DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 96–20]

RIN 1557–AB47

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R–0897]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AB66

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 572

[No. 96–82]

RIN 1550–AA82

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB57

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are amending their regulations, and the Farm Credit Administration (FCA) is issuing new regulations, regarding loans in areas having special flood hazards. This action is required by statute to implement the provisions of the National Flood Insurance Reform Act of 1994. This joint final rule establishes new escrow requirements for flood insurance premiums, adds references to the statutory authority and the requirement for lenders and servicers to ''force place'' flood insurance under certain circumstances, enhances flood hazard notice requirements, sets forth new authority for lenders to charge fees for determining whether a property is located in a special flood hazard area, and contains various other provisions necessary to implement the National Flood Insurance Reform Act of 1994.

EFFECTIVE DATES: October 1, 1996; except for subpart S of part 614, which will be effective October 4, 1996, and part 760, which will be effective November 1, 1996.

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SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act).[1] The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the NFIP. A special flood hazard area (SFHA) is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. SFHAs are delineated on maps issued by FEMA for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.

The 1973 Act amended the NFIP by requiring the OCC, Board, FDIC, OTS, and NCUA to issue regulations governing the lending institutions they supervise (regulated lending institutions or regulated lenders). These agencies' regulations directed lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (security property) if the security property was located, or was to be located, in a SFHA in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that their security property is located in a SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994[2] (CDRI Act),

[1] These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

[2] Pub. L. 103–325, tit. V, 108 Stat. 2160, 2255–87 (September 23, 1994).

which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised the Federal flood insurance statutes.[3] The Reform Act is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[4] The Reform Act requires the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations and requires the FCA to promulgate flood insurance regulations for the first time. In order to fulfill these statutory requirements, the six agencies published a joint NPRM in the fall of 1995. *See* 60 FR 53962 (October 18, 1995).[5] The agencies now complete the rulemaking process by issuing this joint final rule.

Four of the agencies—the OCC, Board, FDIC, and OTS—are required by section 303 of the CDRI Act[6] to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. This joint final rule satisfies the regulation review requirement that section 303 applies to these four agencies. The OCC's portion of the joint final rule is part of its Regulation Review Program. Similarly, this joint final rule is part of the programs initiated by the Board, FDIC, OTS, NCUA, and FCA to reduce unnecessary regulatory burden and to simplify and clarify their regulations.

Section 303 also requires the OCC, Board, FDIC, and OTS to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. This joint final rule also satisfies this portion of section 303. All six of the agencies have reviewed their flood insurance regulations with these purposes in mind. The agencies believe that the joint final rule provides the institutions they regulate with significant flexibility, and minimize the regulatory burden imposed upon regulated lending institutions and loan servicers acting on their behalf, consistent with the requirements of the statute, thus reducing the costs of compliance to those entities and enabling them to operate more efficiently.

II. Overview of Comments Received

The agencies received 138 comment letters on the joint NPRM. The commenters included 12 national banks, two national bank subsidiaries, six state member banks, 15 state nonmember banks, nine savings associations, four Farm Credit organizations, 20 credit unions, 22 financial services holding companies, three State and local government agencies, eight Federal Reserve Banks, 21 trade associations, three flood determination firms, and one insurance agency. In addition, the agencies received comments from five law firms, four mortgage companies, and two consulting services. FEMA also submitted comments.

Thirty-nine commenters expressed general support for the joint NPRM. The majority of these commenters provided specific suggestions for improvement and clarification of the proposal. Twenty-two commenters responded unfavorably to the proposal, characterizing it as overly burdensome or unnecessary. In addition, as discussed later, many commenters sought clarification on specific issues covering a wide spectrum of the proposal's provisions.

The joint final rule is similar to the agencies' proposal in many respects. The agencies, however, have carefully considered the comment letters and have made a number of changes in response to commenters' suggestions and in order to reduce regulatory burden. The topic-by-topic discussion identifies and discusses the significant comments received, describes the provisions of the joint final rule, and highlights changes made by the agencies. Each agency's portion of the joint final rule is substantively consistent, although the format of the regulatory text varies to accommodate the format used at each agency.

III. Description of the Joint Final Rule

A. Need for Supplemental Guidance

The purpose of the Reform Act is to strengthen and enhance the NFIP, and the primary focus of the agencies' joint final rule implementing the Reform Act is to carry out the purpose of the Reform Act. Depending on the location and activities of a regulated lending institution, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. Accordingly, the preamble to the proposal noted issues that could raise safety and soundness concerns in some circumstances and invited comment on these issues so that the agencies could consider whether to provide informal guidance, separate from the joint final rule, that addresses safe and sound banking concerns presented by regulated lenders' flood insurance programs. In particular, the agencies requested comment on the need for guidance related to purchased loans and institutions with significant exposure to flood hazards.

Commenters sought guidance from the agencies on a wide range of topics including the applicability of the flood insurance rules with respect to condominiums, cooperatives, agricultural buildings, subordinate liens, manufactured homes, home equity lines of credit, fixtures, residential and commercial construction loans, FEMA's appeal process for contested flood hazard determinations, and the standard flood hazard determination form. Eighteen commenters stated that general guidance on safety and soundness issues would be useful, with most preferring informal guidance. Other commenters, primarily credit unions, requested more detailed guidance on compliance with the joint final rule.

A number of commenters stated that additional guidance is not necessary or appropriate, emphasizing that standard financial institution practices are sufficient to protect an institution's interest in its collateral. These commenters stated that the risk profiles of institutions differ, and that the individual institution is in the best position to identify and control major forms of financial risks. A few commenters indicated that each institution should develop and implement risk management procedures to address issues such as geographic lending concentrations and portfolio concentrations.

The joint final rule addresses certain of these concerns, including, for example, agricultural buildings, manufactured homes, the FEMA appeals process, and the standard flood hazard determination form. However, given the number, level of detail, and diversity of subject matter of the requests for additional information, the agencies have concluded that informal staff guidance addressing the more technical compliance issues would be helpful and

[3] A more detailed description of the pertinent provisions of the CDRI Act appears in the preamble to the agencies' joint notice of proposed rulemaking (proposal or NPRM). *See* 60 FR 53962, 53963–65 (October 18, 1995). This preamble refers to the 1968 Act, the 1973 Act, and the Reform Act collectively as the Federal flood insurance statutes.

[4] H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 195 (1994) (Conference Report).

[5] In conducting this rulemaking, all six of the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain of the CDRI Act provisions. The heads of five of the six agencies (OCC, Board, FDIC, OTS, and NCUA) comprise the membership of the FFIEC.

[6] 12 U.S.C. 4873.

appropriate. Consequently, the agencies intend to issue informal guidance to address these technical issues subsequent to the promulgation of the joint final rule.

B. Topic-by-Topic Discussion

Authority, Purpose, and Scope

The OCC, Board, FDIC, and OTS proposed in the joint NPRM to expand this section to add detailed statements of authority, purpose, and scope. The FCA proposed language similar to that of the other agencies. The NCUA proposed to replace the question and answer format of its flood insurance regulations with standard regulation text so that its flood insurance regulations are consistent with the other agencies. No comments were received on this section and the agencies adopt it as proposed.

Loan Servicers

The agencies proposed to apply their regulations implementing the escrow, forced placement, and flood hazard determination fee provisions of the Reform Act to regulated lending institutions and to loan servicers acting on behalf of regulated lending institutions. As indicated in the preamble to the proposal, the agencies do not interpret the NFIP to impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. The agencies concluded that loan servicers were covered by certain provisions of the Reform Act primarily to ensure that they could perform for the lender the administrative tasks related to the forced placement of flood insurance—including providing the requisite notices to borrowers, arranging for the insurance, and collecting and transmitting insurance premiums—without fear of liability to the borrower for the imposition of unauthorized charges.[7]

The proposal indicated that a regulated lender could fulfill its responsibilities under the NFIP by ensuring that its loan servicing contracts obligated its servicers to perform the duties required by the Federal flood insurance statutes. The agencies also stated that, where there were deficiencies in existing arrangements, lenders should ensure that their loan servicing agreements were revised to provide for the loan servicer to fulfill Federal flood insurance requirements.

The agencies received 21 comments on this issue. Several commenters addressed the relationship between regulated lender and loan servicer with respect to fulfillment of Federal flood insurance requirements and requested detailed additions to the regulatory language to clarify how this relationship is intended to function. One commenter requested that the final rule provide that the lender may rely upon the servicer to fulfill such requirements so long as the lender performs reasonable audits. Another requested that the final rule provide that an originating lender may transfer liability for flood insurance requirements to a servicer, but a third requested clarification that the lender's responsibilities are non-delegable despite its relationship with its servicer. Another commenter requested clarification of the responsibilities of a regulated lender acting as a servicer as opposed to a non-regulated servicer.

In response to these comments, the agencies emphasize that the obligation of a loan servicer to fulfill administrative duties with respect to Federal flood insurance requirements arises from the contractual relationship between the loan servicer and the lender or from other commonly accepted standards for performance of servicing obligations. The lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements. The agencies also wish to emphasize that there is no distinction between a regulated lending institution as servicer and a non-regulated servicer with respect to flood insurance requirements, since either entity acting as servicer will be doing so under the terms of a loan servicing contract. The provisions in the joint final rule with respect to escrow requirements, forced placement, and flood hazard determination fees therefore provide—as in the proposal—that these requirements may be fulfilled either by a regulated lender or a servicer acting on its behalf.

Definitions

The proposal added or revised several definitions, including definitions of the terms *building, designated loan, mobile home,* and *servicer,* and also added several other definitions to streamline the agencies' flood insurance regulations, including definitions of the term *Director, residential improved real estate,* and *special flood hazard area.*

The agencies received 20 comments on these definitions. Ten commenters requested clarification on the definition of *mobile home.* For purposes of the appendix to 44 CFR part 61, which sets forth FEMA's standard flood insurance policy, ''mobile home'' (the term used in the Federal flood insurance statutes) is defined to have the same meaning as ''manufactured home.''[8] The text of the proposal is modified to reflect that the two terms have the same meaning. In order to ensure consistency with the term as used in the Reform Act and avoid conflicting interpretations, the agencies believe it is appropriate to defer to FEMA's interpretations with respect to what is a ''properly secured'' mobile home for flood insurance purposes.

Two commenters requested a definition of the phrase ''making, increasing, extending, or renewing a loan.'' The agencies believe that Congress intended the flood insurance purchase requirements to be applicable at origination, or at any time thereafter during the life of the loan when the institution determines that the security property is located in an area having special flood hazards.[9] The specific issues that arise in connection with this phrase are discussed later in this preamble in ''Loan Purchase as Equivalent to Making a Loan,'' ''Loan Acquisitions Involving Table Funding Arrangements,'' and ''Use of Standard Flood Hazard Determination Form.''

Two commenters suggested revisions of the definition of *residential improved real estate.* These comments are discussed later in this preamble in ''Escrow of Flood Insurance Payments.''

Flood Insurance Requirement

The proposal did not amend substantively the existing regulatory provision that implements the statutory requirement that flood insurance must be purchased for the term of a loan when the security property is located in a SFHA in a community that participates in the NFIP. The proposal also did not amend substantively the existing regulatory provision with respect to the minimum amount of insurance required by statute for such

[7] The agencies also noted that section 102(f) of the 1973 Act as added by the Reform Act, 42 U.S.C. 4012a(f), does not authorize them to seek civil money penalties against loan servicers that are not regulated lending institutions. The statute's failure to impose liability on servicers independent of lenders reinforces the conclusion that a servicer's obligation to comply with NFIP requirements arises from its contractual relationship with a lender.

[8] *See* 44 CFR 59.1 (defining manufactured home), 44 CFR 61.13 and Appendix A to 44 CFR part 61 (FEMA's standard flood insurance policy defining mobile home as meaning manufactured home); 58 FR 62420 (Nov. 26, 1993). FEMA recently amended 44 CFR part 65, which sets forth the procedures to be followed for the review by FEMA of a contested flood hazard determination, to substitute the term ''manufactured home'' for ''mobile home.'' FEMA explained that it made this change because the former term is now the preferred term in the industry. *See* 60 FR 62213 (Dec. 5, 1995).

[9] Conference Report at 197.

property. The Reform Act made no changes to these statutory requirements.

The agencies received 28 comments on this issue. Five commenters requested that the final rule provide that the amount of flood insurance may be limited to the overall value of the property minus the value of the land. When flood insurance is required, the policy must cover the outstanding principal balance of the loan or the maximum amount available under the NFIP, whichever is less. The flood insurance statutes are intended to provide coverage to the improvements. As suggested by the commenters who addressed this point, the joint final rule provides that, in addition to the statutorily prescribed dollar limits, flood insurance coverage under the NFIP is limited to the overall value of the property less than the value of the land.

Five commenters requested that the final rule provide that Federal flood insurance requirements do not apply to loans where a security interest in improved real property is only taken ''out of an abundance of caution.'' Section 102(b)(1) of the 1973 Act, as amended by the Reform Act,[10] provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute. The requested exception is not available under the 1973 Act.

One commenter inquired whether flood insurance coverage could be purchased for ''developed lots,'' that is, land that secures a loan to improve the property by streets, sewers, and utilities (but no ''above-ground'' improvements such as buildings) so it may then be sold to homebuilders who may construct residential housing on the developed lots. As previously noted in this section, flood insurance generally is available only with respect to a structure or mobile home and not with respect to the land on which the structure or mobile home sits. Flood insurance therefore would not be available under the NFIP for property used to secure a development loan of the type described in this paragraph.

One commenter asked whether the requirement to maintain flood insurance coverage for the term of the loan continues if a regulated lender sells the loan to a non-regulated lender while retaining servicing rights. The commenter wanted to ascertain whether the servicer in such a situation would have the authority to force place insurance and whether the servicer would be subject to criticism upon examination if the non-regulated lender instructed the servicer not to force place.

As noted in the discussion on ''Loan Servicers,'' the agencies believe that the obligation of a loan servicer to fulfill Federal flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or other commonly accepted standards for performance. The duties of a regulated lender with respect to Federal flood insurance requirements for a particular loan cease upon the sale of the loan unless the seller agrees to retain responsibility for such requirements under a loan servicing agreement with the transferee owner. When a loan servicer force places flood insurance, it does so on behalf of the lender in accordance with the loan servicing agreement. If a lender instructs a loan servicer not to force place flood insurance, the responsibility for that instruction, and for any deficiency in compliance, remains with the lender.

One commenter requested that the final rule state that a regulated lender has no duty to change the amount of insurance coverage on a loan unless the loan is increased, extended or renewed. The agencies note in response that a lender may have to increase the amount of coverage on a loan in instances other than the increase, extension, or renewal of a loan, such as when the amount of insurance available under the 1968 Act has been increased and the lender determines that the borrower does not have adequate coverage.

One commenter stated that the proposal did not address the requirements for ''contents coverage'' for loans secured by personal property within a structure located in a SFHA. The agencies agree with the commenter that contents coverage is not required unless, as specified in section 102(b) of the 1973 Act,[11] personal property secures the loan in addition to improved real property. The proposal included language requiring flood insurance for any personal property securing a loan that is also secured by real property. The agencies believe that this language adequately addresses this point.

One commenter requested that the final rule state that a lender may refuse to make a loan in a SFHA when Federal flood insurance is not available, such as in communities that do not participate in the NFIP. The agencies' flood insurance regulations in effect before the effective date of this joint final rule state that the requirement to obtain flood insurance for security property applies only to those areas where flood insurance has been made available under the 1968 Act. The proposal stated that the requirement applies only to a *designated loan*, a term defined to mean a loan secured by a building or mobile home located or to be located in a SFHA where flood insurance is available under the 1968 Act. The effect of these two provisions is the same, namely, that a lender may exercise discretion and decline to make a loan in a SFHA where Federal flood insurance is not available. The agencies therefore believe that the requested change is not necessary.

The same commenter requested that the final rule expressly state that a lender may require flood insurance on any loan, even when not required by the final rule. A requirement for flood insurance on security property that is not subject to the Federal flood insurance statutes is a matter of contract between the lender and borrower. Consistent with the agencies' view that the joint final rule should include only those provisions necessary to implement the flood insurance statutes, the agencies have not included this provision in the joint final rule.

Loan Purchase as Equivalent to Making a Loan

The proposal noted that the agencies' regulations in effect until the effective date of this joint final rule differ as to whether a loan purchase constitutes the ''making'' of a loan that would trigger an obligation to make a flood hazard determination. The OCC and the Board have taken the position that a loan purchase does not trigger such an obligation. The OTS has treated a loan purchase as the equivalent of ''making'' a loan, and the NCUA has taken the position that if flood insurance is required for a Federal credit union (FCU) to make a loan, then flood insurance is necessary for an FCU to purchase a loan. The FDIC has not previously taken a position.

The proposal highlighted the agencies' desire for regulatory uniformity. Accordingly, the OTS proposed to remove loan purchases from its flood insurance regulations; the FDIC proposed to adopt the position of the OCC and the Board; and the NCUA invited comment on whether it should maintain its position.

The agencies received 44 letters on this issue. The overwhelming majority agreed that a loan purchase should not require a flood hazard determination. Three commenters, including FEMA,

[10] *See* 42 U.S.C. 4012a(b)(1).

[11] 42 U.S.C. 4012a(b)(1).

believed that a loan purchase should be considered the ''making'' of a loan.

As noted in the preamble to the proposal, the 1973 Act identifies the events that trigger a lender's obligation to review the adequacy of flood insurance coverage on an affected loan (*e.g.*, the making, increasing, extending, or renewing of a loan). The Reform Act does not include a loan purchase in this list of specified tripwires. As a practical matter, a loan purchaser may always require, as a condition of purchase, that the seller determine whether the property securing the loan is located in a SFHA.

The preamble further noted that, with respect to loans sold in the secondary mortgage market, the inclusion of a loan purchase as a tripwire event may be unnecessary because of the expansion of the scope of the NFIP's coverage with regard to Fannie Mae and Freddie Mac (the largest volume purchasers of residential mortgage loans).[12] Finally, the preamble to the proposal noted that including a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and the purchaser of a resential mortgage loan sold in the secondary market.

For these reasons, and to promote consistent treatment for all regulated lending institutions, the OTS and FDIC are hereby adopting the position of the OCC and the Board that a loan purchase is not an event that triggers the obligation to make a flood hazard determination. While the authority of Farm Credit System institutions is limited with regard to loan purchases, the FCA also concurs with the position of the OCC and the Board on this issue.

The NCUA requested comment on its position that a borrower must obtain adequate flood insurance before an FCU can purchase the borrower's loan if flood insurance coverage would have been required for the FCU to have made the loan initially. Two commenters agreed with the NCUA and 14 commenters suggested that the NCUA adopt the other agencies' position. Ten of the commenters that disagreed with the NCUA stated that the agencies should be consistent on this issue. Seven commenters suggested that the NCUA's position treats loan purchasing as a triggering event and requires credit unions to unnecessarily duplicate the original lenders' flood insurance determinations. Two commenters suggested that credit unions should be able to check the flood status of a loan before purchasing it.

The NCUA agrees that a loan purchase does not trigger a flood hazard determination and that requiring a determination when an FCU purchases a loan could be duplicative. However, the NCUA's regulation governing loan purchases provides additional requirements for FCUs.[13] Section 701.23(b)(1)(i) only permits an FCU to purchase its members' loans if the FCU could grant the loan or if the FCU refinances the loan within 60 days. Accordingly, before an FCU purchases a member's loan to hold in its portfolio, the FCU must determine whether the improved real property securing the loan has adequate flood insurance coverage. This may be accomplished by reviewing the loan documentation or by making a new determination. The FCU avoids these additional requirements when the FCU originates real-estate-secured loans on an ongoing basis and purchases loans to package and sell in the secondary mortgage market.[14]

Finally, the NCUA notes that while the agency's flood insurance regulations, 12 CFR part 760, apply to all Federally-insured credit unions, § 701.23 applies only to FCUs. A Federally-insured State-chartered credit union should follow the loan purchasing guidelines of its state regulator.

Loan Acquisitions Involving Table Funding Arrangements

The agencies invited comment on whether a regulated lender that provides table funding to close a loan originated by a mortgage broker or mobile home dealer should be deemed to be ''making'' or ''purchasing'' the loan for purposes of the flood insurance requirements. 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. While the transaction is, in substance, a loan made by the funding party, it is structured as the purchase of a loan. The preamble to the proposal indicated that the agencies were inclined to treat table funded loans like loans made, rather than purchased, by the funding party.

The preamble to the proposal outlined guidance provided by the regulations of the Department of Housing and Urban Development (HUD) implementing the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601–2616,[15] and the Financial Accounting Standards Board (FASB)[16] for distinguishing between making and purchasing loans.

The agencies invited comment on: (1) their position that a table funded transaction is more like the making of a loan by the provider of funds than a purchase of a loan in the secondary market; and (2) whether the RESPA or FASB standard is a more appropriate guideline for defining a table funded transaction as either the making or the purchase of a loan.

The agencies received 40 letters on this issue. Twenty commenters agreed with the agencies that a table funded transaction is more like making a loan, eight believed the transaction is more like a loan purchase, and seven expressed some other view. Some commenters addressed only whether the RESPA or FASB standards provided more appropriate guidance. Fourteen commenters supported the RESPA standard while thirteen supported the FASB standard.

The commenters who favored the RESPA standard asserted that RESPA provides a better model for determining the appropriate treatment of table funded transactions because it reflects the realities of the market place and focuses on the structure of the transaction. Some commenters also noted that it would be less confusing and burdensome for lenders, and less likely to result in errors by lenders, to treat the same transaction in a consistent manner for purposes of both RESPA and the Reform Act.

The commenters who supported the FASB standard asserted that it is clearer and more workable. Some stated that the broker or dealer originating the transaction is usually responsible for the

[12] The agencies note that both Fannie Mae and Freddie Mac require their respective sellers and servicers to be in full compliance with the flood insurance statutes. *See* Fannie Mae Announcement No. 95–10 (June 8, 1995), Freddie Mac Bulletin No. 94–18 (December 8, 1994).

[13] 12 CFR 701.23.

[14] 12 CFR 701.23(b)(1)(i).

[15] *See* 24 CFR 3500.2, 3500.5(b)(7).

[16] *See* FASB, Emerging Issues Task Force (EITF) Abstracts, EITF Issue No. 92–10, ''Loan Acquisitions Involving Table Funding Arrangements,'' 1993 (interpreting FASB Statement of Financial Accounting Standards No. 65, ''Accounting for Certain Mortgage Banking Activities'') (FASB Statement No. 65). This EITF table funding interpretation elaborated on guidance that has been superseded. *See* FASB, Statement of Financial Accounting Standards No. 122, ''Accounting for Mortgage Servicing Rights,'' May 1995 (superseding FASB Statement No. 65).

flood hazard determination. If the transaction is not treated as a loan purchase, the acquiring regulated lender would have to perform a duplicative flood hazard determination—and the duplicative costs would have to be absorbed by the lender or borrower.

The joint final rule reflects the agencies' position that, for flood hazard determination purposes, the substance of the table funded transaction should control and that the typical table funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds. Regulated lenders who provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be ''making'' a loan for purposes of the flood insurance requirements. The agencies believe that this treatment most closely reflects the realities of such transactions, which are purchases only in a technical sense. The presence of a mortgage broker or a mobile home dealer in the transaction should not obscure the fact that the entity supplying the funds is actually primarily responsible for the credit decision and will bear any risk inherent in the loan upon completion of the transaction.

The agencies have also concluded that it is appropriate to use the RESPA standard to define when a table funded loan will be treated as the making of a loan. Under the current RESPA regulations, 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. This RESPA definition is used to determine whether a transaction will be treated as a loan or as a secondary market transaction. The funding entity is responsible for meeting the disclosure requirements of RESPA if the transaction is a loan; the funding entity generally would have no responsibilities under RESPA if the transaction is a secondary market transaction. The purpose for which the RESPA standard was developed is therefore similar to the purpose for which the standard would be used in connection with the flood insurance regulations.

The FASB standard referenced in the proposal, on the other hand, was intended to provide guidance to lenders on the proper accounting treatment for mortgage servicing rights and loan origination costs, and focused on factors such as which entity is the first titled owner of the loan, whether the broker is independent of the lender and sells loans to more than one lender, and whether the broker has been indemnified by the lender for the market and credit risks connected with the loan. Based on these criteria, the FASB guidance permitted transactions to be treated as purchased loans even where the lender had a significant level of involvement in the underwriting process.

In order to ensure that lenders are aware of the treatment of table funded transactions, the joint final rule includes a definition of *table funding* that is identical to the current RESPA definition. The joint final rule also states that a lender that acquires a loan from a mortgage broker or other entity through table funding will be considered to be making a loan for the purposes of the joint final rule.

The agencies also note that treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices, a possibility that concerned several commenters. The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer, as is currently done with respect to the RESPA requirements.

Applicability of Federal Flood Insurance Requirements to Subsidiaries

In the preamble to the proposal, each of the agencies briefly discussed the applicability of its flood insurance rules to the subsidiaries of the institutions it regulates. The OCC noted that a national bank's operating subsidiary is subject to the rules applicable to the operations of its parent bank as provided under 12 CFR 5.34. Similarly, the Board noted that a state member bank's operating subsidiary is subject to the rules applicable to the operations of its parent bank, and the OTS said that a savings association's operating subsidiary is subject to the rules applicable to its parent thrift. The FDIC stated that its authority to regulate insured nonmember banks extends to activities that such institutions may conduct through a subsidiary. The FCA indicated that a Farm Credit System service corporation does not have the authority to extend credit. The NCUA indicated that a credit union's subsidiary organization, called a credit union service organization (CUSO), is not a ''regulated lending institution'' subject to the Reform Act, but as a practical matter, a CUSO must adhere to the flood insurance requirements. The agencies also indicated that the question of whether the Federal flood insurance statutes apply to a mortgage banking subsidiary of a regulated lending institution is mooted to some extent by the Reform Act's amendment requiring Fannie Mae and Freddie Mac to ensure that flood insurance requirements are met for the loans they purchase.

The OTS also noted in the proposal that its current regulations did not apply to service corporations but that the OTS interpreted the Reform Act's new definition of ''regulated lending institution,'' including the phrase ''similar institution subject to the supervision of a Federal entity for lending regulation,'' to include subsidiaries of thrift institutions that are service corporations. The OTS proposed to apply its flood insurance regulations to service corporations that engage in mortgage lending. The OTS believed that this position was consistent with the Reform Act's statutory language and Congressional intent, and would ensure uniform and consistent treatment for regulated financial institutions.

The FDIC invited comment on its proposed interpretation to require subsidiaries of insured nonmember banks that engage in lending secured by real estate to comply with the flood insurance requirements.

The agencies received eight comment letters on this issue. Seven supported the OTS's and FDIC's positions. One, a thrift trade association, opposed extending flood insurance regulations to service corporations because of the unfair burden that would be placed on bank and thrift subsidiaries relative to mortgage bankers. The agencies received one comment letter that supported the NCUA's position.

Based on the commenters' responses and the desire for regulatory consistency, the OTS's portion of the joint final rule applies to service corporations. The OTS believes that the purpose of the Federal flood insurance statutes is best served by treating loans made by service corporations in the same way as loans made elsewhere in the corporate structure by the thrift institution or its operating subsidiaries. The FDIC's portion of the joint final rule makes subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term ''bank'' to include a subsidiary of such institutions. The positions of the other agencies, as reflected in their statements in the preamble to the proposal, are unchanged.

Exemptions

The proposal retained the exemption from the basic flood insurance requirement for State-owned property that is self-insured in a manner

satisfactory to the Director of FEMA, and added the Reform Act's new exemption for loans with an original principal balance of $5,000 or less and a repayment term of one year or less. The agencies received 19 comment letters on this issue. Fifteen commenters requested expansion of the statutory exemption for loans in the amount of $5,000 or less with a term of one year or less. Because the exemption has been established by statute (*see* 42 U.S.C. 4012a(c)(2)), it may only be expanded by a legislative amendment. The joint final rule therefore adopts the language as proposed.

Escrow of Flood Insurance Payments

Definition of residential improved real estate. As required by the Reform Act, the proposal stated that a regulated lender must require the escrow of flood insurance premiums for loans secured by *residential improved real estate* if the lender requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for hazard or fire insurance, or any other fees. The proposal also cautioned that, depending on the type of loan, the escrow account for flood insurance premiums may be subject to section 10 of RESPA, 12 U.S.C. 2609,[17] which generally limits the amount that may be maintained in escrow accounts for consumer mortgage loans, and requires notices containing escrow account statements for those accounts.

There are differences between the scope of the Reform Act's coverage and the scope of RESPA's coverage that raise a question about how the two laws should be applied together. The Reform Act's escrow provision applies to loans secured by ''residential improved real estate,'' a term defined in the Reform Act as improved real estate for which the improvement is a residential building.[18] This definition does not distinguish between mortgage loans secured by one to four family residential buildings and commercial loans secured by residential buildings. Under the language of the proposal, therefore, the Reform Act's escrow provision applied 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.

RESPA, on the other hand, applies to a ''federally related mortgage loan,'' which is defined as a loan secured by a first or subordinate lien on residential real property designed principally for the occupancy of from one to four families.[19] Further, by regulation HUD has determined that RESPA does not cover construction financing, loans primarily for business, commercial, or agricultural purposes, loans secured by 25 acres or more of real estate, whether residential or commercial, and loans on vacant or undeveloped property not developed within two years.[20] Similarly, the limits on amounts escrowed and the escrow account statement requirements prescribed by RESPA section 10, which is the only RESPA section that the Reform Act makes applicable to flood insurance premiums, apply only to consumer mortgage loans.

In the proposal, the agencies resolved the differences between the scope of coverage of the two statutes by applying RESPA section 10 only to flood insurance escrow accounts for loans that are already subject to RESPA generally, *i.e.,* escrows for consumer mortgage loans. The agencies took the position that (1) the escrow of flood insurance premiums is required whenever the lender escrows other charges associated with the loan, but (2) the detailed requirements of RESPA section 10 do not apply unless the loan itself is subject to RESPA.

The agencies received 20 comments on the scope of the escrow requirement. Five commenters generally agreed with the proposal, while 15 requested additional clarification on specific matters. Five commenters said that the term *residential improved real estate* as defined in the proposal could be interpreted to include loans on multi-family properties, which are mortgage loans secured by five or more family residential units typically processed as commercial loans made for a business purpose. These commenters recommended that the agencies limit the Reform Act's escrow requirement only to those loans that are subject to RESPA. Some commenters requested that the final rule distinguish between mortgage loans secured by one to four family residential units and mortgage loans secured by multi-family units, and asked that the definition be modified so that it applies only to the former type of mortgage loans. They stated that if this change were made, lenders would not have to escrow for flood insurance on mortgage loans secured by five or more family units, thereby easing their administrative burdens. They also pointed out that this would take advantage of a well-understood approach to distinguishing between loans on residential and other property, and thereby minimize confusion and increase compliance.

Industry commenters also pointed out that loans on commercial property are processed quite differently from consumer loans and often are subject to extensive negotiation of terms. Escrows on such loans may reflect required property maintenance expenditures or compensating balances as a pricing term rather than the types of payments covered by escrows on consumer mortgage loans. On the other hand, FEMA, although observing that the Reform Act neither required nor authorized the agencies to require escrows on commercial properties, recommended that the agencies impose a similar escrow requirement on commercial property loans as well.

The escrow provisions of the Reform Act are designed to improve compliance with flood insurance requirements by ensuring that homeowners located in special flood hazard areas obtain and maintain flood insurance for the life of the loan. The Conference Report stated that a major reason for the lack of compliance with the NFIP is that many homeowners stop paying premiums on their flood insurance policies.[21] However, the Reform Act itself simply does not restrict the flood insurance escrow requirement to consumer mortgage loans. The determinative factor in the coverage of the escrow requirement is not the purpose of the loan, but the purpose of the building—whether it is primarily used for residential purposes.

Section 10 of RESPA, the only RESPA provision that the Reform Act makes applicable to flood insurance escrow accounts, limits the amounts that lenders and servicers may legally require borrowers to deposit in escrow accounts.[22] In 1994, HUD amended its RESPA regulations[23] to interpret section 10 of RESPA by establishing a nationwide standard escrow accounting method known as aggregate accounting and giving lenders and servicers specific guidance on the requirements of section 10. The final rule required lenders and servicers to use the aggregate accounting method for escrow accounts involving

[17] The regulations of HUD implementing section 10 appear at 24 CFR 3500.17 (1995); *see also* 60 FR 8812 (Feb. 15, 1995), 60 FR 24734 (May 9, 1995), 61 FR 13232 (Mar. 26, 1996) and 61 FR 29238 (June 7, 1996) (revising § 3500.17).

[18] 42 U.S.C. 4012a(d)(4). The proposal defined the term as real estate upon which a home or other residential building is located or to be located.

[19] 19 12 U.S.C. 2602(1)(A).

[20] *See* 24 CFR 3500.5(b).

[21] Conference Report at 198.

[22] 12 U.S.C. 2609.

[23] HUD, Final Rule on Escrow Accounting Procedures, 59 FR 53890 (Oct. 26, 1994) (adding 24 CFR 3500.17).

consumer mortgage loans, instead of the method known as single-item analysis accounting, and provided a phase-in period for existing escrow accounts to convert to the aggregate accounting method.[24] This change was intended to reduce the cost of home ownership, by ensuring that funds would not be held in escrow accounts in excess of the amounts necessary to protect lenders' interests in preserving loan collateral.[25] It appears that Congress intended to apply the same section 10 limits to the new flood insurance escrow accounts required under the Reform Act. Because of the differences between the scope of coverage of the Reform Act and RESPA, however, the agencies do not believe that the Reform Act is intended to impose the particular requirements of section 10 on loans that are not subject to RESPA generally, for example, commercial loans secured by residential buildings. There is nothing in the legislative history of the Reform Act suggesting that Congress meant to extend the scope of section 10 of RESPA in this way through the enactment of the Reform Act, and absent specific direction from Congress, the agencies did not believe that they had the authority to expand RESPA's section 10 coverage to loans that are not otherwise subject to RESPA.

In addition, RESPA only applies to mobile home loans if they are also secured by real estate, whereas the Reform Act applies to mobile home loans whether or not secured by real estate. RESPA also exempts all loans secured by 25 acres or more of real estate, whether residential, commercial, or agricultural, whereas the Reform Act applies to all such loans if secured by structures primarily used for residential purposes. While RESPA and the Reform Act cover refinancings,[26] the Reform Act also covers increases, extensions, and renewals.

In the joint final rule, the text of the agencies' definition of *residential improved real estate* is the same as was proposed. It primarily covers loans that are otherwise subject to RESPA. But, because the Reform Act defines ''residential improved real estate'' as ''improved real estate for which the improvement is a residential building,'' multi-family properties containing five or more residential units are covered under the Reform Act's escrow provisions, as are single family dwellings (including mobile homes) and two to four family dwellings. A construction loan, loan secured by 25 acres or more of real estate, or commercial loan is subject to the escrow requirements if the loan is secured by improved real estate primarily used for residential purposes and an escrow account is required in connection with the loan for taxes, insurance premiums, fees, and other charges. Finally, except for escrows on consumer mortgage loans, the escrow accounts established for these loans need not comply with the requirements of section 10 of RESPA. The agencies have also made minor conforming changes to the text of the escrow provision.

Types of escrow accounts covered. Six commenters asked for clarification of what constitutes a ''required'' escrow. The commenters were divided on whether a ''voluntary'' escrow account (where the borrower requests the lender to establish an escrow account) should trigger a flood insurance escrow requirement. The Reform Act mandates a flood insurance escrow only when a regulated lending institution requires an escrow account for taxes, insurance, fees, or other charges. Although exclusion of voluntary escrows could lead to the possibility of evasion and difficulties in examining for compliance, the agencies do not believe that the Reform Act mandates escrow of flood insurance premiums in connection with escrow accounts specifically requested by the borrower. However, where a lender is escrowing for hazard insurance premiums or taxes without also escrowing for flood insurance premiums, the lender will have the burden of demonstrating that the escrow arrangement is truly voluntary.

In determining whether an escrow account arrangement is voluntary, the agencies believe it is appropriate to look to the loan policies of the regulated lender and the contractual agreement underlying the loan. If the loan documentation permits the lender to require an escrow account, and the lender's loan policies normally would require an escrow account for a loan with particular characteristics, an escrow account in connection with such a loan generally would not be considered to be voluntary. An escrow arrangement generally would be viewed as voluntary, however, if the policies of the lender do not require the establishment of an escrow account in connection with the particular type of loan, even though the loan documentation may permit a lender to require the establishment of an escrow account.

Additionally not all accounts established in connection with a loan secured by residential improved real estate are considered to be escrow accounts that would trigger the requirement for the escrow of flood insurance premiums. For example, accounts established in connection with commercial loans for such items as interest or maintenance reserves or compensating balances are not considered to be escrow accounts for the purposes of this provision. As a general matter, 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 be considered to trigger the escrow requirements for flood insurance premiums.

Several commenters asked if the requirement to escrow flood insurance premiums would be triggered only if other escrows were required on the particular loan in question, rather than if the institution generally required escrows on other loans of similar type. The agencies agree that the final rule should be applied on a loan-by-loan basis within similar types of loans.

Several commenters asked whether voluntary payments for credit life insurance would trigger a flood insurance escrow. The agencies note, as did some of these commenters, that HUD takes the position that voluntary payments for credit life insurance do not constitute escrows for purposes of RESPA,[27] and, accordingly, believe that payments under credit life insurance and similar types of contracts should not trigger the escrow of flood insurance premiums. Escrows for hazard insurance such as fire, storm, wind, or earthquake are the types of insurance that trigger the requirement to escrow flood insurance premiums if such insurance is required on the loan.

Various commenters opposed flood insurance escrows in general or thought that insurance companies or municipalities would be the logical entities to enforce the purchase and maintenance of flood insurance. However, the agencies note that the requirement is mandated by the Reform Act. Other commenters pointed out that their institutions lack the capability for escrows, either in general or with respect to mobile homes. Both the statute and this joint final rule specify that escrow of flood hazard insurance payments is required only when other payments also are escrowed.

[24] 59 FR at 53890. The rule also established formats and procedures for initial and annual escrow account statements.

[25] Id. at 53890–91.

[26] See Conference Report at 197.

[27] See 60 FR 24733 (May 9, 1995) (revising 24 CFR 3500.17).

Forced Placement

The proposal set forth the requirement imposed by the Reform Act on a regulated lender or a servicer acting on its behalf to purchase or ''force place'' flood insurance for the borrower if the lender or the servicer determines that adequate coverage is lacking. The agencies received 31 comments on this issue.

Four commenters asked if a loan could be made without flood insurance in place provided the lender gave notice to the borrower at closing that flood insurance must be obtained by the borrower within 45 days from the date of closing and that the lender would force place insurance if the borrower had not complied by the end of that period. Section 102(e)(2) of the 1973 Act, as amended, 42 U.S.C. 4012a(e)(2), provides for forced placement of flood insurance 45 days after the borrower is notified of deficient flood insurance coverage. The agencies do not interpret this provision of the Reform Act as granting a borrower 45 days from loan closing to arrange for flood insurance on the security property.

The agencies believe that the addition of the forced placement authority does not lessen the need for flood insurance to be in place at the time a loan is made. Section 102(e) of the 1973 Act provides that the agencies must require a regulated lending institution not to make, increase, extend, or renew any loan secured by improved real property located in a SFHA unless the security property is covered by the minimum amount of flood insurance required by the statute. The agencies interpret this provision to mean that the flood insurance regulations must require that such insurance be in place at the time a lender makes a loan that is secured by improved real property located in a SFHA.

The agencies believe that the forced placement provision of the Reform Act is designed to complement the other statutory tripwires for ensuring that security property located in a SFHA is adequately covered by flood insurance. As a practical matter, forced placement should not be necessary at the time of making, increasing, extending, or renewing a loan, when the lender is obligated to require that flood insurance be in place. Rather, forced placement authority is designed to be used if, over the term of the loan, the lender or its servicer determines that flood insurance coverage on the security property is deficient under section 102(e) of the 1973 Act.

To further emphasize this point, the agencies are removing the phrase ''at the time of origination or'' from the final version of the forced placement regulation. The agencies realize that this phrase tracks the statutory language set forth in section 102(e)(1) of the 1973 Act. The agencies believe, however, that the removal of this phrase will not substantively alter the requirements of the rule since this joint final rule still provides, in accordance with the statute, that a lender or servicer acting on its behalf is under a duty during the term of a designated loan to force place insurance if the lender or servicer acting on the lender's behalf determines that the security property is not adequately insured. The removal of this phrase clarifies (1) that flood insurance coverage must be in effect at the time of closing of a designated loan, and (2) the duties of a lender or its servicer with respect to forced placement of flood insurance.

One commenter requested clarification as to the precise amount of flood insurance a lender or servicer acting on its behalf is required to force place. Section 102(b)(1) of the 1973 Act, as amended, 42 U.S.C. 4012a(b)(1), states that security property located in a SFHA must be covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage available under Federal flood insurance statutes, whichever is less. A regulated lender must therefore initiate procedures to force place flood insurance whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum stipulated by statute for the particular category of property securing the loan. The amount that must be force placed is equal to the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit.

One commenter suggested that forced placement should be at the lender's discretion while another commented that the final rule should state that lenders have both the legal authority and obligation to force place flood insurance. The agencies wish to make it plain that under section 102(e) of the 1973 Act lenders are both authorized and obligated to force place flood insurance if necessary. The joint final rule therefore provides that a lender, or servicer acting on the lender's behalf, upon discovering that security property is not covered by an adequate amount of flood insurance, must, after providing notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, purchase flood insurance in the appropriate amount on the borrower's behalf.

Portfolio Review

The preamble to the proposal indicated that neither the Reform Act nor the proposed rule required a regulated lending institution or servicer acting on the lender's behalf to conduct a review of all loans in portfolio as of September 23, 1994, that is, a retroactive portfolio review. The Reform Act does not revise the list of events that trigger a determination (the making, increasing, renewing, or extension of a loan, sometimes referred to as the statutory tripwires). The proposal also indicated that a requirement for retroactive portfolio review would impose a costly and unnecessary burden on regulated lending institutions.

Similarly, the agencies did not propose to require a regulated lending institution or servicer acting on its behalf to conduct portfolio reviews on a prospective basis. The preamble noted that the 1968 and 1973 Acts, as amended by the Reform Act, do not prescribe portfolio review as the means that a lender or servicer acting on its behalf must use to determine whether security property is adequately covered by flood insurance. The flood statutes do not require that determinations be made at any particular time, other than in connection with making, increasing, extending, or renewing a loan. Nonetheless, the preamble indicated that a regulated lending institution and servicer acting on its behalf should develop policies and procedures to ensure that, when a determination has been made that property securing a loan is located in a SFHA, they satisfy the requirements of the Reform Act's forced placement provision.

The proposal also noted that it might be appropriate as a matter of safety and soundness for the agencies to ensure that institutions that are significantly exposed to the risks for which flood insurance is designed to compensate determine the adequacy of flood insurance coverage by (1) periodic reviews, or (2) reviews triggered by remapping of areas represented in a regulated lending institution's loan portfolio.

The agencies invited comment on the advisability of issuing guidance in this area and on how the guidance should differentiate among regulated lending institutions based on their levels of exposure to flood risk. In particular, the agencies invited comment on the methods that regulated lending institutions already use or are considering for determining the adequacy of flood insurance coverage;

the cost (or other burden) associated with portfolio reviews; and on whether the additional loans for which flood insurance would be required as a result of portfolio reviews would be significant in relation to a regulated lending institution's or its servicer's portfolio.

The agencies received 76 comment letters on this issue, the most letters received on one topic. Forty-four commenters agreed with the agencies' view that the Reform Act does not require retroactive or prospective portfolio review. The same number agreed with the agencies' view that the final rule should not impose a requirement for retroactive or prospective portfolio reviews. Eleven commenters urged the agencies not to issue additional guidance as a safety and soundness matter for institutions that are significantly exposed to the risks for which flood insurance is designed to compensate. However, fourteen commenters recommended that the agencies issue informal guidance addressing, for example, when an institution is ''significantly exposed.''

Twenty commenters stated that the decision whether to engage in portfolio review should be left to the lender. Six recommended that the decision should be determined as a result of examinations, and not dictated in advance by regulations or agency guidance. Some of these commenters stated that the agencies should impose a portfolio review burden only on those individual institutions found in examinations to have inadequate systems in place. Others recommended that safety and soundness issues with respect to the adequacy of flood insurance should be handled on a case-by-case basis through the examination process.

An issue that generated significant comment is whether the Reform Act's forced placement provision implicitly imposes on lenders an affirmative obligation to monitor loans for FEMA map changes for the life of the loan. Ten commenters requested the agencies to address this uncertainty in the final rule.

Nine commenters questioned whether the agencies' position on portfolio review is consistent with the forced placement language of the Reform Act. These commenters stated that the forced placement provision appears to require some action on the lender's part in response to remappings, as a lender will not know whether to force place flood insurance unless it is apprised of changes in the flood zone status of the property. These commenters indicated that the preamble's statement that prospective portfolio review is not required implies that a lender is not required to monitor for map changes subsequent to origination. Another commenter also pointed out that in order to comply with the forced placement provision, a lender may be obliged to conduct a retroactive portfolio review to determine whether it is required to force place insurance on any loans in its portfolio.

Fourteen commenters, however, stated that prospective monitoring is not required because the Reform Act did not group map changes with the statutory tripwires listed in the basic purchase provision of the Reform Act. In their view, a lender does not have a duty to track for map changes. Seven commenters recommended that the final rule explicitly state that there is no duty to track for map changes or that ongoing monitoring is not required. Others pointed out that a requirement to make flood determinations upon remapping alone, without an intervening tripwire event, would impose costly and unnecessary burdens on lenders.

One commenter urged that the final rule provide that the lender's flood determination obligation after loan origination is limited only to the tripwire events, unless the lender, for its own portfolio risk management reasons, wishes to adopt a different approach. Fourteen commenters suggested that life of loan monitoring is one less expensive method lenders could use, pointing out that the cost for ongoing tracking of loans for flood map changes would be lower than the cost of performing periodic reviews or entire portfolio reviews triggered by remappings. Five commenters stated that the additional loans for which flood insurance would be required as a result of portfolio reviews would be insignificant in relation to the lender's or its servicer's portfolio.

The agencies reiterate their view that the Reform Act does not require lenders to engage in retroactive or prospective portfolio reviews or any other specific method for carrying out their responsibilities under the Federal flood insurance statutes. The Reform Act clearly requires lenders to check the status of security property for loans when triggered by the statutory tripwires. The Reform Act did not add remappings to the list of statutory tripwires. The Reform Act does not require lenders to monitor for map changes, and the agencies will not impose such a requirement by regulation. The joint final rule does not require that determinations be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan, the lender, or servicer acting on the lender's behalf, determines that required flood insurance is lacking, the Reform Act requires the lender, or servicer acting on the lender's behalf, to initiate forced placement procedures. A lender, or servicer acting on the lender's behalf, continues to be responsible for ensuring that where flood insurance was required at origination, the borrower renews the flood insurance policy and continues to renew it for as long as flood insurance is required for the security property. If a borrower allows a policy to lapse when insurance is required, the lender, or servicer acting on its behalf, is required to commence forced placement procedures.[28]

The preamble to the proposal stated that depending on the location and activities of a lender, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. The agencies believe that each lender is in the best position to tailor its flood insurance policies and procedures to suit its business. Lenders should evaluate and, when necessary, modify their flood insurance programs to comport with both the requirements of Federal flood insurance statutes and regulations and principles of safe and sound banking. The agencies believe that more experience should be gained before a decision is made that further guidance is necessary for institutions in areas that have significant exposure to flood hazards. The agencies caution, however, that an institution with a lending area that includes communities that are subject to significant flood hazards, but that do not participate in the NFIP, presents special problems that may not be adequately addressed by the procedures generally used to limit flood risks, such as monitoring of remappings and other procedures.

Penalties

The proposal noted that the penalty provisions of the Reform Act are self-executing and do not require the agencies to develop regulations to implement them. Thus, the agencies did not propose regulations on the penalty provisions. The agencies received six comment letters on this issue. Two recommended that the final rule set out the statutory provisions contained in

[28] The insurance provider routinely notifies the lender, or servicer acting on behalf of the lender, along with the borrower when the insurance contract is due for renewal. The insurance provider also routinely notifies the lender or its servicer as well as the borrower if the insurance provider has not received the policy renewal.

section 102(f) and (g) of the 1973 Act, as amended by the Reform Act, 42 U.S.C. 4012a(f) and (g). Two others requested that the final rule provide guidance on how the agencies intend to implement the broad enforcement authority given to them to take remedial action under section 102(g) of the 1973 Act. One asked the agencies to provide guidance on how the phrase ''pattern or practice'' of noncompliance will be construed, expressing the concern that interpretations should be uniform and not left completely to the discretion of individual examiners. The agencies have determined not to repeat the provisions of the statute in the joint final rule.

One commenter suggested that the final rule refer to the procedural rules that apply to such enforcement actions. The uniform rules of practice and procedure for agency administrative enforcement actions developed by the OCC, Board, FDIC, OTS, and NCUA (Uniform Rules) apply to such actions. Those rules were amended recently to apply the Uniform Rules to the civil money penalty provisions and the remedial actions described in section 102(f) and (g) of the 1973 Act.[29]

Determination Fees

General. The proposed rule included a provision that set forth the authorization conferred by the Reform Act on a lender, or servicer acting on the lender's behalf, to charge a reasonable fee for the costs of making a flood hazard determination under specified circumstances: if the borrower initiates the transaction (making, increasing, extending, or renewing a loan) that triggers a flood hazard determination; if the determination reflects FEMA's revision of flood maps; or if the determination results in the purchase of flood insurance by the lender, or servicer acting on behalf of the lender, under the forced placement provision.

The agencies received 43 comment letters on this issue. Fifteen commenters requested that the final rule clarify that the authority to charge a reasonable fee for the costs of making a flood hazard determination covers a ''life-of-loan'' charge to the borrower that would pay for monitoring of the flood hazard status of the security property for the term of the loan. The agencies believe that the statutory authority to charge a borrower a reasonable fee for a flood hazard determination does extend to a fee for life-of-loan monitoring by either the lender, or servicer acting on behalf of the lender, or by a third party, such as a flood hazard determination company.

While the Reform Act specifies the circumstances that may give rise to the charging of a determination fee, the Act does not expressly provide what may be included in the determination fee nor does the joint final rule adopt a rigid definition. However, the agencies agree that a determination fee may include, among other things, reasonable fees for the costs of an initial flood hazard determination, as well as reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of a security property during the life of a loan for purposes of making determinations on an ongoing basis. Consequently, the joint final rule has been clarified to provide that a determination fee may include, but is not limited to, a life-of-loan monitoring fee. Because the authority to charge a life-of-loan monitoring fee is based on the authority to charge a determination fee, the monitoring fee may be charged only if one of the specified events in the statute occurs.

A commenter asked whether the authority to charge a reasonable determination fee extended to a situation where there has been a remapping, but the security property was found not to be in a SFHA. Section 102(h) of the 1973 Act, 42 U.S.C. 4012a(h), does not distinguish between positive and negative flood hazard determinations in its authorization to charge a reasonable fee for that service in the event of a remapping. Consequently, the agencies believe that a lender, or servicer acting on the lender's behalf, may charge a fee in either situation.

One commenter inquired whether authority to charge determination fees extended only to determinations by third parties. Section 102(h) of the 1973 Act does not distinguish between determinations done in-house by a lender or servicer acting on its behalf and those performed by another entity. The agencies believe that a lender, or servicer acting on its behalf, may charge a determination fee if either of the entities performs this service itself or if the lender or its servicer arranges to have a third party perform the determination.

One commenter requested that the final rule provide that a lender may include out of pocket costs, internal costs, and profit as part of a reasonable flood hazard determination fee. Another suggested that a reasonable fee should cover the costs of notification, obtaining flood insurance, and adding flood insurance premiums to the loan balance. The agencies decline, however, to list all of the components of a reasonable flood hazard determination fee (which may include a life-of-loan monitoring fee) in the joint final rule because that determination may vary depending upon circumstances and is best determined on a case-by-case basis by the regulated lending institution.

Truth in Lending Act Issues. Seven commenters raised issues concerning the interaction between the rules concerning flood insurance and rules under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, particularly with respect to the treatment of determination fees charged at consummation that include life-of-loan coverage and fees charged subsequent to closing.

Some commenters argued that Regulation Z[30] should not require the portion of a life-of-loan monitoring fee that is not related to the initial determination to be included as part of the finance charge. One commenter stated that, in its experience, the addition of a portion of the life-of-loan monitoring fee to the finance charge did not have a significant impact on the finance charge disclosed, although the costs involved in breaking down charges for the purposes of Regulation Z impose a burden on lenders.

The official staff commentary to Regulation Z (12 CFR part 226 (Supplement I)) explains the proper treatment of life-of-loan fees. The commentary states that fees for services that will be performed periodically during the loan term, including fees for determinations as to whether security property is in a SFHA, may not be excluded from the finance charge, regardless of when the fee is charged. The commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge.[31] If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge. Further consideration of this issue would be beyond the scope of this rulemaking.

Several commenters indicated that determination fees assessed after consummation, such as fees for a new determination following a remapping, should not be included as part of the finance charge disclosures under Regulation Z. These commenters argued

[29] *See* 61 FR 28021 (June 4, 1996) and 61 FR 20330–20356 (May 6, 1996). The FCA expects to make similar amendments to its rules of practice. *See* 12 CFR part 662.

[30] The Board's Regulation Z, 12 CFR part 226, implements the Truth in Lending Act.

[31] *See* 12 CFR part 226, Supplement I—Official Staff Interpretations, 12 CFR § 226.4, comment 4(c)(7)-3 (1996).

that whether or not a new determination will be necessary and a fee imposed during the loan term is unknown at the time disclosure is provided. Regulation Z and the commentary state that, generally, if a disclosure provided at or before consummation becomes inaccurate because of a subsequent event, the inaccuracy does not result in a violation. Accordingly, no additional clarification is needed.

Notice Requirements

Borrower. The proposed rule closely tracked the specific notice requirements of section 1364 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4104a. Moreover, like the statute, the proposal contained a provision authorizing regulated lending institutions to use an alternate form of notice in certain situations. The alternate notice provision allows the lender to rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee of the property who is the ultimate recipient, or borrower, of the lender's funds. The need for this alternate form of notice would arise, for example, in a situation where the lender is providing financing through a developer for the purchase of condominium units by multiple borrowers. The lender may not deal directly with the individual condominium unit purchaser and, in such a case, need not provide notice to each purchaser but may instead rely on the developer/seller's assurances that the developer/seller has given the necessary notice. The same may be true for a cooperative conversion, in which case the sponsor of the conversion may be providing the required notice to the purchasers of the cooperative shares. A purchaser of shares in a cooperative may be considered to be a ''lessee'' rather than a purchaser with respect to the underlying real property. For the reasons explained later, the agencies are adopting the notice requirements provision essentially as it was proposed with minor revisions to clarify the text.

Twenty-two commenters expressed broad support for the continued use of the term ''borrower'' in the notice requirement rather than the phrase ''purchaser or lessee'' used in the statute. The joint final rule retains the term ''borrower,'' except that the alternate notice provision has been revised to clarify that the recipient of the notice to the borrower in cases where the alternate method applies will be the purchaser or lessee of the property.

Twenty commenters, citing increasingly compressed time frames for loan approval and closing in certain circumstances, requested specific guidance on what is meant by the ''reasonable time'' standard for notice delivery established by section 1364 of the 1968 Act, and followed by the agencies in the proposed rule. Other commenters noted that the ''Use of Prescribed Form of Notice'' provision of the proposed rule appeared to establish a conflicting standard of reasonable time—ten days—for notice purposes. These commenters asked which standard controlled. The agencies believe that the statutory standard of providing written notification of special flood hazards within a reasonable period before completion of the transaction offers regulated lending institutions sufficient flexibility to meet the statutory goal of providing adequate notice to borrowers and servicers, while accommodating the need in appropriate circumstances for an abbreviated notice period.

What constitutes ''reasonable'' notice will necessarily vary according to the circumstances of particular transactions. Regulated lending institutions should bear in mind, however, that a borrower should receive notice timely enough to ensure that (1) The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. In light of these considerations, the joint final rule does not establish a fixed time period during which a lender provides notice to the borrower. To avoid any confusion regarding application of the ''reasonableness'' standard to notice delivery, the proposed rule authorizing use of the sample form of notice provided in appendix A of the rule has been revised to provide that delivery of notice based on the sample form of notice must take place within a reasonable time before the completion of the transaction. The agencies generally continue to regard ten days as a ''reasonable'' time interval.

Two commenters also raised questions regarding the alternate method of notice provision in the proposed rule. One commenter questioned whether the seller or lessor of the property—as opposed to the lender—is supposed to make the determination regarding the flood status of a security property pursuant to this provision. Another commenter questioned whether the seller or lessor must use the sample form of notice set forth in appendix A to the final rule.

In response, the agencies note that this section of the joint final rule does not shift the burden of determining flood status from the lender to the seller or lessor. Rather, it implements the provision of section 1364(a)(1) of the 1968 Act that permits borrower notice delivered by a seller or lessor to substitute for lender notice so long as the lender receives satisfactory assurances that the notice has been delivered to the borrower. The prescribed contents of the notice do not change when the seller or lessor provides notice to the borrower. Before relying on the alternate form of notice, a lender must have a written assurance that the notice provided by the seller or lessor contained all the elements required by section 1364 of the 1968 Act. The alternate notice provision in the joint final rule is not intended to set a lower notification standard. The seller or lessor notice is subject to the same content requirement as notice by the lender, but a seller or lessor need not use the sample form of notice provided in appendix A to the final rule in order for a lender to rely on the notice.

The agencies received three comments concerning the effect of the proposed notice provisions on lenders that finance the purchase of mobile homes. These commenters noted that, in some mobile home lending transactions, the lender may not know where the mobile home is to be located until just prior to the time of loan closing. In other so-called ''home only'' transactions, the purchaser of the mobile home buys and finances the home separately from the land on which it ultimately will be located. These commenters asserted that they would be unable to comply with the notice requirements until they learn where the mobile home will be located and can thus determine whether the mobile home will be located in a SFHA.

Consistent with the previous discussion in this section of the reasonable notice standard, the agencies believe that the notice requirements of the 1968 Act, as amended, can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home is or will be located in a SFHA and before completion of the loan transaction. Particularly in those circumstances where time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notification of flood hazards to borrowers at the earliest practicable time.

Moreover, the agencies will not apply the borrower notice requirements to those ''home only'' mobile home transactions that close before the permanent location for the mobile home

is known. Clearly, a lender cannot determine whether flood insurance is required before the location of the mobile home has been fixed. When the lender learns the location of the mobile home, the lender must determine whether the mobile home is in a SFHA, notify the borrower and require the purchase of any required flood insurance. The agencies recommend that lenders consider notifying borrowers in ''home only'' mobile home transactions, at the time the loan closes, that they will be required to have and pay for flood insurance if the mobile home they purchase is eventually located in a SFHA in a participating community. The joint final rule does not require this type of notice because the statute does not require it. The agencies' recommendation reflects their view that it would be prudent practice for lenders to avoid imposing unanticipated obligations and costs on borrowers if and when flood insurance becomes necessary.

Servicer. The Reform Act added loan servicers to the entities that must be notified of special flood hazards, and the proposal requested comment on the appropriate timing of notice to the servicer. Thirty commenters felt that notification to the servicer in advance of the closing would not be possible or would serve no purpose. Commenters also pointed out that transfer to a servicer can take up to four months and that in many cases the servicer's identity will not be known until well after the closing. A number of alternative schedules were suggested, including a requirement that the notice of special flood hazards be transmitted to the servicer along with the other data on hazard insurance and taxes required to service a loan with an escrow, so that the servicer can escrow for flood insurance payments along with other escrowing for hazard insurance and taxes. In recognition that the servicer is often not identified prior to closing, the joint final rule requires notice to the servicer as promptly as practicable after the lender provides notice to the borrower, and provides that notice to the servicer must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes.

Six commenters recommended that the final rule state that a copy of the notice to the borrower would suffice to fulfill the notice requirement to the servicer. The proposal permitted the lender to use the same notice for both the borrower and servicer. That provision is adopted without change in the joint final rule. The proposed rule also has been revised to explicitly state that delivery of a copy of the borrower's notice to the servicer suffices as notice to the servicer.

Several commenters recommended that a separate notice to a servicer affiliated with the lender not be required. The agencies do not agree with this recommendation. The statute requires the lender to notify the servicer of special flood hazards, and the joint final rule reflects this requirement. Moreover, even in the case of servicing by an affiliate, the lender would ordinarily transmit a file to the servicer, either in writing or electronically, to enable the servicer to collect and disburse payments, and the notice of special flood hazards can be transmitted as part of that process without imposing an undue regulatory burden.

The proposed rule has been revised to indicate that the notice to the servicer may be transmitted in written or electronic form.

FEMA or FEMA's Designee. The joint final rule also implements the statutory requirement that, in connection with making, increasing, extending, renewing, selling, or transferring a loan secured by improved real estate or a mobile home located in a SFHA, regulated lenders notify the Director of FEMA or the Director's designee of the identity of the loan servicer and of any change in the servicer. Notice of the identity of the servicer will enable FEMA to provide notice to the servicer of a loan 45 days before the expiration of a flood insurance contract, as required by section 1364(c) of the 1968 Act, as amended. FEMA has designated the insurance provider as its designee to receive notice of the servicer's identity and of any change therein, and at FEMA's request this designation is stated in the joint final rule.

Six commenters requested a model form of notice to the Director of FEMA or the Director's designee, or guidance on the information to be included in the notice. Some commenters suggested that, in the case of a loan subject to RESPA where a Notice of Transfer of servicing to the borrower is required, sending to the Director or the Director's designee a copy of such Notice of Transfer should suffice. The agencies believe that delivery of a copy of the Notice of Transfer, which includes the name, address, and other information concerning the servicer, may be sufficient if the sender includes enough information on or with the notice to enable the Director or the Director's designee to identify the loan and the security property. Other forms of notice also are sufficient if the notice provides information that enables the Director or the Director's designee to identify the loan, the security property, the servicer, and the servicer's address.

Several commenters inquired about electronic transmission of the notice, and one inquired about the possibility of batch transmission. As in the case of notice to the servicer, the joint final rule permits electronic transmission of the notice to the Director or the Director's designee. The agencies also note that nothing in the joint final rule prohibits a timely batch transmission.

Several commenters questioned the need to notify the Director or the Director's designee if the lender or an affiliate of the lender is the loan servicer. The agencies believe that the statute requires notice by the lender to the Director or designee of the initial servicer, and the joint final rule reflects this requirement. However, since the Director has chosen the insurance provider as his designee, the agencies believe that the regulatory burden of notification is minor because there is ordinarily an exchange of information between the lender and the insurance provider at the time a loan is made. Therefore, the agencies have not adopted this suggestion.

Three commenters objected to notifying FEMA when a loan is sold on a ''service released'' basis, where the servicing is sold along with the loan. Failure to provide such notice would defeat the purpose of the requirement, however, as FEMA will have no record of the identity of either the owner or servicer of the loan. The joint final rule is therefore unchanged in this regard.

Three commenters expressed confusion over a lender's obligation in the event of a subsequent transfer of servicing by a transferee servicer, on the grounds that the lender would not necessarily be aware of the transfer. The agencies note that under section 1364(b)(1) of the 1968 Act, as amended, the duty to provide notice to FEMA follows the servicing, and the joint final rule reflects this. Accordingly, the obligation to notify the Director or designee of subsequent changes is transferred to the new servicer along with a transfer of servicing.

Two commenters wanted to limit notice to the ''making'' of a loan and any transfer of servicing, on the grounds that notices in connection with increasing, extending, renewing, selling, or transferring a loan will be redundant. The statute, however, requires notice in all such cases. Moreover, in the case of a loan made before the effective date of the joint final rule, a notice on an increase, extension, renewal, sale, or transfer of the loan will be the first legally required notice to the Director or the Director's designee. Therefore, the

agencies have not adopted this suggestion.

Five commenters argued that it is an unnecessary regulatory burden to notify FEMA when the servicing is transferred or the loan is paid off. The statute requires notice to the Director or the Director's designee when servicing is transferred, but neither the statute nor the joint final rule requires notice when a loan is paid off.

Appendix A—Sample Form of Notice

The agencies received 22 comments on the sample form of notice set forth in appendix A of the proposed regulation. Five commenters asked whether use of the sample form of notice is mandatory. The agencies stress that use of the sample form of notice is not mandatory. A regulated lender may choose to use the sample form as presented in appendix A of the joint final rule to comply with the notice requirements of section 1364 of the 1968 Act. In addition, lenders may personalize, change the format of, and add information to the sample form if they wish to do so. The agencies stress that the sample form merely provides an example of an acceptable form that notice may take. However, to ensure compliance with the notice requirements contained in the joint final rule, a lender-revised notice form must provide the borrower at a minimum with the information in the sample form of notice.

The agencies made several changes to the sample form in response to suggestions from commenters. To streamline the sample form, the agencies combined the introductory paragraphs of the sample notice. The agencies adopted a language change suggested by FEMA regarding the statistical risk of flooding in a SFHA. To increase borrower recognition of their flood insurance responsibilities under the NFIP, the agencies added a reference to the authority and obligation of a regulated lender to force place flood insurance under the 1973 Act. Finally, to clarify that flood insurance is not available for land, the agencies added a sentence that with respect to the amount of flood insurance coverage allowable under the NFIP, the value of the land should be deducted from the overall value of the security property.

Use of Standard Flood Hazard Determination Form

The proposed rule required a regulated lender to use the standard flood hazard determination form (SFHD form) developed by FEMA [32] to determine whether the building or mobile home offered as security property is or will be located in a SFHA in which flood insurance is available under the 1968 Act. The proposed rule allowed the lender to use the form in a printed, computerized or electronic form. The proposed rule required the lender to retain a copy of the completed form, in either hard copy or electronic form, for the period of time the lender owns the loan.

The agencies received 22 comments regarding use of the SFHD form. Four commenters raised issues dealing with the format of the form. For example, two commenters requested clarification about how an electronically maintained form could be used and whether it must be in the same format as the hard-copy form. FEMA addressed the format of an electronically maintained form in the preamble of its final rule adopting the SFHD form.[33] FEMA stated that if an electronic format is used, the format and exact layout of the SFHD form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the SFHD form.

One commenter asked whether FEMA and the agencies could work together to combine the SFHD form, the notice of flood hazards to the borrower and servicer, and notice commencing the forced placement procedure. The agencies have not adopted this suggestion because the three documents have different purposes. The SFHD form must be used in connection with all loans to determine whether the security property is or will be located in an area having special flood hazards. On the other hand, the notice to the borrower and the servicer must be provided to the borrower and servicer only when the security property is located in a SFHA. The Reform Act does not require the agencies to develop a specific form of notice to borrowers for use in connection with the forced placement procedures. For example, a lender, or servicer acting on the lender's behalf, may choose to send the notice directly. Others may decide to use the insurance company that issues the forced placement policy to send the notice. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. For information concerning the contents of the notification letters used under the MPPP, lenders should consult FEMA's MPPP Notice.[34]

Thirteen commenters addressed the topics of the guarantee of information provided by a third party and reliance on a previous determination under section 1365(d) and (e) of the 1968 Act. The agencies' proposed rule did not specifically address these issues, but the preamble discussed them. The preamble explained that the Reform Act permits lenders to rely on third-party flood hazard determinations only if the third party guarantees the accuracy of the information provided to the lender. The Reform Act also permits a lender to rely on a previous determination whether or not the security property is located in a SFHA. A lender is exempt from liability for errors in the previous determination if the previous determination is not more than seven years old and the basis for it was recorded on the SFHD form mandated by the Reform Act. There are, however, two circumstances in which a lender may not rely on a previous determination: (1) if FEMA's map revisions or updates show that the security property is now located in a SFHA, or (2) if the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

Several commenters requested clarification about the statutory provision that a regulated lender may not rely on a previous determination unless the determination was made on FEMA's SFHD form. The agencies believe that this is the correct reading of the statutory provision. Section 1365 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4104b, states that a person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination if the basis for the previous determination was set forth on FEMA's SFHD form.

Two commenters pointed out that pursuant to section 1365 of the 1968 Act, a lender cannot rely on a previous determination set forth on a SFHD form when it makes a loan, only when it increases, extends, renews or purchases a loan. The agencies agree with this interpretation of section 1365 of the 1968 Act but note that subsequent transactions by the same lender with respect to the same property will be

[32] *See* 60 FR 35276 (July 6, 1995) (codified at 44 CFR 65.16 and Appendix A to part 65).

[33] The agencies required regulated lending institutions to use the FEMA-devised SFHD form by means of a joint final rule issued without notice and comment prior to the issuance of the proposal to implement the other Reform Act amendments. The agencies' proposal incorporated that provision. *See* 60 FR 35286 (July 6, 1995).

[34] Notice by FEMA, 60 FR 44881 (August 29, 1995).

treated as renewals and will require no new determination.

The agencies adopt this provision as proposed.

Recordkeeping Requirements

The proposed rule included two recordkeeping requirements: (1) retention of a copy of the completed SFHD form, in either hard copy or electronic form, for the period of time the regulated lender owns the loan; and (2) retention of the record of the receipt of notice to the borrower and the servicer for the period of time the regulated lender owns the loan. In addition, the agencies asked for comment on whether the final rule should require the lender to retain in its files a copy of each notice to FEMA of the identity of the servicer and/or a copy of each mandatory notice to borrowers and servicers. The agencies received 58 comment letters addressing these and other issues pertaining to recordkeeping.

Of the 25 comment letters addressing whether the final regulation should require the lender to retain in its files a copy of the notice to FEMA of the identity of the servicer, 19 commenters believed that such a requirement is unnecessary. Like the proposed rule, the joint final rule does not require that the lender retain in its loan files a copy of the notice to FEMA of the identity of the loan servicer. The joint final rule continues to implement the statutory requirement that lenders must notify FEMA in writing of the identity of the loan servicer and/or of a transfer in servicing rights.

Commenters were mixed in their views whether a regulated lender should be required to maintain a copy in its loan files of the notice to the borrower and the servicer. The joint final rule does not require that a copy of these notices be maintained in the loan files because the Reform Act does not require it.

Like section 1364 of the 1968 Act, as amended, and the proposed rule, the joint final rule requires lenders to retain a record of the receipt of the notices by the borrower and the servicer for the period of time the lender owns the loan. A number of commenters requested clarification about what constitutes a ''record of receipt.'' The joint final rule does not prescribe a particular form for the record of receipt. However, the agencies believe that the record of receipt should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt may include a borrower's signed acknowledgment on a copy of the notice, a borrower-initialed list of documents and disclosures that the lender provided the borrower, or a scanned electronic image of a receipt or other document signed by the borrower. A lender may keep the record of receipt provided by the borrower and the servicer in the form that best suits the lender's business practices.

Two commenters supported the requirement that lenders must retain a copy of the completed SFHD form, in either hard-copy or electronic form, for the period of time the lender owns the loan. One commenter stated that a copy of the completed form should be retained in the appropriate loan file; the other commenter stated that it need not necessarily be kept in the loan file. The agencies have adopted the SFHD form retention requirement of the proposed rule unchanged. The joint final rule does not specify the location where the copy must be kept. A lender may, but is not required to, retain the copy in the relevant loan file.

Seven commenters stressed that lenders should be able to retain both the record of the receipt of the notices by the borrower and the servicer and the SFHD form in electronic form. As discussed earlier, lenders may retain these records electronically. Lenders are expected, however, to be able to retrieve these electronic records within a reasonable time pursuant to a document request from their Federal supervisory agency.

Agricultural Lending Considerations

Six commenters responded to the discussion in the preamble to the proposal on agricultural lending considerations. The comments generally related to the characteristics that make agricultural lending different from other types of commercial and residential mortgage lending for purposes of flood insurance. Unlike residential lending, where most of the value of the loan collateral is in the residence, in agricultural lending the value of the collateral is concentrated not only in the land, but also in multiple farm buildings. The commenters asserted that it will be difficult to value agricultural buildings for flood insurance purposes. Some agricultural buildings have valuable utility to farm operations but are of relatively nominal market value. Other buildings may have a higher market value but comprise a relatively low percentage of the total loan collateral. Commenters also opined that many agricultural structures would suffer little damage in a flood. To the extent that NFIP flood insurance pricing does not recognize differences in the market value and susceptibility to flood damage of various agricultural structures, commenters asserted that borrowers of regulated agricultural lenders will be forced to pay the same rates for flood insurance as are applicable to other types of commercial structures. Thus, these commenters maintained that participation in the NFIP may be disproportionately expensive for regulated agricultural lenders and their borrowers.

To address these issues, one commenter requested reconsideration of the appropriateness of the proposed regulation for agricultural lending. Another commenter suggested that the agencies create a separate definition for agricultural buildings that would make it possible to treat agricultural structures on a collateral property as a group for flood insurance purposes.

While recognizing that agricultural lenders and their borrowers may be in a different position from others affected by the requirements of the NFIP, the agencies have concluded that Congress did not intend to differentiate agricultural from other types of lenders in the Federal flood insurance legislation. Agricultural lending by commercial banks, thrifts, and credit unions has been covered by the flood insurance statutes since the passage of the 1973 Act. The Reform Act extended the scope of the NFIP to the institutions of the Farm Credit System, which lend substantially in the agricultural sector. The Reform Act clearly identifies the regulated lending institutions covered by the NFIP and offers no leeway for a regulatory exclusion of agricultural lenders. Similarly, issues related to pricing of flood insurance, while obviously significant to regulated lenders and their borrowers, are not within the regulatory purview of the agencies.[35]

As noted in the preamble to the proposal, the FCA encourages Farm Credit System institutions, as well as other agricultural lenders, to work with FEMA to resolve questions regarding the operation and cost structure of the NFIP as it applies to insurance of agricultural structures. In its comment letter on the proposed rule FEMA indicated that it is studying wet floodproofing techniques to determine whether wet floodproofing criteria can be included in the NFIP floodplain management regulations.[36]

[35] As regards the treatment of a group of agricultural buildings for flood insurance purposes, the preamble to the proposal noted that FEMA permits borrowers to insure their nonresidential buildings using one policy with a schedule separately listing the buildings. However, each building must be covered by flood insurance.

[36] In this connection, one commenter questioned why the proposal did not address the effect of

Concurrently, FEMA has indicated that it plans to determine the appropriate flood insurance rates for agricultural structures under the NFIP. Any proposed changes in the NFIP floodplain management regulations will occur through a rulemaking process that provides for public notice and comment. The agencies urge agricultural lenders and their borrowers to participate in pertinent FEMA proceedings so that they may have an opportunity to raise these issues with FEMA. In the agencies' view, these issues are subject to FEMA's administrative and regulatory jurisdiction as administrator of the NFIP.

FEMA Flood Hazard Determination Appeals

The proposed rule did not address the process for appealing flood hazard determinations to FEMA; however, the agencies received eleven letters with comments about various aspects of the process. Many of the commenters' concerns are addressed in FEMA's final rule entitled ''Review of Determinations for Required Purchase of Flood Insurance'' and in the preamble to that final rule.[37] For example, two commenters commented on whether the borrower and the lender must jointly submit an appeal, or whether an appeal submitted by one or the other would be accepted. In its final rule, FEMA clarified that a request must be submitted jointly by the lender and the borrower.

Two commenters recommended that the agencies' final regulation include instructions on how to file a flood determination appeal with FEMA. The agencies believe it is inappropriate to provide this information in the joint final rule because the flood determination appeal process is governed by FEMA and delineated in FEMA's regulations. The agencies understand that FEMA is currently developing a ''sample letter'' with filing instructions for use by lenders and borrowers in submitting an appeal to FEMA.

Three commenters asked which party, the lender or the borrower, should pay FEMA's fee for deciding the appeal. While this is a matter for the lender and the borrower to determine, the agencies believe that the party who requests the appeal of a flood determination generally will bear the cost of the appeal. An appeal is typically initiated at the request of a borrower who believes the property securing the loan is, in fact, not located in an SFHA, despite a flood determination to the contrary. The appeal fee is not charged by the lender as an incident to or condition of the credit. The official staff commentary to Regulation Z provides that charges imposed by someone other than the creditor are generally finance charges only if the creditor requires the borrower to use the third party's services, or the creditor retains the charge.

Finally, four commenters inquired about the flood insurance requirement when a flood determination appeal is in process. FEMA responded to similar questions in the preamble to its final rule. Generally, under section 102(e)(3) of the 1973 Act, 42 U.S.C. 4012a(e)(3), the mandatory flood insurance requirement is temporarily delayed until FEMA responds to an appeal. If FEMA fails to respond before the later of 45 days or the closing of the loan, the mandatory flood insurance purchase requirement is delayed until FEMA provides a response.

Miscellaneous Issues

Standards with respect to purchased loans. Five commenters requested guidance on minimum standards for loan participations and purchased loans. Six other commenters indicated that no guidance on purchased loans is necessary because institutions can manage their own risks internally. Some of those commenters also noted that additional guidance would be tantamount to increased regulatory burden.

If institutions purchasing loans use underwriting standards that address flood insurance, such as requirements for representations from the seller that flood insurance has been purchased for security property located in a special flood hazard area, the agencies agree that no further guidance is necessary. Where an institution's portfolio includes more than an insignificant number of purchased loans and its underwriting standards do not address flood insurance coverage, however, the agencies would expect the institution to have other procedures in place to ensure that it does not expose itself to significant risks through such purchases.

Moreover, the agencies believe that the effects of the Reform Act-mandated standards for flood insurance for loans purchased by Fannie Mae and Freddie Mac should be gauged over a period of time before determining whether further guidance is necessary for institutions in areas that have significant exposure to flood hazards. Institutions with significant lending in non-participating communities should have procedures to ensure that loans on properties in flood hazard areas where flood insurance is not available do not constitute an unacceptably large portion of the institution's loan portfolio.

Subordinate Liens. The agencies received 14 comments concerning flood insurance requirements for second mortgages or home equity loans. Because a second mortgage or a home equity loan is secured by a building or mobile home, these loans are covered by the flood insurance requirements, unless one of the statutory exemptions specifically applies.

Effective Date of Flood Insurance Policies. Some commenters asked about the applicability in various lending situations of the 30-day delay in effectiveness of flood insurance policies as prescribed in section 1306 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4013. FEMA addressed this issue in its Policy Issuance 8–95, dated December 5, 1995. FEMA determined that the 30-day waiting period generally is not applicable to the purchase of flood insurance in connection with making, increasing, extending, or renewing a loan.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the OCC, Board, FDIC, OTS, and NCUA (banking agencies) hereby certify that this joint final rule will not have a significant economic impact on a substantial number of small entities. Moreover, this joint final rule is required by the Reform Act. Accordingly, a regulatory flexibility analysis is not required.

In response to comments received during the public comment period (a substantial number representing smaller entities), the banking agencies have attempted to minimize regulatory burden by: (1) adding and revising definitions to make technically complex flood insurance rules more readily understood; (2) determining that the purchase of a loan is not the equivalent of the making of a loan for flood insurance purposes; and (3) minimizing the recordkeeping and notice requirements to include only those matters required by the statute.

section 580 of the Reform Act, 42 U.S.C. 4022(a)(2), with respect to agricultural structures. Section 580 relates to flood mitigation and floodplain management efforts under the NFIP and is not directly relevant to these regulations, which implement the Reform Act provisions pertaining to regulated lenders. Section 580 does appear pertinent, however, to wet floodproofing and other questions relating to coverage of certain repeated loss agricultural structures under the NFIP, which may be the subject of FEMA rulemaking.

[37] *See* 60 FR 62213 (December 5, 1995) (to be codified at 44 CFR 65.17).

As a general matter, the joint final rule does not impose standards that are in excess of industry standards with respect to flood insurance, as those standards are reflected in the underwriting standards for Fannie Mae and Freddie Mac. Further, for those lenders already covered by existing flood insurance requirements, the joint final rule does not represent a significant increase over the burden imposed under the current rules. For such lenders, the joint final rule would increase burden above that imposed under the current rules in the following cases: (1) where residential property securing a loan is located in a special flood hazard area and the lender requires escrows for other tax and insurance payments, premiums for required flood insurance must be escrowed as well; (2) the content of the notices currently provided to borrowers is modified to provide additional information to the borrower; and (3) notice to FEMA of the servicer of the loan secured by property located in a special flood hazard area is required to permit FEMA to contact the servicer if the flood insurance lapses.[38] The banking agencies believe that these increases in burden will result only in minor additional expenses for depository institutions.

V. Paperwork Reduction Act of 1995

The OCC, Board, FDIC, OTS, and NCUA (banking agencies) invite comment on:

(1) Whether the collection of information contained in this joint final rule is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The banking agencies asked similar questions in the proposal. Several commenters indicated that the banking agencies had underestimated the paperwork burden associated with the flood rules. For purposes of allocating the paperwork burden for the flood rules, FEMA is charged with the hours for *completing* the SFHD form (FEMA form 81–93; OMB Control No. 3067–0264), while the banking agencies are charged with the *recordkeeping* burden associated with the SFHD form and the notifications and additional recordkeeping required when a property is located in a SFHA. The separation of burden responsibility and reporting easily could cause the paperwork burden of these rules to appear to be understated. When viewed in conjunction with FEMA's burden, however, the banking agencies believe that the recordkeeping and notification burden estimates associated with these rules are reasonable.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in the OCC's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 1557–0202 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information requirements should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0202), Washington, DC 20503, with a copy to the Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements relating to the OCC's portion of this joint final rule are found in 12 CFR 22.6, 22.7, 22.9, and 22.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (national banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated number of respondents and/or recordkeepers: 3,000.

Estimated total annual reporting and recordkeeping burden: 78,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(i); *see also* 5 CFR 1320 Appendix A Item 1), the Board reviewed its portion of this joint final rule under the authority delegated to the Board by the Office of Management and Budget and assigned OMB control number 7100–0280. Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0280), Washington, DC 20503.

The collection of information requirements relating to the Board's portion of this joint final rule are included in 12 CFR 208.23. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (state chartered member banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The respondents/recordkeepers are for-profit financial institutions, including small businesses.

It is estimated that there will be 1,042 respondent/recordkeepers and a total of 26,800 hours of annual hour paperwork burden. The estimated annual hour paperwork burden per respondent/recordkeeper is 25.7 hours, 1 hour for recordkeeping and a total of 24.7 hours for: (1) Notifying the borrower and the servicer; (2) notifying the Director of FEMA of initial servicers; and (3) if necessary, notifying the Director of FEMA when a loan servicer has changed. Banks likely will add the required records to their existing usual and customary loan documentation. Thus there is estimated to be no significant annual cost burden over the annual hour burden. Additionally, the Board estimates that there is no associated capital or start up cost as banks are expected to use their current word processing programs to produce the notices.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan. Because the records would be maintained at state member banks and the notices are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

FDIC: The collections of information contained in the FDIC's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 3064–0120 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget,

[38] The provision concerning forced placement of flood insurance is self-implementing and is included in the joint final rule only to ensure that regulated lenders are aware of the authority and requirements of that provision. Including the provision in the joint final rule does not impose any additional burden on regulated lenders.

Paperwork Reduction Project (3064–0120), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collections of information requirements relating to the FDIC's portion of this joint final rule are found in 12 CFR 339.6, 339.7, 339.9, and 339.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (state chartered nonmember banks) and borrowers (anyone who applies for a loan secured by improved real estate or a mobile home which may be located in a SFHA).

The likely respondents/recordkeepers are insured nonmember banks and their subsidiaries.

Estimated number of respondents/recordkeepers: 6,250.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 162,500 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

OTS: The collection of information requirements contained in the OTS's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 1550–0088 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0088), Washington, DC 20503, with a copy to the OTS, 1700 G Street, NW., Washington, DC 20552.

The collection of information requirements relating to the OTS's portion of this joint final rule are found in 12 CFR 572.6, 572.7, 572.9, and 572.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (savings associations) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,500.

Estimated average annual burden hours per recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 39,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

NCUA: The collection of information requirements contained in the NCUA's portion of this joint final rule were approved by the Office of Management and Budget under OMB Control No. 3133–0143. Written comments on the collection of information should be sent to the Office of Management and Budget, OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Attn: Alexander Hunt.

The collection of information requirements relating to the NCUA's portion of this joint final rule are found in 12 CFR 760.6, 760.7, 760.9 and 760.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (Federally-insured credit unions) and borrowers (members that apply for a loan secured by improved real estate or a mobile home which may be located in a SFHA). The likely recordkeepers are Federally-insured credit unions.

Estimated number of respondents and/or recordkeepers: 700.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 16,325 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

VI. Executive Order 12866

OCC and OTS: The OCC and the OTS each has determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

VII. Executive Order 12612

Executive Order 12612 requires the NCUA to consider the effects of its actions on State interests. The NCUA's portion of this joint final rule will apply to all Federally-insured credit unions and reduce regulatory requirements. The NCUA Board has determined that the NCUA's portion of the joint final rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this joint final rule revises current OCC and OTS flood insurance regulations as prescribed by the Reform Act. The Reform Act specifically requires six agencies, including the OCC and OTS, to implement certain of the Reform Act's amendments through regulations. Therefore, to the extent that the joint final rule imposes new Federal requirements, the requirements are statutorily mandated by the Reform Act. Nevertheless, the OCC and OTS each has determined that its portion of the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not prepared budgetary impact statements or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 572

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part 22 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.
22.1 Authority, purpose, and scope.
22.2 Definitions.
22.3 Requirement to purchase flood insurance where available.
22.4 Exemptions.
22.5 Escrow requirement.
22.6 Required use of standard flood hazard determination form.
22.7 Forced placement of flood insurance.
22.8 Determination fees.
22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
22.10 Notice of servicer's identity.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 22.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 93a and 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 §§ 22.6 and 22.8, 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 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 22.2 Definitions.

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

(b) *Bank* means a national bank or a bank located in the District of Columbia and subject to the supervision of the Comptroller of the Currency.

(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.

§ 22.3 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.

§ 22.4 Exemptions.

The flood insurance requirement prescribed by § 22.3 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.

§ 22.5 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 § 22.3. 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.

§ 22.6 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.

§ 22.7 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 § 22.3, 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 § 22.3, 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.

§ 22.8 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 bank or its servicer on behalf of the borrower under § 22.7.

(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.

§ 22.9 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.

§ 22.10 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'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'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.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 14, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 781–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.8, paragraph (e) is removed and reserved, and appendix A—Sample Notices following paragraph (k)(6)(iii) is removed.

3. A new § 208.23 is added at the end of subpart A to read as follows:

§ 208.23 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section 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).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, 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. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* (1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *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.

(3) *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.

(4) *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.

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

(6) *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 section, 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.

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

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

(9) *Servicer* means the person responsible for:

(i) 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

(ii) 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.

(10) *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.

(11) *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.

(c) *Requirement to purchase flood insurance where available*—(1) *In general.* A state member 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.

(2) *Table funded loans.* A state member 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 section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) 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

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

(e) *Escrow requirement.* If a state member 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 state member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The state member bank, or a servicer acting on its behalf, 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 state member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form*—(1) *Use of form.* A state member 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.

(2) *Retention of form.* A state member 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.

(g) *Forced placement of flood insurance.* If a state member 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 paragraph (c) of this section, 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 paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the state member bank or its servicer shall purchase insurance on the borrower's behalf. The state member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees*—(1) *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 state member 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.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

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

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

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

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

(B) 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

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) 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.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance*—(1) *Notice requirement.* When a state member 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.

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

(i) 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;

(ii) 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));

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

(iv) 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.

(3) *Timing of notice.* The state member bank shall provide the notice required by paragraph (i)(1) 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.

(4) *Record of receipt.* The state member 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.

(5) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a state member 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 state member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

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

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a state member 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'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 state member 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.

(2) *Transfer of servicing rights.* The state member bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) 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 (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.23—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover the *lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

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

Sec.
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.

§ 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 §§ 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.

§ 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.

§ 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.

§ 339.4 Exemptions.

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

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the 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.

§ 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 § 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.

§ 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.

§ 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 § 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 § 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.

§ 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 § 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.

§ 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.

§ 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.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Directors.

Dated at Washington, D.C., this 13th day of August, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, chapter V of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.48 [Removed]

2. Section 563.48 is removed.

3. A new part 572 is added to read as follows:

PART 572—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.
572.1 Authority, purpose, and scope.
572.2 Definitions.
572.3 Requirement to purchase flood insurance where available.
572.4 Exemptions.
572.5 Escrow requirement.
572.6 Required use of standard flood hazard determination form.
572.7 Forced placement of flood insurance.
572.8 Determination fees.
572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
572.10 Notice of servicer's identity.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 572.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462, 1462a, 1463, 1464 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 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 §§ 572.6 and 572.8, 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 572.6 and 572.8 of this part apply to loans secured by buildings or mobile homes, regardless of location.

§ 572.2 Definitions.

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

(b) *Savings association* means, for purposes of this part, a savings association as that term is defined in 12 U.S.C. 1813(b)(1) and any subsidiaries or service corporations thereof.

(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.

§ 572.3 Requirement to purchase flood insurance where available.

(a) *In general.* A savings association 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 savings association 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.

§ 572.4 Exemptions.

The flood insurance requirement prescribed by § 572.3 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.

§ 572.5 Escrow requirement.

If a savings association 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 savings association shall also require the escrow of all premiums and fees for any flood insurance required under § 572.3. The savings association, or a servicer acting on behalf of the savings association, 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 savings association, or a servicer acting on behalf of the savings association, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 572.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A savings association 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 savings association 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 savings association owns the loan.

§ 572.7 Forced placement of flood insurance.

If a savings association, or a servicer acting on behalf of the savings association, 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 § 572.3, then the savings association 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 § 572.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the savings association or its servicer shall purchase insurance on the borrower's behalf. The savings association or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 572.8 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 savings association, or a servicer acting on behalf of the savings association, 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 § 572.7.

(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.

§ 572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a savings association 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 savings association 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 savings association 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 savings association provides notice to the borrower and in any event no later than the savings association 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 savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the savings association owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a savings association 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 savings association shall retain a record of the written assurance from the seller or lessor for the period of time the savings association owns the loan.

(f) *Use of prescribed form of notice.* A savings association 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.

§ 572.10 Notice of servicer's identity.

(a) *Notice requirement.* When a savings association 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 savings association shall notify the Director of FEMA (or the Director'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 savings association'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 savings association shall notify the Director of FEMA (or the Director'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.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 16, 1996.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

Farm Credit Administration

12 CFR CHAPTER VI

Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. Part 614 is amended by revising subpart S to read as follows:

Subpart S—Flood Insurance Requirements

Sec.
614.4920 Purpose and scope.
614.4925 Definitions.
614.4930 Requirement to purchase flood insurance where available.
614.4935 Escrow requirement.
614.4940 Required use of standard flood hazard determination form.
614.4945 Forced placement of flood insurance.
614.4950 Determination fees.
614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.
614.4960 Notice of servicer's identity.
Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Subpart S—Flood Insurance Requirements

§ 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 (1968 Act), as amended, and the Flood Disaster Protection Act of 1973 (1973 Act), as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans of Farm Credit System (System) institutions that are 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 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§ 614.4925 Definitions.

(a) *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.

(b) *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.

(c) *Designated loan* means a loan secured by a building or a mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

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

(e) *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 subpart, 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.

(f) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

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

(h) *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.

(i) *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.

(j) *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.

§ 614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan are covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 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 System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for purposes of this part.

(c) *Exemptions.* The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) 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

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

§ 614.4935 Escrow requirement.

If a System institution 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 4, 1996, the institution shall also require the escrow of all premiums and fees for any flood insurance required under § 614.4930. The institution, or a servicer acting on behalf of the institution, 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 institution, or a servicer acting on behalf of the institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 614.4940 Required use of standard flood hazard determination form.

(a) *Use of form.* System institutions 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 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* System institutions 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 institution owns the loan.

§ 614.4945 Forced placement of flood insurance.

If a System institution, or a servicer acting on behalf of the institution, 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 are not covered by flood insurance or are covered by flood insurance in an amount less than the amount required under § 614.4930(a), then the institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930(a), for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the institution or its servicer shall purchase insurance on the borrower's behalf. The institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the 1973 Act, any System institution, or a servicer acting on behalf of the institution, 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 under § 614.4945.

(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.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the institution shall mail or deliver a written notice containing the information specified in paragraph (b) of this section to the borrower and to the servicer of the loan. Notice is required whether or not flood insurance is available under the 1968 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 1973 Act (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and also may 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 the mobile home caused by flooding in a Federally declared disaster.

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

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

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

(f) *Use of prescribed form of notice.* An institution will be considered to be in compliance with the requirements of this section for notice to the borrower by providing written notice to the borrower containing the language presented in appendix A to this subpart within a reasonable time before the completion of the transaction. The notice presented in appendix A to this subpart satisfies the borrower notice requirements of the 1968 Act.

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution 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 institution shall notify the Director of FEMA (or the Director'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 institution'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 institution shall notify the Director of FEMA (or the Director'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.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 8, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, part 760 of chapter VII of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

760.1 Authority, purpose, and scope.
760.2 Definitions.
760.3 Requirement to purchase flood insurance where available.
760.4 Exemptions.
760.5 Escrow requirement.
760.6 Required use of standard flood hazard determination form.
760.7 Forced placement of flood insurance.
760.8 Determination fees.
760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
760.10 Notice of servicer's identity.

Appendix to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 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 §§ 760.6 and 760.8, 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 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 760.2 Definitions.

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

(b) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(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* means 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.

§ 760.3 Requirement to purchase flood insurance where available.

(a) *In general.* A credit union 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 loan.* A credit union 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.

§ 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 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.

§ 760.5 Escrow requirement.

If a credit union 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 November 1, 1996, the credit union shall also require the escrow of all premiums and fees for any flood insurance required under § 760.3. The credit union, or a servicer acting on behalf of the credit union, 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 credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Director (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 credit union 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 credit union owns the loan.

§ 760.7 Forced placement of flood insurance.

If a credit union, or a servicer acting on behalf of the credit union, 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 § 760.3, then the credit union 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 § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 760.8 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 credit union, or a servicer acting on behalf of the credit union, 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 credit union or its servicer on behalf of the borrower under § 760.7.

(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.

§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a credit union 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 credit union 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 credit union 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 credit union provides notice to the borrower and in any event no later than the time the credit union 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 credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union 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 credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

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

§ 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union 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 credit union shall notify the Director of FEMA (or the Director'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 credit union'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 credit union shall notify the Director of FEMA (or the Director'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.

Appendix to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located

participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 19, 1996.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

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