

- 1. An organization owns the land on which a building (owned by another organization) sits. The property is located in a V zone. Both organizations have common ownership. The organization that owns the building pays lot rent to the organization that owns the land.**

If we issue a loan to the organization that owns the land, securing only the land, is the customer exempt from flood insurance because the building is owned by a separate organization?

The loan described in this scenario does not meet the definition of a designated loan because it is not secured by a building or manufactured home. The borrower is not required to obtain flood insurance under these circumstances.

- 2. The bank has two commercial loans that are in flood areas. We have the required amounts of flood insurance on the structures. We were advised by auditors that since the UCC-1 filings include all assets (including the building contents) we need to have flood insurance on the contents of the buildings.**

Do we need insurance on the contents as well as the structure?

Yes, contents coverage is required based on the information provided in the question. There are three factors to consider when determining if flood insurance is required for contents:

- 1) Does the bank have a security interest in the building and its contents?
*Keep in mind that the method of securing collateral is not relevant. (i.e. UCC, Mortgage, Security Agreement)
- 2) Is the building that serves as collateral located in a Special Flood Hazard Area?
- 3) Are the secured contents stored in that building?

If the answer is yes to all of these questions, then flood insurance on contents is required. You should have procedures to make a reasonable determination of value on contents to obtain the appropriate amount of coverage.

- 3. I understand the rules to state that if a loan is secured by contents, but not by a building, the mandatory purchase of flood insurance rules do not apply even if the building in which those contents are housed is located in a Special Flood Hazard Area (SFHA). However, when both the building and the contents of that building secure the same loan, if the building is in the SFHA within a participating community then flood insurance would apply on both the building and the contents.**

In the event that one loan (A) is secured by a building in a SFHA and a second loan (B) is secured by the contents stored in that building, flood insurance rules apply to the building secured loan. Do the flood insurance rules apply to the second content secured loan? We are questioning this because the building in which the contents are

stored is in a SFHA and that building is held as collateral for a loan – just not the same loan.

For example:

Loan A is a \$150,000 term loan secured by a building that is located in a SFHA, flood insurance rules apply and the borrower must obtain coverage on the building. Because contents are not part of the collateral for this loan, flood insurance is not required on the contents, but is required on the building.

Loan B is a \$500,000 line of credit secured by inventory, equipment, and personal property. These items are housed in the building that secures Loan A, but the building is NOT part of the collateral for Loan B. Since the building is not part of the collateral for this loan, mandatory purchase does not apply to the contents.

Is that correct?

The interpretation is correct. Since Loan B is not secured by a building located in a SFHA, flood insurance is not required by law. However, a bank should consider risk management implications in this scenario. Using the example noted in the question, while Loan B does not trigger a regulatory requirement for flood insurance, it may be prudent from a risk management perspective to obtain such coverage in order to protect the bank's collateral. A bank should consider the impact of cross-collateralization agreements, if applicable.

- 4. The property securing a loan is a residential investment/multi-family property. The owner and mortgagor is NOT a tenant in the property. We do file UCC's on all personal property for the borrower, and our security agreement and mortgage also mention personal property and all assets.**

The contents belong to the tenants. What coverage would we ask for?

If the borrower does not store any personal property in the building securing the loan, then there are no contents to insure. Flood insurance requirements for contents are limited to contents securing the loan that are stored in the building that also secures the same loan, provided that the building is located in a SFHA. In this scenario, a bank should make sure that all movable property stored in the building belongs to the tenant. If all contents belong to tenants and not the borrower, no contents coverage is required. Any movable property stored in the building that belongs to the borrower would trigger the requirement to obtain contents coverage.

- 5. I have the following question regarding coverage for contents if the Bank does not have a specific interest (via UCC-1) in a building's contents, and contents were not included in the determination of value of the real estate, but the language in the Mortgage document does state the Bank has an interest in such by virtue of the mortgage.**

If the flood insurance policy does not include content coverage, but building only, and the amount of the flood insurance for the building adequately covers the outstanding balance of the loan, is it necessary to require content insurance?

If the Bank removes the language in the Mortgage document declaring its interest in the contents, then content insurance is not required.

If the language remains, then it is necessary to require flood insurance for both the building and contents in this instance because the Bank has a security interest in the contents as noted by the Mortgage document. In this scenario, the insurable value of the building appears to be greater than the loan amount. Even though the minimum amount of flood insurance required may be less than the insurable value of the building, both the building and contents must be covered by flood insurance. While there is no prescribed formula the lender must use, the lender may apply any reasonable approach to cover both the real estate and contents for the minimum amount of flood insurance required by the Act and Regulation. Furthermore, a borrower and lender may contractually negotiate for a higher level of flood insurance coverage than what the law requires.

- 6. We were told at a previous webinar that if the flood zone on our flood certificate and the flood zone from the certificate pulled by the flood insurance company do NOT match, they have an obligation to comply with the highest or worst zone. However, if they do not, we will be covered by showing due diligence that we asked them to change it and document the file as such. Is this correct?**

Questions and Answers #71 and #72 from the Interagency Questions and Answers Regarding Flood Insurance discuss expectations of lenders in the case of zone discrepancies. Lenders should review these Q&As closely to ensure full compliance. In summary, a lender should only be concerned if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D, or X). If the flood insurance policy shows a lower risk zone than the Standard Flood Hazard Determination Form, the lender should investigate the discrepancy. A lender should determine if the “Grandfather Rule” applies, which in some cases allows a borrower to benefit from a prior, more favorable rating. A discrepancy resulting from the Grandfather Rule is reasonable and acceptable, but should be documented and substantiated by the lender.

If a zone discrepancy appears to be the result of a mistake, a lender should recheck its determination. If there still appears to be a discrepancy after the recheck, a lender and borrower may jointly request that FEMA review the determination obtained by the lender. FEMA will only conduct this review if the request is submitted within 45 days of the date the lender notified the borrower that the building is in a SFHA. If the discrepancy is not resolved or the borrower, insurance company, or insurance agent is uncooperative in assisting the lender, according to the answer to question #71, “the lender should notify the insurance agent about the insurer’s duty pursuant to FEMA’s letter of April 16, 2008 (W-08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also

notify the insurance company itself. The lender should substantiate these communications in its loan file.”

- 7. We’ve had recent flood zone changes. And one of the things that NFIP told us was that it’s not required to change the zone on the policy during mid-policy. For example, the property has an A policy and during a zone change the zone designation is changed to a V. We send the 45-day notice when we receive information of the zone change. And we had agents tell us that the NFIP did not require them to change the policy. So we contacted NFIP and it said that in fact the insurer was not required to change its zone mid-policy. But, that means we would not have adequate coverage, so should we force place that 45- days for the difference in coverage, what do we do?**

Refer to answer above for # 6.

- 8. What is the time frame within which a lender must obtain the applicant’s acknowledgement of the flood determination?**

Part 339 does not require a lender to obtain the applicant’s acknowledgement of the flood determination.

- 9. How often is the determination of flood zones performed?**

A determination should be performed whenever a lender makes, increases, extends, or renews a loan secured by real estate.

Regarding the Standard Flood Hazard Determination form, the NFIP Mandatory Purchase of Flood Insurance Guidelines (page 37-38) states:

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

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

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

- 10. We have a \$60,000,000 loan on an 800,000 square foot office building in New York City. If we escrow for taxes do we really have to escrow for flood insurance? The borrower has \$100,000,000 in flood insurance under an umbrella policy that covers multiple properties. The property owner also has multiple lenders on multiple properties. As long as we are confident that the coverage is in place, why should we have to escrow for such a large amount of voluntary coverage? This property was severely flooded in Sandy, but the building is still standing and the damage is expected to be less than \$10,000,000 to repair. The basement and lobby flooded, so there was damage to mechanicals (electric panels, elevator equipment, fuel pumps, etc.) but no damage above the grade level. All 60 floors above grade are fine. Some thought needs to be given to large CBD properties. The prudent measures for homes and commercial properties in low rise areas do not apply in Manhattan.**

The bank is not required to escrow for flood insurance premiums in this scenario. Currently, the escrow requirement only applies if the loan is secured by residential improved real estate, which has been reiterated in a technical correction made to the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

- 11. If we have a residential mortgage on which we're escrowing taxes and the flood determination finds that the property is located in a flood zone, do we have to start escrowing for flood insurance premiums immediately?**

This scenario is not directly addressed in the law, regulation, or other applicable guidance. According to FEMA's Mandatory Purchase of Flood Insurance Guidelines, escrow requirements are subject to the escrow account provisions of Section 10 of the Real Estate Settlement Procedures Act (RESPA) of 1974, which imposes accounting and notice obligations on a lender for consumer loans. Since RESPA allows a lender to perform an escrow analysis at any time, there does not appear to be any reason to delay the escrow of flood insurance premiums. In this scenario, a bank should begin escrowing for flood insurance premiums as soon as flood insurance is obtained. The bank must also comply with accounting and notice requirements under RESPA when initiating the escrow of flood insurance premiums.

- 12. If the bank escrows for taxes on a multifamily or commercial office building, does it also have to escrow for flood insurance, or does this requirement apply only to single family residential loans?**

Currently, the escrow requirement applies if the loan is secured by residential, improved real estate, including multifamily residential properties or mixed-use buildings that are primarily for residential purposes. Current escrow requirements do not apply to commercial office buildings. However, it should be noted that the Biggert-Waters Act includes revisions to current escrow requirements that will apply to any residential mortgage outstanding or entered into after July 6, 2014. These revisions will be addressed in the future through implementing regulations by the federal banking agencies.

- 13. We are granting a loan for \$2.2 million in a flood zone. The borrower has \$3.0 million in coverage from Lloyds of London with a \$25,000 deductible. We will hold the deductible amount in escrow. We have never received any flood insurance from anyone other than the NFIP, so I want to make sure that this scenario is in compliance.**

A private flood insurance policy that meets all six of the FEMA insurance policy criteria described below (a through f) conforms to the mandatory flood insurance purchase requirements of the 1994 Reform Act. Please note that Section 100239 of the Biggert-Waters Act amends § 4012a of the National Flood Insurance Act requiring lenders to accept private flood insurance as satisfaction of the flood insurance coverage requirements if the coverage meets the requirements provided in the Biggert-Waters Act. Until the regulatory agencies issue implementing regulations for the new Biggert-Waters Act provisions, bankers should follow outstanding guidance in this area.

a. Licensure

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

b. Surplus Lines Recognition (Non-Residential Commercial)

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

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

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

d. Breadth of Policy Coverage

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

e. Strength of Mortgage Interest Clause

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

f. Legal Recourse

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

(Source: pages 57-58 of FEMA's Mandatory Purchase of Flood Insurance Guidelines)

- 14. We are currently signed up with MPPP (Mortgage Portfolio Protection Plan) to issue our flood insurance notices and to establish forced placed flood insurance. The cost of this force placed coverage is extremely high. My question is this: Are banks allowed to contact a borrower's insurance company/agent where their hazard insurance premium is currently written to have that company establish a regular flood insurance policy at a regular premium cost (with the Bank sending funds for the policy to the agent/company) or is forced placed coverage required at the higher premiums as alluded to in the letters?**

Pages 40-42 of FEMA's Mandatory Purchase of Flood Insurance Guidelines discuss force placement requirements in detail. According to these guidelines, a lender has the freedom to choose any insurer when force-placing coverage. Most loans for which flood insurance is force placed must be processed with a limited amount of underwriting information. Therefore, placement is appropriate through the MPPP, where only limited underwriting information is required.

If a lender is able to obtain adequate underwriting information, perhaps with help from the former insurance agent, it may be able to force place flood insurance protection via the Standard Flood Insurance Policy (SFIP). The SFIP is generally less costly than the MPPP.

- 15. When force placing flood insurance, is a bank permitted to force place the insurance before expiration of the borrower's 45-day time frame to obtain insurance?**

The FDPA provides that a lender or its servicer must notify a borrower if it determines that the flood insurance coverage on the improved real estate or mobile home serving as collateral for the borrower's loan has expired or is less than the amount required for that particular property (42 USC 4012a(e)). The notice must inform the borrower of the need to purchase flood insurance. If the borrower fails to purchase flood insurance within 45 days after the lender's notification, the lender or servicer must purchase flood insurance on behalf of the borrower and may charge the borrower for the cost of the premiums and fees incurred by the lender or servicer.

The Biggert-Waters Act amends the FDPA to:

- 1). Provide that the premiums and fees that a lender or servicer may charge the borrower include premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage amount;
- 2). Require the lender or servicer, within 30 days of receiving a confirmation of a borrower's existing flood insurance coverage, to terminate any force-placed insurance and refund to the borrower all force-placed insurance premiums and any related fees paid for by

the borrower during any period of overlap between the borrower's policy and the force-placed policy; and,

3). Require a lender or servicer to accept as confirmation of a borrower's existing flood insurance policy a declarations page that includes the existing flood insurance policy number and the identity and contact information for the insurance company or agent

It is the agency's position that these provisions of the Biggert-Waters Act became effective on July 6, 2012.

16. There is a Flood Insurance policy that is reaching its renewal date of 10/01/12. We call on 10/02/12 and find out that the premium has not been received, however the policy has a 30-day grace period before it actually lapses.

Would we send the required borrower notification regarding expired coverage on 10/02/12, or would we wait until after the 30-day grace period and then send the notification and start the process?

Also, is the bank allowed to pay the premium for the customer before the 30-day grace period expires to keep the policy in force rather than force placing insurance?

Section 339.7 of the FDIC's Regulations states that a bank must notify the borrower that the borrower should obtain flood insurance once the bank determines that the building or mobile home and any personal property securing a designated loan is not covered by flood insurance, or is covered by flood insurance in an amount less than required. In this case, the notice would be sent to the borrower on 10/2/12.

Refer to answer 15 regarding the payment of the premium before the 30-day grace period expires.

17. We are a participant on a loan to which the borrower is pledging real estate that's in a flood hazard area. The flood insurance we have on file has expired. We contacted the lead bank for a renewal certificate, but it does not have one. Exactly what is our responsibility as a participant in this scenario?

Question and Answer #4 speaks to mandatory purchase requirements in the case of loan participations. It states that each participating lender remains individually responsible for ensuring compliance with the act and regulation, even if there is an agreement that assigns compliance to a lead lender or agent. The answer further states,

“Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities

of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.”

In this case the lead bank does not have a renewal certification. The participating bank should confirm with the flood insurance company that the flood insurance policy is still in place. If the participating bank determines that flood insurance has lapsed or is inadequate, they should contact the lead bank to request adequate flood insurance be obtained and document the communication. If after such contact the lead bank fails to obtain flood insurance, the participant bank should force place flood insurance and notify the participating banks.

- 18. Can you please provide some guidance on the situation where a notice has been sent to a borrower notifying them that contents coverage is a requirement? The amount was \$500,000. If the borrower provides \$250,000 does the policy still get force placed on day 45 or do they need to send a new notice stating that the coverage is now insufficient?**

The initial notice should require the borrower to obtain a sufficient amount of coverage within 45 days. If the borrower obtains coverage for an insufficient amount, the lender should force place coverage for the deficient amount after 45 days have passed from the initial notice. The 45-day notification period does not reset in this scenario.

- 19. By practice, the bank is allowed, once in receipt of an expired flood policy, to send the customer a letter notifying him of the requirement to carry adequate flood insurance and providing the amount of coverage required by law and the statement that the customer has a free choice of an insurer from whom to purchase coverage while simultaneously force placing the flood insurance coverage.**

If the customer obtains his own insurance can the bank cancel the placed insurance back to the effective date of the borrower’s insurance? By using this process there would be no lapse of coverage at any time as there would be if the bank allowed the customer 45 days to obtain the flood insurance.

Refer to answer 15.

- 20. Sometimes the replacement cost value (RCV) is lower on an appraisal than the RCV on the hazard insurance policy or flood insurance policy. It was brought to our attention that once we receive the flood insurance policy we should rely on the RCV used by the flood insurance provider, even if the appraisal RCV is lower.**

Which RCV is appropriate to use? The bank receives the RCV from the appraisal before closing, the hazard insurance policy at the time of closing, and the flood insurance policy after closing. If a bank should rely on the RCV from the flood insurance policy after closing, does it need to send a 45 day letter to increase coverage from the amount the bank originally told the borrower based on the appraisal? Also,

is it a best practice to review the RCV annually? What determines or defines awareness about the amount of coverage?

Question and Answer #9 provides guidance on determining the “insurable value” of a building. For properties in a SFHA, the maximum amount of insurance available under the NFIP is the lesser of the maximum limit of coverage available for the particular type of property or the insurable value of the property. The answer includes the following:

“In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.”

Based on the above guidance, a bank has flexibility in establishing insurable value.

There are no requirements under the law or regulation to perform a regular review of insurable value. A bank may choose to perform such a review based on risk management principles. This type of review could make the institution aware of inadequate flood insurance even though the bank did not make, increase, extend, or renew the loan. This awareness would require the lender to comply with the regulation, including force placing insurance, if necessary.

- 21. A loan for a purchase is closing in 10 days. The bank pulls the FEMA certificate and determines that the property is in a flood zone. Immediately, the bank sends the required notice and addendum to the customer about the requirement to purchase flood insurance. The appraisal arrives 4 days later with a RCV of \$191,640. It's a residential property and the maximum allowable coverage through the NFIP is \$250,000 and the loan amount is \$400,000. The bank requires the borrower to obtain \$191,640 in building coverage for the appropriate flood zone. The borrower obtains a flood insurance policy for \$191,640. The day before closing the bank receives a hazard insurance binder that indicates the RCV of the building is \$305,000. If this is the insurable value, the customer needs \$250,000 in coverage, but the flood insurance policy of \$191,640 has been requested and paid for. The bank still does not know what the RCV on the flood insurance policy will indicate.**

Is the bank in compliance with the amount of building coverage in place? Does the bank need to monitor this loan and reevaluate the insurable value once all policies are received? If the bank needs to increase coverage, what actions should the bank take if the flood insurance company is unwilling to change a new policy until the time of renewal? What value should we rely on?

The response to question #20 provides guidance on determining the “insurable value” of a building. A bank has flexibility in determining insurable value, so long as it can be supported. A bank should develop procedures that outline a reasonable approach for determining the insurable value of a building with respect to flood insurance requirements. A bank should use the valuation method it determines to most accurately reflect what the insurance loss payout would be.

22. We have a loan secured by property that is not in a flood zone, but a shed that is also part of our collateral is in a flood zone. The original appraisal gave no value to the shed. However, an updated appraisal valued the shed at \$500. The shed is insured for \$500 but the deductible is \$1,000. Is this the appropriate way to insure the shed?

If the bank has taken the shed as collateral then flood insurance would be required. However, the shed appears to have no insurable value based on the original appraisal. A flood insurance policy for \$500 with a deductible of \$1,000 provides no benefit to the borrower or the bank. Even with a \$500 deductible there is no benefit. In this case, the bank should document the lack of insurable value that was in the first appraisal. While the second appraisal shows \$500, the deductible is larger than the policy and further supports the lack of value for the building.

The preamble to the October 17, 2011 Federal Register states that insuring non-residential buildings to 100 percent of replacement cost value may not be practical in all cases. The bank, either by itself or in conjunction with the flood insurance provider or other appropriate professional, is permitted to use different methods to determine insurable value for non-residential property such as an appraisal based on a cost-value approach, the insurable value used in the hazard insurance policy (recognizing that adjustments may be needed since hazard policies do not cover foundations), a construction-cost calculation, or any other reasonable approach provided it can be supported. It is important for lenders to recognize that, when calculating the minimum amount of insurance that is required to be purchased, the insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP.

Information regarding deductibles can be found in the FEMA Flood Insurance manual that is published primarily for insurance agents (<http://www.fema.gov/business/nfip/manual.shtm>).

23. A property had a shed in a SFHA but the insurance agent refused to insure it stating it had zero insurable value. The replacement cost was \$1,000 but this was under a general policy and the policy was not residential. The bank tried to insure the shed with another agency but it refused. What should the bank do in these types of situations?

The bank could attempt to demonstrate the ‘insurable value’ with the agent because the bank cannot technically close the loan until appropriate coverage is in place. An insurance agent may provide guidance to the bank on how to determine insurable value and/or if the

agent is indicating that there is no value the bank must document this (as noted above in response to Question # 22).

- 24. I understand that an existing flood policy will cover a detached garage up to 10% of the dwelling policy. Would this also apply to a shed, storage building or barn where a detached garage does not exist? The bank indicates that it has been getting pushback from insurance agents who say that a shed is also covered when there is no garage. And this individual indicates that they've seen some language that defines a detached garage as having car storage. Is there any written guidance on this issue that you could point the bank to?**

An existing flood policy will not cover a shed, storage building or barn where a detached garage does not exist. Please refer to NFIP Q&A #38 (pasted below) which states that coverage on the Dwelling Form would not include carports, tool and storage sheds and the like.

38. How many buildings or locations (and their contents) may be insured on each policy? Normally, only one building and its contents can be insured on each policy. The Dwelling Form of the Standard Flood Insurance Policy does provide coverage for up to 10 percent of policy amount for appurtenant detached garages but not for carports, tool and storage sheds, and the like. In addition, the Scheduled Building Policy is available to cover 2 to 10 buildings. The policy requires a specific amount of insurance to be designated for each building, and all buildings must have the same ownership and the same location.

- 25. If the detached garage is more than 10% of the value of the overall structure we've been requiring additional insurance on that detached garage - is this correct?**

Yes, the 10 percent coverage reduces the overall coverage limit, so if 10 percent of the policy value is not enough to cover the garage adequately a separate policy could be written for the structure.

- 26. In regard to a detached garage and other structures on such property – what is the best way to determine the value of each of these structures? The appraisal generally provides a value for the entire parcel including the land. We generally subtract the land value from the total appraised value to determine dwelling cost, which is part of our formula for determining flood insurance requirements. The garage and/or any shed on the property which would be covered under the master flood policy is generally not “broken out” from the total value. Should we use the appraisal adjustments for such structures to determine value, to insure that the value of the garage does not exceed 10% of the value of the property? Or should we use the information provided by the town on the property card, regarding the assessed value?**

Please refer to Q&A # 9, pasted here:

9. *What is the “insurable value” of a building? Answer:* The insurable value of a building is the same as the overall value of a property minus the land on which the property is located. FEMA’s *Mandatory Purchase of Flood Insurance Guidelines* state

that the insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building, which is defined as “[t]he cost to replace property with the same kind of material and construction without deduction for depreciation.” FEMA’s guidelines, however, also provide that lenders should avoid creating a situation in which the insured pays for more coverage than the NFIP would pay in the event of a loss strictly linking insurable value to RCV is not practical in all cases. In cases involving certain residential or condominium properties, insurance policies should be written to, and the insurance loss payout usually would be the equivalent of, RCV. However, in cases involving nonresidential properties, and even some residential properties, where the insurance loss payout would normally be based on actual cash value, which is RCV less physical depreciation, insurance policies written at RCV may require an insured to pay for coverage that exceeds the amount the NFIP would pay in the event of a loss. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP policy for the type of property being insured. This allows the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders need to be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property. In calculating the amount of insurance to require, the lender and borrower (either by them or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used in a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

27. If there is a guest cottage or a pool house on a property included in the appraised value, how do we determine the amount of coverage to request for the separate policies required on these structures?

There is no exact method, total required flood insurance coverage can be allocated among the secured buildings in varying amounts. A best practice may be to make a reasonable determination of how the value is distributed among the multiple structures, whether the appraisal gives this guidance or the insurance agent can advise- then distribute coverage accordingly.

28. In regard to detached garages, should the flood policy name the covered garage or shed as a separate structure? Should it refer specifically to two buildings, or is it inferred that the garage or shed is part of the property, and is no further specific designation necessary?

The following is noted within the FDIC Compliance Manual (page V-6.4): “Multiple Structures—Multiple structures that secure a loan located in an SFHA generally must each be covered by flood insurance, even though the value of one structure may be sufficient to

cover the loan amount. FEMA does permit borrowers to insure nonresidential buildings using one policy with a schedule separately listing each building. Loans secured by agricultural properties and improvements may be particularly assisted through this practice.”

- 29. In regard to other structures onsite (i.e. pool house, guest house, etc.), same question as above in regard to determination of value. Also, if a separate structure requires a separate policy (i.e. is not a detached garage or shed), is the \$250,000 maximum an aggregate figure per loan, or is it the maximum allowed per structure? In other words, if the borrower obtains a maximum policy of \$250,000 on the owner-occupied residence on the property, can he also obtain a separate \$75,000 policy on a guest house on the property, or is \$250,000 the maximum allowed per entire property?**

The \$250,000 is per structure (NFIP, 1-4 family); it is the maximum required amount. The guest house would be considered a separate structure and may be insured up to the property’s value of \$75,000.

- 30. Are there any other structures besides a detached garage or shed that can be covered in the main policy?**

No. Per the July 21, 2009 federal register: ‘If the residential building is a one-to-four family dwelling that is covered by a dwelling form NFIP policy, that policy will cover a detached garage at the same location as the dwelling, up to 10 percent of the limit of liability on the dwelling, provided the detached garage is not used or held for use as a residence, a business or for farming purposes. In other cases, the lender must require the borrower to obtain coverage for each building securing the loan.’ There may be other eligible structures. Please refer to the Q&A.

- 31. In regard to force placed insurance and a zoning discrepancy, how should the bank determine whether the customer is over insured through FEMA or that the policy is valid? A customer cannot have two policies for the same property under FEMA.**

Scenario: Customer property is valued at \$80,000 and is located in a high risk Standard Flood Hazard Area (SFHA) (such as an AE zone designation) the flood policy covers only the lower risk category of an X zone; therefore the customer would not be adequately covered for flood. After the required notification is exhausted and the customer has failed to provide the acceptable insurance with the appropriate zone coverage, the bank would then force-place an \$80,000 insurance policy at the AE risk category.

How is the bank to determine whether the customer is paying for two policies, in which one may not be valid under FEMA or that the charge for the force placed insurance is only the difference between the cost of the coverage of the X-Zone versus the AE-Zone coverage. Also, if the bank is using a private company to purchase the insurance, would the additional cost be considered unfair as the customer still

maintains his X-zone policy and the bank maintains the AE-Zone policy, both a cost to the customer?

The lender should not force place a policy when there already is a policy in place. The bank should attempt to get the zone updated in accordance with the guidance provided in Q&A # 7 of the Interagency Questions and Answers Regarding Flood Insurance. The bank should communicate with its borrower once it is determined that there was a zoning change. As noted in this Q&A, if the discrepancy is not resolved, or in the course of attempting to resolve a discrepancy, a borrower or an insurance company or its agent is uncooperative in assisting a lender in this attempt, the lender should notify the insurance agent about the insurer's duty pursuant to FEMA's letter of April 16, 2008 (W- 08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also notify the insurance company itself. The lender should substantiate these communications in its loan file.

32. We have had this loan since 2002 and the flood policy always listed the property as being in flood zone "B". A review of this file prompted us to pull a current determination which indicated zone "A9". To be sure, we pulled a second determination with a different provider and again it indicated zone "A9". We sent a 45-day notice to the borrowers advising that they needed to get the zone changed on their policy to reflect zone "A9". Their insurance agent advised us that the company writing their insurance had determined the property to be in zone "B". We asked for a copy of their determination and the agent stated the company didn't have it, the insurance provider took care of that. We contacted the insurance company and it stated "it was right on the line between zone "B" and "A9", too close to call, so it opted to insure the property in zone "B". We have again advised the borrower and the insurance agent that pursuant to FEMA's letter of April 16, 2008, when there is a discrepancy in zones, it is the insurance company's duty to write a flood insurance policy that covers the most hazardous flood zone, which in this case is zone "A9". We have advised that if it does not, we will force place coverage in zone "A9".

1) My first question is.....is this the proper procedure? If so, do we force place coverage?

2) My second question is..... if the borrowers currently carry more insurance than necessary for the bank's purposes, should we force place only for the amount that is required (lesser of loan amount, RCV or \$250,000) or should we insure for the amount the borrowers currently have, and

3) My third and final question is....As there can only be one outstanding flood insurance policy per building, do we advise borrowers to cancel their current policy?

Yes, the bank's procedures are adequate; however, the bank should not force place flood insurance based on a zone discrepancy when flood insurance is already in place. The bank should document the communication with the insurance agent..

According to Q&A#71, a lender and borrower may jointly request that FEMA review the determination to confirm or review the accuracy of the determination; however, FEMA will

only conduct this review if it is submitted within 45 days of the date the lender notified the borrower that a building or manufactured home is in an SFHA and flood insurance is required.

33. Due to the changes with five family dwellings requiring \$500,000 in coverage, should the bank send a 45-day letter to applicable borrowers?

As you noted, Section 100204 of the Biggert-Waters Act amends section 1305 of the National Flood Insurance Act to increase the flood insurance coverage for residential properties of 5 or more residences to \$500,000. At this time, however, FEMA has not increased the maximum insurance level. The agency will notify the industry once FEMA has taken action on this provision in the Biggert-Waters Act.

34. On slide # 17 it says that the BWRA provisions increase the insurance maximums for multi-family properties from \$250,000 to \$500,000 were effective immediately. We were operating with the understanding that all of the substantive BWRA provisions required the issuance of regulations before becoming effective. Are we required to now review all of our multi-family properties that we are servicing using the \$500,000 standard and send force placement notices to borrowers? We have been advised by FEMA representatives that the NFIP does not yet have a policy that can go to \$500,000, which means that borrowers will need to obtain a private policy for the interim period.

Refer to answer 33.

35. Does the current regulation for notice to borrower require a statement encouraging the borrower to compare insurance coverage issued on behalf of the NFIP and policies on behalf of private insurance companies, or is this a pending requirement?

The Biggert-Waters Act has a requirement that lenders disclose to a borrower that flood insurance is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the program; such a policy would provide the same coverage as under the NFIP; and the borrower is encouraged to compare the costs and terms of such policies. Until the regulatory agencies issue implementing regulations for these new Biggert-Waters Act provisions, bankers should follow outstanding guidance in this area.

36. On multi-family properties that are now required to have the \$500,000, if they already have an excess liability policy greater than the \$500,000 will they still be required to increase their primary flood policy?

An excess liability policy would not cover for inadequate flood insurance. However, until additional guidance is provided regarding the increased limit on multifamily dwellings, banks should continue to use the current standards.

37. Can you please clarify flood insurance requirements for hi-rise building such as those in New York City? Also, are co-ops considered multi-family building?

According to Q&A # 11 residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental nonresidential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building, or 50 percent for single-family dwellings.

Further, Q&A # 26 notes that residential condominiums, including multi-story condominium complexes are subject to the statutory and regulatory requirements for flood insurance. It states that the mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

A co-op is not counted as a multi-family.

38. When will the updated SFHDF be required to be used?

According to FEMA's website, the form number has been changed from FEMA Form 81-93 to the revised FEMA Form 086-0-32. This new form expires on May 30, 2015. The Agency will be allowing users a three-year transition period ending on the expiration date to change user systems before final adoption of the form is required. The previous form can be used until that time. Users may choose to update their systems at any time to the new format. Please refer to FEMA's website for further information.

<http://www.fema.gov/library/viewRecord.do?id=1394>

39. When there is more than one building on a property, should the flood determination be ordered on the property address? If so, and the determination is that the property is in a flood zone, should we then order a determination on each building to determine which building or part of a building is in a flood zone or does the initial determination have to be run on each building?

The lender should verify with the third party which properties are included for the address. It is likely that you may need to order a SFHDF for each building. Per the SFHDF instructions: MULTIPLE BUILDINGS: If the loan collateral includes more than one building, a schedule for the additional buildings/mobile homes indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building

or mobile home. Any attachments should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

40. When a property has multiple buildings (i.e. three buildings), should the initial flood determination request be three separate requests, one for each building such as:

- 1) Building # 1, 52 Pumpkin Pie Rd.**
- 2) Building # 2, 52 Pumpkin Pie Rd.**
- 3) Building # 3, 52 Pumpkin Pie Rd.**

or just one request on the address: 52 Pumpkin Pie Rd. and if the determination shows that the address is in a flood zone, should we then submit a request on each building to determine which building or part of a building (s) is actually in the flood zone for insurance coverage purposes?

Refer to answer 39.