



National Banker Teleconference Update on Mandatory Flood Insurance Purchase Requirements

December 9, 2014

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AGENDA

- Overview of Key Requirements of Flood Insurance Regulations
- Statutory Changes to Mandatory Flood Insurance Purchase Requirements
- Compliance with the Flood Insurance Requirements
- Update on Agency Rulemaking
- Questions and Answers
 - Email questions to: BankerTeleconference@fdic.gov

Speakers

- **Paul Robin**
Section Chief, Supervisory Policy Branch, Division of Depositor and Consumer Protection, FDIC
- **John Jackwood**
Senior Policy Analyst, Division of Depositor and Consumer Protection, FDIC
- **Alex Cheng**
Policy Analyst, Division of Depositor and Consumer Protection, FDIC
- **Lanette Meister**
Senior Supervisory Consumer Financial Services Analyst, Division of Consumer and Community Affairs, FRB
- **Paul Gibbs**
Senior Accountant, Office of Regulatory Policy, FCA
- **Rhonda Daniels**
Compliance Specialist, Compliance Policy Department, OCC
- **Sarah Chung**
Staff Attorney, Office of Regulations and Legislation, NCUA

Key Requirements of Flood Insurance Regulations

Mandatory Purchase

- Flood insurance is required for the term of the loan on buildings or mobile homes if:
 - The institution makes, increases, extends, or renews any loan secured by improved real estate or a mobile home that is affixed to a permanent foundation;
 - The property securing the loan is located or will be located in an Special Flood Hazard Area (SFHA) as identified by the Federal Emergency Management Agency (FEMA); and
 - The community participates in the National Flood Insurance Program(NFIP).
- Calculate the required amount of insurance

Key Requirements of Flood Insurance Regulations

Borrower Notification

- Borrower must be notified if property to be secured is or will be located in an SFHA. The written notice must contain certain information.
- Delivery of notice must take place within a “reasonable time” before the completion of the loan transaction.



Key Requirements of Flood Insurance Regulations

Force Placement

- A lender or its servicer must notify a borrower of the need to purchase flood insurance.
- If the borrower fails to purchase flood insurance within 45 days after notification, the lender or servicer must purchase flood insurance on behalf of the borrower.



Key Requirements of Flood Insurance Regulations

Escrow

- At the present time under the current regulations, an institution must escrow flood insurance premiums and fees if it 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.



Statutory Changes to Mandatory Flood Insurance Purchase Requirements



New Flood Insurance Laws and Regulatory Activity

- The Biggert Waters Flood Insurance Reform Act of 2012
- The Homeowner Flood Insurance Affordability Act of 2014
- Joint Notice of Proposed Rulemaking, Loans in Areas Having Special Flood Hazards, October 30, 2013 (78 FR 65108)
- Joint Notice of Proposed Rulemaking, Loans in Areas Having Special Flood Hazards, October 30, 2014 (79 FR 64518)



Biggert Waters Act: Civil Money Penalty

- When an Agency determines that there has been a pattern or practice of certain violations of the flood insurance requirements, the Flood Disaster Protection Act (FDPA) requires the Agency to assess a civil money penalty against the financial institution.
- Interagency Flood Insurance Q&A 82 discusses pattern or practice considerations.
- Biggert Waters Act increased the maximum civil money penalty per violation to \$2,000 if an Agency finds a pattern or practice of certain flood insurance violations.
- The penalty cap per year was lifted.
- This provision became effective upon enactment.

Biggert Waters Act: Force Placement Provisions

- Lender or servicer may charge borrower for force-placed insurance premiums and fees beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.
- Lender or servicer must terminate force-placed insurance within 30 days of confirmation of borrower's purchase of flood insurance and refund related premiums and fees to borrower.
- Lender or servicer must accept a declarations page as confirmation of a borrower's existing flood insurance.
- The force placement provisions became effective upon enactment.

Biggert Waters Act: Increased Maximum Flood Insurance for “Other Residential Buildings”

- Increased the maximum limit available for non-condominium residential buildings designed for use for five or more families – “Other Residential Buildings”
- Maximum building coverage increased from \$250,000 to \$500,000 per building
- Maximum contents coverage remains \$100,000



Calculation of Flood Insurance

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



Ensuring Appropriate Coverage of “Other Residential Buildings”

- If the lender determines that an “Other Residential Building” securing a designated loan is now covered by flood insurance in an amount less than required, it should take steps to ensure that the borrower obtains sufficient coverage.
- If an affected borrower does not provide evidence of the increased flood insurance, the lender must follow force placement procedures to ensure appropriate coverage is obtained.



Affordability Act: Escrow Requirement

- Would be required to escrow flood insurance premiums and fees for any loan secured by residential improved real estate or a mobile home that is:
 - made,
 - increased,
 - extended,
 - renewed, or
 - refinancedon or after January 1, 2016, unless an exception applies.
- This requirement is effective when the Agencies issue implementing regulations.

Escrow Requirement Exceptions

Would not be required to escrow premiums and fees if:

- Your institution has total assets of less than \$1 billion; and
- On or before July 6, 2012, your institution:
 - Was not required under Federal or State law to escrow taxes or insurance for the term of a loan; and
 - Did not have a policy to require escrow of taxes and insurance.



Escrow Requirement Exceptions (continued)

Would not be required to escrow premiums and fees if:

- Extension of credit primarily for business purpose even if secured by residential real estate;
- Property is covered by a flood insurance policy that is provided by the condominium association, cooperative, homeowners association;
- Subordinate position to a senior lien;
- Home equity line of credit;
- Nonperforming loan; or
- Loan term not longer than 12 months.



Escrow Notice

- Under the proposal would need to mail or deliver a written notice informing a borrower that the institution is required to escrow all premiums and fees for flood insurance on residential improved real estate.
- Revised sample notice is provided in Appendix A of the proposed regulation.



Affordability Act: Option to Escrow

- A borrower would have the option to request that you escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016.
- Would be required to provide borrowers a notice of the option to escrow.
- Sample clause for the option to escrow is provided in Appendix B of the proposed regulation.



Affordability Act: Detached Structure Exemption

- Flood insurance is not required by law for any structure that is:
 - Part of any residential property;
 - Detached from the primary residential structure; and
 - Does not serve as a residence.
- Financial institutions may still require borrowers to obtain or maintain flood insurance for safety and soundness reasons.



Biggert Waters Act: Mandatory Acceptance of Private Flood Insurance

- Must accept a private flood insurance policy as satisfaction of the mandatory purchase requirement if it meets the statutory criteria.
- The statutory criteria provide that a private flood insurance policy that a lender must accept:
 1. Is issued by a company approved to do business in the State or is recognized as a surplus lines insurer;
 2. Provides flood coverage at least as broad as the coverage provided by an Standard Flood Insurance Policy (SFIP);
 3. Includes a mortgage interest clause similar to the clause contained in the SFIP;

Mandatory Acceptance of Private Flood Insurance

- The statutory criteria provide that a private flood insurance policy that a lender must accept (cont.):
 4. Includes a clause providing for 45 days written notice of cancellation;
 5. Contains cancellation provisions as restrictive as the provisions contained in an SFIP;
 6. Requires insured to file suit within 1 year after written denial of a claim under the policy; and
 7. Includes information about the availability of NFIP coverage.
- The requirement to accept private flood insurance with the criteria set forth by the Biggert Waters Act will be effective when the Agencies issue implementing regulations.

Private Flood Insurance

- An institution may accept a private flood insurance policy.
- The Agencies have consistently advised that an institution may accept private flood insurance policies under certain circumstances, including private policies that have the same level of coverage as a SFIP under the NFIP.



COMPLIANCE WITH THE FLOOD INSURANCE REQUIREMENTS

- Learn About Flood Insurance Requirements and Keep Current on Changes
- Educate Your Board of Directors and Senior Management
- Review and Update Your Policies and Procedures
- Train Staff on New Compliance Responsibilities
- Coordinate Responses to Consumer Inquiries
- Modify your Monitoring and Audit Programs



Update on Agency Rulemaking

Proposed Rules

- On October 30, 2013, the Agencies published a proposed rule that would implement provisions in the Biggert Waters Act. [78 FR 65108 \(Oct. 30, 2013\)](#)
- On October 30, 2014, the Agencies published a proposed rule that would implement changes made by the Affordability Act. [79 FR 64518 \(Oct. 30, 2014\)](#)



Update on Agency Rulemaking

Future Rulemakings

- The Agencies continue to work on finalizing all provisions from the October 30, 2013 proposed rule and the October 30, 2014 proposed rule.



RESOURCES

Statutes and Regulations

- [The National Flood Insurance Act of 1968](#), the [Flood Disaster Protection Act of 1973](#), and the National Flood Insurance Reform Act of 1994
- [The Biggert Waters Flood Insurance Reform Act of 2012](#)
- [The Homeowner Flood Insurance Affordability Act of 2014](#)
- The Agencies' flood regulations:
 - [12 CFR Parts 22, 172](#) (OCC)
 - [12 CFR Part 208](#) (Federal Reserve)
 - [12 CFR Part 339](#) (FDIC)
 - [12 CFR Part 614](#) (Farm Credit)
 - [12 CFR Part 760](#) (NCUA)

RESOURCES

Agency Guidance

- [Interagency Statement on the Biggert–Waters Act \(2013\)](#)
- [Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings \(2014\)](#)
- Interagency Questions and Answers Regarding Flood Insurance ([74 FR 35914 \(July 21, 2009\)](#)) and ([76 FR 64175 \(October 17, 2011\)](#))
- FDIC Director’s Resource Center Technical Assistance Video Program – Flood Insurance
<https://www.fdic.gov/regulations/resources/director/video.html>
- FDIC DCP Regional Newsletter, June and September 2014– Flood Insurance (sent via email to only FDIC–supervised institutions from their FDIC Regional Offices)
- Federal Reserve Consumer Compliance Outlook:
 - “Compliance Spotlight: Congress Passes HFIAA.”
<https://www.consumercomplianceoutlook.org/2014/second-quarter/compliance-spotlight/>
 - “Compliance Spotlight: The Biggert–Waters Act.”
<https://www.consumercomplianceoutlook.org/2012/third-quarter/compliance-spotlight/>

RESOURCES

FEMA Resources

- FEMA's NFIP Manual
 - <http://www.fema.gov/flood-insurance-manual>
- FEMA's NFIP Portal
 - <http://www.fema.gov/business/nfip/>



QUESTIONS AND ANSWERS

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Thank You

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