1700 G Street, NW., Washington, DC 20552.

Dated: March 17, 2008.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2008–0002]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1311]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2008–0001]

FARM CREDIT ADMINISTRATION

RIN 3052–AC46

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AD41

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

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

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are soliciting comment on proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers). To help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public understanding of their flood insurance regulations, the staffs of the Agencies have prepared proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. The proposed revised Interagency Questions and Answers contain staff guidance for agency personnel, financial institutions, and the public.

DATE: Comments must be submitted on or before May 20, 2008.

ADDRESSES: *OCC:* Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2008–0002'' in your comment. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1311, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–ZA00 by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by OTS–2007–0001, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2008–0001 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0001.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation

Comments, Chief Counsel's Office, Attention: OTS–2008–0001.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FCA: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. You may also send comments by mail or by facsimile transmission. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

• *E-mail:* Send us an e-mail at *regcomm@fca.gov*.

• *Agency Web Site: http://www.fca.gov*. Once you are at the Web site, select ''Legal Info,'' then ''Pending Regulations and Notices.''

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

• *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments,

• *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT:

OCC: Pamela Mount, National Bank Examiner, Compliance Policy, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–2412; Anjanette Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brad Fleetwood, Senior Counsel, Legal Division, (202) 452–3721, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

FDIC: Mira N. Marshall, Senior Policy Analyst (Compliance), Division of Supervision and Consumer Protection, (202) 898–3912; or Mark Mellon, Counsel, Legal Division, (202) 898–3884, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For the hearing impaired only, telecommunications device for the deaf (TDD): 800–925–4618.

OTS: Ekita Mitchell, Consumer Regulations Analyst, (202) 906–6451; Glenn Gimble, Senior Project Manager, (202) 906–7158; or Richard S. Bennett, Senior Compliance Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, (703) 993–4498; or Mary Alice Donner, Attorney Advisor, Office of General Counsel, (703) 883–4033, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. For the hearing impaired only, TDD: (703) 883–4444.

NCUA: Moisette I. Green, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, OTS, and NCUA to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') fulfilled these requirements by issuing a joint final rule in the summer of 1996. *See* 61 FR 45684 (August 29, 1996).

In connection with the 1996 joint rulemaking process, the Agencies received a number of requests to clarify specific issues covering a wide spectrum of the proposed rule's provisions. Many of these requests were addressed in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of subject matter of the requests for additional information, guidance addressing the more technical compliance issues would be helpful and appropriate. Consequently, the Agencies decided to issue guidance to address these technical issues subsequent to the promulgation of the final rule (61 FR at 45685–86). That objective was fulfilled by the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers) by the Federal Financial Institution Examination Council (FFIEC). 62 FR 39523 (July 23, 1997).

In response to issues that have been brought to the attention of the Agencies in coordination with the Federal Emergency Management Agency (FEMA), the Agencies are releasing for public comment proposed revisions to the 1997 Interagency Questions and Answers.[1] Among the changes the Agencies are proposing are the introduction of new questions and answers in a number of areas, including second lien mortgages, the imposition of civil money penalties, and loan syndications/participations. The Agencies are also proposing substantive modifications to questions and answers previously adopted in the 1997 Interagency Questions and Answers pertaining to construction loans and condominiums. Finally, the Agencies are proposing to revise and reorganize certain of the existing questions and answers to clarify areas of potential misunderstanding and to provide clearer guidance to users. It is the intention of the Agencies that after public comment has been received and considered, and the Interagency Questions and Answers have been adopted in final form, they will supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies and FEMA.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final rule.[2]

[1] The proposed Interagency Questions and Answers have been prepared by staff from the OCC, Board, FDIC, OTS, NCUA and FCA in consultation with and with the assistance of the FFIEC pursuant to 12 U.S.C. 3305(g).

[2] The Agencies' rules are codified at 2 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

Section-by-Section Analysis

Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation

The Agencies propose to eliminate current section I entitled ''Definitions'' and replace it with new proposed section I to address more specific circumstances a lender may encounter when deciding whether a loan should be a designated loan for purposes of flood insurance. The Agencies are proposing to move the questions and answers currently in section I into subsequent sections for better organization. Meanwhile, questions and answers currently in other sections of the 1997 Interagency Questions and Answers that deal with determining when a loan is a designated loan under the Act and Regulation would be included in new section I.

Specifically, proposed question 1, which covers the applicability of the Regulation to a loan in a nonparticipating community, would be moved from current question 1 of section II. Further, the Agencies propose to move current question 2 of section II, discussing whether a loan is a designated loan when a lender purchases a whole loan, to question 3 of new section I. Current question 9 of section I, discussing whether a loan is a designated loan when a lender restructures a loan, would be moved to question 4 of this new section I, and proposed question 5, which addresses table funded loans, would be moved from question 3 of current section II. In addition, minor nonsubstantive changes have been made to these moved questions and answers to provide additional clarity.

The Agencies are also proposing to add two new questions and answers to this section in response to questions the Agencies have received from lenders. Proposed new question 2 explains that, upon a FEMA map change that results in a building or mobile home securing a loan being removed from a special flood hazard area (SFHA), the lender no longer must require mandatory flood insurance; however, the lender may choose to continue to require flood insurance for risk management purposes.

Proposed new question 6 explains that portfolio reviews of existing loans are not required by the Act or Regulation; however, sound risk management practices may lead a lender to conduct periodic reviews. These two new questions and answers are based on current guidance the Agencies have provided to lenders.

Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

Proposed section II would provide guidance on how lenders should determine the appropriate amount of flood insurance to require the borrower to purchase. The Agencies are proposing to retain existing questions 5 and 7 of section II in new section II and renumbering them as proposed questions 12 and 11, respectively. Although minor changes have been made to these two questions and answers for purposes of clarity, the changes are not substantive. Furthermore, part of the guidance currently provided in existing question 7 would be moved to proposed question 22 in section V, as discussed below.

Proposed new question 7 would discuss what is meant by the ''maximum limit of coverage available for the particular type of property under the Act.'' This concept is important because the Regulation states that the amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' Proposed question 7 would introduce and define the insurance term, ''insurable value,'' as it relates to the determination of the maximum limit of coverage available under the Act. Proposed question 7 would also introduce the terms, ''residential building'' and ''nonresidential building.'' These terms would be more fully defined in proposed new questions 8 and 9 of this section, respectively.

Proposed new question 10 would discuss how much flood insurance is required on a building located in an SFHA in a participating community. It would also provide an example showing how to calculate the amount of required flood insurance on a nonresidential building.

Proposed new question 13 would clarify that a lender can require more flood insurance than the minimum required by the Regulation. The Regulation requires a minimum amount of flood insurance; however, lenders may require more coverage, if appropriate.

Proposed new question 14 would address lender considerations regarding the amount of the deductible on a flood insurance policy purchased by a borrower. Generally, the guidance advises a lender to determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender.

Section III. Exemptions from the mandatory flood insurance requirements

As with current section III, proposed section III would contain only one question and answer, which describes the statutory exemptions from the mandatory flood insurance requirements. Proposed question and answer 15 under section III would be revised to provide greater clarity, with no intended change in substance or meaning.

Section IV. Flood insurance requirements for construction loans

The Agencies are proposing a series of new and revised questions and answers to clarify the requirements regarding the mandatory purchase of flood insurance for construction loans to erect buildings that will be located in an SFHA. The Agencies believe that these questions and answers are necessary in light of recent concerns raised by some regulated lenders regarding borrowers' difficulties in obtaining flood insurance for construction loans at the time of loan origination.

Existing question 2 in section I would be revised to provide greater clarity and would be moved to proposed question 16 under proposed section IV. The proposed answer to question 16 would revise the existing guidance to limit its scope and explain that a loan secured by raw land located in an SFHA is not a designated loan that would require flood insurance coverage. The remaining guidance currently in the answer to existing question 2 in section I would be discussed in subsequent questions and answers in section IV in the proposed document, as detailed below.

Proposed question 17, derived from current question 1 in section I, would address whether a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act is a designated loan. The answer would provide that a lender must make a flood determination prior to loan origination for a construction loan. If the flood determination shows that the building securing the loan will be located in an SFHA, the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements. Proposed question 18 would explain that, generally, a building in the course of construction is eligible for coverage under a National Flood Insurance Program (NFIP) policy, and that coverage may be purchased prior to the start of construction.

Proposed question 19 would address the timing of when flood insurance must be purchased for buildings under the course of construction. The Act and Regulation provide that lenders may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home that is located or to be located in an SFHA unless the building is covered by adequate flood insurance. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

Recently, lenders have informed agency staff, however, that borrowers have been encountering difficulties in obtaining flood insurance for construction loans at the time of loan origination due to insurers' refusals to write policies on undeveloped land until either an elevation certificate has been issued for the structure or at least two walls and a roof for the building have been erected. The Agencies have also received reports that borrowers who are able to obtain flood insurance for construction loans at loan origination often pay the highest premiums possible because elevations for the insured property have not yet been established.

To address these concerns, the Agencies, in the answer to proposed question 19, would provide lenders with flexibility regarding the timing of the mandatory purchase requirement for construction loans by permitting lenders to allow borrowers to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued. Lenders, however, must require the borrower to have flood insurance in place before funds are disbursed to pay for building construction on the property securing the loan (except as necessary to pour the slab or perform preliminary site work). A lender who elects this approach and does not require flood insurance at loan origination must have adequate internal controls in place to ensure compliance.

The Agencies also propose to add new question 20 to clarify whether the 30-day waiting period for an NFIP policy applies when the purchase of flood insurance is deferred in connection with a construction loan since there has been confusion among lenders on this issue in the past. Per guidance from FEMA, the answer would provide that the 30-day waiting period would not apply in such cases.[3] The NFIP would rely on the insurance agent's representation that the exception applies unless a loss has occurred during the first 30 days of the policy period.

Section V. Flood insurance requirements for agricultural buildings

The Agencies are proposing a new section V to address the flood insurance requirements for agricultural buildings that are taken as security for a loan, but that have limited utility to a farming operation. The section would also address loans secured by multiple buildings where some buildings are located in a flood hazard area and some buildings are not.

The proposed answer to new question 21 would explain that all buildings taken as security for a loan and located in an SFHA require flood insurance. Lenders have the option of carving a building from the security for a loan; however, the Agencies believe that it is typically inappropriate for credit risk management reasons to do so.

The guidance in current question 7 under section II would be split between question 11 under proposed section II, as discussed above, and question 22 under proposed section V. The proposed answer to question 22 would explain that a lender is always required to determine whether a building securing a loan is located in an SFHA, but that only those buildings located in an SFHA *and* within a participating community are required to have flood insurance. Flood insurance need not be required on those properties that (1) are not located in a special flood hazard area (whether or not within a participating community) or (2) are located in a special flood hazard area that is not within a participating community.

Section VI. Flood insurance requirements for residential condominiums

For organizational purposes, the Agencies are proposing to consolidate questions and answers relating to the Regulation's flood insurance requirements for residential condominiums into a new section VI. In addition to modifying and expanding the two existing questions in the 1997 Interagency Questions and Answers on residential condominiums, the Agencies are proposing to add five additional

[3] FEMA, *Mandatory Purchase of Flood Insurance Guidelines*, (September 2007) at 30. FEMA has made available a new version of this booklet electronically at *http://www.fema.gov/library/viewRecord.do?id=2954*. Hard copies are available by calling FEMA's Publication Warehouse at (800) 480–2520.

questions and answers to provide better clarity on the requirements.

Proposed question and answer 24 would modify and expand current question 8 under section II to more completely address the Regulation's flood insurance requirements for residential condominium units. The proposed answer would first explain that the amount of flood insurance coverage on the condominium unit required by the Regulation is the lesser of the outstanding principal balance of the loan or the maximum amount of coverage available under the NFIP.

The proposed answer would then explain that *if the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP*, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or an amount equal to the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain an individual unit owner's dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements, if there is no RCBAP or the RCBAP coverage is less than either 100 percent of the insurable value (replacement cost) of the building or the amount equal to the total number of units in the condominium building times $250,000, whichever is less.

The proposed answer revises and clarifies the current answer to question 8 under section II. The current answer provides that ''to meet federal flood insurance requirements, an RCBAP should be purchased in an amount of at least 80 percent of the replacement value of the building or the maximum amount available under the NFIP (currently $250,000 multiplied by the number of units), whichever is less.''

The proposed question and answer recognizes that neither the Act nor the Regulation addresses explicitly the appropriate level of RCBAP coverage; rather, they address the general purchase requirement applicable to all types of buildings and mobile homes: The lesser of the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP. The proposed question and answer acknowledges the standard set forth in the Regulation, and clarifies that the maximum amount of insurance available under the NFIP for a residential condominium unit is the lesser of the maximum limit available for a residential condominium unit (currently, $250,000) or the insurable value of the unit (the replacement value of the building divided by the number of units).[4] The proposed question and answer would also reflect that where the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, an RCBAP written at 80 percent of the replacement cost value of the building *does not* meet the Regulation's flood insurance requirements (unless that amount were equal to the maximum amount of insurance available under the NFIP, which is $250,000 multiplied by the number of units), whereas the current answer suggested that such a coverage level was adequate. While FEMA's recent guidance prescribes 80 percent replacement cost value coverage as the minimum amount necessary to avoid imposition of a co-insurance penalty at the time of loss,[5] proposed answer 24 clarifies that this amount of insurance is insufficient to comply with the Act's and Regulation's minimum requirements. The proposed answer would provide that where the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP and the RCBAP is written at less than 100 percent of the insurable value (replacement cost) of the building or an amount equal to $250,000 multiplied by the number of units, whichever is less, the lender must require the borrower to obtain an individual unit owner's dwelling policy to meet the Regulation's flood insurance requirements.

The Agencies are proposing the modification contained in proposed question 24 and its answer to be in accordance with the general mandatory purchase requirement in the Regulation. As FEMA has noted:

> Although unit owners have a shared interest in the common areas of the condominium building, as well as in their own unit, unit owners are unable to individually protect such common areas. Therefore, the RCBAP, insured to its full replacement cost value (RCV) to the extent possible under the NFIP, is the correct way to insure a residential condominium building against flood loss. A properly placed RCBAP protects the financial interests of the association, unit owners, and lenders and also satisfies the statutory requirements.[6]

The Agencies plan that any guidance adopted as final in question and answer 24 would apply to any loan that is made, increased, extended, or renewed after the effective date of the revised guidance. The Agencies further plan that the revised guidance would apply to any loan made prior to the effective date of the revised guidance, which a lender determines to be covered by flood insurance in an amount less than required by the Regulation, as set forth in proposed question and answer 24, at the first flood insurance policy renewal period following the effective date of the revised guidance.

Proposed question 27 would modify and expand current question 9 under section II to address lenders' options when a loan secured by a residential condominium unit is in a multi-unit complex whose condominium association allows its existing flood insurance policy to lapse. Specifically, if the borrower/unit owner or the condominium association fails to purchase adequate flood insurance within 45 days of the lender's notification of inadequate insurance coverage, the lender must force place flood insurance to cover the unit owner's dwelling in an amount adequate to meet the Regulation's flood insurance requirements.

The Agencies are also proposing five new questions and answers to address additional issues regarding flood insurance requirements for residential condominiums. Proposed new question 23 would be added to specifically affirm that the mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those in multi-story condominium complexes located in an SFHA in which flood insurance is available under the Act.

Proposed new question 25 would address lenders' options when a loan secured by a residential condominium unit is in a multi-unit complex whose condominium association does not obtain or maintain the amount of flood insurance coverage required under the Regulation. Specifically, it would provide that a lender must require the borrower to purchase an individual unit owner's dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The proposed answer would also detail what is considered an adequate amount of flood insurance under the Regulation and provide an example.

[4] In recent guidance, FEMA expressly discusses the statutory standard for determining the required amount of flood insurance for a condominium. FEMA *Mandatory Purchase of Flood Insurance Guidelines*, at 46.

[5] FEMA's recent guidance encourages condominium associations to obtain 100 percent coverage. *Id.* at 47.

[6] *See id.* at 46.

Proposed new question 26 would address the steps a lender must take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit. The proposed answer would also summarize some of the risks to which the lender and the individual unit owner/borrower may be exposed should a loss occur where the condominium association did not maintain adequate flood insurance coverage under an RCBAP.

Proposed new question 28 would be added to explain how the RCBAP's co-insurance penalty applies when, at the time of loss, the RCBAP's coverage amount is less than 80 percent of either the building's replacement cost or the maximum amount of flood insurance available for that building under the NFIP (whichever is less). Examples of how to calculate the penalty would also be provided. Proposed new question 29 would be added to explain the interplay between the individual unit owner's dwelling policy coverage limitations and the RCBAP.

Section VII. Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA

Proposed new Section VII, which addresses flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA, would include seven questions from current section I and parts of two questions from current section V. Specifically, current questions 3, 4, 5, 6, 7, 8, and 10 would be renumbered as questions 30, 31, 34, 35 and 36, 37, 38, and 39 respectively. Current question 5 in section V would be split into proposed questions 32 and 33.

Proposed questions and answers 30, 31, and 39 would include minor wording changes without any intended change in substance or meaning. Proposed question 32 would expand on part of current section V, question 5, but would not change the substance of the answer. New question 34 would be revised to clarify the issue discussed in current question 5 of section I without any change in substance or meaning. New questions 35 and 36 would be added to clarify the issues discussed in current question 6 of section I.

Section VIII. Flood insurance requirements for loan syndications/participations

The Agencies are proposing to include a new section VIII and new question 40 in response to questions from lenders. The proposed question and answer would explain that, with respect to loan syndications and participations, individual participating lenders are responsible for ensuring compliance with flood insurance requirements. The Agencies believe that the risk of flood loss can be a significant threat to the value of improved real property securing loans, especially in light of many recent catastrophic flood-related events such as Hurricane Katrina. Therefore, the Agencies believe that each lender in a loan participation/syndication arrangement that is secured by improved real property located in a special flood hazard area should be responsible for ensuring that the respective interest of the lender in the collateral that secures the lender's portion of the loan is protected against the risk of flood loss, at least to the amount required by the Regulation. This does not mean that each lender in a syndication or participant in a loan must individually undertake such activities as obtaining a flood determination or monitoring whether flood insurance premiums are paid. Rather, it means that the participating lender should perform 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 on-going basis for compliance with the flood insurance requirements. The participating lender should require as a condition to the participation, syndication or other credit risk sharing agreement that the lead lender or agent will provide participating lenders with sufficient information on an ongoing basis to monitor compliance with flood insurance requirements.

Section IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights

The heading to proposed section IX has been modified to provide greater clarity with no intended change in substance or meaning. The current questions 1, 2, 3, 4, 5, and 6 under current section IX would be renumbered as proposed questions 42, 43, 44, 45, 46, and 47, respectively, with minor revisions to questions and answers 42 and 46 to provide greater clarity, with no intended change in substance or meaning. Proposed section IX would also incorporate and expand current question 6 under section II as proposed question and answer 41. Proposed question 41 would expound on the two scenarios from current question 6 to provide greater clarity, with no intended change in substance or meaning.

Section X. Escrow requirements

Current section IV on escrow requirements would be moved to proposed section X but would remain largely unchanged. Question 1 under current section IV, relating to the date loan originations were subject to the escrow requirement, would be deleted, as it is now obsolete. Questions 2 through 7 under current section IV would be renumbered as proposed questions 48 through 53, respectively, with minor changes for greater clarity with no intended change in substance or meaning.

Section XI. Forced placement of flood insurance

For organizational purposes, the Agencies are proposing to move existing questions 1, 2, and 3 in Part VI to questions 54, 55, and 56 in section XI of the proposed document, respectively. The Agencies are proposing minor revisions to proposed question and answer 54 to provide greater clarity, with no intended change in substance or meaning.

Section XII. Gap insurance policies

The Agencies are proposing to add a new section and question and answer on the appropriateness of gap or blanket insurance policies, often purchased by lenders to ensure adequate life-of-loan flood insurance coverage for designated loans, as a result of questions received by the Agencies on such policies. Gap or blanket insurance policies are lender-paid private policies that are meant to cover a lender's entire portfolio of loans for insurance shortfalls or expired policies.

The proposed answer to question 57 of section XII would explain that, generally, gap or blanket insurance is not an adequate substitute for NFIP insurance, as a gap or blanket policy typically protects only the lender's, not the borrower's interest, and cannot be transferred when a loan is sold. The question and answer would acknowledge, however, that in limited circumstances, a gap or blanket policy may satisfy flood insurance obligations in instances where NFIP and private insurance for the borrower are otherwise unavailable.

Section XIII: Required use of the Standard Flood Hazard Determination Form (SFHDF)

Current section V would be moved to proposed section XIII, and questions 1, 2, 3, and 4 of current section V would be renumbered as proposed questions 58, 59, 60, and 61, respectively. The Agencies are proposing some minor changes to the answers for these questions to provide additional clarity with no intended change in substance or meaning. For organizational purposes, the guidance found in question 5 of current section V would be moved to proposed questions 32 and 33 under proposed section VII, as discussed above.

Section XIV. Flood determination fees

Current section VII would be moved to proposed section XIV. Questions 1 and 2 in current section VII would be renumbered as questions 62 and 63, respectively, with only minor language modifications, with no intended change in substance or meaning.

Section XV. Flood zone discrepancies

The Agencies are proposing a new section and two new questions concerning issues where there is a discrepancy between the flood hazard zone designation on a flood hazard determination form and the flood hazard zone designation on the flood insurance policy. Proposed new question 64 would address how lenders should respond when confronted with a discrepancy between the flood hazard zone designations on the flood hazard determination form and the flood insurance policy. The question discusses the legitimate reasons why such discrepancies may exist and describes how to resolve differences if there is no legitimate reason for them. Proposed question 65 discusses when such flood zone discrepancies in a loan portfolio will result in a finding that the lender violated federal flood insurance requirements. If there are repeated instances in the lender's loan portfolio of discrepancies between the flood hazard zone listed on a flood hazard determination and the flood hazard zone listed on a flood insurance policy, and the lender has not taken steps to resolve such discrepancies, then an agency may find that the lender has violated the mandatory purchase requirements.

Section XVI. Notice of special flood hazards and availability of Federal disaster relief

The Agencies propose to move current section VIII to proposed section XVI. Therefore, questions 1, 2, 3, 4, 5, and 6 under current section VIII would be renumbered as proposed questions 66, 67, 68, 69, 70, and 71, respectively, with nonsubstantive changes made to provide additional clarity to the answers. For organizational purposes, question 1 under current section X would be consolidated under this new section XVI and renumbered as question 73. Furthermore, a new question 72 is proposed to be added to clarify that the Notice of Special Flood Hazards must be provided to the borrower each time a loan is made, increased, extended, or renewed, even when a new determination is not required.

Section XVII. Mandatory civil money penalties

The Agencies are proposing a new section and two new questions concerning the imposition of mandatory civil money penalties for violations of the flood insurance requirements. Proposed new question 74 would list the sections of the Act that trigger mandatory civil money penalties when examiners find a pattern or practice of violations of those sections. The question would also include information about statutory limits on the amount of such penalties. Proposed new question 75 would discuss the general standards the Agencies consider when determining whether violations constitute a pattern or practice for which civil money penalties are mandatory. These considerations are not dispositive of individual cases, but serve as a reference point for reviewing the particular facts and circumstances.

Redesignation Table

The following redesignation table is provided as an aide to assist the public in reviewing the proposed revisions to the 1997 Interagency Questions and Answers.

Current	Proposed
Section I. Definitions:	
Section I, Question 1	Section IV, Question 17.
Section I, Question 2	Section IV, Question 16.
Section I, Question 3	Section VII, Question 30.
Section I, Question 4	Section VII, Question 31.
Section I, Question 5	Section VII, Question 34.
Section I, Question 6	Section VII, Question 35; and Section VII, Question 36.
Section I, Question 7	Section VII, Question 37.
Section I, Question 8	Section VII, Question 38.
Section I, Question 9	Section I, Question 4.
Section I, Question 10	Section VII, Question 39.
Section II. Requirement to Purchase Flood Insurance Where Available:	
Section II, Question 1	Section I, Question 1.
Section II, Question 2	Section I, Question 3.
Section II, Question 3	Section I, Question 5.
Section II, Question 4	Deleted as obsolete.
Section II, Question 5	Section II, Question 12.
Section II, Question 6	Section IX, Question 41.
Section II, Question 7	Section II, Question 11; and Section V, Question 22.
Section II, Question 8	Section VI, Question 24.
Section II, Question 9	Section VI, Question 27.
Section III. Exemptions	Section III. Exemptions from the mandatory flood insurance requirements.
Section III, Question 1	Section III, Question 15.
Section IV. Escrow Requirements	Section X. Escrow requirements.
Section IV, Question 1	Deleted as obsolete.
Section IV, Question 2	Section X, Question 48.
Section IV, Question 3	Section X, Question 49.

Current	Proposed
Section IV, Question 4	Section X, Question 50.
Section IV, Question 5	Section X, Question 51.
Section IV, Question 6	Section X, Question 52.
Section IV, Question 7	Section X, Question 53.
Section V. Required Use of Standard Flood Hazard Determination Form (SFHDF)	Section XIII. Required use of Standard Flood Hazard Determination Form (SFHDF).
Section V, Question 1	Section XIII, Question 58.
Section V, Question 2	Section XIII, Question 59.
Section V, Question 3	Section XIII, Question 60.
Section V, Question 4	Section XIII, Question 61.
Section V, Question 5	Section VII, Question 32; and Section VII, Question 33.
Section VI. Forced Placement of Flood Insurance	Section XI. Forced placement of flood insurance.
Section VI, Question 1	Section XI, Question 54.
Section VI, Question 2	Section XI, Question 55.
Section VI, Question 3	Section XI, Question 56.
Section VII. Determination Fees	Section XIV. Flood determination fees.
Section VII, Question 1	Section XIV, Question 62.
Section VII, Question 2	Section XIV, Question 63.
Section VIII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief	Section XVI. Notice of special flood hazards and availability of Federal disaster relief.
Section VIII, Question 1	Section XVI, Question 66.
Section VIII, Question 2	Section XVI, Question 67.
Section VIII, Question 3	Section XVI, Question 68.
Section VIII, Question 4	Section XVI, Question 69.
Section VIII, Question 5	Section XVI, Question 70.
Section VIII, Question 6	Section XVI, Question 71.
Section IX. Notice of Servicer's Identity	Section IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
Section IX, Question 1	Section IX, Question 42.
Section IX, Question 2	Section IX, Question 43.
Section IX, Question 3	Section IX, Question 44.
Section IX, Question 4	Section IX, Question 45.
Section IX, Question 5	Section IX, Question 46.
Section IX, Question 6	Section IX, Question 47.
Section X Appendix A to the Regulation-Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.	Section XVI. Notice of special flood hazards and availability of Federal disaster relief.
Section X, Question 1	Section XVI, Question 73.

Public Comments

The Agencies invite public comment on the proposed new and revised Interagency Questions and Answers. If financial institutions, bank examiners, community groups, or other interested parties have unanswered questions or comments about the Agencies' flood insurance regulations, they should submit them to the Agencies. The Agencies will consider including these questions and answers in the final guidance.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the federal banking Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this proposed guidance is not a proposed rule, comments are nevertheless invited on whether the proposed interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

The text of the proposed Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the revised flood insurance law and regulations. For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final rule.[7] The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') are providing answers to questions pertaining to the following topics:

I. Determining when certain loans are designated loans for which flood insurance is required under the Act and Regulation.
II. Determining the appropriate amount of flood insurance required under the Act and Regulation.
III. Exemptions from the mandatory flood insurance requirements.
IV. Flood insurance requirements for construction loans.
V. Flood insurance requirements for agricultural buildings.
VI. Flood insurance requirements for

[7] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

residential condominiums.
VII. Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA.
VIII. Flood insurance requirements for loan syndications/participations.
IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
X. Escrow requirements.
XI. Forced placement of flood insurance.
XII. Gap insurance policies.
XIII. Required use of Standard Flood Hazard Determination Form (SFHDF).
XIV. Flood determination fees.
XV. Flood zone discrepancies.
XVI. Notice of special flood hazards and availability of Federal disaster relief.
XVII. Mandatory civil money penalties.

I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance is Required Under the Act and Regulation

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

Answer: Yes. The Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA. If the building or mobile home is determined to be located in an SFHA, a lender is required to notify the borrower. In this case, a lender, generally, may make a conventional loan without requiring flood insurance, if it chooses to do so. However, a lender may *not* make a Government-guaranteed or insured loan, such as an SBA, VA, or FHA, loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would be an unacceptable risk.

2. *What is a lender's responsibility if a particular building or mobile home that secures a loan, due to a map change, is no longer located within an SFHA?*

Answer: The lender is no longer obligated to require mandatory flood insurance; however, the borrower can elect to convert the existing NFIP policy to a Preferred Risk Policy. For risk management purposes, the lender may, by contract, continue to require flood insurance coverage.

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

Answer: No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation, generally, are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories.

However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Regulation.

4. *Does the Regulation apply to loans that are being restructured because of the borrower's default on the original loan?*

Answer: Yes, if the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan.

5. *Are table funded loans treated as new loan originations?*

Answer: Yes. Table funding, as defined under HUD's Real Estate Settlement Procedure Act (RESPA) rule, 24 CFR 3500.2, is a settlement at which a loan is funded by a contemporaneous advance of loan funds and the assignment of the loan to the person advancing the funds. A loan made through a table funding process is treated as though the party advancing the funds has originated the loan. The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

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

Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a regulated lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

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

Answer: ''The maximum limit of coverage available for the particular type of property under the Act'' depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available. For single-family and two-to-four family dwellings and other residential buildings located in a participating community under the regular program, the maximum cap is $250,000. For nonresidential structures located in a participating community under the regular program, the maximum cap is $500,000. (In participating communities that are under the emergency program phase, the caps are $35,000 for single-family and two-to-four family dwellings and other residential structures, and $100,000 for nonresidential structures).

In addition to the maximum caps under the NFIP, the Regulation also provides that ''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,'' which is commonly referred to as the ''insurable value'' of a structure. The NFIP does not insure land; therefore, land values should not be included in the calculation. An NFIP policy will not cover an amount exceeding the ''insurable value'' of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real property for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real property, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss.

(Please note, however, when taking a security interest in improved real property where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

8. *What are examples of residential buildings?*

Answer: 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 non-residential 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.

9. *What are examples of nonresidential buildings?*

Answer: Nonresidential buildings include small business concerns, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than six months' duration, nursing homes, and mixed-use buildings with less than 75 percent residential square footage.

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

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

- The outstanding principal balance of the loan(s) or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the type of structure or
  - The ''insurable value'' of the structure (*see* Question 7).

Example: (calculating insurance required on a non-residential building): Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

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

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

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

Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together. The total amount of required flood insurance is the lesser of:

- the outstanding principal balance of the loan(s) or
- the maximum amount of insurance available under the NFIP, which is the lesser of:
  - the maximum limit available for the type of structures or
  - the ''insurable value'' of the structures (*see* Question 7).

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must have some coverage.

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

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

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

12. *If the insurable value of a building or mobile home, located in an SFHA in which flood insurance is available under the Act, securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?*

Answer: No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that 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 building or mobile home is located. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the insurable value of the improvements.

13. *Can a lender require more flood insurance than the minimum required by the Regulation?*

Answer: Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. The borrower or lender may have to seek such coverage outside the NFIP. Each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. Lenders should avoid creating situations where a building is being ''over-insured''.

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

Answer: Yes. However, it is not a sound business practice for a lender to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.

III. Exemptions From the Mandatory Flood Insurance Requirements

15. *What are the exemptions from coverage?*

Answer: There are only two exemptions from the purchase requirements. The first applies to state-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.

IV. Flood Insurance Requirements for Construction Loans

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

Answer: No. A designated loan is defined as a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act. Any loan secured by only raw land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

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

Answer: Yes. Therefore, a lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act. If so, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination that mandatory flood insurance is required. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

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

Answer: Yes. FEMA's *Flood Insurance Manual*, under general rules, states: buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises.

Flood Insurance Manual at p. GR 4 (October 2006). The definition section of the *Flood Insurance Manual* defines "start of construction" in the case of new construction as "either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation." *Flood Insurance Manual* at p. DEF 9. While an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

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

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

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued, *provided* that the lender requires the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

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

Answer: No. The NFIP will rely on an insurance agent's representation on the application for flood insurance that the purchase of insurance has been properly deferred unless there is a loss during the first 30 days of the policy period. In that case, the NFIP will require documentation of the loan transaction, such as settlement papers, before adjusting the loss.

V. Flood Insurance Requirements for Agricultural Buildings

21. *Some agricultural operations have buildings on their farms with limited utility to the farming operation and, in many cases, the farmer would not replace such buildings if lost in a flood. Is a lender required to mandate flood insurance for such buildings?*

Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA in a participating community. The Act does not differentiate agricultural lending from other types of lending.

The lender may consider "carving out" buildings from the security it takes on the loan. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether it would be able to market the property securing its loan in the event of foreclosure. Additionally, the lender should consider any local zoning issues or other issues that would affect its collateral.

22. *What are a lender's requirements under the Regulation for a loan secured by multiple agricultural buildings located throughout a large geographic area where some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP, and others do not?*

Answer: A lender is required to make a determination as to whether the property securing the loan is in an SFHA. If secured property is located in an SFHA, but not in a participating community, no flood insurance is required, although a lender can require the purchase of flood insurance (from a private insurer) as a matter of safety and soundness. Conversely, where a secured property is located in a participating community but not in an SFHA, no insurance is required. A lender must provide appropriate notice and require the purchase of flood insurance for designated loans located in an SFHA in a participating community. Agricultural buildings that are part of the loan's security and are located in an SFHA in a participating community are required to have flood insurance.

VI. Flood Insurance Requirements for Residential Condominiums

23. *Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?*

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

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

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

- The outstanding principal balance of the loan(s) or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the residential condominium unit or
  - The ''insurable value'' allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.

Assuming that the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain a dwelling policy if there is no RCBAP, as explained in Question 25, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in Question 26.

The RCBAP, which is a master policy for condominiums issued by FEMA, may only be purchased by the condominium owners association. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common. The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less.

The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000;
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000).)

The guidance in question and answer 24 will apply to any loan that is made, increased, extended, or renewed after the effective date of the revised guidance. Further, the guidance will apply to any loan made prior to the effective date of the guidance, which a lender determines to be covered by flood insurance in an amount less than required by the Regulation, and as set forth in proposed question and answer 24, at the first flood insurance policy renewal period following the effective date of the revised guidance.

25. *What action must a lender take if there is no RCBAP coverage?*

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 24.

Example: The lender makes a loan in the principal amount of $175,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance

($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

26. *What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?*

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request the individual unit owner/borrower to ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*see* Question 24). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (*see* Question 24).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or $160,000 per unit).

- Outstanding principal balance of loan is $300,000
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate dwelling policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

The risk arises because the individual unit owner's dwelling policy may contain claim limitations that prevent the dwelling policy from covering the individual unit owner's share of the co-insurance penalty, which is triggered when the amount of insurance under the RCBAP is less than 80 percent of the building's replacement cost value at the time of loss. In addition, following a major flood loss, the insured unit owner may have to rely upon the condominium association's and other unit owners' financial ability to make the necessary repairs to common elements in the building, such as electricity, heating, plumbing, elevators, etc. It is incumbent on the lender to understand these limitations.

27. *What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?*

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* Question 24). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* Questions 25 and 26). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

28. *How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?*

Answer: In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a co-insurance penalty, is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (inadequate insurance amount to avoid penalty)

Replacement value of the building—$250,000
80% of replacement value of the building—$200,000
Actual amount of insurance carried—$180,000
Amount of the loss—$150,000
Deductible—$500
Step A: 180,000 ÷ 200,000 = .90
(90% of what should be carried to avoid co-insurance penalty)
Step B: 150,000 × .90 = 135,000
Step C: 135,000 − 500 = 134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500). Unit owners' dwelling policies will not cover any assessment that may be imposed to cover the costs of repair that are not covered by the RCBAP.

Example 2: (adequate insurance amount to avoid penalty)

Replacement value of the building—$250,000
80% of replacement value of the building—$200,000
Actual amount of insurance carried—$200,000
Amount of the loss—$150,000
Deductible—$500
Step A: 200,000 ÷ 200,000 = 1.00
(100% of what should be carried to avoid co-insurance penalty)
Step B: 150,000 × 1.00 = 150,000
Step C: 150,000 − 500 = 149,500

In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty. The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

29. *What are the major factors involved with the individual unit owner's dwelling policy's coverage limitations with respect to the condominium association's RCBAP coverage?*

Answer: The following examples demonstrate how the unit owner's dwelling policy may cover in certain loss situations:

Example 1: (RCBAP insured to at least 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the dwelling policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost allocated to that unit.
- The loss assessment coverage under the dwelling policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the dwelling policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: (RCBAP insured to less than 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and there is an RCBAP that was insured to less than 80 percent of the building replacement cost value at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its co-insurance penalty.
- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building replacement cost value at the time of loss before the loss assessment coverage under the dwelling policy becomes available. Under the dwelling policy, covered repairs to the unit, if applicable, would have priority in payment over loss assessments against the unit owner.

Example 3: (No RCBAP)

- If the unit owner purchases building coverage under the dwelling policy and there is no RCBAP, the dwelling policy covers assessments against unit owners for damages to common areas up to the dwelling policy limit.
- However, if there is damage to the building elements of the unit as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the dwelling policy.

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

30. *Is a home equity loan considered a designated loan that requires flood insurance?*

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

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

Answer: No. While a line of credit, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is a designated loan and, therefore, requires a flood determination when application is made for the loan, draws against an approved line do not require further determinations. However, a request made for an *increase* in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* the response to Question 61 in Section XIII. Required use of Standard Flood Hazard Determination Form).

32. *When a lender makes a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?*

Answer: A lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The lender on the second mortgage cannot comply with the Act and Regulation by requiring flood insurance only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on the entire $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on real property with a fair market value of $150,000. The insurable value of the residential building on the real property is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 is purchased and maintained on the secured property to comply with the Act and Regulation.

33. *If a borrower requesting a home equity loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?*

Answer: It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary, when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the home equity loan, a new determination would be required because this lender would be deemed to be ''making'' a new loan. In either situation, the lender will need to determine whether the amount of insurance in force is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the home equity loan), the insurable value, or the maximum amount of coverage available on the improved real estate.

34. *If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?*

Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is a loan secured by a building or mobile home located or to be located in an SFHA, ''unless the building or mobile home and any personal property securing such loan'' is covered by flood insurance for the term of the loan. In this example, the collateral is not the type that could secure a designated loan because it does not include a building or mobile home; rather, the collateral is the inventory alone.

35. *Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?*

Answer: Yes. Flood insurance is required for the building located in the SFHA and any contents stored in that building.

36. *If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?*

Answer: No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

37. *Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an ''abundance of caution''?*

Answer: Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

38. *If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?*

Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

39. *If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?*

Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA, owned by that third party is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.

VIII. Flood Insurance Requirements for Loan Syndications/Participations

40. *How do the Agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication/participation?*

Answer: Although a syndication/participation agreement may assign compliance duties to the lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation.

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 on-going 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.

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

41. *How do the flood insurance requirements under the Regulation apply to lenders under the following scenarios involving loan servicing?*

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The lender initially services the loan; however, the lender subsequently sells both the loan and the servicing rights to a non-regulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

Answer: The lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the lender sells or transfers the loan and servicing rights, the lender must provide notice of the identity of the new servicer to FEMA or its designee.

If the lender retains ownership of the loan and only transfers or sells the servicing rights to a non-regulated party, the lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the lender as owner of the loan, including escrow of insurance premiums and forced placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, forced placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the lender, without fear of liability to the borrower for the imposition of unauthorized charges. In addition, the preamble to the Regulation emphasizes that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the 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.

Scenario 2: A non-regulated lender originates a designated loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The non-regulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The non-regulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the lender must comply with the Regulation, including force placing insurance, if necessary. Similarly, if the lender subsequently extends, increases, or renews a designated loan, the lender must also comply with the Regulation.

Where a regulated lender purchases only the servicing rights to a loan originated by a non-regulated lender, the regulated lender is obligated only to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.

42. *When a lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee*?

Answer: FEMA stated in a June 4, 1996, letter that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the lender's forced placement of a policy) will constitute notice to FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.

43. *Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?*

Answer: Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

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

44. *Can delivery of the notice be made electronically, including batch transmissions?*

Answer: Yes. The Regulation specifically permits transmission by electronic means. A timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

45. *If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Director or the Director's designee?*

Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

46. *Is a lender required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer?*

Answer: No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer. The obligation of the lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, a financial institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to a mortgage company. The financial institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the Director's designee. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the financial institution, is responsible for notifying the Director's designee of the identity of the new servicer.

47. *In the event of a merger of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?*

Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

X. Escrow Requirements

48. *Are multi-family buildings or mixed-use properties included in the definition of "residential improved real estate" under the Regulation for which escrows are required?*

Answer: "Residential improved real estate" is defined under the Regulation as "real estate upon which a home or other residential building is located or to be located." A loan secured by residential improved real estate located or to be located in an SFHA in which flood insurance is available is a designated loan. Lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for such loans if the lender requires the escrow of taxes, hazard insurance premiums or other loan charges for loans secured by residential improved real estate.

Multi-family buildings. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied. The preamble to the Regulation indicates that single-family dwellings (including mobile homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate, and the lender requires the escrow of other items, such as taxes or hazard insurance premiums, then the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine whether it meets the definition of ''residential improved real estate.'' For example, a building having a retail store on the ground level with a small upstairs apartment used by the store's owner generally is considered a commercial enterprise and consequently would not constitute a residential building under the definition. If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply. (*See* Questions 8 and 9 for examples of residential and nonresidential buildings.)

49. *When must escrow accounts be established for flood insurance purposes?*

Answer: Lenders should look to the definition of ''federally related mortgage loan'' contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to Section 10. Generally, for flood insurance purposes, only loans on one-to-four family dwellings will be subject to the escrow requirements of RESPA. (This includes individual units of condominiums. Individual units of cooperatives, although covered by Section 10 of RESPA, are not insured for flood insurance purposes.)

Loans on multi-family dwellings with five or more units are not covered by RESPA requirements. Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes, such as hazard insurance or taxes. This requirement pertains to any loan, including those subject to RESPA. The preceding paragraph addresses the requirement for administering loans covered by RESPA. The preamble to the Regulation contains a more detailed discussion of the escrow requirements.

50. *Do voluntary escrow accounts established at the request of the borrower trigger a requirement for the lender to escrow premiums for required flood insurance?*

Answer: No. If escrow accounts for other purposes are established at the voluntary request of the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are, in fact, voluntary. For example, when a lender's loan policies require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was made pursuant to a voluntary request by the borrower.

51. *Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?*

Answer: No. Premiums paid for these types of insurance policies will not trigger the escrow requirement for flood insurance premiums.

52. *Will escrow-type accounts for commercial loans, secured by multi-family residential buildings, trigger the escrow requirement for flood insurance premiums?*

Answer: It depends. Escrow-type accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself, such as ''interest reserve accounts,'' ''compensating balance accounts,'' ''marketing accounts,'' and similar accounts are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. However, escrow accounts established for the protection of the property, such as escrows for hazard insurance premiums or local real estate taxes, are the types of escrow accounts that trigger the requirement to escrow flood insurance premiums.

53. *What requirements for escrow accounts apply to properties covered by RCBAPs?*

Answer: RCBAPs are policies purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. A portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes a loan for the purchase of a condominium unit and when dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

XI. Forced Placement of Flood Insurance

54. *What is the requirement for the forced placement of flood insurance under the Act and Regulation?*

Answer: The Act and Regulation require a lender to force place flood insurance, if *all* of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- The community in which the property is located participates in the NFIP;
- The lender determines that flood insurance coverage is inadequate or does not exist; and
- After required notice, the borrower fails to purchase the appropriate amount of coverage.

A lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower the cost of premiums and fees to obtain the coverage. If adequate insurance is not obtained within the 45-day period, then the insurance must be force placed. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of the FEMA publication contains examples of notification letters to be used in connection with the MPPP.

55. *Can a servicer force place on behalf of a lender?*

Answer: Yes. Assuming the statutory prerequisites for forced placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

56. *When forced placement occurs, what is the amount of insurance required to be placed?*

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (*See* Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation.)

XII. Gap Insurance Policies

57. *May a lender rely on a gap or blanket insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance over the life of the loans?*

Answer: Generally no. Gap or blanket insurance typically is not an adequate substitute for NFIP insurance. Among other things, a gap or blanket policy typically protects only the lender's, not the borrower's, interest and, therefore, may not be transferred when a loan is sold. The presence of a gap or blanket policy may serve as a disincentive for the lender or its servicer to perform its due diligence and ensure that there is adequate coverage for a designated loan. Finally, a lender that substitutes a gap or blanket policy for an individual flood insurance policy would be unable to sell the loan in the secondary market, since Fannie Mae and Freddie Mac will not accept loans that are covered solely by a gap or blanket policy.

In limited circumstances, a gap or blanket policy may satisfy a lender's flood insurance obligations, when NFIP and private insurance is otherwise unavailable. For example, when a designated loan does not have sufficient coverage, but the borrower refuses to increase coverage under his NFIP insurance, a gap or blanket policy may be appropriate when the lender is unable to force-place private insurance for some reason. Similarly, when a policy has expired, and the borrower has failed to renew coverage, gap or blanket coverage may be adequate protection for the lender for the 15-day gap in coverage between the end of the 30-day ''grace'' period after the NFIP policy expiration and the end of the 45-day force placement notice period. However, the lender must force place adequate coverage in a timely manner, as required, and may not rely on the gap or blanket coverage on an on-going basis.

XIII. Required Use of Standard Flood Hazard Determination Form (SFHDF)

58. *Does the SFHDF replace the borrower notification form?*

Answer: No. The notification form is used to notify the borrower(s) that he or she is purchasing improved property located in an SFHA. The financial regulatory Agencies, in consultation with FEMA, included a revised version of the sample borrower notification form in Appendix A to the Regulation. The SFHDF is used by the lender to determine whether the property securing the loan is located in an SFHA.

59. *Is the lender required to provide the SFHDF to the borrower?*

Answer: No. While it may be a common practice in some areas for lenders to provide a copy of the SFHDF to the borrower to give to the insurance agent, lenders are neither required nor prohibited from providing the borrower with a copy of the form. In the event a lender does provide the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

60. *May the SFHDF be used in electronic format?*

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

61. *Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing or purchasing a loan secured by a building or a mobile home. Under the Act, the ''making'' of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. May a lender rely on a previous determination for a refinancing or assumption of a loan?*

Answer: It depends. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, *and* there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination.

XIV. Flood Determination Fees

62. *When can lenders or servicers charge the borrower a fee for making a determination?*

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

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination is prompted by FEMA's publication of notices or compendia that affect the area in which the security property is located; or
- When the determination results in forced placement of insurance.

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

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

Answer: Yes. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan. The fee charged for the service at loan closing is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to Question 62 occur.

XV. Flood Zone Discrepancies

64. *What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood*

determination form and the flood insurance policy?

Answer: Lenders should have a process in place to identify and resolve such discrepancies. In attempting to resolve a particular discrepancy, a lender should determine whether there may be a legitimate reason for a discrepancy.

The flood determination form designates a flood hazard zone where the building or mobile home is actually located based on the latest FEMA information; the flood insurance policy designates the flood hazard zone for purposes of rating the degree of flood hazard risk. The two respective flood hazard zone designations may legitimately differ by virtue of the NFIP's ''Grandfather Rule,'' which provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located. The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable rating for particular pieces of improved property. A discrepancy caused as a result of the application of the NFIP's Grandfather Rule is reasonable and acceptable. In such an event where the lender determines that there is a legitimate reason for the discrepancy, it should document its findings.

If the lender is unable to reconcile a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy and there is no legitimate reason for the discrepancy, the lender and borrower may jointly request that FEMA review the determination. This procedure is intended to confirm or disprove the accuracy of the original determination. The procedures for initiating a FEMA review are found at 44 CFR 65.17. This request must be submitted within 45 days of the lender's notification to the borrower of the requirement to obtain flood insurance.

65. *Can a lender be found in violation of the requirements of federal flood insurance regulations if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?*

Answer: Yes. As noted in Question 64 above, lenders should have a process in place to identify and resolve such discrepancies. If a lender is able to resolve a discrepancy—either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy by contacting FEMA to review the determination, then no violation will be cited. However, if more than occasional, isolated instances of unresolved discrepancies are found in a lender's loan portfolio, the Agencies may cite the lender for a violation of the mandatory purchase requirements. Failure to resolve such discrepancies could result in the lender's collateral not being covered by the amount of legally required flood insurance.

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

66. *Does the notice have to be provided to each borrower for a real estate related loan?*

Answer: No. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided. The notice must be provided to a borrower when the lender determines that the property securing the loan is or will be located in an SFHA.

67. *Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?*

Answer: When it is not reasonably feasible to give notice before the completion of the transaction, the notice requirement 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 will be located in an SFHA. Whenever time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time. In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such ''home only'' transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions.

However, as indicated in the preamble to the Regulation, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

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

Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

69. *What will constitute appropriate form of notice to the servicer?*

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

70. *In the case of a servicer affiliated with the lender, is it necessary to provide the notice?*

Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

71. *How long does the lender have to maintain the record of receipt by the borrower of the notice?*

Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their federal supervisory agency.

72. *Can a lender rely on a previous notice if it is less than seven years old and it is the same property, same borrower, and same lender?*

Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to provide the notice to the borrower. Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

73. *Is use of the sample form of notice mandatory?*

Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

XVII. Mandatory Civil Money Penalties

74. *What violations of the Act can result in a mandatory civil money penalty?*

Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulations triggers a mandatory civil money penalty:

(i) Purchase of flood insurance where available (42 U.S.C. 4012a(b));

(ii) Escrow of flood insurance premiums (42 U.S.C. 4012a(d));

(iii) Forced placement of flood insurance (42 U.S.C. 4012a(e));

(iv) Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and

(v) Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations ''shall be assessed a civil penalty'' by its Federal supervisor in an amount not to exceed $350 per violation, with a ceiling per institution of $100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). This limit has since been raised to $385 per violation, and the annual ceiling to $125,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note. Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

75. *What constitutes a ''pattern or practice'' of violations for which civil money penalties must be imposed under the Act?*

Answer: The Act does not define ''pattern or practice.'' The Agencies make a determination of whether one exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

> Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

• Whether the conduct resulted from a common cause or source within the financial institution's control;

• Whether the conduct appears to be grounded in a written or unwritten policy or established practice;

• Whether the noncompliance occurred over an extended period of time;

• The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);

• Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);

• Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;

• Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and

• Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

End of text of the Interagency Questions and Answers Regarding Flood Insurance.

Dated: March 5, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 12, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 14th day of March, 2008. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: February 5, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

Dated: March 13, 2008.

Roland E Smith,

Secretary, Farm Credit Administration Board.

By the National Credit Union Administration Board, on March 13, 2008.

Mary F. Rupp,

Secretary of the Board.

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UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for Fort Field Diversion Dam Reconstruction, Utah County, UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability.

SUMMARY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission),