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

We agree with the Agencies that reorganization of existing Q&A's into new categories by subject enhances clarity and understanding.

We submit the following comments for the Agencies' review and consideration for enhancement prior to publishing the final set of revised and expanded Questions and Answers Regarding Flood Insurance.

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### **Reorganized Category II. Exemptions from the Mandatory Flood Insurance Purchase Requirements**

**Comment #1.** We are requesting clarification on 'Mixed Use' property where detached buildings that may have been used for commercial/business purposes, but now currently do not have a commercial/business use. Could these fall under the residential exemption if the residence is using it for storage?

Example: Couple buys a farm and operates a business out of the residence that they use as their residence. The farm has many outbuildings. The farm has a barn that was used for a commercial purpose by prior owners but the current owners have no use for the building other than storage. Would this fall under the residential exemption?

**Comment #2.** Exemptions 5 (new proposed): If a property is remapped into an SFHA, does that trigger a review of the intended use of each detached structure?

**Clarification-** Answer states: a remapping is not a triggering event. There is no duty to monitor the status of a detached structure following the lender's initial determination.

Does this allow the financial institution to rely on the initial appraisal as to what the detached structure is being used for or is the financial institution responsible to determine the current use of the detached structure?



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**Reorganized Category III. Coverage- NFIP/Private Flood Insurance**

**Comment #3. Request:** In the FAQ's Summary, this section covers mutual aid societies and flood policies. FDIC has not provided clear guidance regarding Mutual Aid Flood Policies and as a result has left banks without sufficient guidance on how to provide adequate flood coverage to groups such as Amish borrowers that are consistent with their social and cultural needs. It is necessary for the FAQ's to address Mutual Aid flood policies, as these policies typically are not licensed under state insurance laws. Guidance of the specific acceptance of mutual aid policies is necessary to allow financial institutions to comply with Flood regulations and serve the needs of various communities.

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**Reorganized Category XI. Flood Insurance requirement for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA**

**Comment #4.** Request Clarification:

OTHER SECURITY INTERESTS 8. 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?

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.

OTHER SECURITY INTERESTS 10. Is flood insurance required if the lender takes a security interest in contents located in a building in an SFHA securing the loan but does not perfect the security interest?

Yes, flood insurance is required. The language in the loan agreement determines whether the contents are taken as security for the loan. If the lender takes a security interest in contents located in a building in an SFHA securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected.

**Clarification-** The proposed Other Security Interests 10 question appears to contradict Other Security Interests question 8 and may cause some confusion on how to handle contents located in a building in an SFHA.

**Reorganized Category XII. REQUIREMENT TO ESCROW FLOOD INSURANCE PREMIUMS AND FEES – GENERAL**

**Comment #5.** ESCROW 3. Are lenders required to escrow force-placed insurance?

Yes, the Regulation requires lenders or their servicers to escrow flood insurance premiums for any residential designated loan made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for an exception from the escrow requirement. The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

**Comment:** This proposed Q and A may need reworded for clarity to the reader. We currently have exceptions as listed in Q and A ESCROW 1. By stating that the Act and Regulation do not include an *exception* to the escrow requirements it could be misinterpreted as all forced-placed insurance must be escrowed.

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**Reorganized Category XV. Forced Placement of Flood Insurance**

**Comment #6.** FORCE PLACEMENT 8. When force placement occurs, what is the amount of insurance required to be placed?

The Regulation states that the minimum 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.”<sup>128</sup> Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees added to the loan balance. The lender must ensure that the forced placed policy amount covers the existing loan balance plus any additional forced-placed premium and fees that will be added to the loan balance.

**Comment-** During the servicing of force-placed flood insurance, the financial institution is not aware of the cost of flood insurance at the time requested. This would require a servicing burden to add additional force-placed premium to the loan balance. The increase of the force-placed policy could increase the premium for the borrower that would cause a negative impact for the customer.

**Comment #7.** FORCE PLACEMENT 10. Does adding the flood insurance premium to the outstanding loan balance constitute a triggering event- an “increase” that would trigger the applicability of flood insurance regulatory requirements?

If the lender’s loan contract with the borrower includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt to be secured by the building or mobile home, such an advancement would be considered part of the loan. As such, the addition of the flood insurance premiums and fees to the loan balance is not considered an “increase” in the loan amount, and thus would not be considered a triggering event. If, however, there is no explicit provision permitting this type of advancement of funds in the loan contract, the addition of flood insurance premiums and fees to the borrower’s loan balance would be considered an “increase” in the

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loan amount, and, therefore is considered a triggering event because no advancement of funds was contemplated as part of the loan.

**Comment:** Financial Institutions would need to review all contracts to make sure that each loan, where the flood insurance premium is added to the loan, does not constitute a triggering event. Financial Institutions would be burdened determining if the loan contract contains such provisions for future and past contracts. Financial Institutions would need to work with document vendors to make confirm this provision is included in all loan contracts.

**Comment #8.** FORCE PLACEMENT 11. What documentation is sufficient to demonstrate evidence of flood insurance in connection with a lender's refund of premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance?

With respect to when a lender is required to refund premiums paid by a borrower for force placed insurance during any period of overlap with borrower-purchased insurance, the Regulation specifically addresses the documentation requirements. The Regulation provides that, for purposes of confirming a borrower's existing flood insurance coverage, a lender must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent. The Regulation does not require that the declarations page contain any additional information in order to be accepted as fulfilling the mandatory flood insurance purchase requirement.

**Comment:** If an agency changes a policy but maintains the same policy number and the financial institution relies on the declaration page with limited information it could cause potential flood violations. It is our opinion that the amount of flood insurance coverage, deductible and flood zone should be required to verify that changes were not made to the policy. It is important to note that financial institutions may rely on a limited declaration page to refund forced placed premiums, but financial institutions should conduct due diligence to verify that there is adequate flood insurance coverage.

