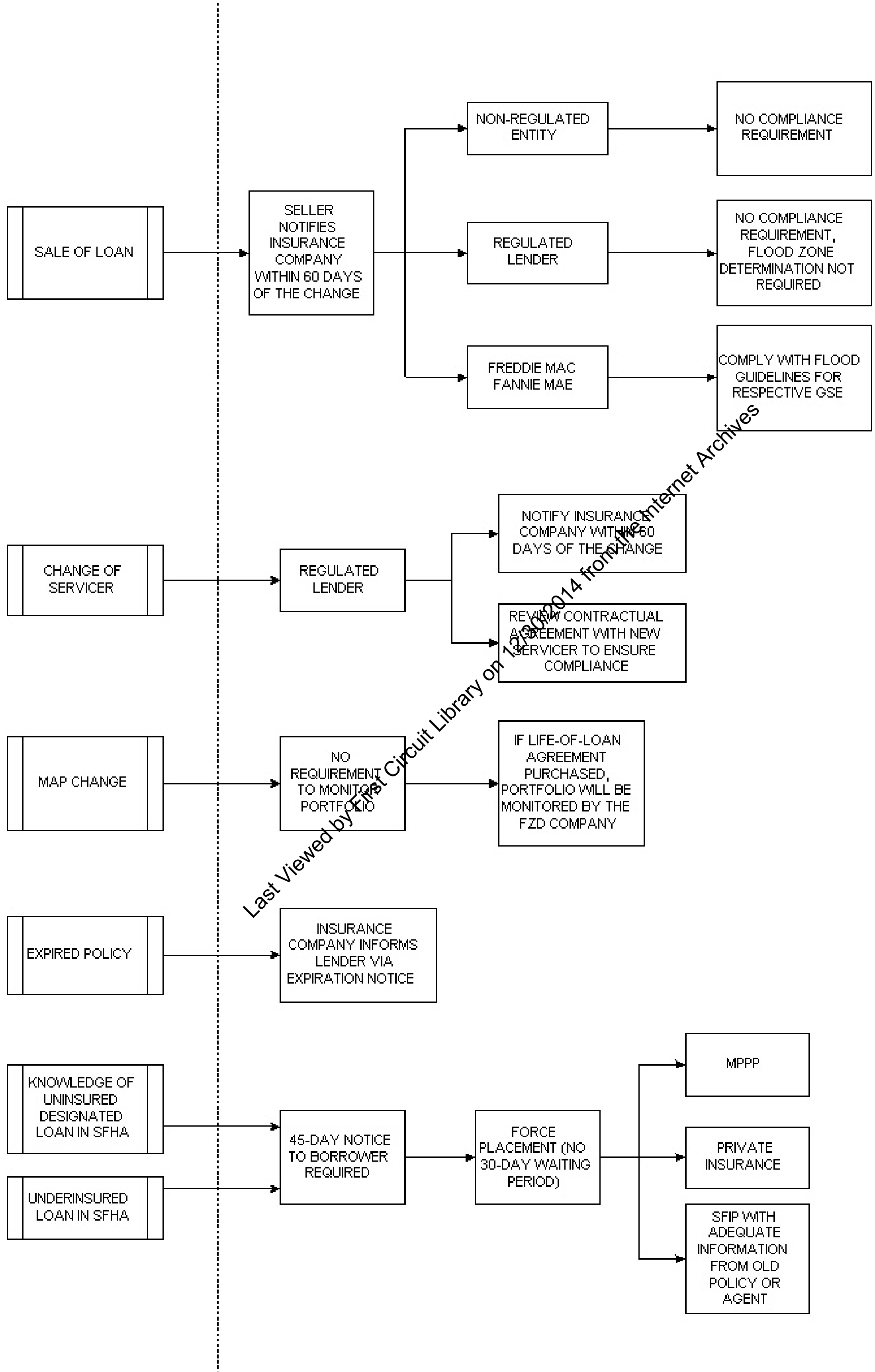
The transfer or purchase of a loan among regulated lenders or servicers does not constitute the making of a loan, so it does not trigger the mandatory purchase requirement.

It is the lending regulators' position that deeming a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and purchaser of loans sold in the secondary market. As a condition of purchase, a loan purchaser may require the seller to determine whether the building securing the loan is in a high flood risk area, also known as a Special Flood Hazard Area (SFHA). The practice of requiring a seller to make a representation as to compliance with the mandatory purchase requirements also provides additional protection to a loan purchaser. This representation is particularly important when the loans are in communities that have SFHAs.

However, the Government-Sponsored Enterprises (GSEs) do require flood insurance coverage on any loan located in an SFHA and transferred to or purchased by them. Both Fannie Mae and Freddie Mac require their respective sellers and servicers to be in full compliance with the flood insurance statutes. Fannie Mae's flood insurance requirements can be viewed in the Single-Family Selling and Servicing Guides and Lender Announcements available through their website at http://www.efanniemae.com. Freddie Mac has similar requirements for lenders in Chapter 58 of the Single-Family Seller/Servicer Guide at http://www.allregs.com/fhlmc.

Freddie Mac considers its purchase of a loan as a tripwire, while Fannie Mae's guide requires compliance with the mandatory purchase requirements at the time of loan origination. Consequently, an originator or intermediate holder of a loan will be constrained in passing on a loan that does not meet the criteria of the GSE sales guides. An entity not directly covered by the statutory requirements, such as a mortgage banker, will be indirectly required to satisfy the statutory flood insurance requirements if it or any subsequent party attempts to sell mortgage loans to Fannie Mae or Freddie Mac. An unregulated mortgage bank that

TRIPWIRES DURING LIFE OF LOAN



extends a designated loan without flood insurance will be unable to pass that loan on to the GSE market.

In addition, although a conventional loan may be extended in a community that does not participate in the National Flood Insurance Program (NFIP), a lender may find that it cannot pass the loan on to Fannie Mae or Freddie Mac. The GSEs have restated they will not buy mortgages secured by properties in nonparticipating communities if they are located in an SFHA. However, they will accept loans in non-participating communities that have not been mapped. The quality control measures instituted by the GSEs set the standard for the industry, even for transactions to private investors who are outside the GSE market.

When any loan is sold and servicing is transferred to the new servicer, notice of the identity of the new servicer must be provided to the Federal Emergency Management Agency's (FEMA) designee, which is the insurance company listed on the policy.

c. Portfolio Review

A look-back or retroactive loan portfolio review, as well as a review made on a prospective basis, which may disclose uninsured risks, is encouraged but not required by the law. The statutory requirements contain no express or implied language that obligates a regulated lender to review its portfolio of existing loans. Under GSE criteria, a lender or servicer is required to monitor loans sold to the GSE.

The 1994 Reform Act requires lenders and servicers to develop policies and procedures to ensure that flood insurance coverage is obtained before a loan can be granted, when a determination has been made that a building securing a loan is located in an SFHA. The lender or servicer also must ensure that a policy does not lapse after it has been placed at loan origination. If the policy lapses and the borrower refuses to purchase flood insurance within 45 days of the required notice, the lender must force place coverage.

A mortgagee or servicer must require the purchase of flood insurance at any time during the term of the loan when the lender determines that the building or manufactured (mobile) home is located in an SFHA. This position is intended to ensure that buildings located in SFHAs are covered by flood insurance, regardless of whether the area is designated as an SFHA by the Administrator of FEMA before or after the loan is originated. For example, when a community or area is remapped by FEMA, buildings that were not located in an SFHA at the time the mortgage was made may later be identified to be in an SFHA.

A lender is notified of remapping through publication in the *Federal Register* of map change information pertaining to an individual community, or through a compendium that lists all changes during a specific time period. FEMA offers a subscription service (for a fee) that provides information on map changes. FEMA also makes map change information available online at http://msc.fema.gov. Some flood zone determination companies provide the service of monitoring map changes that influence the status of loans.

Apart from the requirements mandated on origination of a loan, a regulated lender need only review and take action on any part of its existing portfolio, i.e., "look forward," for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. However, scheduled periodic reviews that track the need for flood insurance on loan portfolios are encouraged. The 1994 Reform Act does require lenders to check the status of security property for loans when triggered by the statutory tripwires. However, the Reform Act did not add remappings to the list of statutory tripwires. Neither the Reform Act nor the agencies' regulations require lenders to monitor for map changes.

The GSE sales guides go beyond the statutory requirements by directing lenders to continually monitor map changes and changes in community status under the NFIP.

2. Safety and Soundness

Federal lending regulators view adequate flood insurance coverage as an important factor in measuring the safety and soundness of a lending institution that extends loans in SFHAs. The existence of flood insurance is a component of prudent underwriting and protects the lender's ongoing interest in its collateral. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. The Federal regulators encourage lenders to evaluate and modify their flood insurance programs as needed to comport with both the mandatory purchase requirements and the principles of safe and sound banking that may be unique to a particular lender.

A lender's flood insurance needs vary widely depending on lending concentrations within the geographic areas it serves. For example, a high prevalence of loans in an SFHA requires particular vigilance. Institutions that are significantly exposed to the risks for which flood insurance is designed to compensate should determine the adequacy of flood insurance coverage by conducting periodic reviews, or reviews triggered by remapping of areas represented in their loan portfolio. Accordingly, a map change in a community that contains a significant number of loans in an SFHA merits a heightened analysis. The same principle applies to a regulated lender's purchase or transfer of existing loans in a community containing a special flood hazard.

In non-participating communities, lenders should have procedures in place to ensure that loans on properties in SFHAs where flood insurance is not available do not constitute a large portion of the institution's loan portfolio.

3. Table Funding

The regulations generally follow the Real Estate Settlement Procedures Act definition in which table funding is defined as a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The typical table-funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds, and thus is subject to the mandatory purchase requirements.

Table funding is a mechanism used in the "wholesale" mortgage lending industry for utilizing mortgage brokers in the production of mortgage loans. The brokers who originate the loans are independent contractors not subject to Federal regulatory supervision.

In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. Wholesale lenders provide the funds for loan closings and acquire the resulting loans, which they sell into the secondary market. Mortgage brokers receive compensation for surrendering the servicing income stream.

Under the regulations, lenders who provide table funding to close loans originated by mortgage brokers or manufactured (mobile) home dealers, such as described above, are deemed to be making, not purchasing, loans for purposes of the mandatory flood insurance requirements. Consequently, mortgage brokers are not obligated to comply with the 1994 Reform Act in these types of transactions. However, if any mortgage brokers are involved in the processing and underwriting of the application, the lender should contractually delegate to them the responsibility to comply with the various notice, form, and purchase requirements of the Flood Disaster Protection Act of 1973, thereby eliminating any duplication of flood determinations and borrower notices.

4. Impact on Servicers

The 1994 Reform Act addresses the role of servicers by sanctioning NFIP-related activities conducted on behalf of regulated lenders.

A servicer, as broadly defined in the 1994 Reform Act (42 U.S.C. §4003(a)(11) and §4121(a)(11)) may be a regulated lender or a private entity assisting a lender as an independent contractor. The provisions of the 1994 Reform Act apply to all banking institutions' subsidiaries and service corporations. If a servicer is a subsidiary of a regulated lender, it is included under the purview of the 1994 Reform Act. As discussed in Section C of these guidelines, the activities that apply to servicers include escrow, force placement, and zone determination, as well as the submission and receipt of notices. A servicer is directly involved in NFIP activities as a recipient of notices such as a copy of the borrower's Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance from the lender and the expiration/renewal notice from the insurer.

The regulations that address a servicer's activities treat loan servicers as acting on behalf of regulated lending institutions. Under the regulations, loan servicers are to be held answerable for their actions to the lender by means of contract. A lender thus may fulfill its duties under the 1994 Reform Act by imposing its responsibilities on the servicer under a loan service agreement. Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will fulfill Federal insurance requirements for escrow, force placement, flood hazard determinations, and the various notices, with conditions for recourse. The Federal regulations state that where deficiencies are found in existing loan servicing contracts, lenders should revise these agreements to provide for the loan servicer to fulfill Federal flood insurance requirements. It would also be prudent to monitor the activity of servicing agents.

The mandatory purchase provisions do not apply directly to loan originators that are not banking institutions or to servicers that are not acting on behalf of a banking institution. However, these non-bank originators and servicers must see to it that loans they sell or service for a GSE meet the requirements of the 1994 Reform Act. Non-bank (e.g., mortgage broker), nonconforming loan lenders who do not originate for GSEs do not come under the authority of the 1994 Reform Act.

5. Private Flood Insurance

As part of the notification procedure in making a loan, lenders must inform prospective borrowers of the availability of coverage from private insurers as well as from the NFIP. Federal regulatory entities may require gap/blanket insurance, which is not available from the NFIP, through a private insurer. However, FEMA recognizes the limited availability of flood insurance from the private insurance market.

A lender must consider the suitability of private flood insurance policies only when the mandatory purchase requirement applies. If NFIP coverage is not available in a particular community, or if the risk is otherwise not eligible for NFIP coverage, e.g., in a non-participating community or a Coastal Barrier Resources Act area, private flood insurance may be an alternative. A lender has more discretion in selecting private flood coverage when NFIP coverage is not available.

When private flood coverage is being considered in lieu of an NFIP policy, a lender should understand and comply with FEMA's criteria (described below) for selection of the private insurer and the form of coverage.

A private flood insurance policy that meets all six of the FEMA criteria described in **a.** through **f.** below conforms to the mandatory flood insurance purchase requirements of the 1994 Reform Act. To the extent that the private policy differs from the NFIP Standard Flood Insurance Policy (SFIP), available on the FEMA website at http://www.fema.gov/business/nfip/sfip.shtm, the differences should be carefully examined before the policy is accepted as sufficient protection under the law.

a. Licensure

The insurer must be licensed, admitted, or otherwise approved to do business in the jurisdiction where the building is located, by the insurance regulator of that jurisdiction, except as indicated in **b.** below.

b. Surplus Lines Recognition (Non-Residential Commercial)

In the case of non-residential commercial property insurance issued under a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, the insurer should be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the jurisdiction where the building is located.

c. Requirement of 45-Day Cancellation/ Non-Renewal Notice

The private flood insurance policy should include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. The policy should also state that, to be effective, such notice must be mailed to both the insured and the lender or Federal agency lender, and must include information about the availability of flood insurance coverage under the NFIP. The policy should be as restrictive in its cancellation provisions as the SFIP.

d. Breadth of Policy Coverage

The policy must guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least as broad as the coverage under the SFIP.

e. Strength of Mortgage Interest Clause

Lenders must ensure that a mortgage interest clause similar to that contained in the General Conditions section of the SFIP is contained in the policy.

f. Legal Recourse

The policy must contain a provision that the insured must file suit within 1 year after the date of written denial of all or part of the claim.

6. Regulatory Overview

The 1994 Reform Act expressly incorporates regulatory sanctions into the law and indirectly influences the potential for civil liability. This subsection addresses the regulatory examinations and penalties; the issue of liability under civil law is discussed on page 60.

a. Regulatory Examinations

As part of the 1994 Reform Act, Congress established a task force charged with studying the extent to which the Federal regulatory agencies and the secondary market enforce the statutory requirements. Accordingly, lenders and servicers can continue to expect onsite examination by the regulatory entity primarily responsible for the supervision of the institution as part of their compliance examinations. Similarly, the GSEs will be reviewed by their oversight agency and must conduct a review of their sellers. The examination procedures may include reviewing a sampling of loan files.

The examiners may perform the following activities:

- Review an institution's practices dealing with flood insurance, including a suitable flood zone determination procedure that includes monitoring renewal of coverage and maintaining records of compliance.

- Ask for proof of the submission of the Notice to Borrower form.

- Observe whether the timing requirements of the various notices have been met.

- Verify that the proper amount of coverage was placed in effect at the time of origination and remains in force throughout the renewal periods, with the lender shown as the mortgagee or loss payee on the policy.

- Check that the lender follows appropriate procedures when an area is reclassified because of a flood map revision.

- Confirm that a lender or servicer exercises force placement if there is failure to escrow or to continue a policy in effect.

The regulatory examinations will be tailored to the activities of the institution under review. For example, if an institution purchases servicing rights, the examination probably will include a review of the contractual obligations placed on the institution by the owner of the loans. Similarly, if the institution utilizes a third party to service loans, the contract with the third party may be reviewed to ascertain that the flood insurance requirements are identified and the compliance responsibilities are adequately addressed. If the institution transfers servicing of loans to another servicer, the institution must show that it provided notice of the new servicer's identity to the FEMA designee within the prescribed timeframe.

If the institution uses a third party to perform flood zone determinations, it can expect a review of its contractual provisions to verify that compliance requirements are identified and covered, including the extent of the third party's guarantee of work.

b. Regulatory Penalties

Under the 1994 Reform Act, Congress for the first time directed the agencies to impose civil money penalties for noncompliance with the mandatory purchase requirements. The law requires penalties related to covered loans on which a lender fails to:

- Place insurance,

- Escrow flood insurance premium on applicable loans,

- Provide notice requirements pertaining to designated loans, or

- Force place the insurance

in such a way that constitutes a "pattern or practice of committing violations" giving rise to an assessable event (42 U.S.C. §4012a(f) and (g)). Similar provisions exist with respect to GSEs.

The per-violation and aggregate amounts of civil penalties are adjusted by statute for inflation on a periodic basis. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. §2461 note), Federal agencies must evaluate and adjust the penalty amount at least once every 4 years. Lenders can check with their regulators for the most current penalty amount.

Penalties assessed are deposited in the National Flood Mitigation Fund created by the 1994 Reform Act. As of November 30, 2006, a total of 119 banks had been assessed nearly $1.3 million in penalties, for various violations of the 1994 Reform Act.

Other remedial sanctions consist of unsatisfactory bank ratings, memoranda of understanding, and, ultimately, cease and desist orders being issued against lending institutions found to have a pattern or practice of committing violations.

7. Civil Liability

In legal actions where aggrieved borrowers have instituted actions against lenders for failure to obtain flood insurance coverage, the courts have stated that the mandatory purchase and notice statutes are designed for regulatory purposes to strengthen the NFIP.

The court rulings have concluded that the statute and lender regulations are not intended to make “incidental beneficiaries” of aggrieved borrowers who find themselves without NFIP coverage on flood-damaged structures located in an SFHA. In the past, the courts have ruled that the mandatory purchase statute does not grant borrowers any “implied private cause of action” that might enable them to automatically recover funds on the basis of a lender’s failure to comply with the Flood Disaster Protection Act of 1973. Courts have agreed with the lenders that the intent of the law is to promote sound land use management and lessen the payments made from the Federal Treasury for disaster assistance, as well as to protect the lenders themselves.

LEGAL REFERENCES

This appendix references and describes the legal citations of the mandatory purchase sections of the National Flood Insurance Act of 1968, as amended. The statutory history and authority of various aspects of the Act that pertain to the mandatory purchase provisions are covered.

Administration of the National Flood Insurance Program

The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security (DHS).

At its inception, however, the NFIP was administered by the Federal Insurance Administration (FIA), which was established under the Housing and Urban Development Act of 1968, as part of the U.S. Department of Housing and Urban Development (HUD). The FIA was headed by the Federal Insurance Administrator, an office authorized by the Urban Property Protection and Reinsurance Act of 1968 (Title XI of the Housing and Urban Development Act of 1968). President Carter's Reorganization Plan No. 3 of 1978 (43 FR 41493) created FEMA and transferred the functions authorized and described in the National Flood Insurance Act of 1968 and the position of Federal Insurance Administrator to FEMA. The organization of FEMA was further defined in Executive Order 12127, dated March 31, 1979 (44 FR 19367), and Executive Order 12148, dated June 20, 1979. On April 1, 1979, in a notice published in 44 FR 20962, and later codified at 44 CFR §2.64, the Director of FEMA delegated responsibility for the administration of the NFIP to the Federal Insurance Administrator of the FIA, which had become a Directorate within FEMA.

When the DHS was established on March 1, 2003, FEMA was among the 22 Federal agencies transferred to the new Cabinet-level department. Since the advent of the DHS, FEMA Mitigation has been responsible for administration of the NFIP. The Director of FEMA is now the Administrator of FEMA. The Assistant Administrator of FEMA Mitigation also serves as Federal Insurance Administrator.

The authorization of the NFIP is codified in the United States Code at 42 U.S.C. 4011.

Operation of the National Flood Insurance Program

The National Flood Insurance Act of 1968, which created the NFIP, is codified at 42 U.S.C. 4001 et seq. The Act became effective on January 28, 1969, authorized by the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, as amended, Public Law 90-448, 82 Stat 476). The NFIP was established as a federally subsidized insurance program to provide flood insurance at or below actuarial rates. The legislative history states that Congress created the NFIP because flood insurance was generally unavailable from private insurance companies, who were unable to write flood insurance on an economically feasible basis (H. Rep. No. 90-1585, 90th Cong., 2d Sess., reprinted in, 1968 U.S. Code Cong. & Ad. News 2873, 2965-73; S. Rep. No. 90-1123, 90th Cong., 2d Sess. (1968)).

Initially, the NFIP's Standard Flood Insurance Policy (SFIP) was available only from independent insurance agents writing directly for FEMA. In October 1983, FEMA instituted the Write Your Own (WYO) Program, whereby qualified property and casualty insurance companies are authorized to write and service the federally backed SFIP under their own names (62 CFR Sub-Part C, §62.23). With the WYO Program, FEMA functions similarly to a reinsurer in accepting the risk of the primary WYO insurer on the line of NFIP business written by the companies. FEMA continues to bear the risk for the “direct” insurance program while serving as a guarantor of WYO insurers on WYO business.

Unlike the private insurance industry, the NFIP is by statute primarily a “take all comers” insurance entity. (See pages 20-22 of these guidelines for exceptions) No individual risk analysis, i.e., underwriting, is conducted to determine the likelihood of a future loss to a specific property. The main criterion for insurability is whether or not the community in which the property is located participates in the NFIP (42 U.S.C. §4012). If so, the risk is then rated in accordance with its flood zone, date of construction, building type, and amount of coverage requested. Premiums paid are deposited by the Administrator of FEMA to the National Flood Insurance Fund (42 U.S.C. 4017(b)(2)), which may be augmented when necessary by funds borrowed from the United States Treasury and by appropriations (42 U.S.C. 4016, 4017(b)(1),(3)).

The insurance regulations set out the terms and conditions of flood insurance coverage and rates. All flood insurance made available under the NFIP is subject to the express terms and conditions of the insurance policy, the statute, and the governing regulations (44 C.F.R. 61.4(a)).

As set forth at 44 C.F.R. 61, Appendix A(1), the SFIP is a single-peril policy that covers only direct physical loss by or from flood and limits coverage under both the insuring clause and the exclusions. The regulations prohibit alteration, variation, or waiver of the policy provisions (44 C.F.R. 61.13(d)), except by the Federal Insurance Administrator, who is charged with interpreting the meaning of the policy (44 C.F.R. 61.14(b)).

Other statutory references to the Act and its relevant amendments include the National Flood Insurance Act of 1968 (title 13 of the Housing and Urban Development Act of 1968), Pub. L. No. 90-448, 82 Stat. 476(1968) (codified at 42 U.S.C. 4001-4128); the Housing and Urban Development Act of 1969, Pub. L. No. 91-152, 83 Stat. 397 (1969) (codified at 12 U.S.C. section 1703); and the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234, 87 Stat. 975 (1973). The 1994 amendments were accomplished as part of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. 103-325, Title V, 108 Stat. 2257-2260 et.seq., generally referred to as the Reform Act. The Flood Insurance Reform Act of 2004, Pub. L. No. 108-264 (codified at 42 U.S.C. 4030), focused on severe repetitive loss properties and miscellaneous topics that did not affect the requirement to purchase flood insurance.

Mandatory Purchase Requirement

The mandatory purchase requirement was established by the Flood Disaster Protection Act of 1973. This law required purchase of flood insurance as a condition for obtaining a mortgage loan from federally regulated lending institutions for properties in identified floodprone areas, and as a condition for obtaining Federal assistance. The restriction on Federal assistance included the receipt of federally related financing by private lending institutions as well as VA and FHA loans. Since flood insurance was available only in communities participating in the NFIP, the result of this legislation was a great increase in the number of communities participating in the program and in the number of policies in force.

The 1973 mandatory purchase requirement, however, was met with some criticism. Continuing pressure from contractors and real estate developers resisting the limits on lending and Federal assistance to non-participating communities resulted in a 1977 amendment that modified §4106 (b) by deleting the original wording, which prohibited private regulated lending in non-participating communities, and in its place substituted a notice requirement. This 1977 change came to be known as the "Eagleton Amendment" (Pub.L 95-128, Title VII, sec. 703(a), Oct 12, 1977). The amendment deleted from the 1973 Act its §4106 (b) requirement that Federal regulators issue regulations prohibiting lenders from making conventional loans with respect to property in non-participating communities. The notice requirement is contained in the Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance. Consequently, lenders regulated by, or whose deposits are insured by, Federal instrumentalities may now make conventional loans secured by mortgages on improved real property and manufactured (mobile) homes in areas of special flood hazard in communities that do not participate in the NFIP. They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance. Thus, the mandatory flood insurance purchase requirement does not apply with respect to such loans. However, lenders should carefully evaluate the underwriting risk involved in making such loans. In non-participating communities, a lender may require private flood insurance, if available. The notice requirements do not apply to unsecured loans, or to loans secured by improved real property that is not located in an SFHA.

The 1977 change benefits developers, who are allowed to obtain federally guaranteed money for floodplain development, but works to the detriment of the ultimate, and perhaps unsuspecting, future owner of the building at the time a flood may occur. The possibility of flood damage is in addition to what could be an excessively high premium in the future, if the building is constructed below the Base Flood Elevation and the community subsequently joins the NFIP as a participating community.

The mandatory purchase law directed the Federal lending regulators and Government-Sponsored Enterprises (GSEs) to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in an area of special flood hazard in a community that is eligible for the purchase of National Flood Insurance, if the building, mobile home, and any personal property securing such loan is to be the security for the loan.

Each Federal regulatory agency and GSE was given the right to issue its own regulations to implement the 1973 Act, and the authority of FEMA was limited to its statutory responsibility of administering the NFIP. FEMA was not given direct responsibility for implementing enforcement of the mandatory flood insurance purchase requirements.

1994 Amendments to the Mandatory Purchase Requirement

The Riegle Community Development and Regulatory Improvement Act, Pub. L. 103-325, 108 Stat. 2160 (the Reform Act), was signed into law on September 23, 1994. As described in this handbook, the new law substantially amended the mandatory purchase requirement.
The flood insurance provisions of the 1994 Act required the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office

of Thrift Supervision, and the National Credit Union Administration to revise their flood insurance regulations. The Farm Credit Administration was required to promulgate flood insurance regulations for the first time. The six agencies issued their regulations jointly in order to fulfill the statutory requirements and have coordinated and consulted with the Federal Financial Institutions Examination Council, as required by certain of the Reform Act flood insurance provisions. The CFR citations for the regulations of the lender agencies are listed below. Contact information for the agencies is provided in Appendix 5.

Office of the Comptroller of the Currency: 12 CFR Part 22

Federal Reserve System: 12 CFR Part 208

Federal Deposit Insurance Corporation: 12 CFR Part 339

Office of Thrift Supervision: 12 CFR Parts 563 and 572

Farm Credit Administration: 12 CFR Part 614

National Credit Union Administration: 12 CFR Part 760

FDIC REGULATIONS

Federal Deposit Insurance Corporation
12 CFR Chapter III
Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC revises part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 339--LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

339.1 Authority, purpose, and scope.
339.2 Definitions.
339.3 Requirement to purchase flood insurance where available.
339.4 Exemptions.
339.5 Escrow requirement.
339.6 Required use of standard flood hazard determination form.
339.7 Forced placement of flood insurance.
339.8 Determination fees.
339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
339.10 Notice of servicer's identity.

Appendix A to Part 339--Sample Form of Notice of Special Flood Hazards and Availability of
Federal Disaster Relief Assistance
Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Sec. 339.1 Authority, purpose, and scope.

(a) Authority. This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) Purpose. The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(c) Scope. This part, except for Secs. 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

Sec. 339.2 Definitions.

(a) Act means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).

(b) Bank means an insured state nonmember bank and an insured state branch of a foreign bank or any subsidiary of an insured state nonmember bank.

(c) Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) Director of FEMA means the Director of the Federal Emergency Management Agency.

(g) Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.

(h) NFIP means the National Flood Insurance Program authorized under the Act.

(i) Residential improved real estate means real estate upon which a home or other residential building is located or to be located.

(j) Servicer means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

Sec. 339.3 Requirement to purchase flood insurance where available.

(a) In general. A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) Table funded loans. A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

Sec. 339.4 Exemptions.

The flood insurance requirement prescribed by Sec. 339.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

Sec. 339.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under Sec. 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

Sec. 339.6 Required use of standard flood hazard determination form.

(a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) Retention of form. A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

Sec. 339.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under Sec. 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under Sec. 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

Sec. 339.8 Determination fees.

(a) General. Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) Borrower fee. The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under Sec. 339.7.

(c) Purchaser or transferee fee. The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

Sec. 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) Notice requirement. When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) Contents of notice. The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;
(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

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

(c) Timing of notice. The bank shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) Record of receipt. The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) Alternate method of notice. Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) Use of prescribed form of notice. A bank will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

Sec. 339.10 Notice of servicer's identity.

(a) Notice requirement. When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) Transfer of servicing rights. The bank shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

STANDARD FLOOD HAZARD DETERMINATION FORM

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY **STANDARD FLOOD HAZARD DETERMINATION**	*See The Attached Instructions*	*O.M.B. No. 1660-0040* *Expires October 31, 2008*

SECTION I - LOAN INFORMATION

1. LENDER NAME AND ADDRESS	2. COLLATERAL *(Building/Mobile Home/Personal Property)* PROPERTY ADDRESS *(Legal Description may be attached)*

3. LENDER ID. NO.	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED $

SECTION II

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number

B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME

1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective/ Revised Date	3. LOMA/LOMR	4. Flood Zone	5. No NFIP Map
		☐ yes Date		

C. FEDERAL FLOOD INSURANCE AVAILABILITY ***(Check all that apply)***

1. ☐ Federal Flood insurance is available *(community participates in NFIP)*. ☐ Regular Program ☐ Emergency Program of NFIP
2. ☐ Federal Flood insurance is not available because community is not participating in the NFIP.
3. ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA), Federal Flood insurance may not be available.

CBRA/OPA designation date: ____________

D. DETERMINATION

IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? ☐ YES ☐ NO

If yes, flood insurance is required by the Flood Disaster Protection Act of 1973.
If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.

E. COMMENTS ***(Optional)*:**

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.

F. PREPARER'S INFORMATION

NAME, ADDRESS, TELEPHONE NUMBER *(If other than Lender)*	DATE OF DETERMINATION

FEMA Form 81-93, DEC 05 **This form may be locally reproduced.**

STANDARD FLOOD HAZARD DETERMINATION FORM INSTRUCTIONS
PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 20 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, retain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the form, including suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676- 0264), Washington, DC 20503. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form. **Please do not send your completed form to the above address.**

SECTION 1

1. **LENDER NAME**: Enter lender name and address.

2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS: Enter property address for the insurable collateral. In rural areas, a postal address may not be sufficient to locate the property. In these cases, legal property descriptions may be used and may be attached to the form if space provided is insufficient.

3. LENDER ID. NO.: The lender funding the loan should identify itself as follows: FDIC-insured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number. Other lenders who fund loans sold to or securitized by FNMA or FHLMC should enter the FNMA or FHLMC seller/servicer number.

4. LOAN IDENTIFIER: Optional. May be used by lenders to conform with their individual method of identifying loans.

5. AMOUNT OF FLOOD INSURANCE REQUIRED: Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. Lenders may exceed the minimum federal requirements. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the value of the building/mobile home/personal property.

SECTION 2

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name. Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worchester, Township of; Baldwin County; Jefferson Parish.) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.

2. County(ies). Enter the name of the county or counties in which the community is located. For unicorporated areas of a county, enter "unincorporated areas". For independent cities, enter "independent city."

3. State. Enter the two-digit state abbreviation. (Examples: VA, TX, CA.)

4. NFIP Community Number. Enter the 6-digit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website http://msc.fema.gov or by calling 1-800-358-9616. If no NFIP Community Number exists for the community, enter "none".

B. NFIP DATA AFFECTING BUILDING/MOBILE HOME

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map may be obtained from FEMA by calling 1-800-358-9616. Scanned copies of the NFIP maps can be viewed on FEMA's website at http://msc.fema.gov. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. NFIP Map Number or Community-Panel Number. Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075 F.) Some older maps will have a 9-digit number (Example: 12345601A.) Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none".

2. NFIP Map Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93.) this will be the latest of all dates shown on the map.

3. LOMA/LOMR. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, no entry is required. Information on LOMAs and LOMRs is available from the following sources:
* The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.
* For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the Federal Register. This information is also available on FEMA's website at http://msc.fema.gov.
* A subscription service providing digitized copies of these letters on CD-ROM is also available by calling 1-800-358-9616.

4. Flood Zone. Enter the flood zone(s) covering the building or mobile home. (Examples: A, AE, A4, AR, AR/A, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D.) If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered Special Flood Hazard Areas (SFHAs). Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none".

5. No NFIP Map. If no NFIP map covers the area where the building or mobile home is located, check this box.

C. FEDERAL FLOOD INSURANCE AVAILABILITY. Check all boxes that apply; however, note that boxes 1 (Federal Flood Insurance is available...) and 2 (Federal Flood Insurance is not available...) are mutually exclusive. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book, which is available from FEMA and at http://msc.fema.gov. The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in designated Coastal Barrier Resources Areas (CBRA) and Otherwise Protected Areas (OPAs) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. Information about the Coastal Barrier Resources System may be obtained on FEMA's website at http://www.fema.gov/nfip/cobra.shtm.

D. DETERMINATION: If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

F. PREPARER'S INFORMATION: If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. An individual's name may be included, but is not required.

Date of Determination. Enter date on which flood hazard determination was completed.

OTHER INFORMATION

MULTIPLE BUILDINGS: If the loan collateral includes more than one building, a schedule for the additional building(s)/mobile home(s) indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building or mobile home. Any attachment(s) should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

GUARANTEES REGARDING INFORMATION: Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

FORM AVAILABILITY: Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website http://www.fema.gov/nfip/sfhdform.shtm.

PURPOSE OF FORM: In accordance with P.L. 103-325, Sec. 1365, (b) (1), this form has been designed to facilitate compliance with the flood insurance purchase requirements of the National Flood Insurance Reform Act of 1994.

NOTICE REQUIREMENTS OF THE STATUTE

Section 4104a **Notice requirements** (This section of the U.S. Code includes public law section 527 of the 1994 Reform Act)

(a) **Notification of Special Flood Hazards**

(1) **Regulated lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) **omitted**

(3) **Contents of notice**

Written notification required under this subsection shall include-

(A) a warning, in a form to be established by the Director, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973 [42 U.S.C.A. § 4012a (b)];

(C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers; and

(D) any other information that the Director considers necessary to carry out the purposes of the national flood insurance program.

(b) **Notification of Change of Servicer**

(1) **Lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

(2) **omitted**

(c) **Notification of Expiration of Insurance**

The Director (or the designee of the Director) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Director) the owner of the loan.

Section 4104b **Standard hazard determination forms** (This section of the U.S. Code includes public law section 528 of the 1994 Reform Act)

(a) **Development**

The Director, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available. The form shall be established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(b) **Design and Contents**

(1) **Purpose**

The form under subsection (a) shall be designed to facilitate compliance with the flood insurance purchase requirements of this title.

(2) **Contents**

The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Director. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

(c) **Required Use**

The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

(d) **Guarantees Regarding Information**

In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

(e) **Reliance on Previous Determination**

Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless-

(1) map revisions or updates pursuant to section 4101(f), 1360(f) after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or

(2) the person contacts the Director to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

(f) **Effective Date**

The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regulations required under subsection (a) and shall take effect upon the expiration of the 180-day period beginning on such issuance.

Appendix A to Part 339
Sample Forms of Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance

Two sample versions of this notice form are provided on the following pages—one for use in participating communities, and the other for use in non-participating communities.

Note: Lenders are encouraged to consider whether their collateral interests, in high flood risk areas, are adequately protected based on **minimal** statutory requirements. Lenders can require flood insurance limits up to the full RCV of the building, up to NFIP limits, as with other lines of insurance.

Condominium unit owners have unique flood insurance coverage needs that require additional consideration. The NFIP designed the Residential Condominium Building Association Policy (RCBAP) to address the flood insurance needs of condominium unit owners and associations. Please refer to the Condominiums section of these guidelines for information concerning the flood insurance coverage options and requirements applicable to lending institutions.

Sample Form for Participating Communities: Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

- The building or mobile home securing the loan for which you have applied is or will be located in an area prone to high flood risks that we call a Special Flood Hazard Area (SFHA).

  The area has been identified by the Federal Emergency Management Agency (FEMA) as an SFHA using the Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM) for the community number________________. FIRMs are prepared by FEMA in cooperation with the applicable community to identify high flood risk and low-to-moderate flood risk areas. The SFHA in which your building or mobile home is or will be located has at least a one percent chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of flooding in an SFHA is 26 percent.

- Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in an SFHA. If you would like to make such a request, please contact us for further information. Borrowers may also call a FEMA mapping specialist at (877) 336-2627 to discuss their concerns.

- Federal financial assistance, including FEMA disaster assistance, flood mitigation grants and federally backed mortgage lending is available in the NFIP participating communities. Mandatory flood insurance requirements are applicable to all Federal financial assistance. The mandatory flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973 are applicable to Federally regulated lenders making loans in SFHAs. We will not make you the loan that you have applied for if you do not purchase flood insurance. If you fail to renew flood insurance on the property, federal law authorizes and requires us to purchase the flood insurance for you at your expense. The flood insurance must be maintained for the life of your loan.

  - Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through a Write Your Own (WYO) company that has agreed to write and service NFIP policies on behalf of FEMA. Flood insurance also may be available from private insurers that are not Federally backed.

  - At minimum, flood insurance purchased must cover the lowest of: (1) the outstanding principal balance of the loan(s); or (2) the maximum amount of coverage allowed for the type of building under the NFIP; or (3) the full replacement cost value (RCV) of the building and/or contents securing the loan. The market value or land value on which the building is located has no bearing on the RCV of the building.

- Federal disaster relief assistance, the majority of which is in the form of a low-interest disaster assistance loan from the Small Business Administration (SBA), may be available for losses not covered by your flood insurance policy. Flood insurance requirements apply to recipients of Federal disaster assistance grants and SBA disaster assistance loans. If you are planning to build a structure or make repairs, contact the local community's chief executive official to determine building standards for structures within an SFHA.

Notice received by ______________________________ Date ____________________

Sample Form for Non-Participating Community: Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

- The building or mobile home securing the loan for which you have applied is or will be located in an area prone to high flood risks, also known as a Special Flood Hazard Area (SFHA).

  - The area has been identified by the Federal Emergency Management Agency (FEMA) as an SFHA using the Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM) for the community number________________. FIRMs are prepared by FEMA in cooperation with the applicable community to identify high flood risk and low-to-moderate flood risk areas. The SFHA in which your building or mobile home is or will be located has at least a one percent chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of flooding in an SFHA is 26 percent.

  - Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in an SFHA. If you would like to make such a request, please contact us for further information. Borrowers may also call a FEMA mapping specialist at (877) 336-2627 to discuss their concerns.

- The community in which the property securing the loan is located does not participate in the National Flood Insurance Program (NFIP). Federal flood insurance is not available. However, private flood insurance may be available on a limited basis in the SFHAs of non-participating communities. Federal financial assistance including disaster assistance grants or loans and flood mitigation grants are not available in SFHAs of non-participating communities. For example, if the non-participating community has been identified for at least one year as containing an SFHA, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a federally declared flood disaster.

- Conventional loans, loans that are not Federally backed can be made on buildings in SFHAs of non-participating communities, if authorized by the regulatory authority of the lending institution. However, government guaranteed or insured loans (e.g., SBA, VA, and FHA loans) are not permitted to be made in non-participating communities, if secured by structures in SFHAs.

A non-participating community *can* join the NFIP—contact your local chief executive official for additional information.

Notice received by ___________________________________ Date __________________

Federal Emergency Management Agency
Washington, DC 20472

NOTIFICATION OF CHANGE OF SERVICER

The National Flood Insurance Reform Act (NFIRA) requires federally regulated lending institutions and Federal agency lenders to report changes of Servicer. Section 1364 of the National Flood Insurance Act of 1968, as amended by Section 527 of NFIRA, provides in paragraph (b)(1) that:

> "Each Federal entity . . . shall by regulation require lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any changes in the servicer of the loan, not later than 60 days after the effective date of such change."

The Federal Emergency Management Agency is requesting that all notices be sent to the Write Your Own company (insurance carrier issuing flood policy) or agent of record to endorse the flood policy to change the mortgagee or servicer.

In order to expedite the processing, please submit the following information to the insurance company:

- Borrower's Full Name
- Flood Insurance Policy Number
- Property Address (including city/state)
- Name of Bank or Servicer Reporting the Change
- Name/Telephone Number of Contact Person
- Name and Address of New Mortgagee or Servicer
- Name and Address of New Contact Person

FLOOD INSURANCE RESOURCES

Federal Emergency Management Agency & National Flood Insurance Program	
Coastal Barrier Resources System (CBRS) Areas – Map Panel List	http://www.fema.gov/business/nfip/cbrs/cbrs.shtm
Community Status Book	http://www.fema.gov/fema/csb.shtm
FEMA Regional Office List	http://www.fema.gov/about/contact/regions.shtm
Flood Insurance Manual	http://www.fema.gov/business/nfip/manual.shtm
Flood Map Modernization Program, FEMA	http://www.fema.gov/plan/prevent/fhm/mm_main.shtm
Flood Map Orders (FEMA Map Service Center)	http://msc.fema.gov
Flood Map Technical Questions	femamapspecialists@mapmodteam.com
Flood Zone Determination Companies List	http://www.fema.gov/business/nfip/fzone1.shtm
General Information about Flood Risk, Insurance Coverage, Insurance Rates	http://www.floodsmart.gov
Information Resource Library, Multimedia	http://www.fema.gov/library
Lender Information & Publications	http://www.fema.gov/business/nfip/infol.shtm
Letters of Map Change (LOMC) Information	http://www.fema.gov/hazard/map/lomc.shtm
Mortgage Portfolio Protection Program (MPPP) – Participating WYO Companies List	http://www.fema.gov/nfipInsurance/mppp.jsp
NFIP Bureau & Statistical Agent	http://bsa.nfipstat.com
NFIP Direct Servicing Agent	http://www.nfipservices.com
NFIP Regional Office List	http://www.fema.gov/business/nfip/nfip_regions.shtm
Standard Flood Hazard Determination Form (SFHDF)	http://www.fema.gov/business/nfip/sfhdform.shtm
Standard Flood Insurance Policy (SFIP)	http://www.fema.gov/business/nfip/sfip.shtm
Top Ten Facts Every Lender Needs to Know about the NFIP	http://www.fema.gov/library/viewRecord.do?id=1408
Training Opportunities for Lenders	http://www.fema.gov/business/nfip/trainlen.shtm
Watermark newsletter & *e-Watermark* online updates	http://www.fema.gov/business/nfip/wm.shtm http://watermark.nfipstat.com/index.htm
Write Your Own (WYO) Companies List	http://www.fema.gov/nfipInsurance/companies.jsp

Federal Entities for Lending Regulation	
Board of Governors of the Federal Reserve System (FRS)	http://www.federalreserve.gov 202-785-6054
Farm Credit Administration (FCA)	http://www.fca.gov/FCA-HomePage.htm 703-883-4020
Federal Deposit Insurance Corporation (FDIC) – Bankers Page	http://www.fdic.gov/quicklinks/bankers.html 202-898-3912
National Credit Union Association (NCUA)	http://www.ncua.gov 703-518-6300
Office of the Comptroller of the Currency (OCC)	http://www.occ.treas.gov 202-874-4858
Office of Thrift Supervision (OTS)	http://www.ots.treas.gov 202-906-6288
Government-Sponsored Enterprises (GSEs) for Housing	
Federal Home Loan Mortgage Corporation (Freddie Mac)	http://www.freddiemac.com http://www.allregs.com/fhlmc 703-903-2000
Federal National Mortgage Association (Fannie Mae)	http://www.fanniemae.com http://www.efanniemae.com 202-752-7000

30-DAY WAITING PERIOD

A. Start of Waiting Period

For flood insurance under the National Flood Insurance Program (NFIP), there is a standard 30-day waiting period before new applications and endorsements to increase coverage become effective.

1. If the application or endorsement form and the premium payment are received at the NFIP *within 10 days* from the date of application or endorsement request, or if mailed by certified mail within 4 days from the date of application or endorsement request, then the waiting period will be calculated from the *application or endorsement date*. Use the application date or endorsement date plus 9 days to determine if the application or endorsement and premium payment were received within 10 days. When sent by certified mail, use the application date or endorsement date plus 3 days to determine if the application or endorsement and premium payment were mailed within 4 days.

2. If the application or endorsement form and the premium payment are received at the NFIP *after 10 days* from the date of application or endorsement request, or are not mailed by certified mail within 4 days from the date of application or endorsement request, then the waiting period will be calculated from the *date the NFIP receives the application or endorsement*.

As used in A.1 and A.2 above, the term "certified mail" extends to not only the U.S. Postal Service but also certain third-party delivery services. Acceptable third-party delivery services include Federal Express (FedEx), United Parcel Service (UPS), and courier services and the like that provide proof of mailing. Third-party delivery is acceptable if the delivery service provides documentation of the actual mailing date and delivery date to the NFIP insurer. Bear in mind that third-party delivery services deliver to street addresses but cannot deliver to U.S. Postal Service post office boxes.

B. Effective Date

1. New Policy (other than 2, 3, or 4 below)—The effective date of a new policy will be 12:01 a.m., local time, on the 30th calendar day after the application date and the presentment of premium. (Example: a policy applied for on May 3 will become effective 12:01 a.m., local time, on June 2.) The effective date of coverage is subject to the waiting period rule listed under A.1 or A.2 above.

2. New Policy (in connection with making, increasing, extending, or renewing a loan, whether conventional or otherwise)—Flood insurance, which is initially purchased in connection with the making, increasing, extending, or renewal of a loan, shall be effective at the time of loan closing, provided that the policy is applied for and the presentment of premium is made at or prior to the loan closing. (Example: presentment of premium and application date—April 3, refinancing—April 3 at 3:00 p.m., policy effective date—April 3 at 3:00 p.m.) This rule applies to all buildings regardless of flood zone. The waiting period rule listed under A.1 or A.2 above does not apply.

3. **New Policy** (in connection with lender requirement)—The 30-day waiting period does not apply when flood insurance is required as a result of a lender determining that a loan on a building in a Special Flood Hazard Area (SFHA) that does not have flood insurance coverage should be protected by flood insurance. The coverage is effective upon the completion of an application and the presentment of payment of premium. (Example: presentment of premium and application date—April 3, policy effective date—April 3.) The waiting period rule listed under A.1 or A.2 must be used.

4. **New Policy** (when the initial purchase of flood insurance is in connection with the revision or updating of a Flood Hazard Boundary Map or Flood Insurance Rate Map)—During the 13-month period beginning on the effective date of the map revision, the effective date of a new policy shall be 12:01 a.m., local time, following the day after the application date and the presentment of premium. This rule only applies where the Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) is revised to show the building to be in a Special Flood Hazard Area (SFHA) when it had not been in an SFHA. (Example: FIRM revised—January 1, 2005, policy applied for and presentment of premium—August 3, 2005, policy effective date—August 4, 2005.) The waiting period rule listed under A.1 or A.2 above must be used. This rule applies to all property owners including condominium associations.

5. **New Policy** (in connection with the purchase of an RCBAP)—When a condominium association is purchasing a Residential Condominium Building Association Policy (RCBAP), the 30-day waiting period does not apply if the condominium association is required to obtain flood insurance as part of the security for a loan under the name of the condominium association. The coverage is effective upon completion of an application and presentment of premium. The waiting period rule listed under A.1 or A.2 above does not apply.

   Otherwise, the 30-day waiting period applies, and the waiting period rule listed under A.1 or A.2 above must be used.

6. **New Policy** (submit-for-rate application)—With three exceptions (described below), the effective date of a new policy will be 12:01 a.m., local time, on the 30th calendar day after the presentment of premium.

   The *three exceptions* are as follows.

   First, there is no waiting period if the initial purchase of flood insurance on a submit-for-rate application is in connection with making, increasing, extending, or renewing a loan, provided that the policy is applied for and the presentment of premium is made at or prior to the loan closing. The waiting period rule listed under A.1 or A.2 above does not apply.

   Second, the 30-day waiting period does not apply when flood insurance is required as a result of a lender determining that a loan which does not have flood insurance coverage should be protected by flood insurance, because the building securing a loan is located in an SFHA. The coverage is effective upon the completion of an application and the presentment of payment of premium. This exemption from the 30-day waiting period applies only to loans in SFHAs, i.e., those loans for which the statute requires flood insurance. The waiting period rule listed under A.1 or A.2 above must be applied.

Third, during the 13-month period beginning on the effective date of a map revision, the effective date of a new policy shall be 12:01 a.m., local time, following the day after the date the increased amount of coverage is applied for and the presentment of additional premium is made. This rule applies only on an initial purchase of flood insurance where the Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) is revised to show the building to be in an SFHA when it had not been in an SFHA. The waiting period rule listed under A.1 or A.2 must be applied.

7. **New Policy** (rewrite Standard to PRP)—The 30-day waiting period does not apply when an insured decides to rewrite the existing policy at the time of renewal from Standard to a Preferred Risk Policy (PRP), provided that the selected PRP coverage limit amount is no higher than the next highest PRP amount above that which was carried on the Standard policy using the highest of building and contents coverage. In those cases where the Standard policy has only one kind of coverage, either building or contents only, the 30-day waiting period applies.

   In addition, if the structure is no longer eligible under the PRP or the insured decides to rewrite the existing PRP at renewal time to a Standard policy, the 30-day waiting period does not apply provided the coverage limit amount is no more than the previous PRP coverage amount or the next higher PRP amount above that.

8. **New Policy** (contents only)—Unless the contents are part of the security for a loan, the 30-day waiting period applies to the purchase of contents-only coverage.

9. **New Policy** (documentation required)—The insurer may rely on an agent's representation on the application that the loan exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, before adjusting the loss.

10. **Community's Initial Entry** (or conversion from Emergency to Regular Program)—Process according to rules 1 through 9 above and 11 below.

11. **Endorsements**—With two exceptions (described below), the effective date for a new coverage or an increase in limits on a policy in force shall be 12:01 a.m., local time, on the 30th calendar day following the date of endorsement and the presentment of additional premium, or on such later date set by the insured to conform with the reason for the change. The waiting period rule listed under A.1 or A.2 above must be used.

    The *two exceptions* are as follows.

    First, during the 13-month period beginning on the effective date of a map revision, the effective date of an endorsement of an existing policy shall be 12:01 a.m., local time, following the day after the application date and the presentment of premium. This rule applies only where the FHBM or FIRM is revised to show the building to be in an SFHA when it had not been in an SFHA. The waiting period rule listed under A.1 or A.2 above does not apply.

    Second, the 30-day waiting period does not apply when the additional amount of flood insurance is required in connection with the making, increasing, extending, or renewing of a loan, such as a second mortgage, home equity loan, or refinancing. The increased amount of flood coverage shall be effective at the time of loan closing, provided that the increased amount of coverage is applied for and the presentment of additional premium is made at or prior to the loan closing. The waiting period rule listed under A.1 or A.2 above does not apply.

The insurer may rely on an agent's representation on the endorsement that the loan exception applies unless there is a loss during the first 30 days after the endorsement effective date. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, before adjusting the loss.

12. **Renewals** (inflation increase option)—The 30-day waiting period does not apply when an additional amount of insurance is requested at renewal time that is no more than the amount of increase recommended by the insurer on the renewal bill to keep pace with inflation. If a revised renewal offer is generated at least 30 days before renewal with coverage more than the inflation increase option, the new limits will apply at policy renewal.

    In either situation, the increased amount of coverage will be effective at 12:01 a.m. on the date of policy renewal provided the premium for the increased coverage is received before the expiration of the grace period.

13. **Renewals** (higher PRP limits)—The waiting period does not apply to a renewal offer to the insured for the next higher limits available under the PRP.

14. **Renewals** (deductible reduction)—The 30-day waiting period does not apply to a reduction of the deductible effective as of the renewal date.

Adapted from the May 1, 2007, revision of the NFIP Flood Insurance Manual*, General Rules section, pages GR 8-10.*

Federal Emergency Management Agency
Federal Insurance Administration
Appendix A

Mortgage Portfolio Protection Program
Guidelines and Requirements

Background

The Mortgage Portfolio Protection Program (MPPP) was introduced on January 1, 1991, as an additional tool, provided by the Federal Insurance Administration (FIA), to assist the mortgage lending and servicing industries, in response to their requests, in bringing their mortgage portfolios into compliance with the flood insurance requirements of the Flood Disaster Protection Act of 1973.

The MPPP is not intended to act as a substitute for the need for mortgagees to review all mortgage loan applications at the time of loan origination and comply with flood insurance requirements as appropriate.

It is expected that the proper implementation of the various requirements of this MPPP will result in mortgagors, following their notification of the need for flood insurance, to either show evidence of such a policy or contact their local insurance agent or appropriate Write Your Own (WYO) company to purchase the necessary coverage. It is also intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by this MPPP.

The following represents the criteria and requirements that must be followed by all parties engaged in the sale of flood insurance under the National Flood Insurance Program's Mortgage Portfolio Protection Program.

Requirements for Participating in the MPPP

1. General

a. All mortgagors notified, in conjunction with this Program, of their need to purchase flood insurance must be encouraged to obtain a Standard Flood Insurance Policy (SFIP) from their local agent.

b. When a mortgagee or a mortgage servicing company discovers, at any time following loan origination, that one or more of the loans in its portfolio are determined to be located in a Special Flood Hazard Area (SFHA), and that there is no evidence of flood insurance on such property(ies), then the MPPP may be used by such lender/servicer to obtain (force place) the required flood insurance coverage. The MPPP process can be accomplished with limited underwriting information and with special flat flood insurance rates.

c. In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone in which the property is located. Also, the amount of coverage may have to be changed if the building occupancy does not support that amount.

d. It will be the WYO company's responsibility to notify the mortgagor of all coverage limitations at the inception of coverage and to impose those limitations that are applicable at the time of loss adjustment.

2. WYO Arrangement Article III—Fees

With the implementation of the MPPP, there is no change in the method of WYO company allowance from that which is provided in the Financial Assistance/Subsidy Arrangement for all flood insurance written.

3. Use of WYO Company Fees for Lenders/Servicers or Others

a. No portion of the allowance that a WYO company retains under the WYO Financial Assistance/Subsidy Arrangement for the MPPP may be used to pay, reimburse or otherwise remunerate a lending institution, mortgage servicing company, or other similar type of company that the WYO company may work with to assist in its flood insurance compliance efforts.

b. The only exception to this is a situation where the lender/servicer may be actually due a commission on any flood insurance policies written on any portion of the institution's portfolio because it was written through a licensed property insurance agent on their staff or through a licensed insurance agency owned by the institution or servicing company.

4. Notification

a. WYO Company/Mortgagee—Any WYO company participating in the MPPP must notify the lender or servicer, for which it is providing the MPPP capability, of the requirements of the MPPP. The WYO company must obtain signed evidence from each such lender or servicer indicating their receipt of this information, and keep a copy in its files. An example of such evidence of receipt follows as Addendum 5.

b. Mortgagee to Mortgagor—In order to participate in the MPPP, the lender (or its authorized representative, which will typically be the WYO company providing the coverage through the MPPP) must notify the borrower of the following, at a minimum:

(1) The requirements of the Flood Disaster Protection Act of 1973,

(2) The flood zone location of the borrower's property,

(3) The requirement for flood insurance,

(4) The fact that the lender has no evidence of the borrower's having flood insurance,

(5) The amount of coverage being required and its cost under the MPPP, and

(6) The options of the borrower for obtaining conventionally underwritten flood insurance coverage and the potential cost benefits of doing so.

A more detailed discussion of the notification requirements is made a part of this program document in both Section 15 and as Addendums 1 and 2.

5. Eligibility

a. Type of Use—The MPPP will be allowed only in conjunction with mortgage portfolio reviews and the servicing of those portfolios by lenders and mortgage servicing companies. The MPPP is not allowed to be used in conjunction with any form of loan origination.

b. Type of Property—The standard NFIP rules apply, and all types of property eligible for coverage under the NFIP will be eligible for coverage under the MPPP.

6. Source of Offering

The force placement capability will be offered by the WYO companies only and not by the NFIP Servicing Agent.

7. Dual Interest

The policy will be written covering the interest of both the mortgagee and the mortgagor. The name of the mortgagor must be included on the Application Form. It is not, however, necessary to include the mortgagee as a named insured because the Mortgage Clause (Article VII.Q of the Dwelling Form and the General Property Form) affords building coverage to any mortgagee named as mortgagee on the Flood Insurance Application. If contents coverage for the mortgagee is desired, the mortgagee should be included as a named insured.

8. Term of Policy

NFIP policies written under the MPPP will be for a term of 1 year (subject to the renewal notification process).

9. Coverage Offered

Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be $250,000 for building coverage and $100,000 for contents. If the WYO company wishes to provide higher limits that are available to other occupancy types such as other residential or non-residential, it may do so only if it can indicate that occupancy type as appropriate. If the mortgaged property is in an Emergency Program Community, then the coverage limits available will be $35,000 for building coverage and $10,000 for contents. Again, if the higher limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

10. Policy Form

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form should be used.

11. Waiting Period

The NFIP rules for the waiting period and effective dates apply to the MPPP.

12. Premium Payment

The current rules applicable to the NFIP will apply. The lender or servicer (or payor) has the option to follow its usual business practices regarding premium payment, so long as the NFIP rules are followed.

13. Underwriting—Application

a. The MPPP will require less underwriting data than is normally required under the standard NFIP rules and regulations. The MPPP data requirements for rating, processing and reporting are, at a minimum:

(1) Name and mailing address of insured (mortgagor; also see Dual Interest),

(2) Address of insured (mortgaged) property,

(3) Community name, number, map panel number and suffix, and program type (Emergency or Regular),

(4) Occupancy type (so statutory coverage limits are not exceeded. This data may be difficult to obtain. Also see Coverage Offered.),

(5) NFIP flood zone where property is located (lender must determine, in order to decide whether the mandatory purchase requirement applies),

(6) Amount of coverage,

(7) Name and address of mortgagee,

(8) Mortgage loan number,

(9) Policy number.

b. No elevation certificates are required as there is no elevation rating.

c. For more detailed information regarding reporting requirements, see the WYO *Transaction Record Reporting and Processing (TRRP) Plan.*

14. Rates

See the MPPP rate table below.

MORTGAGE PORTFOLIO PROTECTION PROGRAM RATE AND INCREASED COST OF COMPLIANCE (ICC) TABLE[1,2,3]

Zone	MPPP Rates per $100 of Building Coverage	MPPP Rates per $100 of Contents Coverage	ICC Premium for Full $30,000 Coverage[4,5]
Emergency Program Community	$2.77	$2.92	N/A
A Zones – All building & occupancy types, except in Zones A99, AR, AR Dual	$2.77/$1.39	$2.92/$1.39	$75.00
V Zones – All building & occupancy types	$4.31/$4.31	$4.05/$4.05	$75.00
Zones A99, AR, AR Dual	$0.74/$0.44	$0.98/$0.39	$6.00

[1]Before calculating the premium, refer to page MPPP 1 of the current NFIP *Flood Insurance Manual* at http://www.fema.gov/business/nfip/manual.shtm for possible changes to these rates.

[2]When calculating the premium, add the $35.00 Federal Policy Fee and, if applicable, the $50.00 Community Probation Surcharge.

[3]MPPP policies are not eligible for NFIP Community Rating System premium discounts.

[4]ICC coverage does not apply to contents-only policies or to individually owned condominium units insured under the Dwelling Form or General Property Form.

[5]ICC premium is not eligible for the deductible discount. First calculate the deductible discount, then add in the ICC premium.

15. Policy Declaration Page Notification Requirements

In addition to the routine information, such as amounts of coverage, deductibles and premiums, that a WYO company may place on the policy declarations page issued to each insured under the NFIP, the following messages are required:

a. This policy is being provided for you as it is required by Federal law as has been mentioned in the previous notices sent to you on this issue. Since your mortgage company has not received proof of flood insurance coverage on your property in response to those notices, we provide this policy at their request.

b. The rates charged for this policy may be considerably higher than those that may be available to you if you contact your local insurance agent (or the WYO company at . . . .).

c. The amounts of insurance coverage provided in this policy may not be sufficient to protect your full equity in the property in the event of a loss.

d. You may contact your local insurance agent (or WYO company at . . . .) to replace this policy with a conventionally underwritten Standard Flood Insurance Policy, at any time, and typically at a significant savings in premium.

The WYO company may add other messages to the declarations page and make minor editorial modifications to the language of these messages if it believes any are necessary to conform to the style or practices of that WYO company, but any such additional messages or modifications may not change the meaning or intent of the above messages.

Since the amount of underwriting data obtained at the time of policy inception will typically be limited, the extent of any coverage limitations (such as, when replacement coverage is not available or coverage is limited because the building has a basement or is considered an elevated building with an enclosure) will be difficult to determine. It is, therefore, the responsibility of the WYO company to notify the mortgagor/insured of all coverage limitations at the inception of coverage and impose any that are applicable at the time of the loss adjustment.

16. **Policy Reformation—Policy Correction**

Article VII.G of the Dwelling Form and the General Property Form will apply as appropriate.

Examples of circumstances under which reformation or correction might be needed would be:

a. Policy Reformation—The wrong flat rate was applied for the zone in which the property was actually located.

b. Policy Correction—The amount of coverage exceeds the amount available under the NFIP for the type of building occupancy that represents the building insured. In such cases, the amount of coverage would have to be adjusted to the amount available and any appropriate premium adjustments made.

17. **Coverage Basis—Actual Cash Value or Replacement Cost**

There are no changes from the standard practices of the NFIP for these provisions. The coverage basis will depend on the type of occupancy of the building covered and the amount of coverage carried.

18. **Deductible**

A $500 Deductible is applicable for policies written under the MPPP.

19. **Federal Policy Fee**

There is no change from the standard practice. The Federal Policy Fee in effect at the time the MPPP policy is written must be used.

20. **Renewability**

The MPPP policy is a 1-year policy. Any renewal of that policy can occur only following the full notification process spelled out in Addendum 2 that must take place between the lender (or its authorized representative) and the insured/mortgagor, when the insured/mortgagor has failed to provide evidence of obtaining a substitute flood insurance policy.

21. **Cancellations**

The NFIP *Flood Insurance Manual* rules for cancellation/nullification are to be followed, when applicable.

22. **Endorsement**

An MPPP policy may not be endorsed to convert it directly to a conventionally underwritten SFIP. Rather, a new policy application, with a new policy number, must be completed according to the underwriting requirements of the SFIP, as contained in the NFIP *Flood Insurance Manual*. The MPPP policy may be endorsed to assign it under rules of the NFIP. It may also be endorsed for other reasons such as increasing coverage.

23. **Assignment to a Third Party**

Current NFIP rules remain unchanged; therefore, an MPPP policy may be assigned to another mortgagor or mortgagee. Any such assignment must be through an endorsement, however.

24. **Article XIII—Restrictions Other Flood Insurance**

Article XIII of the Arrangement is also applicable to the MPPP and, as such, does not allow a company to sell other flood insurance that may be in competition with NFIP coverage. This restriction, however, applies solely to policies providing flood insurance. It also does not apply to insurance policies provided by a WYO company in which flood is only one of several perils provided, or when the flood insurance coverage amounts are in excess of the statutory limits provided under the NFIP, or when the coverage itself is of such a nature that it is unavailable under the NFIP, such as blanket portfolio coverage.

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements
Addendum 1

Initial Portfolio Review Mortgagor Notification Process

Once it has been determined by the lender/servicer or its representative that flood insurance is needed on mortgages in the lender's portfolio, and there is no evidence of flood insurance, and it decides to use FIA's MPPP to assist in bringing the lender's portfolio into compliance with flood insurance requirements, then the following notification process must be used.

This process will consist of three initial notification letters. Each letter will contain certain messages, at a minimum, in the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) The requirements of the Flood Disaster Protection Act of 1973; (2) reminding the insured of the previous letters sent that resulted in the current flood insurance policy; (3) the high premiums on the current policy; (4) potentially inadequate coverage limits; (5) coverage limitations; and (6) the options available to the insured.

First Initial Notification Letter

The first letter is to be issued after the review of the lender's portfolio reveals the need for the flood insurance coverage and the absence of it. This letter must contain, at a minimum, the following messages:

1. "The Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan for buildings located in a Special Flood Hazard Area (SFHA) shown on a map published by FEMA. This applies to such loans from lending institutions that are under the jurisdiction of a Federal regulatory agency or instrumentality."

2. "We have determined that your property (building), on which we hold the mortgage loan, is located in an SFHA and, therefore, you are required by law to have a policy of flood insurance on that property."

   - This letter must then include language advising the mortgagor that in the event they wish to challenge the zone determination, they should provide written factual evidence supporting their challenge obtained from a community official or registered engineer, architect, or surveyor, stating the specifics of the location of the building and the reason for their challenge. The letter must include reference to the appeal process required in Section 524 of the National Flood Insurance Reform Act of 1994, and to the regulations promulgated to establish the procedures and process for such review.

- The lender/servicer is reminded that since the Act places the responsibility of determining the flood zone location of each mortgaged property on the lender/servicer, he cannot discharge that responsibility by simply obtaining some form of self-certification from the mortgagor. If the lender wishes to change its original determination on the location of the mortgagor's property based upon information submitted by the mortgagor, the lender/servicer must convince itself, after reviewing that submission, that its original determination was in error and make any such change based on that review. He should not simply accept unsubstantiated allegations, from whatever source, as to the building's flood zone location. The ultimate responsibility for making such determinations under the statute rests with the mortgagee, not the mortgagor.

3. "There is no evidence in your mortgage loan file of your having a flood insurance policy on your property. In case this information is in error, please contact us at . . . ."

4. "If you do not have a flood insurance policy on this property, you may wish to contact your local insurance agent (or WYO company at . . . .)."

5. "If you do not respond within 45 days of this letter, either providing evidence of a flood insurance policy in effect on this property, or requesting that we provide you with such coverage, the necessary flood insurance coverage will be provided for you. In that event, since certain insurance underwriting information about your property that is necessary to determine the appropriate flood insurance rate for your policy would not have been obtained, due to your not responding, the Federal government's Mortgage Portfolio Protection Program's flood insurance rates will have to be used. These rates may be considerably higher than those that could be obtained for you if you respond to this notice."

This letter, or an attachment, must also include such other information as: (1) the name of the lender/servicer, (2) the mortgage loan number, (3) the address of the property in question, (4) the flood zone in which the property has been determined to be located, (5) the amount of flood insurance being required, and (6) coverage limitations.

Second Initial Notification Letter

This letter will be sent 30 days following the first initial notification letter, if no response has been received from the mortgagor. It will contain, at a minimum, the following messages:

1. "About a month ago you were notified that Federal law requires all mortgages, such as yours, on properties determined to be located in a Special Flood Hazard Area, to be covered by a policy of flood insurance."

2. "That letter mentioned that if you did not respond positively within 45 days from that letter, it would be necessary to obtain a policy of flood insurance for you."

3. "This is to remind you that since you have not responded to the earlier notice as yet, and if you do not respond within the next 15 days (or the actual expiration date), flood insurance, as mentioned previously, will be obtained on your property, on your behalf."

4. "In the event that you do not respond and the coverage must be obtained as mentioned, the cost of that coverage may be significantly higher than the premium that you could obtain if you were to contact your local insurance agent (or WYO company at . . . .)."

Third and Final Initial Notification Letter

This letter must be sent to the mortgagor accompanying the flood insurance policy declarations page.

This letter must be sent as soon after the end of the 45-day notification period as possible, if no positive response has been received to the two previous notification letters. It must contain the following messages, at a minimum:

1. "This letter is to inform you that a policy of flood insurance has been obtained on your behalf, to cover the mortgage on your property, as required by the Flood Disaster Protection Act of 1973."

2. "You have been notified on two previous occasions explaining the circumstances surrounding your need to have flood insurance coverage and explaining your options, but to date no response has been received."

3. "Attached is the flood insurance policy purchased on your behalf and its accompanying declarations page that explains: the amount of coverage purchased on your behalf, its cost, some limitations to that coverage, and the options you may still wish to exercise to obtain similar coverage, but typically at a significantly lower cost."

4. "If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements."

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements Addendum 2

MPPP Renewal/Expiration Mortgagor Notification Process

When an MPPP policy has been purchased and the expiration date of that policy is approaching the end of its 1-year term, and the insured has not requested or produced a substitute policy of flood insurance, the following notification process will be followed.

This process will consist of a total of three (or, at the lender's option, two) renewal MPPP letters. Each letter will contain certain required messages within the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender, and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) reminding the insured of the previous letters sent that resulted in the current flood insurance policy that is about to expire; (2) the requirements of the Flood Disaster Protection Act of 1973; (3) the high premiums on the current policy; (4) potentially inadequate coverage limits; (5) coverage limitations; and (6) the options available to the insured.

First MPPP Renewal/Expiration Notification Letter

The first MPPP Renewal/Expiration Notification Letter will be sent to the insured/mortgagor at least 45 days prior to the renewal/expiration of the MPPP policy. It will, at a minimum, contain the following messages:

1. "This letter is to notify you that the flood insurance policy that was required to be purchased on your property about a year ago is about to expire."

2. "When you were originally notified of the need for this coverage, it was explained that the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained for the life of the loan, on mortgage loans for buildings (and their contents, if appropriate) located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency."

3. "The premium on the flood insurance policy currently in effect and written on your behalf, and due to expire, may be considerably higher than would be the case if you had responded to the suggestions contained in the previous notices sent you, recommending that you contact your local insurance agent (or the WYO company at . . . .), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy."

4. "As has been mentioned in previous notices, you may wish to replace this policy with a conventionally underwritten Standard Flood Insurance Policy now, and benefit from rates that potentially are significantly lower than the rates being used with this policy."

5. "Failure to respond to this notice within 45 days (or by [date]) will result in this policy being renewed, and at rates that are most likely to be much higher than are otherwise available."

Second MPPP Renewal/Expiration Notification Letter

The requirement for the second MPPP Renewal/Expiration Notification Letter is optional on the part of the participating WYO company. If such a company decides not to issue the second of the three notices (letters), then the third MPPP Renewal/Expiration Notification Letter required in the March 1, 1991, *Federal Register* will serve as the second and final notice required. The language of such a letter may be modified, if needed, to reflect the fact that only two such letters were sent.

Third and Final MPPP Renewal/Expiration Notification Letter

The third and final notice will be sent out as part of the renewed MPPP policy. The notice containing the following required messages may be sent as a cover letter or an attachment to the policy declarations page and policy itself, or the required messages may be included on the declarations page that accompanies the renewal policy. It must contain the following messages:

1. "Since you have not responded to our previous notices that your flood insurance policy, which is required by Federal law, was about to expire, we have renewed that policy for the next year."

2. "As has been previously explained, the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan, for property located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency."

3. "The premium on this flood insurance policy just renewed may be considerably higher than would be the case if you had contacted your local insurance agent (or WYO company at . . . .), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy."

4. "If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements."

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements
Addendum 3

Questions and Answers: Portfolio Review Considerations

1. What is the MPPP?

The MPPP is a tool for providing flood insurance coverage to properties which are part of a lending institution's mortgage portfolio when such properties have been determined to be in a Special Flood Hazard Area and therefore subject to the flood insurance purchase requirement mandated by Federal law.

2. What is the first step in using the MPPP?

The MPPP is intended to be utilized only when the lender (or its representative) has reviewed its portfolio and determined which of the loans are on buildings located in a Special Flood Hazard Area (SFHA), and, therefore, in need of flood insurance.

3. What source of information should the MPPP participant, or their authorized representative, be using in reviewing a loan portfolio, to determine flood zone location of the properties in question?

The flood insurance maps published by the Federal Emergency Management Agency (FEMA), augmented by other official documentation available from local officials or other sources, as may be deemed necessary, should be used.

The Flood Disaster Protection Act of 1973, which imposes the flood insurance requirement, makes specific reference to "areas identified by the Secretary (since changed to Director [of FEMA]) as an area having special flood hazards." The National Flood Insurance Act of 1968, as amended, charged FEMA with the responsibility of identifying areas which have special flood hazards. Therefore, the official source of information that serves as the basis for identifying such areas is the maps published by FEMA.

4. What if a source of information other than the FEMA maps is used as the basis for determining the flood zone location of properties?

The lender may be risking erroneous determinations, thereby potentially placing the lender in a position of a liability exposure, bad customer relations and/or problems with its Federal regulatory agency or worse.

5. Does it mean that, if the system used to make these flood zone determinations is not based on the FEMA maps, the system should not be used?

Due to the potential for problems as mentioned above, the lender must be careful as to the basis behind the system it uses to make these flood zone determinations. Also, since the lender must keep evidence of the determination in every mortgage file, if that evidence doesn't reflect the map panel used to make the determination, the lender may have difficulty proving to its Federal regulatory agency, or in court if the need arose, that the lender is complying with the law.

6. What flood zone determination information should the lenders keep in each mortgagor's file to indicate evidence of compliance?

Pursuant to Section 528 of the National Flood Insurance Reform Act of 1994, FEMA developed a Standard Flood Hazard Determination Form (SFHDF) for use by lenders when determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in a special flood hazard area. The SFHDF contains a section for recording flood zone determination information. All lenders subject to the Reform Act will have to place a copy of the SFHDF in each mortgagor's file to indicate evidence of compliance.

7. What version of the flood map should be used in conjunction with the MPPP portfolio review?

The FEMA map in effect at the time of the portfolio review is the map that must be used. The provisions of the Flood Disaster Protection Act of 1973 as amended by the Reform Act: (1) require the lender to notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, if, at any time during the term of the loan, the lender determines the improved real estate or mobile home securing the loan is located in an area identified by FEMA as an area having special flood hazards and in which flood insurance is available but the property is not covered by flood insurance; and (2) require the lender to purchase coverage on behalf of the borrower if the borrower fails to purchase such flood insurance within 45 days after notification by the lender.

8. Doesn't the fact that the MPPP was designed to assist lenders/servicers in bringing their portfolios into compliance with flood insurance requirements mean that they will be dealing with loans that can range from being very new to being many years old, and that the maps that may have been in effect at the time of the loan origination might not be readily available now?

Yes. However, this does not present a problem since, as mentioned in question 7 above, compliance with the Reform Act requires use of the map in effect at the time of the review rather than the map in effect at the time of the loan origination.

9. Once the lender/servicer's portfolio has been reviewed and determinations have been made as to which properties need flood insurance, is there anything critical that the lender (or its representative) should consider before beginning the process of mailing the initial notices to their mortgagors?

The lender should consider how the mailing will be handled and the results of that mailing. There is a strong likelihood that, once the mailings begin, a certain percentage of the mortgagor recipients of those notices will challenge the notices. Some of those challenges will be directed, in one way or another, to the lender/servicer, regardless of any instructions in the notices. The lender should therefore determine at the outset whether it wants the notices to be sent all at once, or sent in batches. The larger the volume, the more consideration to the batch approach that should be given.

Also, the lender needs to consider how it wants the review of its portfolio carried out. If the results of the review are provided to the lender all at the same time and the lender decides to send the notices to the mortgagors in batches, it may be exposing itself to additional liability.

This could occur since the lender was aware of all the mortgages in its portfolio that needed flood insurance, but acted on only a certain number at a time. The lender, therefore, needs to consider having the portfolio review carried out in such a fashion that the results of each portion of that review are made available to the lender as soon as they are available from the party conducting the review, and are acted upon as soon as possible thereafter.

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements
Addendum 4

Questions and Answers: Other Considerations

1. What is the MPPP and what is it designed to do?

The MPPP is a tool made available to the lending and mortgage servicing industries that provides them with the capability to write flood insurance policies quicker and easier that will assist them with their efforts to bring their portfolios into compliance with flood insurance requirements.

2. Is the MPPP available to lenders for all their loans?

No. It may be used in only conjunction with loan portfolios. It may not be used as a compliance vehicle for loan originations.

3. Is the MPPP mandatory for lenders/servicers?

No. It is voluntary, but lenders/servicers that believe their loan portfolios may not be in compliance with flood insurance requirements are strongly encouraged to use it if they believe it could be helpful.

4. What are the benefits of the MPPP?

The specific benefits will vary with the category of participant as follows.

For lenders/servicers:
- Portfolio compliance with flood insurance requirements.
- Reduction or elimination of certain potential liability.
- Protection of equity (lender/servicer, borrower).

For WYO companies:
- Increased policy sales and fees.
- Increased lender/servicer client base.

For insurance agents:
- Increased policy sales and commissions.

5. Is it possible for WYO companies and insurance agents to benefit from the MPPP even if they don't directly participate in it?

Yes. Property insurance (fire and auto) is already being sold by insurance agents to many of these same borrowers because lenders require it in conjunction with home mortgages and auto loans. As a result, many agents already have established business relationships with their local lenders. These agents could alert these lenders to the availability of the MPPP and advise them as to how to proceed even if the agent was not going to directly participate.

At the same time the agent could offer to assist the lender with determining the flood zone location of the addresses of all new mortgage loan applications for that lender and ask, in return, for the opportunity to write all the flood insurance policies on those properties that are determined to need it. The notices that will be sent to the borrowers will generate inquiries and sales.

6. How will flood policies actually be sold under the MPPP?

Policies will be written through the insurance companies participating in the Write Your Own (WYO) Program.

7. Will all the insurance companies participating in the WYO Program be writing policies under the MPPP?

Any WYO company may write policies under the MPPP, but only those that traditionally have dealt with the lending industry participate in this Program. Any such company that does wish to participate must agree in writing to comply with the requirements of the MPPP.

8. Does FIA maintain and publish a list of the WYO companies that participate in the MPPP?

Yes. Such a list has been developed and is modified and republished as needed.

9. What is the first thing a lender/servicer should do if it wishes to utilize the MPPP?

The lender must review its loan portfolio and determine which of the properties are located in Special Flood Hazard Areas (SFHAs).

10. When a lender/servicer decides to utilize the MPPP, must they use the MPPP to service their portfolio all at the same time?

No. Lenders/servicers should carefully analyze the pros and cons of phasing in their portfolio compliance effort. (See Addendum 3, question 9.)

11. Is use of the MPPP limited to only those properties located in SFHAs?

Yes.

12. What will happen if a policy is written through the MPPP, but the property is not located in an SFHA?

If no loss has occurred at the time the situation is discovered but the mortgagee wants the borrower to have flood insurance even though the property is not in an SFHA, the situation can be corrected by cancelling the MPPP policy and rewriting the coverage under a conventional Standard Flood Insurance Policy (SFIP) with a refund of any premium overpayment. If such a situation is discovered after a flood loss has occurred, the claim will be honored. However, the MPPP policy would have to be cancelled and the coverage rewritten under a conventional SFIP with a refund of any premium overpayment. The loss should then be reported under the new policy number. Under both scenarios, the effective date of the conventional SFIP would be the same as that of the cancelled MPPP policy.

13. **What differences are there between a flood policy sold under the traditional flood insurance program and one under the MPPP?**

The actual policy and coverage are the same, but there are differences primarily in the areas of:

- rates,
- a letter notification process to the borrowers,
- the underwriting information necessary.

14. **What are the rate differences?**

The rates under the MPPP are, on the average, several times those used under the traditional flood insurance program.

15. **Why are the MPPP rates so high?**

Because the borrower did not respond to the notices sent, key information necessary to underwrite the risk is not available. Therefore, it is necessary to assume that those properties have a very high risk and the rates charged reflect that risk.

16. **Does the borrower have any option in avoiding the MPPP policy with its higher cost?**

Yes. The borrower can simply contact a local insurance agent, obtain a conventionally underwritten flood insurance policy, and present it to the lender/servicer.

17. **If a borrower pays off the mortgage loan, can the MPPP then be cancelled?**

Yes, but any refund due the borrower will be paid on a pro-rata basis.

18. **If the borrower or lender/servicer sells or assigns the mortgage to another borrower or lender/servicer, can the MPPP policy be assigned?**

Yes. The Standard Flood Insurance Policy language allows for the assignment of all NFIP policies. Any such assignment of an NFIP policy must be done by way of an endorsement.

19. **Must a WYO company participating in the MPPP maintain copies of all its MPPP documents?**

The companies are responsible for the data on each Application Form, in keeping with its normal practices. Although some of the data beyond that required does not have to be reported, the companies are still responsible for it. The WYO companies may use their normal business practices in determining which form they will use to retain data, forms, or other required information.

20. **Who initiates the notification letter process required by the MPPP?**

Lenders/servicers differ on how their force-placed hazard insurance notices are sent to their borrowers. Some lenders insist on sending such notices directly. Others let the insurance company, with whom the force-placed policies are written, send out the notices. Since the MPPP is a part of the NFIP, then any policies written through the MPPP must comply with all NFIP requirements, regardless of the entity that actually sends the notices.

21. Must the lender or WYO company maintain copies of the notification letters?

The WYO company is responsible for assuring that the letters are sent regardless of whether the company or the lender actually sends them. The WYO company must maintain evidence that the letters are being sent. It will be the WYO company's decision as to the form the evidence takes, such as paper copies, microfiche, computer images, or a record of addresses of the mortgagors to whom the letters were sent with an indication as to the date when those mortgagors were notified.

22. What does a WYO company do if all of the information that FIA requires on the declarations page won't fit on that page?

The company may wish to include some of that information on the declarations page and some on an "endorsement." In such a case, it should indicate an endorsement number on the declarations page.

23. Does a policy declarations page have to be issued each time an MPPP policy is renewed?

Yes, and it must accompany the final renewal notification letter.

24. When an MPPP is renewed, can the same policy number that was assigned to the original MPPP policy be used?

Yes.

25. Will the rating credits that will be available in a community participating in the Community Rating System (CRS) apply to a policy written under the MPPP?

No.

26. The MPPP requirements call for the full map panel number and date to be obtained. What does the WYO company do with that information since the NFIP Application Form in use today doesn't contain enough space to even capture all this information?

The WYO companies have never been required to use NFIP forms in the WYO program, but have been free to develop their own forms. They are, however, responsible for all required data, some of which must be reported and some of which isn't, but must be kept in the company files. The data requirements for the MPPP follow the same conditions. The full map panel number for that panel used to determine flood zone location and rate the policy is the one that must be captured and maintained. The majority of the maps FEMA has published for many years have the 10-digit number, suffix, and date for each panel. Some of the maps still in use have only the 6-digit community number and date. The 6-digit community number cannot be used when the 10-digit number exists.

27. Is contents coverage under the MPPP optional?

Yes. The lender must decide whether or not it will require contents coverage as part of the MPPP policy.

28. What is meant by the term "coverage limitations" that is mentioned in the MPPP materials?

"Coverage limitations" primarily means Actual Cash Value coverage instead of Replacement Cost coverage, when appropriate. It could also apply, however, to the situation where only an amount to cover the loan balance is purchased which may be insufficient to cover the full insurable value of the property. The WYO company will have to determine what limitations may apply depending on the decisions of the lender/servicer as to how it wants to use the MPPP and the amount of underwriting information obtained.

29. The notification process contains standards for the letters being mailed and the MPPP policy being written such as 45, 30, and 15 days. Must these standards be strictly adhered to?

There are a number of standards similar to this in the NFIP. Some limited flexibility has been built into the actual implementation process through the underwriting review process that FIA uses with the companies.

30. May WYO companies, under the requirements of the MPPP, use any portion of the MPPP fee they retain for any purpose other than as a commission to an insurance agent or agency for their writing the policy, such as for flood zone determinations or the tracking of loans?

No.

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements
Addendum 5

Receipt for Materials

The Federal Insurance Administration (FIA) has published a package of materials for implementation of the National Flood Insurance Program's Mortgage Portfolio Protection Program (MPPP) by WYO companies and lending institutions and/or mortgage servicing or similar companies. The implementation package contains the following:

- Cover letter from the FIA Administrator
- Guidelines and Requirements
- Addendum 1, Initial Portfolio Review Mortgagor Notification Process
- Addendum 2, MPPP Renewal/Expiration Mortgagor Notification Process
- Addendum 3, Questions and Answers: Portfolio Considerations
- Addendum 4, Questions and Answers: Other Considerations
- Addendum 5, Receipt for Materials (this document)
- Addendum 6, Agreement to Adhere to the Guidelines and Requirements

Any WYO company that offers the MPPP to a lender/servicer must provide this Receipt and the following Agreement (Addendum 6), together with the complete implementation package referenced above, to the lender/service. To participate in the MPPP as a means of bringing its portfolio into compliance with flood insurance requirements, the lender/servicer must sign this Receipt and the following Agreement as evidence of having received the implementation package and agreeing to comply with the guidelines and requirements contained therein.

This Addendum is to acknowledge that the package of implementation materials for the National Flood Insurance Program's Mortgage Portfolio Protection Program (MPPP) has been provided and received on the date(s) indicated.

___________________________	___________________________
Name of WYO company's representative providing package	Name of lender/mortgage servicer's representative receiving package
___________________________	___________________________
Name of WYO company represented	Name of lender/mortgage servicer represented
___________________________	___________________________
Date package provided	Date package received

WYO companies are required to keep a copy of this Receipt and the following Agreement in their files for each lender/mortgage servicer to which they provide services under the Mortgage Portfolio Protection Program. Lenders/mortgage servicers may wish to do the same.

Agreement to Adhere to the Guidelines and Requirements of the Mortgage Portfolio Protection Program, 2006-2007

In conjunction with acceptance of the offer by the Federal Insurance Administration (FIA) to enter into a Financial Assistance/Subsidy Arrangement, Write Your Own companies may optionally elect to participate in the Mortgage Portfolio Protection Program (MPPP) of the National Flood Insurance Program. To participate in the MPPP, the Write Your Own company must agree to adhere to all Guidelines and Requirements contained in the implementation package published by FIA. This Addendum is to indicate and provide evidence of the company's acceptance of these terms.

Please complete the section below for the individual in your organization designated as the contact person for MPPP services and questions.

A separate form must be submitted for each company.

MPPP Contact Name ____

Address ____

Telephone Number ____

In witness whereof, the parties hereto have accepted this Agreement on this ____ day

of ______________________, 2006.

Group/ParentCompany ____

Writing Company __________________________________ NAIC Number _________

By ____

Print Name____

Title ____

The United States of America
U.S. Department of Homeland Security
Federal Emergency Management Agency

Acknowledged __________________________________
Administrator
Federal Insurance Administration

GLOSSARY

This list of terms and definitions includes many of the significant concepts that are central to the operation of the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA). In a few instances, standard mortgage lending industry terms have been added.

Act. The National Flood Insurance Act of 1968 and any amendments to it.

Actual Cash Value (ACV). The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

Administrator. The Administrator (formerly known as Director) of the Federal Emergency Management Agency.

Agent. One who solicits, negotiates, or effects contracts of insurance on behalf of an insurer, including a Write Your Own insurer. An agent who produces "direct" business is deemed the agent of the insured, not of the Federal Government.

Application. The statement made and signed by the prospective policyholder or the agent in applying for an NFIP flood insurance policy. The application gives information used to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of the flood insurance policy. For a policy to be issued, the correct premium payment must accompany the application.

Assignment. The transfer by a policyholder of his/her legal right or interest in a policy contract to a third party. In the NFIP, written assignment of a policy is permissible upon transfer of title, without the consent of FEMA, except in the case where a residential (household) contents-only policy is involved or the policy was issued to cover a building in the course of construction.

Base Flood. A flood having a 1-percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE). The elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a 1-percent chance of equaling or exceeding that level in any given year.

Binder or Certificate of Insurance. A temporary agreement between company, producer, and insured that the policy is in effect. Binders and certificates of insurance are not permitted under the NFIP.

Blanket Insurance. A single amount of insurance applying to more than one building and/or its contents. Blanket coverage is not permitted under the NFIP**.**

Building (Eligible Building).

- A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or
- A manufactured home (a "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

"Building" does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle, except as described above.

Building in the Course of Construction. A walled and roofed building that is principally above ground and affixed to a permanent site. It does not include building materials or supplies intended for use in construction, alteration, or repair unless such materials or supplies are within an enclosed building on the premises.

Cancellation. The ending of the insurance coverage provided by a policy before the expiration date.

Chattel Mortgage. A mortgage on personal property; the creation of a lien as security on chattel that, for purposes of the NFIP, includes contents items as well as a mobile home.

Civil Money Penalties. Administrative sanctions that lenders incur if they do not comply with the 1994 National Flood Insurance Reform Act. An institution can incur up to $100,000 per year in penalties.

Coastal Barrier. A naturally occurring island, sandbar, or other strip of land, including coastal mainland, that protects the coast from severe wave wash.

Coastal Barrier Improvement Act (CBIA) of 1990. This Federal law greatly expanded the identified land in the Coastal Barrier Resources System established pursuant to the Coastal Barrier Resources Act of 1982.

Coastal Barrier Resources Act (CBRA) of 1982. For the purposes of the NFIP, this Federal law designated certain portions of the Gulf and East Coasts as undeveloped coastal barriers. These areas are shown on appropriate flood insurance map panels and have certain coverage restrictions.

Coastal Barrier Resources System (CBRS). Communities, coastal barriers, and other protected areas identified by the Department of the Interior legislation defined above.

Coastal High Hazard Areas. Special Flood Hazard Areas along the coasts that have additional flooding hazards due to wind and wave action. These areas are identified on Flood Insurance Rate Maps as Zones V, V1-V30, and VE.

***Code of Federal Regulations* (*CFR*).** The codification of the general and permanent rules initially published in the *Federal Register* by the executive departments and agencies of the Federal Government.

Coinsurance. A penalty imposed on the loss payment unless the amount of insurance carried on the damaged building is at least 80 percent of its replacement cost or the maximum amount of insurance available for that building under the NFIP, whichever is less. Coinsurance applies only to building coverage under the Residential Condominium Building Association Policy.

Community. A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community Number. A 6-digit designation identifying each NFIP community. The first two numbers are the state code. The next four are the FEMA-assigned community number. An alphabetical suffix is added to a community number to identify revisions in the Flood Insurance Rate Map for that community.

Community Rating System (CRS). A program developed by FEMA to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Compendium of Flood Map Changes. A document published every 6 months by the Administrator of FEMA that includes separately in their entirety all changes and revisions to Flood Insurance Rate Map panels and all Letters of Map Amendment and Letters of Map Revision for which notice was published in the *Federal Register* or otherwise provided during the preceding 6 months. The Administrator makes these compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the NFIP, and at cost to all other parties.

Condominium. That form of ownership of real property in which each unit owner has an undivided interest in common elements.

Condominium Association. The entity made up of the unit owners responsible for the maintenance and operation of:

- Common elements owned in undivided shares by unit owners;
- Other real property in which the unit owners have use rights;

where membership in the entity is a required condition of unit ownership.

Conforming Loan. A mortgage loan that meets all the requirements (size, type, and age) to be eligible for purchase or securitization by a Government-Sponsored Enterprise for Housing.

Conventional Loan (Financing). A real estate mortgage extended by a lender where the loan is not insured or guaranteed by a government agency such as the Federal Housing Administration, Department of Veterans Affairs, or Farmers Home Administration.

Cooperative. That form of ownership of real property in which each unit owner holds an interest in a building by contract or share, but owns no title to the building. The NFIP does not issue a Dwelling Form policy to unit owners in a cooperative.

Cooperative Association. The cooperative corporation, which because it owns the land and improvements, has the insurable interest in the building and is eligible to obtain NFIP flood insurance coverage under the General Property Form.

Declarations Page. A computer-generated summary of information provided by the prospective policyholder in the application for flood insurance. The Declarations Page also describes the term of the policy and the limits of coverage and displays the premium and the insurer's name. The Declarations Page is a part of the flood insurance policy.

Deductible. The portion of an insured loss to be borne by the insured before the insured is entitled to recovery from the insurer. The NFIP applies the deductible separately to the building and contents portion of a loss covered by the Standard Flood Insurance Policy. In the NFIP Regular Program, the standard deductible is $500 except for Pre-FIRM risks in Special Flood Hazard Areas, which have a $1,000 standard deductible. Other deductible amounts are available, and special deductibles apply to the expense of contents and manufactured (mobile) home removal. In the Emergency Program, the standard deductible is $1,000 for all risks. (Refer to the Rating and Condominiums sections of the NFIP *Flood Insurance Manual* for more information about deductibles.)

Deductible Buyback. The option whereby, for an additional premium, policyholders who wish to reduce their deductibles from the standard deductibles of $1,000 per building loss and per contents loss for Pre-FIRM risks in Special Flood Hazard Areas may purchase separate $500 deductibles for building and contents coverages.

Depreciation. A decline in value of a building or other real estate improvement, resulting from age, physical wear, or functional obsolescence.

Designated Loan. A loan secured by a building or manufactured (mobile) home located or to be located in a Special Flood Hazard Area, where flood insurance is available under the 1968 Act.

Determination Review. An appeal process performed by FEMA to resolve disputes posed by borrowers and lenders/servicers concerning properties found to be in Special Flood Hazard Areas. A fee is charged, and the request must be signed jointly by the lender or servicer and borrower. Elevation data is not considered. The requester receives a Letter of Determination Review stating whether the structure was found to be inside or outside an SFHA.

Director. The Administrator of the Federal Emergency Management Agency.

Dwelling Form. *See* Standard Flood Insurance Policy—Dwelling Form.

Elevated Building. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundation walls are not an acceptable means of elevating buildings in V and VE Zones.

Elevation Certificate. A certified statement that verifies a building's elevation and certain other construction characteristics needed to rate the building for flood insurance under the NFIP. The information required and the risks subject to these requirements are described in the Special Certifications section of the NFIP *Flood Insurance Manual*.

Emergency Program. The initial phase of a community's participation in the NFIP. During this phase, only limited amounts of insurance are available under the Act.

Escrow Requirement. A mandate placed on federally regulated lending institutions by the National Flood Insurance Reform Act of 1994 to escrow for flood insurance premiums under specified circumstances.

Evidence of Insurance. Copies of the Flood Insurance Application, premium payment, and Declarations Page that, when submitted to the lender, constitute proof of flood insurance purchase. The NFIP does not recognize binders or certificates of insurance.

Expense Constant. A flat fee formerly charged on each new and renewal policy, the Expense Constant was eliminated effective May 1, 2003, and no longer affects the premium calculation for new and renewal business. However, the Expense Constant may affect the calculation of refunds going back prior to May 1, 2003, for policy cancellations and endorsements.

Farm Credit Administration (FCA). The Federal agency responsible for regulating and examining the institutions that make up the Farm Credit System, authorized by the Farm Credit Act of 1971.

Federal Agency Lenders. The Small Business Administration, the Federal Housing Administration, the agencies within the U.S. Department of Agriculture—Rural Develop-ment, and the Department of Veterans Affairs, all of which are subject to the mandatory purchase requirement in the 1994 Reform Act. These agencies were covered by the 1973 Act purchase requirements.

Federal Deposit Insurance Corporation (FDIC). The Federal agency that regulates

State-chartered and insured "nonmember banks" and savings banks that are not part of the Federal Reserve System.

Federal Emergency Management Agency (FEMA). The Federal agency under which the NFIP is administered. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

Federal Home Loan Mortgage Corporation (Freddie Mac). A privately owned, federally chartered agency that purchases loans (usually for residential, one- to four-family unit dwellings) from lenders as part of the secondary market for home mortgages. *See also* Government-Sponsored Enterprises for Housing.

Federal Insurance Administrator. FEMA's Assistant Administrator for Mitigation, who also is charged with implementing and overseeing the NFIP.

Federal National Mortgage Association (Fannie Mae). A privately owned, federally chartered agency that, like Freddie Mac, purchases loans (usually for residential, one- to four-family unit dwellings) from lenders as part of the secondary market for home mortgages. Together, Fannie Mae and Freddie Mac are the primary investors in the secondary market. *See also* Government-Sponsored Enterprises for Housing.

Federal Policy Fee. A flat charge that the policyholder must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the NFIP.

***Federal Register*.** The document published daily by the U.S. Government that presents regulations and legal notices issued by Federal agencies, including proposed and final Base Flood Elevation determinations.

Federally Regulated Lending Institutions. Any banks, savings and loan associations, credit unions, farm credit banks, Federal land bank associations, production credit associations, or similar institutions subject to the supervision of a Federal entity for lending regulation, such as the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Administration.

FHBM. *See* Flood Hazard Boundary Map.

Financial Assistance/Subsidy Arrangement. The arrangement between an insurance company and FEMA to initiate, and annually renew, the company's participation in the Write Your Own Program. It stipulates the duties of the company and the government.

FIRM. *See* Flood Insurance Rate Map.

500-Year Flood. A flood that has a 0.2-percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding. These areas include flood Zones B, C, and X, where one- to four-unit buildings are eligible for the Preferred Risk Policy. A 500-year flood would be deeper than a 100-year flood and would cover a greater area.

Flood.

- A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is the policyholder's property) from:
  - Overflow of inland or tidal waters;
  - Unusual and rapid accumulation or runoff of surface waters from any source; or
  - Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining

caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood Hazard Boundary Map (FHBM). The official map of a community issued by FEMA, where the boundaries of the flood, mudflow, and related erosion areas having special hazards have been designated.

Flood Insurance Manual**.** The NFIP's official manual that describes the Program for property/casualty agents who sell federally backed flood insurance or wish to qualify to do so. The manual explains Program rules and regulations; policy provisions and coverage limits; risk rating methods; and procedures for completing and submitting forms to place, change, or cancel flood insurance coverage.

Flood Insurance Rate Map (FIRM). The official map of a community on which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community. NFIP Regular Program communities have FIRMs.

Flood Map Status Information Service. A subscription service through which the FEMA Map Service Center sells information about community status, map effective dates, etc., on CD-ROM.

Flood Zone. One of the lettered geographical areas shown on FEMA Flood Hazard Boundary Maps and Flood Insurance Rate Maps to indicate risk, severity, or type of flooding.

- Zones that begin with the letters A and V are areas of high flood risk, or Special Flood Hazard Areas, where the purchase of flood insurance as a condition for granting a designated loan is required.
- Zones B, C, D, and X are areas of low to moderate flood risk, where the purchase of flood insurance as a condition for granting a designated loan is not required but should be encouraged by lenders. Historically, about one-quarter of all NFIP claims have originated in these areas.

See also Special Flood Hazard Area.

Flood Zone Determination Vendor. An organization that makes flood zone determinations on individual properties and monitors map changes. *See also* Third-Party Flood Zone Determination Companies.

Floodplain. Any land area susceptible to being inundated by flood waters from any source.

Floodplain Management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, and floodplain use regulations.

Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

Floodproofing Certificate. An NFIP form that, in certain circumstances, may be submitted as an alternative to elevating buildings to or above the Base Flood Elevation.

General Property Form. *See* Standard Flood Insurance Policy—General Property Form.

Government-Sponsored Enterprises (GSEs) for Housing. The privately owned corpo-rations that are federally chartered to support residential housing by providing a secondary market for mortgages. These include:

- The Federal Home Loan Mortgage Corporation (FHLMC), "Freddie Mac"
- The Federal National Mortgage Association (FNMA), "Fannie Mae."

Grandfathering. An exemption based on circumstances previously existing. Under the NFIP, buildings located in Emergency Program communities and Pre-FIRM buildings in the Regular Program are eligible for subsidized flood insurance rates. Post-FIRM buildings in the Regular Program built in compliance with the floodplain management regulations in effect at the start of construction will continue to have favorable rate treatment even though higher Base Flood Elevations or more restrictive, greater risk zone designations result from Flood Insurance Rate Map revisions.

GSEs. *See* Government-Sponsored Enterprises for Housing.

Improved Real Estate. Property on which a building is located. Under the NFIP, this means a walled and roofed building or a building in the course of construction that qualifies for insurance coverage.

Increased Cost of Compliance (ICC) Coverage. Coverage under the Standard Flood Insurance Policy for expenses that a property owner must incur, above and beyond the cost to repair the physical damage the building actually sustained from a flooding event, to comply with mitigation requirements of State or local floodplain management ordinances or laws. Acceptable mitigation measures are elevation, flood-proofing, relocation, demolition, or any combination thereof.

Letter of Determination Review (LODR). FEMA's ruling on the determination made by a lender or third party that a borrower's building is in a Special Flood Hazard Area (SFHA). A LODR deals only with the location of a building relative to the SFHA boundary shown on the Flood Insurance Rate Map.

Letter of Map Amendment (LOMA). An amendment to the currently effective FEMA map which establishes that a property is not located in a Special Flood Hazard Area. A LOMA is issued only by FEMA.

Letter of Map Change (LOMC). Any of several FEMA-issued letters that effect a change to a Flood Insurance Rate Map or to the flood zone and rating status of an insured building. LOMCs include the Letter of Map Amendment, the Letter of Map Revision, and the Letter of Map Revision Based on Fill.

Letter of Map Change Subscription Service. A service through which the FEMA Map Service Center sells regular updates of all LOMAs and LOMRs.

Letter of Map Revision (LOMR). An official amendment to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F). An official amendment to the currently effective FEMA map. It is issued by FEMA and provides FEMA's determination concerning whether a building has been elevated on fill above the Base Flood Elevation and excluded from the Special Flood Hazard Area.

Loan Portfolio. A collection of loans held for servicing or investment.

LODR. *See* Letter of Determination Review.

LOMA. *See* Letter of Map Amendment.

LOMR. *See* Letter of Map Revision.

LOMR-F. *See* Letter of Map Revision Based on Fill.

Mandatory Purchase. A provision of the Flood Disaster Protection Act of 1973, whereby individuals, businesses, and others buying, building, or improving property located or to be located in identified areas of special flood hazards within NFIP participating communities are required to purchase flood insurance as a prerequisite for receiving any type of direct or indirect Federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

Manufactured (Mobile) Home. A structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation. “Manufactured (mobile) home” does not include recreational vehicles.

Map Amendment. A change to an effective FEMA map that results in the exclusion from the Special Flood Hazard Area (SFHA) of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first FEMA map that showed the structure or parcel to be within the SFHA).

Map Panel Number. Four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised.

Map Revision. A change in the Flood Hazard Boundary Map or Flood Insurance Rate Map for a community which reflects revised zone, base flood, or other information.

Map Zone. *See* Flood Zone.

Mobile Home. *See* Manufactured (Mobile) Home.

Mortgage Portfolio Protection Program (MPPP). A program designed to help lending institutions maintain compliance with the Flood Disaster Protection Act of 1973, as amended. Policies written under the MPPP can be placed only through a Write Your Own Company.

National Credit Union Administration (NCUA). The Federal agency that regulates federally insured credit unions.

National Flood Insurance Program (NFIP). The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations, Subchapter B.

NFIP Bureau and Statistical Agent. A corporation, partnership, association, or any other organized entity that contracts with FEMA to be the focal point of support operations for the NFIP.

NFIP Servicing Agent. A corporation, partnership, association, or any other organized entity that contracts with FEMA to service insurance policies as direct business.

Non-Participating Community. A community in which the sale of flood insurance under the NFIP is not authorized because the community chooses not to participate in the Program.

Non-Residential Buildings. A category of buildings, insurable by the NFIP under the General Property Form, that includes, but is not limited to: small business concerns; churches; schools; farm buildings (including grain bins and silos); poolhouses; clubhouses; recreational buildings; mercantile structures; agricultural and industrial structures; warehouses; hotels and motels with normal room rentals for less than 6 months' duration; and nursing homes. *See also* Other Residential Buildings.

Office of the Comptroller of the Currency (OCC). The organization within the Department of the Treasury that regulates national banks.

Office of Thrift Supervision (OTS). The organization with the Department of the Treasury that regulates Federal and state savings associations, savings banks, their wholly-owned subsidiaries, and savings and loan holding companies.

100-Year Flood. A flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to the 100-year flood. These high-risk zones are also known as Special Flood Hazard Areas (SFHAs). Over the life of a 30-year mortgage, there is a 26-percent chance that a building in an SFHA will experience such a flood.

Other Residential Buildings. A category of buildings, insurable by the NFIP under the General Property Form, that includes, but is not limited to: hotels and motels where the normal occupancy of a guest is 6 months or more; tourist homes and rooming houses that have more than four roomers; and residential buildings (excluding hotels and motels with normal room rentals for less than 6 months' duration) containing more than four dwelling units. *See also* Non-Residential Buildings.

Participating Community. A community for which FEMA has authorized the sale of flood insurance under the NFIP.

Physical Map Revision (PMR). An official republication of an NFIP map to show changes to floodplain and/or floodway boundary delineations, Base Flood Elevations, and planimetric features.

Policy. The entire written contract between the insured and the insurer. It includes:

- The printed policy form;
- The application and Declarations Page;
- Any endorsement(s) that may be issued; and
- Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one dwelling, specifically described by the prospective policyholder in the application, may be insured under a policy.

Post-FIRM Building. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

Preferred Risk Policy (PRP). A policy that offers fixed combinations of building/ contents coverage or contents-only coverage at modest, fixed premiums. The PRP is available for property located in B, C, and X Zones in Regular Program communities that meets eligibility requirements based on the property's flood loss history.

Pre-FIRM Building. A building for which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial Flood Insurance Rate Map (FIRM).

Probation. A FEMA-imposed change in a community's status resulting from violations and deficiencies in the administration and enforcement of NFIP local floodplain management regulations.

Probation Surcharge (Premium). A flat charge that the policyholder must pay on each new or renewal policy issued covering property in a community that the NFIP has placed on probation under the provisions of 44 CFR 59.24.

Real Estate Settlement Procedures Act (RESPA) of 1974. A Federal law that prescribes rules concerning payment and disclosure of settlement service charges. Under implementing Regulation Z, the Department of Housing and Urban Development included as a "settlement service" the provision of services involving hazard, flood, or other casualty insurance.

Recreational Vehicle. A vehicle that is (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections, (3) designed to be self-propelled or permanently towable by a light-duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use including, but not limited to, travel trailers, trailers on wheels, park trailers, and other similar vehicles.

Regular Program. The final phase of a community's participation in the NFIP. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

Regular Program Community. A community wherein a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

Regulatory Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remapping. Scheduled revisions of community flood maps to take into consideration natural changes within the floodplain and regulatory floodways and to allow for changes as a result of land use and development, land contour changes, and new information gained from advanced technology. Every 6 months, FEMA publishes the results of its remapping efforts in a compendium of flood map changes in the *Federal Register*.

Repetitive Loss Structure. An NFIP-insured structure that has had at least two paid flood losses of more than $1,000 each in any 10-year period since 1978.

Replacement Cost Value (RCV). The cost to replace property with the same kind of material and construction without deduction for depreciation.

Residential Condominium Building. A building, owned and administered as a condominium, containing one or more family units and in which at least 75 percent of the floor area is residential.

Residential Condominium Building Association Policy (RCBAP). *See* Standard Flood Insurance Policy—Residential Condominium Building Association Policy (RCBAP).

Residential Improved Real Estate. Improved real estate for which the improvement is a residential building.

Section 1316. A section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property FEMA finds has been declared by a duly constituted State or local zoning authority or other authorized public body to be in violation of State or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Servicer. The entity responsible for receiving scheduled, periodic payments from a borrower under the terms of a loan, including principal, interest, and any other payments as may be required under the terms of the loan. The servicer may also be the lender.

SFHA. *See* Special Flood Hazard Area.

Small Loan. Any loan having an original principal balance of $5,000 or less and a repayment term of 1 year or less and, thus, exempt from Federal requirements for the mandatory purchase of flood insurance.

Special Flood Hazard Area (SFHA). An area having special flood, mudflow, or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V. For the purpose of determining Community Rating System premium discounts, all AR and A99 zones are treated as non-SFHAs.

Stafford Act. A Federal law that precludes further disaster relief benefits on property where the owners have not obtained and maintained the required flood insurance coverage after receiving Federal assistance for repairs to property damaged by initial flooding.

Standard Flood Hazard Determination Form (SFHDF). FEMA Form 81-93, which is to be used in either printed, computerized, or electronic form by all companies performing flood zone determinations,. A completed SFHDF is required in most loan files and is the primary "product" of flood zone determination companies.

Standard Flood Insurance Policy—Dwelling Form. Policy issued to insure a building and/or residential contents on a single-family or a two- to four-family dwelling.

Standard Flood Insurance Policy—General Property Form. Policy issued to insure a building and/or contents on other residential or non-residential buildings. *See also* Other Residential Buildings *and* Non-Residential Buildings.

Standard Flood Insurance Policy—Residential Condominium Building Association Policy (RCBAP). Policy issued to insure a residential condominium building and all units within the building, provided that the building is located in a Regular Program community and at least 75 percent of the total floor area is residential.

State-Owned Property. Property that does not require flood insurance if it is covered under a State policy of self-insurance satisfactory to the Administrator of FEMA.

Structure. *See* Building.

Suspension. FEMA's removal of an NFIP participating community from the Program because the community has not enacted and/or enforced the proper floodplain management regulations required for participation.

Table Funding. Typically, a loan transaction where the party providing the funding ordinarily reviews and approves the credit standing of the borrower and issues a commitment to the broker to purchase the loan at the time the loan is originated.

Tentative Rates. Unpublished NFIP rates used to issue policies for applications that fail to provide valid actuarial rating information.

Third-Party Flood Zone Determination Companies. Vendors that, for a fee, determine the flood zone classification of a property. If a lender/servicer uses one of these companies for flood zone determinations, the results must be guaranteed for accuracy. *See also* Flood Zone Determination Vendor.

Timeshares. Property interests that generally fall into one of two categories, either (1) fee or real estate ownership, or (2) non-fee interest, such as the right to use. A timeshare building organized on a fee simple basis is eligible for the Residential Condo-minium Building Association Policy.

A timeshare not organized on a fee simple basis can obtain the General Property Form. Different policy coverages apply according to property interest.

Tripwire. An action that alerts lenders and servicers to comply with flood insurance purchase requirements in the case of the making, increasing, extending, or renewing of a loan, or the transfer of a loan to a Government-Sponsored Enterprise for Housing.

Waiting Period. The time between the date of application and the policy effective date.

Write Your Own (WYO) Program. A cooperative undertaking of the insurance industry and FEMA begun in October 1983. The WYO Program operates within the context of the NFIP and involves private insurance carriers that issue and service NFIP policies under their own names.

WYO Vendor. An organization employed by certain Write Your Own (WYO) carriers to conduct support operations to procure, produce, and handle NFIP claims on behalf of the insurer.

Zone. *See* Flood Zone.

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