



# FEDERAL REGISTER

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Vol. 78

Wednesday,

No. 210

October 30, 2013

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## Part III

### Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 22 and 172

### Federal Reserve System

12 CFR Part 208

### Federal Deposit Insurance Corporation

12 CFR Parts 339 and 391

### Farm Credit Administration

12 CFR Part 614

### National Credit Union Administration

12 CFR Part 760

Loans in Areas Having Special Flood Hazards; Proposed Rule

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

12 CFR Parts 22, 172

[Docket ID OCC–2013–0015]

RIN 1557–AD67

**FEDERAL RESERVE SYSTEM**

12 CFR Part 208

[Regulation H, Docket No. R–1462]

RIN 7100 AE–00

**FEDERAL DEPOSIT INSURANCE CORPORATION**

12 CFR Parts 339, 391

RIN 3064–AE03

**FARM CREDIT ADMINISTRATION**

12 CFR Part 614

RIN 3052–AC93

**NATIONAL CREDIT UNION ADMINISTRATION**

12 CFR Part 760

RIN 3133–AE18

**Loans in Areas Having Special Flood Hazards**

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

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are proposing to amend their regulations regarding loans in areas having special flood hazards to implement provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Specifically, the proposal would establish requirements with respect to the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The proposal also would clarify the Agencies' flood insurance regulations with respect to other amendments made by the Act and make technical

corrections. Furthermore, the OCC and the FDIC are proposing to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

**DATES:** Comments must be received on or before December 10, 2013, except that comments on the Paperwork Reduction Act analysis in part V of the **SUPPLEMENTARY INFORMATION** must be received on or before December 30, 2013.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "Loans in Areas Having Special Flood Hazards" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Loans in Areas Having Special Flood Hazards" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*— "regulations.gov": Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2013–0015" in the Search Box and click "Search." Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments. Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- *Email:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Fax:* (571) 465–4326.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC–2013–0015" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. 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 rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Enter "Docket ID OCC–2013–0015" in the Search box and click "Search." Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th 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) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to 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. R–1462 or RIN 7100 AE–00, 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.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as

submitted, unless modified for technical reasons. Accordingly, 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 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments by any of the following methods:

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

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

Comments submitted must include "FDIC" and "Loans in Areas Having Special Flood Hazards." Comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

**FCA:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- **Email:** Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- **Agency Web site:** <http://www.fca.gov>. Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Submitting a Comment."

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

- **Mail:** Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the

Web site, Select "Law & Regulations," then "FCA Regulations," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, 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 email addresses to help reduce Internet spam.

**NCUA:** You may submit comments, identified by RIN 3133-AE18 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.

- **Agency Web site:** <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- **Email:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include [Your name] Comments on "Loans in Areas Having Special Flood Hazards" in the email subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for email.

- **Mail:** Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

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

You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:**

**OCC:** Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649-5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649-6350, or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, Office of the Chief Counsel.

**Board:** Lanette Meister, Senior Supervisory Consumer Financial

Services Analyst (202) 452-2705; Vivian W. Wong, Counsel (202) 452-3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**FDIC:** Navid Choudhury, Senior Attorney, Consumer Compliance Section (202) 898-6526, Legal Division; or John Jackwood, Senior Policy Analyst (202) 898-3991, Division of Depositor and Consumer Protection.

**FCA:** Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy (703) 883-4203, TTY (703) 883-4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

**NCUA:** Sarah Chung, Staff Attorney, (703) 518-1178, Office of General Counsel.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Introduction*

The Biggert-Waters Flood Insurance Reform Act of 2012<sup>1</sup> (the Act), signed into law by the President on July 6, 2012, significantly revised Federal flood insurance statutes. Section 100209 of the Act, relating to the escrow of flood insurance payments, and section 100239 of the Act, relating to the acceptance of private flood insurance coverage, amended provisions of the Flood Disaster Protection Act (FDPA)<sup>2</sup> that require the Agencies to issue implementing regulations. Section 100244 of the Act, relating to force-placed insurance, necessitates conforming revisions to the Agencies' current flood insurance regulations. The Agencies jointly are issuing this proposal to revise their regulations accordingly. In connection with the issuance of this proposal, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain provisions of the flood insurance statutes.<sup>3</sup> The Agencies' proposal would implement only certain provisions of the Act over which the Agencies have jurisdiction. Accordingly, the Agencies encourage lenders to consult the Act for further information about revisions to the flood insurance statutes that will not be implemented through this rulemaking.

<sup>1</sup> Public Law 112-141, 126 Stat. 916 (2012).

<sup>2</sup> Public Law 93-234, 87 Stat. 975 (1973).

<sup>3</sup> See 42 U.S.C. 4012a(b)(1). The heads of four of the five Agencies (OCC, Board, FDIC, and NCUA) comprise part of the membership of the FFIEC.

### B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)<sup>4</sup> and the FDPA govern the National Flood Insurance Program (NFIP).<sup>5</sup> The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if the community where the improved real estate or mobile home is located participates in the NFIP. A special flood hazard area (SFHA) is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year.<sup>6</sup> SFHAs are delineated on maps issued by FEMA for individual communities.<sup>7</sup> A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.<sup>8</sup>

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. The FDPA required the mandatory purchase of flood insurance and directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS)<sup>9</sup> to issue regulations governing the lending institutions that they supervised. The resulting regulations directed these lending institutions to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (secured property) if the secured property was located in a SFHA in a participating community. The regulations also required lenders to notify borrowers that the secured property is located in a SFHA and that Federal disaster assistance is available with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, also known as the National Flood Insurance Reform Act of 1994 (Reform Act),

comprehensively amended the Federal flood insurance statutes.<sup>10</sup> The Reform Act established new requirements on Federally regulated lending institutions, such as the escrow for flood insurance premiums under certain conditions and mandatory force-placement of flood insurance coverage. The Reform Act was intended to increase compliance with the mandatory flood insurance purchase requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims. In addition, the Reform Act broadened the definition of “Federal entity for lending regulation” to include the FCA, thereby increasing the number of regulated lending institutions subject to the mandatory flood insurance purchase requirement to include lenders regulated by the FCA.

The Reform Act required the Agencies to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The Agencies fulfilled these requirements by issuing a joint final rule in August 1996.<sup>11</sup>

### C. The Biggert-Waters Act Amendments

Among other changes,<sup>12</sup> the Act significantly amends the NFIP requirements, over which the Agencies have jurisdiction. Specifically, the Act: (i) Increases the maximum civil money penalty (CMP) that the Agencies may impose per violation when there is a pattern or practice of flood violations and eliminates the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year;<sup>13</sup> (ii) requires regulated lending institutions to escrow premiums and

fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;<sup>14</sup> (iii) directs regulated lending institutions to accept private flood insurance, as defined by the Act, and to notify borrowers of the availability of private flood insurance;<sup>15</sup> and (iv) amends the force-placement requirement to clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.<sup>16</sup>

The civil money penalty provisions,<sup>17</sup> and the force-placement requirements were effective upon enactment. In contrast, both the escrow and private flood insurance provisions will become effective when the Agencies finalize implementing regulations. The Agencies previously published guidance regarding the effective dates of these amendments.<sup>18</sup>

## II. Summary of the Proposal

As indicated above, the Agencies propose to revise their respective flood insurance regulations to implement the Act’s amendments addressing the escrow of flood insurance payments, private flood insurance, and force-placed insurance. These provisions, and other amendments, proposed by this rulemaking are summarized below and more specifically described in IV. Section-by-Section Analysis of this preamble. Although the Agencies’ proposals are substantively consistent, the format of the regulatory text varies

<sup>10</sup> Public Law 103–325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

<sup>11</sup> 61 FR 45684 (Aug. 29, 1996).

<sup>12</sup> The Agencies note, for example, that section 100222 of the Act mandates a revision to the Special Information Booklet required under section 5 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2604(b)) to include a notice to the borrower of the availability of flood insurance under the NFIP or from a private insurance company, whether or not the real estate is located in an area having special flood hazards. The requirement to revise the Special Information Booklet is the responsibility of the Bureau of Consumer Financial Protection (CFPB) under RESPA. In addition, section 100204 of the Act directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage made available to such residential properties will be equal to the coverage made available to commercial properties. Policies for such properties will be made available by FEMA at a later date.

<sup>13</sup> Section 100208 of the Act, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

<sup>14</sup> Section 100209 of the Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)). Congress further amended section 42 U.S.C. 4012a(d) subsequent to the enactment of the Act to clarify that the flood insurance escrow requirement applies only to loans secured by residential improved real estate. *See* Public Law 112–281, 125 Stat. 2485 (Jan. 14, 2013).

<sup>15</sup> Section 100239 of the Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

<sup>16</sup> Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

<sup>17</sup> Some of the Agencies have revised their regulations to incorporate these increased civil money penalties. *See* OCC: 77 FR 66529 (Nov. 11, 2012) and 77 FR 76354 (Dec. 28, 2012); Board: 77 FR 68680 (Nov. 16, 2012); FDIC: 77 FR 74573 (Dec. 17, 2012); and FCA: 78 FR 24336 (April 25, 2013). The NCUA is in the process of updating its rule to reflect this civil money penalty change.

<sup>18</sup> “Interagency Statement on the Impact of Biggert-Waters Act,” March 29, 2013 (Board: CA 13–2; OCC: Bulletin 2013–10; FDIC: FIL 14–2013; FCA: Information Memorandum, March 29, 2013; NCUA: 13–RA–03).

<sup>4</sup> Public Law 90–448, 82 Stat. 572 (1968).

<sup>5</sup> These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

<sup>6</sup> 44 CFR 59.1.

<sup>7</sup> 44 CFR part 65.

<sup>8</sup> 44 CFR part 60.

<sup>9</sup> Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), (Dodd-Frank Act), transferred the powers, duties, and functions formerly performed by the OTS among the FDIC, as to State savings associations, the OCC, as to Federal savings associations, and the Board as to savings and loan holding companies. The OTS was abolished 90 days after the transfer date.

to conform to each Agency's current regulation.

First, the Agencies' proposal generally would require regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home, unless the institutions qualify for the statutory exception. Except as may be required under applicable State law, a regulated lending institution is not required to escrow if it has total assets of less than \$1 billion and, as of the Act's date of enactment, July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy to require escrow of taxes and insurance. The Agencies are proposing to implement the exception substantially as set forth in the statute.

Second, consistent with the Act, the Agencies' proposal would require that regulated lending institutions accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement. The proposal also specifically requests comment on whether the Agencies should use their authority under the FDPA to include a provision in the final rules that expressly permits regulated lending institutions to accept a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance" to satisfy the FDPA's general mandatory purchase requirement. The Agencies are also soliciting comment on what criteria the Agencies might require for such a policy. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition, and if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Third, the Agencies' proposal includes new and revised sample notice forms and clauses. Specifically, the proposal amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the Agencies' respective regulations, to add language concerning the availability of private flood insurance coverage (pursuant to the notice requirements under section 100239 of the Act) and the escrow requirement. The proposal also adds an additional sample notice form, Notice of Requirement to Escrow for Outstanding Loans, as Appendix B to assist

institutions in complying with the proposal's requirement to inform existing borrowers about the new escrow requirement. An institution would provide this notice for existing loans when neither the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance nor the notice of force-placement is provided. Finally, as Appendix C, the Agencies are proposing a sample clause regarding the new escrow requirement that may be included with the force-placement notice.

Fourth, the proposal would amend the force-placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The proposal also would stipulate the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

Fifth, the Agencies propose needed technical corrections. For example, the Agencies' current flood insurance regulations refer to the "Director" of the FEMA. The correct title for the head of that agency is "Administrator."<sup>19</sup> The Agencies' proposal would correct all references to the head of FEMA.

Finally, the OCC and the FDIC propose to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively. Specifically, the OCC proposes to add language to its flood insurance regulation for national banks, 12 CFR part 22, to make it applicable to both national banks and Federal savings associations, and to remove its regulation for Federal savings associations, 12 CFR part 172. Similarly, the FDIC proposes to add language to 12 CFR part 339, its flood regulation for State non-member banks, to make it applicable to both State non-member banks and State savings associations and to remove its flood regulation for State savings associations, 12 CFR part 391 subpart D. Parts 22, 172, 339, and 391 subpart D, are nearly identical and contain no substantive differences, as they were originally adopted through an interagency rulemaking process.<sup>20</sup>

<sup>19</sup> 6 U.S.C. 313.

<sup>20</sup> The OCC republished the former OTS rule as an OCC rule with respect to Federal savings

### III. Legal Authority

Section 102(b) of the FDPA (42 U.S.C. 4012a(b)), as amended by the Act, provides that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator of FEMA as an area having special flood hazards and in which flood insurance has been made available under the NFIP, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance. Thus, section 102(b) of the FDPA grants the Agencies rulemaking authority to implement this mandatory flood insurance purchase requirement as it pertains to regulated lending institutions.

Furthermore, under section 102(b) of the FDPA, as amended by section 100239 of the Act, the Agencies (after consultation and coordination with the FFIEC) must by regulation direct regulated lending institutions to accept private flood insurance as satisfaction of the mandatory flood insurance purchase requirement, described above. Section 102(b) of the FDPA, as amended by section 100239 of the Act, also authorizes the Agencies to implement the definition of private flood insurance under section 102(b) of the FDPA, as amended by the Act, as well as the requirement that the lender disclose to the borrower the availability of flood insurance from private insurance companies.

The OCC, Board, and FDIC have general authority to issue regulations assuring the safety and soundness of depository institutions.<sup>21</sup> The NCUA and FCA have similar authority with respect to the institutions that they supervise.<sup>22</sup> In addition, section

associations and the FDIC republished the former OTS rule with respect to State savings associations in 2011, with only nomenclature changes. See 76 FR 49140 (Aug. 9, 2011) (OCC) and 76 FR 47811 (Aug. 5, 2011) (FDIC).

<sup>21</sup> See 12 U.S.C. 1 and 93a; 12 U.S.C. 321 (granting the Board authority to impose conditions for membership in the Federal Reserve System); 12 U.S.C. 1820(g) (granting the FDIC authority to prescribe regulations to carry out the FDI Act; See also section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1)).

<sup>22</sup> The Federal Credit Union Act (12 U.S.C. 1751 et seq.) and section 5.17 of the Farm Credit Act of 1971, as amended, (12 U.S.C. 2252). Sections 106, 201, and 206 of the Federal Credit Union Act (12 U.S.C. 1756, 1781, and 1786) provide NCUA with the authority to examine and supervise Federally insured credit unions to protect the credit union system and the safety and soundness of the National Credit Union Share Insurance Fund.

100239(a)(1), which amended section 102(b) of the FDPA, provides that nothing in that subsection shall be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance.

Finally, section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 100209 of the Act and Public Law No. 112-281,<sup>23</sup> states that the Agencies (after consultation and coordination with the FFIEC) must by regulation require all premiums and fees for flood insurance under the 1968 Act for residential improved real estate or a mobile home be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home with the same frequency as payments on the loan are made for the duration of the loan. The statute requires that such funds be deposited in an escrow account on behalf of the borrower and used to pay the flood insurance provider when premiums are due. Section 102(d) of the FDPA, as amended, also authorizes the Agencies to implement the exception to this requirement for certain regulated lending institutions with assets less than \$1 billion.

#### IV. Section-by-Section Analysis

##### \_\_\_\_ Authority, purpose, and scope

Since the Agencies last revised their regulations in 1996, the title of the head of FEMA has changed from "Director" to "Administrator." In accordance with this change, the Agencies are proposing an amendment to the reference to the head of FEMA in the scope section.

As part of the OCC's and FDIC's consolidation of their flood insurance rules, the OCC and FDIC also are proposing to insert the term "Federal savings association" or "FDIC-supervised institution" where necessary throughout their flood insurance rules.

##### \_\_\_\_ Definitions

*Private flood insurance.* The Agencies are proposing to add a new definition for "private flood insurance" consistent with section 100239 of the Act, which added a new section 102(b)(7) to the FDPA. Under section 102(b)(7) of the FDPA, "private flood insurance" means an insurance policy that: (i) Is issued by an insurance company that is licensed, admitted or otherwise approved to engage in the business of insurance in

the State or jurisdiction in which the insured building is located by the insurance regulator of the State or jurisdiction or, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction;<sup>24</sup> (ii) provides flood coverage at least as broad as the coverage provided by a standard flood insurance policy (SFIP) under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer; (iii) includes a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution; (iv) includes information about the availability of flood insurance coverage under the NFIP; (v) includes a mortgage interest clause similar to the clause contained in an SFIP; (vi) includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and (vii) contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

*Other definitions.* The Agencies also are proposing technical amendments to change the references to the head of FEMA from Director to Administrator in the definitions and to renumber the definitions to accommodate the inclusion of the new definition for "private flood insurance."

*OCC-only definitions.* The OCC also proposes the following amendments to the definition section for purposes of integrating its national bank and Federal savings association flood insurance rules. First, the proposed rule provides that the term "Federal savings association" means a Federal savings association as defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof. This definition is identical to the definition of "Federal savings association" in 12 CFR part 172, except that part 172 specifically referenced "subsidiaries." Current 12 CFR part 22 does not specifically include a reference to bank operating subsidiaries because

<sup>24</sup> The Agencies note that with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners' (NAIC) International Insurer's Department (IID List). See The Nonadmitted and Reinsurance Reform Act of (NRRRA), Title V of the Dodd-Frank Act, Public Law 111-203 (July 21, 2011).

such subsidiaries are subject to the rules applicable to the operations of their parent bank pursuant to 12 CFR 5.34. Because Federal savings association operating subsidiaries also are subject to the same rules applicable to the parent savings association, as provided by 12 CFR 159.3(h), the inclusion of "subsidiary" in this definition is unnecessary and its removal will not affect the applicability of 12 CFR part 22 to Federal savings association operating subsidiaries.

Second, the OCC proposes to remove the definition of "bank," which the rule currently defines as meaning a national bank. Instead, the term "bank" is replaced with "national bank" throughout the rule.

*FDIC-only definition.* The FDIC also proposes the following amendments to the definitional section for purposes of integrating its State nonmember bank and State savings association flood insurance rules. The FDIC proposes to remove the definition of "bank" and replace it with "FDIC-supervised institution" which would be defined to mean any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

\_\_\_\_ Requirement to purchase flood insurance where available.

In General.

The current regulation provides that a regulated lending institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. This provision further provides that flood insurance coverage 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. A "designated loan" means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act, as amended.<sup>25</sup> The Agencies are proposing to revise the language relating to the coverage limit to reflect more accurately what is actually covered under Federal flood insurance statutes. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is limited to the building or mobile home

<sup>25</sup> OCC: 12 CFR 22.2(e); Board: 12 CFR 208.25(b)(4); FDIC: 12 CFR 339.2(e); FCA: 12 CFR 614.4925(e); NCUA: 12 CFR 760.2(f).

<sup>23</sup> 126 Stat. 2485 (Jan. 14, 2013).

and any personal property securing the loan and not the land itself.

#### Private flood insurance

The Agencies also are proposing to amend this section to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, which requires that all regulated lending institutions accept private flood insurance if certain conditions are met. Specifically, the proposal would require a regulated lending institution to accept private flood insurance that meets the definition of this term to satisfy the FDPA's insurance requirement, provided that the private flood insurance policy also meets the conditions set forth in the general mandatory purchase requirement. Therefore, a regulated lending institution may only accept private flood insurance coverage under this provision if the building or mobile home and any personal property that secures the mortgage loan is covered for the term of that loan by the amount of flood insurance required by section 102(b)(1)(A) of the FDPA. As described above in      *Definitions*, this proposal also would amend the Agencies' regulations to include the statutory definition of "private flood insurance."

The Agencies understand that there have been concerns regarding the ability of regulated lending institutions to evaluate whether a flood insurance policy meets the definition of "private flood insurance" set forth in the Act because some regulated lending institutions lack the necessary technical expertise. To facilitate compliance in this regard, the Agencies are proposing a safe harbor to allow lenders to rely on the expertise of State insurance regulators. Under the proposed safe harbor, if a State insurance regulator makes a written determination that a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" set forth in the Act, then the Agencies will deem such policy to meet the statutory definition of "private flood insurance."

The Agencies note that regulating insurance providers is generally the domain of State insurance regulators. As a result, State insurance regulators may be the appropriate parties to determine whether a flood insurance policy meets all the criteria set forth in the statutory definition of "private flood insurance." The Agencies solicit comment on whether: (i) Any mechanism exists or may be developed by State regulators to make such a determination; (ii) a written determination would facilitate lenders' acceptance of flood insurance

by private insurers; (iii) such a safe harbor would alleviate the concerns of regulated lending institutions in evaluating private flood policies; and (iv) a safe harbor would enable the growth of the private flood insurance market.

Although section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Act, requires a regulated lending institution to accept private flood insurance that meets the statutory definition, the Agencies note that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition. The Agencies believe that the Congressional intent of the statute was to stimulate the private flood insurance market.<sup>26</sup> Consequently, in addition to requiring regulated lending institutions to accept private flood insurance policies that comply with the statutory definition of "private flood insurance," the Agencies are considering whether to include a provision in the final rules that expressly permits regulated lending institutions to accept, as satisfaction of the FDPA's mandatory purchase requirement, a flood insurance policy issued by a private insurer that does not meet the Act's definition of "private flood insurance." The Agencies would include this provision pursuant to their authority under the FDPA to issue regulations directing lending institutions not to make, increase, extend, or renew any loan secured by property in a SFHA unless the property is covered by "flood insurance."<sup>27</sup>

To assist with determining whether the Agencies should include this provision, the Agencies solicit comment on whether policies issued by private insurers that do not meet the statutory definition of "private flood insurance" should be permitted to satisfy the mandatory purchase requirement. Alternatively, the Agencies solicit comment on whether it is appropriate to include a provision in the final rules that specifically requires regulated lending institutions to accept only policies issued by private insurers that meet the statutory definition and, if included, what would be the effect of such a provision on the availability of privately issued flood insurance.

Furthermore, if the Agencies decide to include a provision in the final rules

<sup>26</sup> The Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to "increase the role of private markets in the management of flood insurance risk." H. Rep. No. 112–102, at 1 (2011); see also 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

<sup>27</sup> See 42 U.S.C. 4012a(b).

that expressly permits regulated lending institutions, at their discretion, to accept policies issued by private insurers that do not meet the statutory definition of "private flood insurance" to satisfy the mandatory purchase requirement, the Agencies are requesting comment on whether they should require the following criteria for such discretionary policies pursuant to the Agencies' authority to implement the FDPA's general mandatory purchase requirement.

First, State insurance regulators, as the functional regulator of insurance companies, may be in the best position to evaluate the condition and ability of a private insurer to issue a flood insurance policy. Accordingly, the Agencies could require that flood insurance issued by a private insurer that a regulated lending institution may accept at its discretion must be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located by the insurance regulator of the State. Further, in the case of a policy of difference in condition, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, the Agencies could require that the private insurance provider must be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located.<sup>28</sup>

Second, the Agencies could require that the coverage provided under any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must be at least as broad as the coverage provided by a SFIP under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For example, the private flood insurance policy must provide coverage for the foundation of a building in addition to the above-ground portion of the building. This criterion could ensure that a private flood insurance policy accepted by a regulated lending institution provides the institution and the borrower with appropriate and sufficient coverage for the property securing the loan.

<sup>28</sup> As discussed above in the **SUPPLEMENTARY INFORMATION** accompanying the definition of "private flood insurance" in      *Definitions*, with respect to alien (non-U.S.) surplus lines insurers, States may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC's IID List.

Finally, the Agencies could require that any flood insurance policy issued by a private insurer that a regulated lending institution accepts at its discretion must include a mortgage interest clause similar to the clause contained in a SFIP.<sup>29</sup> Therefore, the Agencies could require the mortgage interest clause to cover the interests of both the insured (whether such insured is a mortgagor/borrower or another entity that purchased the policy, such as a condominium owners' association) and the mortgagee (the lender). Having both the insured and the mortgagee covered in the mortgage interest clause would mean that, in the event of a loss, the interests of both the regulated lending institution and the insured would be protected.

The Agencies solicit comment as to whether requiring the above criteria for any flood insurance policy issued by a private insurer that a lender accepts at its discretion would be inconsistent with State legal requirements and industry practice with respect to private flood insurance. The Agencies also solicit comment as to whether criteria, additional to those discussed above, should be imposed if the Agencies permit regulated lending institutions to accept a private flood insurance policy issued by a private insurer that does not meet the statutory definition of "private flood insurance."<sup>30</sup> The Agencies believe that the proposed mandatory acceptance approach is consistent with both the statutory language and Congressional intent.<sup>31</sup> Additionally, the Agencies request comment on whether allowing discretionary acceptance of flood insurance policies issued by private insurers not meeting the statutory definition of private flood insurance but requiring that such discretionary policies meet certain criteria could encourage development of the private flood insurance market while also ensuring that regulated lending institutions and borrowers are properly protected. The Agencies also seek comment regarding the experience of both lenders and their borrowers with respect to policies issued by private

<sup>29</sup> "Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear." NFIP Dwelling Form.

<sup>30</sup> Additionally, as indicated above, nothing in the Act can be construed to supersede or limit the Agencies' authority to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which a regulated lending institution will accept private flood insurance. See 42 U.S.C. 4012a(b)(5).

<sup>31</sup> 158 Cong. Rec. H4616–01, H4621–H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

insurers that do not meet the statutory definition of "private flood insurance" as compared to policies issued by private insurers that meet the statutory definition of "private flood insurance."

Regulated lending institutions have previously relied upon FEMA's "Mandatory Purchase of Flood Insurance Guidelines" (Guidelines) for guidance when determining whether a private insurance policy conforms to the flood insurance requirements. FEMA had advised that, to the extent that the private policy differs from the NFIP's policy, the differences should be carefully examined before accepting the policy. On February 4, 2013, FEMA rescinded the Guidelines and advised lenders to "consult their respective regulatory agency for information regarding compliance with the mandatory purchase requirements."<sup>32</sup> The Agencies note that currently institutions continue to have the discretion to accept flood insurance issued by a private insurer pursuant to section 102(b)(1)(A) of the FDPA.

#### Exemptions

The Agencies are proposing a technical amendment to change the reference to the head of FEMA from Director to Administrator.

#### Escrow requirement

##### In General

Pursuant to section 102(d) of the FDPA, as amended by section 100209(a) of the Act and Public Law 112–281,<sup>33</sup> the Agencies are proposing to revise their regulations to require regulated lending institutions, or servicers acting on behalf of a regulated lending institution, to escrow all premiums and fees for flood insurance required for any loans secured by residential improved real estate or a mobile home unless the lending institutions qualify for the statutory exception.<sup>34</sup> In addition, these

<sup>32</sup> FEMA Letter, February 4, 2013. See <http://www.fema.gov/library/viewRecord.do?fromSearch=fromsearch&id=2954>.

<sup>33</sup> 126 Stat. 2485 (Jan. 14, 2013).

<sup>34</sup> The Agencies note that CFPB's mortgage servicing rule promulgated the new escrow requirements set forth in section 6 of RESPA, which were enacted in the Dodd-Frank Act. The CFPB's rule excludes flood insurance that is required under the FDPA from the new escrow requirements. 78 FR 10696, 10880 (Feb. 14, 2013). That is, the CFPB rule exempts from the definition of force-placed insurance, insurance required by the FDPA. *Ibid.* The CFPB's rule requires a servicer to advance funds to a borrower's escrow account and to disburse such funds in a timely manner to pay the premium charge on a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges). Thus, even if a borrower were delinquent by more than 31 days, a

premiums and fees must be payable with the same frequency as payments on the loan are made for the duration of the loan. Consistent with section 102(d) of the FDPA, as amended, the proposed provision applies to any loan secured by residential improved real estate or a mobile home that is made or is outstanding on or after July 6, 2014.

The Agencies are proposing to implement amended section 102(d) of the FDPA with some clarifications. First, as noted above, Public Law 112–281 amended section 102(d) of the FDPA, as amended by section 100209 of the Act, to insert the word "residential" prior to every mention of "improved real estate." The Agencies' understand that Congress's intent was to apply the escrow requirement to residential loans and exclude commercial loans.<sup>35</sup> Consequently, the Agencies are proposing that regulated lending institutions need not escrow flood insurance premiums and fees for loans that are an extension of credit for a business, commercial, or agricultural purpose even if secured by residential real estate. This exception is consistent with similar exceptions in the RESPA<sup>36</sup> and the Truth in Lending Act.<sup>37</sup>

Second, the Agencies are proposing that when a regulated lending institution has determined that a borrower has obtained flood insurance coverage that meets the mandatory purchase requirement for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees into an escrow account that has been established by another lender, the institution need not establish another escrow account for the same purpose. Such circumstances may arise, for example, when the regulated lending institution takes a second lien position on a particular property and the borrower is already paying flood insurance premiums and fees on such

servicer would be required under the CFPB's rule to advance funds to continue the borrower's hazard insurance policy. In promulgating this rule, the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. The Agencies do not have a similar grant of consumer protection authority under any of the Federal flood statutes.

<sup>35</sup> In a floor statement on January 1, 2013, in support of S. 3677, which was adopted as Public Law No. 112–281, Congresswoman Biggert stated that the bill is "necessary to clarify that this escrowing provision only applies to 'residential' mortgage loans and not commercial and multifamily loans." The statement further provides that the bill does not impose new escrow obligations on commercial and multifamily real estate servicers.

<sup>36</sup> See 12 U.S.C. 2606(a).

<sup>37</sup> See 15 U.S.C. 1603(1).

property into an escrow account established by the first lienholder. It is the Agencies' understanding that, in such cases, the lender in the second lienholder position will generally request the borrower to increase the current flood insurance policy coverage amount to satisfy the flood insurance purchase requirement for the second loan. The Agencies believe that the increase in premiums and fees due to the expanded coverage would then be paid into the escrow that was previously established by the first lienholder. Therefore, requiring a second escrow account to be established would not be necessary. However, if the first lienholder is not required to or otherwise does not escrow flood insurance premiums and fees for adequate insurance coverage for the residential improved real estate or a mobile home, the proposed rule would require the regulated lending institution in the second lienholder position to escrow required flood insurance premiums and fees, unless such regulated lending institution qualifies for an exception from the escrowing provisions.

Third, the Agencies recognize that when flood insurance coverage for a residential improved real estate or a mobile home is provided by a policy purchased by a common interest community, such as a condominium owners' association, the borrower is not the purchaser of the policy. If that policy is purchased by a common interest community in an amount that is sufficient to meet the mandatory flood insurance purchase requirement, then escrowing flood insurance premiums and fees on behalf of the borrower would not be necessary because the borrower would not be directly responsible for paying the flood insurance premiums or fees. As a result, the Agencies are proposing that a regulated lending institution need not establish an escrow account for flood insurance premiums and fees when the institution has determined that flood insurance coverage is provided by a policy purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the mandatory flood insurance purchase requirement, including coverage for the proper amount. If the amount of the policy purchased by a common interest community is insufficient to meet the mandatory flood insurance purchase requirement, however, the borrower would be required to obtain a supplemental policy to cover the

deficiency, and the proposed rule would require that the regulated lending institution escrow the premiums and fees for the supplemental policy. For example, if a condominium owners' association purchases an RCBAP or a private flood insurance policy for less than the maximum amount of insurance available under the NFIP, the borrower may be required to obtain a dwelling policy for supplemental coverage. If the borrower is required to obtain a dwelling policy, the proposed rule would require the regulated lending institution to escrow the premiums and fees for such policy.

#### Timing

The Agencies' proposal sets forth timing provisions that stipulate when regulated lending institutions must begin escrowing premiums and fees for required flood insurance. Section 100209(b) of the Act (42 U.S.C. 4012a note) provides that the escrow provisions apply to any mortgage outstanding or entered into on or after the expiration of the two-year period beginning on the date of enactment of the Act. Therefore, loans secured by residential improved real estate or a mobile home that are outstanding or entered into on or after July 6, 2014 are covered by this requirement, provided the loan is required to have flood insurance. Consequently, the Agencies propose that for any designated loans made on or after July 6, 2014, the regulated lending institution must begin escrowing upon loan consummation.

With respect to designated loans that are outstanding on July 6, 2014, the proposed rule would require regulated lending institutions to begin escrowing with the first loan payment after the first renewal date of the borrower's flood insurance policy that occurs on or after July 6, 2014. For example, if a borrower's current flood insurance policy will renew on March 15, 2015, and the borrower's loan payments are generally due the first of each month, the institution must begin escrowing with the loan payment due on April 1, 2015. The borrower would be responsible for paying the premium to renew the policy on March 15, 2015, however. Payments that are escrowed beginning April 1, 2015 will be used by the lender to pay the premiums for subsequent years.

The Agencies' proposal is intended to alleviate the potential burden to lenders and borrowers of establishing an escrow account for an outstanding loan for which a borrower was not previously escrowing flood insurance premiums and fees. By tying the establishment of the escrow to the time of flood

insurance policy renewal, the proposal would allow regulated lending institutions to comply with the requirement on a staggered basis, rather than requiring them to establish escrow accounts for all outstanding designated loans at one time.

The Agencies believe this proposal will also benefit borrowers. Delaying the establishment of the escrow until immediately after their flood insurance policy is renewed will ensure that all borrowers will have the maximum amount of time to escrow for their subsequent flood insurance policy renewal. If the Agencies were to require regulated lending institutions to establish escrow accounts for all outstanding designated loans at one time, some borrowers may be burdened with larger escrow payments to cover the premium for the full term over a shorter period of time than other borrowers. For example, if the Agencies required all regulated lending institutions to establish escrow accounts for all outstanding loans on July 6, 2014, then a borrower whose yearly flood insurance policy renewal date is September 15, 2014, would have only approximately two months to escrow for a full year of flood insurance premiums and fees while a borrower whose yearly flood insurance policy renewal date is March 15, 2015, would have approximately eight months to escrow for a full year of flood insurance premiums and fees. Consequently, the borrower with the March 15, 2015, renewal date would have smaller escrow payments each payment period than the borrower with the September 15, 2014 renewal date. Requiring regulated lending institutions to begin escrowing with the first loan payment after the borrower renews the existing policy would mean that all borrowers will have the maximum amount of time to escrow for the next flood insurance payment, regardless of when their policies renew.

The Agencies request comment on the timing proposed for complying with the escrow requirement for outstanding loans and whether regulated lending institutions should be provided the option of complying with the escrow requirement earlier than the dates set forth in the proposal. Lenders with a small number of designated loans that are not otherwise excepted from the escrow requirement may prefer to establish all required escrow accounts for outstanding designated loans in their portfolio at one time, prior to the insurance policy renewal dates. Permitting institutions to comply with the escrow requirement earlier, however, may mean that some

borrowers will have less time to make escrow payments for flood insurance premiums and fees associated with the first insurance policy payment to be paid out of the funds in the escrow than other borrowers, depending on when the regulated lending institution, or its servicer, decides to comply with the escrow requirement. Although borrowers would ultimately pay the same amount regardless of when the escrow begins, the Agencies request comment on whether lenders' early compliance with the escrow requirements would be otherwise detrimental to borrowers, and if so, how it may be detrimental.

The Agencies are also proposing to address the timing applicable to loans that were not designated loans at the time that they were made, but become designated loans after July 6, 2014. This may occur, for example, when there is a FEMA map change, and a building that was not previously located in an SFHA is now located in an SFHA. In those instances, the loan secured by such building may be required to have flood insurance under the FDPA. If flood insurance is required, a regulated lending institution, or a servicer acting on its behalf, also would be required to establish an escrow account to comply with the FDPA, as amended by the Act. The proposed rule would require regulated lending institutions to begin escrowing premiums and fees for required flood insurance with the first loan payment after the flood insurance policy is established. Under the proposal, this initial flood insurance policy may either be purchased by the borrower or, if the borrower failed to purchase a policy, force-placed by the regulated lending institution.

The following explanation illustrates how this provision would operate. Under the Agencies' proposal, in the situation in which a lender determines that a loan that was not originally a designated loan, but has become a designated loan, for example, due to remapping, the lender would notify the borrower that flood insurance is required, as provided in the force-placement provision of the rule. After the required notification, either the borrower would purchase and pay for a flood insurance policy or the lender would force-place a policy and charge the borrower for the cost of coverage. The lender also would commence escrowing payments to cover premiums and fees, which would be applied to the next annual policy renewal, upon the borrower's next loan payment.

The Agencies solicit comment on whether the requirement to begin escrowing for a loan that becomes a

designated loan after July 6, 2014, should be limited only to when a borrower-purchased flood insurance policy is established and exclude instances in which a lender-placed flood insurance policy is established. If the rule were to be limited only to when a borrower-purchased flood insurance is established, a regulated lending institution would not be required to escrow flood insurance premiums and fees when it force-places an initial flood insurance policy. In this instance, after the expiration of such a force-placed insurance policy, there would be no funds escrowed for any policy that may be purchased at that time, whether it is borrower-purchased or lender-placed. Under the proposed rule, a regulated lending institution would be required to escrow flood insurance premiums and fees following the establishment of a force-placed policy for a loan that becomes a designated loan after July 6, 2014. If a borrower fails to purchase the requisite flood insurance upon the expiration of such force-placed insurance, then the lender would use the escrowed funds to renew or purchase a new force-placed policy.

#### Notice

In order to ensure that borrowers are well-informed about the escrow requirement to collect premiums and fees for required flood insurance, the Agencies are proposing that regulated lending institutions provide borrowers with a written notice. Specifically, the proposed rule would mandate that a regulated lending institution, or a servicer acting on its behalf, mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. In order to facilitate compliance with the proposed notice requirement, the Agencies are proposing model language for this notice as discussed in more detail below in the **SUPPLEMENTARY INFORMATION** to Appendices A, B, and C. To minimize the burden to regulated lending institutions of providing this notice and to ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance, the proposal takes advantage of flood insurance notices that already are required under current law. Specifically, the proposal adds language regarding the escrow requirement to the existing Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, included in the Agencies' current rules as Appendix A. The proposal would require that, for designated loans made on or after July 6, 2014, a regulated lending institution,

or a servicer acting on its behalf, must provide a notice that contains language substantially similar to model clauses on the escrow requirement in the revised sample notice provided in Appendix A with or on the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Similarly, under the proposal, for a loan that becomes a designated loan after July 6, 2014, a regulated lending institution, or a servicer acting on its behalf, must provide notice concerning the escrow requirement with the force-placement notice, using language that is substantially similar to the sample language proposed in Appendix C.

However, for loans that are outstanding on July 6, 2014, there are no required notices under current law that the regulated lending institution would be certain to provide before the institution would be required to begin escrowing under the proposal. Consequently, the Agencies are proposing that a regulated lending institution, or a servicer acting on its behalf, provide a separate notice describing the escrow requirement, substantially similar to the sample notice proposed by the Agencies in Appendix B, at least 90 days before the regulated lending institution must begin escrowing. The Agencies believe that 90 days' advance notice would give borrowers sufficient time to gather the necessary funds for the escrow. However, the Agencies solicit comment on whether 90 days is an appropriate time period to provide notice for loans outstanding on July 6, 2014.

#### Exception

This proposal implements the statutory exception to the escrow requirement substantially as included in the Act with some clarifications. The statute states that, except as provided by State law, regulated lending institutions that have total assets of less than \$1 billion are exempt from this escrow requirement if, on or before July 6, 2012, the institution: (i) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan; and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

Because the Act does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the

exception, the Agencies are proposing that a regulated lending institution may qualify for the exception if it has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years. Thus, a regulated lending institution would only be subject to the escrow requirement if it has assets of \$1 billion or more as of December 31 for at least two consecutive years. Consequently, if the proposal is finalized and becomes effective in 2014, regulated lending institutions with assets of \$1 billion or more as of both December 31, 2012, and December 31, 2013, would not qualify for the exception. In contrast, a regulated lending institution with assets of less than \$1 billion as of either December 31, 2012 or December 31, 2013, may qualify for the exception, provided the other conditions for the exception are met.

This measurement method is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under the Community Reinvestment Act (CRA).<sup>38</sup> The Agencies believe the asset measurement method these agencies have used with respect to CRA is an appropriate model in this case as it ensures an institution is definitively over the size threshold before requiring the institution to expend the resources needed to establish a new escrow program.

Moreover, the Agencies are proposing transition rules for a change in status of a regulated lending institution that may initially qualify for the exception, but later grows to exceed the \$1 billion asset size threshold. Similar to the Board's Regulation II, the Agencies propose to give regulated lending institutions approximately six months to begin complying with the escrow requirement.<sup>39</sup> The proposed rules would mirror the proposed rules concerning the timing requirements for when regulated lending institutions must begin to escrow for loans outstanding or entered into on or after July 6, 2014. Therefore, for any designated loans outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require the institution to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year. For any designated loan made after July 1 of the succeeding calendar year

after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing upon loan consummation. Finally, for any loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposed rule would require the institution to begin escrowing with the first loan payment after the flood insurance policy is established.

For example, assume a regulated lending institution qualified for the exception in 2014, but had assets of \$1 billion or more as of December 31, 2014, and December 31, 2015. In that case, 2016 would be the succeeding calendar year. Under the proposal, such regulated lending institution would be required to begin escrowing with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1, 2016, for any loan outstanding on July 1, 2016. For any designated loan made after July 1, 2016, the proposal would require such institution to begin escrowing upon loan consummation. For any loan that becomes a designated loan after July 1, 2016, the proposal would require such institution to begin escrowing with the first loan payment after the flood insurance policy is established.

In addition, the Agencies are proposing the same notice obligation for regulated lending institutions after a change in status with similar timing requirements as would apply to other regulated lending institutions that are subject to the escrow requirement. As a result, for loans that are outstanding on July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the proposal would require a regulated lending institution to provide notice on the escrow requirement at least 90 days before the regulated lending institution must begin escrowing, using language that is substantially similar to the language provided in Appendix B. For designated loans that are made on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, the Agencies propose that notice concerning the escrow requirement be provided with the notice of special flood hazards, using language that is substantially similar to the escrow requirement language provided in the sample form of notice contained in Appendix A. Finally, for a loan that becomes a designated loan after July 1 of the succeeding calendar year after a regulated lending institution has a change in status, notice concerning the escrow requirement would be provided

with the force-placement notice under the proposal, using language substantially similar to the sample language provided in Appendix C.

#### Change in Ownership

The Agencies also are proposing a provision to address situations in which a regulated lending institution that is required to comply with the escrow requirement acquires a designated loan that is covered by FDPA-required flood insurance that becomes subject to the escrow requirement as a result of the acquisition. For example, this may occur if a lender that qualifies for the statutory exception sells the loan to or merges with a regulated lending institution that must comply with the escrow requirement. In these cases, the Agencies are proposing that the regulated lending institution must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan. For instance, suppose a regulated lending institution that is required to comply with the escrow requirement purchases loans from an institution that is not subject to the escrow requirement, and the transfer date for the loans is February 1, 2015. Under the proposal, for any designated loan that is transferred on February 1, 2015, the regulated lending institution that acquires the loan must begin escrowing premiums and fees for flood insurance with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after August 1, 2015.

This proposed timing is similar to the timing the Agencies have proposed for regulated lending institutions that no longer qualify for the statutory exception. Furthermore, as with the notice requirement proposed for other outstanding designated loans, the Agencies are proposing that a regulated lending institution provide notice at least 90 days before the institution must begin to escrow for a designated loan that becomes subject to the escrow requirement as a result of a change in loan ownership.

#### *Required use of standard flood hazard determination form.*

The Agencies are proposing technical amendments in this section to change the reference to the head of FEMA from Director to Administrator and to update how a lending institution may obtain the standard flood hazard insurance form by directing the institution to FEMA's Web site.

<sup>38</sup> See 12 CFR 25.12(u); 12 CFR 195.12(u); 12 CFR 228.12(u); and 12 CFR 345.12(u).

<sup>39</sup> See 12 CFR 235.5(a)(3).

### *Force placement of flood insurance.*

Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies are proposing to amend their rules for the force-placement of flood insurance.<sup>40</sup> The proposal implements section 100244 of the Act by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate a borrower has flood insurance coverage.

### Notice and Purchase of Coverage

Under current regulations, if a regulated lending institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the FDPA, then the regulated lending institution or its servicer must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under the mandatory purchase requirements, for the remaining term of the designated loan. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the regulated lending institution or its servicer must purchase flood insurance on behalf of the borrower. The regulated lending institution or servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Pursuant to section 102(e) of the FDPA, as amended by section 100244 of the Act, the Agencies propose to amend their regulations to provide that the regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Agencies' understanding is that the date on which the flood insurance coverage lapsed is the expiration date provided in the policy.

<sup>40</sup>The Agencies note that section 1463(a) of the Dodd-Frank Act sets forth requirements relating to the force placement of hazard insurance. The CFPB has excluded flood insurance required under the FDPA from the force placement requirements in its rule implementing this provision. 78 FR 10696, 10880 (February 14, 2013).

The Agencies seek comment on whether the Agencies' interpretation of the term "lapsed" is consistent with the insurance industry's use of the term and as to whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.

For purposes of safety and soundness, regulated lending institutions should monitor the continuous coverage of flood insurance for the building or mobile home and any personal property securing a designated loan. Additionally, the Agencies interpret the Act to permit a regulated lending institution to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure that it is continuous. Such a practice will ensure that institutions complete the force-placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution.

### Termination of Force-Placed Insurance

As provided in section 102(e)(3) of the FDPA, as added by section 100244 of the Act, the Agencies propose that within 30 days of receipt by a regulated lending institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to: (i) Notify the insurer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer; and (ii) refund to the borrower all premiums paid by the borrower for any insurance purchased by the regulated lending institution or its servicer under this section for any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the regulated lending institution or its servicer were each in effect (overlap period), and any related fees charged to the borrower with respect to the insurance purchased by the regulated lending institution or its servicer during such overlap period.

The Agencies realize that, although regulated lending institutions and servicers can request that a force-placed insurance policy be terminated, the insurer is the party that actually cancels the policy. The Agencies' proposal therefore clarifies the statutory language in section 102(e)(3) of the FDPA, as amended by section 100244 of the Act, to require the institution only to notify the insurer to terminate the force-placed policy and to fully refund to the borrower the premiums and fees for the

overlap period within the 30-day period required by the statute.

In addition, the Agencies note that section 102(e)(3) of the FDPA, as amended, and the Agencies' proposed regulations, do not specify a party from which a regulated lending institution must receive confirmation of a borrower's existing flood insurance coverage. Therefore, regulated lending institutions may receive the confirmation from either the borrower or a third party, such as an insurance agent or insurer with whom the institution has direct contact.

### Sufficiency of Demonstration

Pursuant to section 102(e)(4) of the FDPA, as amended by section 100244 of the Act, the Agencies propose that for the purposes of confirming a borrower's existing flood insurance coverage, a regulated lending institution or its servicer 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, as confirmation of the existence of coverage. A lender is responsible for making all necessary inquiries into the adequacy of the borrower's insurance policy to ensure the policy complies with the mandatory purchase requirement. If the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request the borrower to obtain an adequate flood insurance policy.

### *Determination fees.*

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

### *Notice of special flood hazards and availability of Federal disaster relief assistance.*

Section 100239 of the Act adds a new section 102(b)(6) to the FDPA (42 U.S.C. 4012a(b)(6)) requiring regulated lending institutions to disclose to a borrower that: (i) Flood insurance is available from private insurance companies that issue SFIPs on behalf of the NFIP or directly from the NFIP; (ii) flood insurance that provides the same level of coverage as an SFIP under the NFIP may be available from a private insurance company that issues policies on behalf of the company; and (iii) the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies

issued on behalf of the NFIP and policies issued on behalf of private insurance companies and to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

Furthermore, section 100239(b) of the Act amends section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)) to require that the disclosures in section 102(b)(6) of the FDPA be provided in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance. Therefore, the proposal requires the disclosures set forth in section 102(b)(6) of the FDPA to be included in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Agencies have proposed model language to include in the sample form of notice contained in Appendix A.

#### *Notice of servicer's identity.*

The Agencies are proposing technical amendments in this section to change the references to the head of FEMA from Director to Administrator.

#### *Appendices A, B, & C*

As noted above in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Notice of special flood hazards and availability of Federal disaster relief assistance*, the Agencies are proposing to amend the sample form of notice contained in Appendix A to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of the Act, regarding the availability of private flood insurance coverage. The proposed additions to the sample form closely track the statutory language. The Agencies also are proposing to revise the language relating to the coverage limit to more accurately reflect what is actually covered under the Federal flood statutes, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Requirement to purchase flood insurance coverage where available*. Specifically, the Agencies are proposing that the language be amended to state that flood insurance coverage is available only on the building or mobile home and any personal property that secures the loan and not the land itself. The Agencies propose other technical amendments to the sample form of notice contained in Appendix A, to change the references to the head of FEMA from Director to Administrator.

In addition, as discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to *Escrow requirement*, the Agencies are proposing that regulated lending

institutions mail or deliver a written notice informing borrowers about the requirement to escrow premiums and fees for required flood insurance. To facilitate compliance with the proposed notice requirement, the Agencies are proposing model language that may be included, if applicable, in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance as set forth in the sample form of notice contained in Appendix A. The Agencies also are proposing a sample form of notice in new Appendix B that may be used for designated loans that are outstanding as of the date a regulated lending institution becomes subject to the escrow requirement or acquires a designated loan that becomes subject to the escrow requirement. Finally, new Appendix C provides a proposed Sample Clause with respect to the escrow requirement notice that regulated lending institutions could include in a notice of force-placement for a loan that becomes a designated loan after a regulated lending institution becomes subject to the escrow requirement.

#### **V. Regulatory Analysis**

##### *Regulatory Flexibility Act*

**OCC:** In general, the Regulatory Flexibility Act (RFA) requires that in connection with a notice of proposed rulemaking an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>41</sup> Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. We have concluded that the proposed rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,257 small national banks, Federal savings associations, trust companies, and branches or agencies of foreign banks.<sup>42</sup> If

<sup>41</sup> See 5 U.S.C. 601 *et seq.*

<sup>42</sup> We base our estimate of the number of active small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$500 million and \$35.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR § 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2012 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8

implemented, the draft NPRM would impact approximately 871 of these small institutions. Thus, the proposed rule impacts a substantial number of small institutions. The OCC classifies the economic impact of total costs on an institution as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small institution is approximately \$23,000 per year.<sup>43</sup> Using this cost estimate, we believe the proposed rule will have a significant economic impact on eleven small institutions supervised by the OCC, which is not a substantial number. Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

**Board:** The RFA requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is proposing revisions to Regulation H to implement certain provisions of the Act over which the Agencies, including the Board, have jurisdiction. Consistent with the Act, the proposal would require a regulated lending institution (or its servicer) to escrow the premiums and fees for required flood insurance for any loan secured by residential improved real estate or a mobile home, unless the lender qualifies under the statutory exception for certain small lenders.

The proposal also would implement the Act's requirement that regulated lending institutions accept any private insurance policy that meets the Act's definition of "private flood insurance" in satisfaction of the mandatory purchase requirement. The proposed

of the U.S. Small Business Administration's *Table of Size Standards*.

<sup>43</sup> Because the OCC does not have the information to determine whether a small institutions would meet the exception for the escrow requirement provided by proposed § 22.5(c), we have not applied this exception in our calculations. Therefore, our estimated costs per small bank may be overstated.

rule would also include a safe harbor allowing lenders to rely on a State insurance regulator's written determination that a particular private insurance policy satisfies the Act's definition. Regulated lending institutions would also be required to provide disclosures on the availability of private flood insurance, as mandated by the Act.

The Act also includes provisions related to the force placement of flood insurance, which the proposal would implement. These provisions clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred in the purchase of force-placed flood insurance from the date coverage lapsed or did not provide a sufficient amount of coverage. The provisions also provide that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to terminate any force-placed insurance purchased by the regulated lending institution, and refund to the borrower all premiums paid by the borrower for lender-placed coverage for any period during which the borrower's flood insurance coverage and the lender-place coverage overlapped.

*2. Small entities affected by the proposed rule.* All State member banks that are subject to Regulation H would be subject to the proposed rule. As of June 30, 2013, there were 844 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of \$500 million or less are considered small. Of the 844 State member banks subject to Regulation H, approximately 634 State member banks would be considered small entities by the SBA.

As discussed in detail above in the **SUPPLEMENTARY INFORMATION**, regulated lending institutions with total assets less than \$1 billion would generally be exempt from the proposed rules implementing the escrow provisions of the Act. Therefore, the escrow provisions of the proposed rule would generally not affect small entities. Furthermore, the Act's force placement provisions already went into effect upon passage of the Act on July 6, 2012. As a result, the proposed rules implementing the Act's force placement provisions should not have any impact on small entities who were required to comply with the provisions as of July 6, 2012. Even prior to the Act's passage, regulated lending institutions, including those that are considered small entities, would have had mechanisms in place to refund premiums and fees to borrowers

for any period of overlap between a force placed policy and a borrower's policy. Consequently, the Act's force placement provisions, which set forth procedures for terminating force placed insurance and refunding premiums and fees to the borrower, nevertheless would have had minimal impact on regulated lending institutions.

With respect to the proposed rules regarding the acceptance of private flood insurance, the Board believes the rules will not have a significant impact on small entities because regulated lending institutions, including those that are considered small entities, currently are permitted to accept private flood insurance policies. Moreover, as discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule would seek to alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance" by providing a safe harbor permitting lenders to rely on the determination of a State insurance regulator. Small entities will be required under the proposal to amend their notices of special flood hazards to include information on the availability of private flood insurance. The proposal provides sample forms to facilitate compliance and reduce burden upon small institutions.

*3. Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

*4. Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

*FDIC:* The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. As of March 31, 2013, there were approximately 3,711 small FDIC-

supervised banks which include 3,398 State nonmember banks and 259 State-chartered savings banks, and 54 savings associations.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of the small entities, which the FDIC supervises. The FDIC reaches this conclusion in reliance upon the fact that the only requirements that the Act requires the Agencies to impose upon supervised entities as a matter of regulation are the escrow requirement and the requirement to accept private flood insurance. The Act provides that generally a depository institution with assets of less than \$1 billion is not required to comply with the escrow requirement. As a result, due to this statutory exclusion, by law the escrow requirement cannot have a significant economic impact on a substantial number of small entities. The requirement to accept private flood insurance also cannot have a significant economic impact on a substantial number of small entities since depository institutions were permitted to accept private flood insurance for NFIP purposes even before the Act's amendments. For these reasons, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities that it supervises.

*FCA:*

Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

*NCUA:*

The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>44</sup> For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.<sup>45</sup> As of June 30, 2013, there are 1,803 small, federally insured credit unions. The proposed rule would require a credit union to escrow the premiums and fees for required flood

<sup>44</sup> 5 U.S.C. 603(a).

<sup>45</sup> Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

insurance for any loan secured by residential improved real estate or a mobile home. The proposed rule would also implement the requirement that credit unions accept any private insurance policy that meets the statutory definition of "private flood insurance", and includes provisions related to the force placement of flood insurance.

Under this proposed rule, credit unions with total assets less than \$1 billion would generally be exempt from the escrow provisions. Therefore, the escrow provisions of the proposed rule would not affect small credit unions. For private flood insurance, NCUA does not believe the proposed rule will have a significant impact on small credit unions since credit unions are currently allowed to accept private flood insurance. In addition, the proposed rule provides a safe harbor for regulated lending institutions (which includes credit unions), including small entities, for evaluating whether a flood insurance policy issued by a private insurer meets the definition of "private flood insurance". Lastly, the force placement provisions in the proposed rule were effective on July 6, 2012, and credit unions have been enforcing force placement provisions already. In addition, credit unions currently have the tools to refund premiums and fees whenever a borrower's policy overlaps a force-placed policy, as required in the proposed rule.

NCUA finds that this proposed rule would affect relatively few federally insured, small credit unions and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small entities.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) requires certain agencies, including the OCC, to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has estimated that the total cost associated with this NPRM, if implemented, would be approximately \$72 million and the average cost per institution would be \$55,000. However, pursuant to section 201 of the UMRA,

a regulation does not impose a mandate to the extent it incorporates requirements "specifically set forth in the law." Therefore, we exclude from our UMRA estimate costs specifically related to requirements set forth in the Act, such as costs related to establishing escrow accounts, amendments to the force placement provisions, and the acceptance of private flood insurance policies. Furthermore, under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. Therefore, based on these exclusions, our UMRA cost estimate for the NPRM, if implemented, is zero.

Accordingly, because the OCC has determined that this proposed rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more, we have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)<sup>46</sup> have determined that this proposed rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as permitted by the PRA, the OCC, Board, and FDIC also propose to extend for three years their respective information collections.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557-0202 (OCC), 7100-0280 (Board), and 3064-0120 (FDIC).<sup>47</sup>

<sup>46</sup> The FCA has determined that the proposed rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

<sup>47</sup> NCUA's part 760 contains various information collection requirements as described in the PRA and previously submitted by NCUA.

The proposed rule adds a notice requirement stating that institutions or services that are required to escrow all premiums and fees for required flood insurance must issue a written notice to the borrower.

This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers. Because the Agencies do not collect any information, no issue of confidentiality arises. The respondents are for-profit and non-profit financial institutions, including small businesses.

Entities subject to the Agencies' existing flood insurance rules will have to review and revise disclosures that are currently provided to ensure that such disclosures accurately reflect the disclosure requirements in this proposed rule. Entities subject to the rule may also need to develop new disclosures to meet the proposed rule's timing requirements.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Agencies. The Agencies expect that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The Agencies estimate that respondents would take, on average, 40 hours to update their systems in order to comply with the disclosure requirements and the one-time escrow notice under the proposed rule. In an effort to minimize the compliance cost and burden, particularly for small entities that do not meet the requirement for the statutory exception, the proposed rule contains model disclosures in appendices A, B, and C that may be used to satisfy the requirements.

#### Burden Estimates

##### OCC:

Number of Respondents: 1,316.

Burden for Existing Recordkeeping Requirements: 196,907 hours.

Burden for Existing Disclosure Requirements: 244,208 hours.

Burden for Proposed Rule: 52,640 hours.

Total Burden for Collection: 493,755 hours.

##### Board:

Number of Respondents: 843.

Burden for Existing Recordkeeping Requirements: 14,191 hours.

Burden for Existing Disclosure Requirements: 17,632 hours.

Burden for Proposed Rule: 33,720 hours.

Total Burden for Collection: 65,543 hours.

**FDIC:**

Number of Respondents: 4,421.

Burden for Existing Recordkeeping Requirements: 61,894 hours.

Burden for Existing Disclosure Requirements: 76,999 hours.

Burden for Proposed Rule: 176,840 hours.

Total Burden for Collection: 315,733 hours.

**NCUA:**

Number of Respondents: 4,192.

Burden for Existing Recordkeeping Requirements: 57,230.85 hours.

Burden for Existing Disclosure Requirements: 70,966.26 hours.

Burden for Proposed Rule: 8,240 hours.

Total Burden for Collection: 136,437.11 hours.

These collections are available to the public at [www.reginfo.gov](http://www.reginfo.gov).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agencies' functions; including whether the information has practical utility; (2) the accuracy of the Agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

**OCC:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: [1557-0202], 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All 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.

**Board:** Cynthia Ayouch, Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop 95, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0280), Washington, DC 20503.

**FDIC:** You may submit comments, which should refer to "Interagency Flood Insurance, 3064-0120" by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

Include "Interagency Flood Insurance, 3064-0120" in the subject line of the message.

- **Mail:** Gary A. Kuiper, Counsel, Attn: Comments, Room NYA-5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the 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.

**Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

**NCUA:** Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOFRA@ncua.gov](mailto:OCIOFRA@ncua.gov).

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395-6974; or by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

#### List of Subjects

##### 12 CFR Part 22

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

##### 12 CFR Part 172

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 208

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

##### 12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 391

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 614

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

##### 12 CFR Part 760

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

#### Office of the Comptroller of the Currency

##### 12 CFR CHAPTER I

##### Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the OCC proposes to amend Part 12 Chapter I as follows:

■ 1. Revise Part 22 to read as follows::

#### PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

##### Sec.

22.1 Purpose and scope.

22.2 Definitions.

22.3 Requirement to purchase flood insurance where available.

22.4 Exemptions.

22.5 Escrow requirement.

22.6 Required use of standard flood hazard determination form.

22.7 Force-placement of flood insurance.

22.8 Determination fees.

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

22.10 Notice of servicer's identity.

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

Appendix B to Part 22—Sample Form of Notice of Requirement to Escrow For Outstanding Loans

Appendix C to Part 22—Sample Escrow Requirement Clause for Loans That Become Designated Loans

**Authority:** 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

**§ 22.1 Purpose and scope.**

(a) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

**§ 22.2 Definitions.**

For the purposes of this part:

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

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

(f) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

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

(h) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of

insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage;

(2) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property for which the insurance is providing coverage;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

(j) *Federal savings association* means, for purposes of this part, a Federal savings association as that term is defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof.

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

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent

chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

**§ 22.3 Requirement to purchase flood insurance where available.**

(a) *In general.* A national bank or Federal savings association shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A national bank or Federal savings association that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance.* (1) *Mandatory acceptance.* A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(h), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 22.2(h) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 22.2(h).

**§ 22.4 Exemptions.**

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

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

**§ 22.5 Escrow requirement.**

(a) *In general.* (1) *Applicability.*

Except as provided in paragraph (c) of this section, a national bank or Federal savings association, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the national bank or Federal savings association has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 22.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 22.3(a).

(2) *Timing.* A national bank or Federal savings association that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow Account.* The national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be

maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A national bank or Federal savings association that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the national bank or Federal savings association, shall mail or deliver a written notice informing the borrower that the national bank or Federal savings association is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 22.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 22.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a national bank or Federal savings association:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a national bank or Federal savings association

previously qualified for the exception in paragraph § 22.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the national bank or Federal savings association must begin escrowing premiums and fees for flood insurance pursuant to § 22.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a national bank or Federal savings association that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 22.3(a) that becomes subject to paragraph (a) of this section as a result of the bank's or savings association's acquisition of the loan, the bank or savings association must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

**§ 22.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* A national bank or Federal savings association shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A national bank or Federal savings association may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A national bank or Federal savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank or savings association owns the loan.

**§ 22.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a national bank or Federal savings association, or a servicer acting on behalf of the bank or savings association, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the national bank or Federal savings association, or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the national bank or Federal savings association, or its servicer, shall purchase insurance on the borrower's behalf. The national bank or Federal savings association, or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a national bank or Federal savings association, or a servicer acting on the bank's or saving association's behalf, of a confirmation of a borrower's existing flood insurance coverage, the national bank or Federal savings association, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the national bank or Federal savings association or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the national bank or Federal savings association or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the national bank or Federal savings association or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a national bank or Federal savings association or its servicer shall 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 agent.

**§ 22.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001— 4129), any national bank or Federal savings association, or a servicer acting on behalf of the national bank or Federal savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

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

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

(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

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

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 22.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

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

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank or savings association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether

or not flood insurance is available under the Act for the collateral securing the loan.

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

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

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

(d) *Record of receipt.* The national bank or Federal savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

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

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

#### **§ 22.10 Notice of servicer's identity.**

(a) *Notice requirement.* When a national bank or Federal savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the national bank's or Federal savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The national bank or Federal savings association shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

### **APPENDIX A TO PART 22—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE**

#### **Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

We are giving you this notice to inform you that:

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

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

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

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

- At a minimum, flood insurance purchased must cover *the lesser of*:
  - (1) the outstanding principal balance of the loan; or
  - (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

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

#### **Availability of Private Flood Insurance Coverage**

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare

the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### **[Escrow Requirement for Residential Loans]**

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

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

### **APPENDIX B TO PART 22—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS**

#### **Notice of Escrow Requirement**

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

#### **How the Escrow Will Work**

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

#### **When the Escrow Will Start**

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### APPENDIX C TO PART 22—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

##### Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### PART 172—[REMOVED]

##### ■ 2. Remove part 172.

#### Federal Reserve System

##### 12 CFR CHAPTER II

##### Authority and Issuance

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

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

##### ■ 1. The authority citation for part 208 continues to read as follows:

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

##### ■ 2. Revise § 208.25 as follows:

#### § 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose*. The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of

1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope*. This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions*. For purposes of this section:

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

(2) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(3) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(4) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

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

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the National Flood Insurance Program.

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

(8) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located in the case of a policy of

difference in conditions, multiple peril, all risk, or other blanket coverage;

(ii) Provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(iii) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to:

(1) The insured; and

(2) The member bank that made the designated loan secured by the property for which the insurance is providing coverage;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in the standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

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

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(11) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(12) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available*—(1) *In general*. A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood

insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(3) *Private flood insurance.* (i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(8) of this section, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (c)(1) of this section.

(ii) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in paragraph (b)(8) of this section for purposes of paragraph (c)(1) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in paragraph (b)(8) of this section.

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

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

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

(e) *Escrow requirement.* (1) *In general.*

(i) *Applicability.* Except as provided in paragraph (e)(3) of this section, a member bank, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the member bank has determined that:

(A) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(B) The borrower has obtained flood insurance coverage that meets the requirements of paragraph (c)(1) of this section for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(C) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of paragraph (c) of this section.

(ii) *Timing.* A member bank that is subject to paragraph (e)(1) of this section, other than due to a change in status under paragraph (e)(3)(ii) of this section or for acquired loans subject to paragraph (e)(4) of this section, shall begin escrowing premiums and fees for flood insurance:

(A) for any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(B) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(C) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(iii) *Escrow account.* The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(2) *Notice.* A member bank that is required to comply with paragraph (e)(1) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the member bank is required to

escrow all premiums and fees for required flood insurance:

(i) For loans subject to paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (e)(1)(ii)(A), (e)(3)(ii)(A), or (e)(4) of this section, using language that is substantially similar to the model form in appendix B; or

(ii) For loans subject to paragraphs (e)(1)(ii)(B) or (e)(3)(ii)(B) of this section, with the notice provided under paragraph (i) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(iii) For loans subject to paragraphs (e)(1)(ii)(C) or (e)(3)(ii)(C) of this section, with the notice provided under paragraph (g) of this section, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(3) *Exception.* (i) *Qualification.* Except as may be required under applicable State law, paragraphs (e)(1) and (2) of this section do not apply to a member bank:

(A) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(B) On or before July 6, 2012:

(1) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(2) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(ii) *Change in status.* If a member bank previously qualified for the exception in paragraph (e)(3)(i) of this section, but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section:

(A) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(B) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(C) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first

loan payment after the flood insurance policy is established.

(4) *Change in ownership.* If a member bank that is required to comply with paragraph (e)(1) of this section acquires a designated loan covered by flood insurance required under paragraph (c) of this section that becomes subject to paragraph (e)(1) of this section as a result of the member bank's acquisition of the loan, the member bank must begin escrowing premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

(f) *Required use of standard flood hazard determination form.*—(1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Force placement of flood insurance.* (1) *Notice and purchase of coverage.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees

incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(2) *Termination of force-placed insurance.* (i) *Termination and refund.* Within 30 days of receipt by a member bank, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the member bank or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the member bank or its servicer under paragraph (g)(1) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the member bank or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the member bank or its servicer during such period.

(ii) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (g)(2)(i) of this section, a member bank or its servicer shall 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 agent.

(h) *Determination fees.*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

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

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

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

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

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

(B) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

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

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

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

(i) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(iv) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(v) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(vi) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by

flooding in a Federally declared disaster.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

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

(j) *Notice of servicer's identity.* (1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60

days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) of this section shall transfer to the transferee servicer.

#### **APPENDIX A TO § 208.25—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE**

##### **Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance**

We are giving you this notice to inform you that:

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

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

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

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

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

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

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

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

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

##### **Availability of Private Flood Insurance Coverage**

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

##### **[Escrow Requirement for Residential Loans]**

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider. ]

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

#### **APPENDIX B TO § 208.25—SAMPLE FORM OF NOTICE OF REQUIREMENT TO ESCROW FOR OUTSTANDING LOANS**

##### **Notice of Escrow Requirement**

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### **How the Escrow Will Work**

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### **When the Escrow Will Start**

When you receive your next flood insurance bill with the renewal of your

policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### APPENDIX C TO § 208.25—SAMPLE ESCROW REQUIREMENT CLAUSE FOR LOANS THAT BECOME DESIGNATED LOANS

##### Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### Federal Deposit Insurance Corporation 12 CFR CHAPTER III

##### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations to read as follows:

■ 1. Part 339 is revised to read as follows:

#### PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.

339.2 Definitions.

339.3 Requirement to purchase flood insurance where available.

339.4 Exemptions.

339.5 Escrow requirement.

339.6 Required use of standard flood hazard determination form.

339.7 Force-placement of flood insurance.

339.8 Determination fees.

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

339.10 Notice of servicer's identity.

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

Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

##### § 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

##### § 339.2 Definitions.

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

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

(f) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g)

of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

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

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(B) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(A) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the FDIC-supervised institution;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

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

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

**§ 339.3 Requirement to purchase flood insurance where available.**

(a) *In general.* An FDIC-supervised institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

(c) *Private flood insurance. (1) Mandatory acceptance.* An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 339.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 339.2(i).

**§ 339.4 Exemptions.**

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

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption; or

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

**§ 339.5 Escrow requirement.**

(a) *In general. (1) Applicability.* Except as provided in paragraph (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the FDIC-supervised institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirements of § 339.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 339.3(a).

(2) *Timing.* An FDIC-supervised institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with

the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The FDIC-supervised institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* An FDIC-supervised institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B; or

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 339.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 339.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.*

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to an FDIC-supervised institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of

a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If an FDIC-supervised institution previously qualified for the exception in paragraph § 339.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to § 339.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If an FDIC-supervised institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 339.3(a) that becomes subject to paragraph (a) of this section as a result of the FDIC-supervised institution's acquisition of the loan, the FDIC-supervised institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

**§ 339.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard

determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

**§ 339.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall 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 agent.

**§ 339.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any FDIC-supervised institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

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

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

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

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

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

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

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

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised

institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

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

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

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

(d) *Record of receipt.* The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the

period of time the FDIC-supervised institution owns the loan.

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

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

#### **§ 339.10 Notice of servicer's identity.**

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

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

We are giving you this notice to inform you that:

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

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

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

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

- At a minimum, flood insurance purchased must cover *the lesser of*:
  - (1) the outstanding principal balance of the loan; or
  - (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

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

#### **Availability of Private Flood Insurance Coverage**

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance

companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

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

#### Appendix B to Part 339—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

##### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the bank will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your

flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### Appendix C to Part 339—Sample Escrow Requirement Clause for Loans that Become Designated Loans

##### Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 2. The authority citation for Part 391 continues to read as follows:

Authority: 12 U.S.C. 1819.

#### Subpart D—[Removed and Reserved]

■ 3. Remove and reserve Subpart D consisting of §§ 391.30 through 391.39.

#### Farm Credit Administration

##### 12 CFR CHAPTER VI

##### Authority and Issuance

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

#### PART 614—LOAN POLICIES AND OPERATIONS

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

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

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

#### Subpart S—Flood Insurance Requirements

Sec.

614.4920 Purpose and scope.

614.4925 Definitions.

614.4930 Requirement to purchase flood insurance where available.

614.4935 Escrow requirement.

614.4940 Required use of standard flood hazard determination form.

614.4945 Force placement of flood insurance.

614.4950 Determination fees.

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

614.4960 Notice of servicer's identity.

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

Appendix B to Subpart S of Part

614—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Subpart S of Part

614—Sample Escrow Requirement

Clause for Loans that Become

Designated Loans

#### Subpart S—Flood Insurance Requirements

##### § 614.4920 Purpose and scope.

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

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

##### § 614.4925 Definitions.

For the purposes of this subpart:

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a state or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

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

(f) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

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

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial policy, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the System institution;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

(j) *Residential improved real estate* means real estate upon which a home or

other residential building is located or to be located.

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

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

**§ 614.4930 Requirement to purchase flood insurance where available.**

(a) *In general.* A System institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance purchased under the NFIP or private flood insurance, as that term is defined in § 614.4925, for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the 1968 Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this subpart.

(c) *Private flood insurance.*

(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in § 614.4925, as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor.* A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 614.4925 for purposes of paragraph (a) of this section if a State insurance

regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 614.4925.

(d) The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of 1 year or less.

**§ 614.4935 Escrow requirement.**

(a) *In general.*

(1) *Applicability.* Except as provided in paragraph (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are made for the duration of the loan, unless the System institution has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes; or

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 614.4930(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 614.4930(a).

(2) *Timing.* A System institution that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The System institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the System institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A System institution that is required to comply with paragraph (a) of this section, or a servicer acting on its behalf, shall mail or deliver a written notice informing the borrower that the System institution is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraph (a)(2)(i) or (c)(2)(i) or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraph (a)(2)(i) or (c)(2)(i) or (d), using language that is substantially similar to the model form in Appendix B; or

(2) For loans subject to paragraph (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 614.4945, using language that is substantially similar to model clauses on the escrow requirement in Appendix A; or

(3) For loans subject to paragraph (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 614.4955, using language that is substantially similar to model clauses on the escrow requirement in Appendix C.

(c) *Exception.* (1) *Qualification.* Except as may be required under applicable State law, paragraph (a)(1) and (2) of this section do not apply to a System institution:

(i) That has total assets of less than \$1 billion as of December 31 of either of the 2 prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a System institution previously qualified for the exception in § 614.4935(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for 2 consecutive calendar year ends, the System institution must begin escrowing premiums and fees for flood insurance pursuant to § 614.4930(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year; or

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a System institution that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 614.4930(a) that becomes subject to paragraph (a) of this section as a result of the System institution's acquisition of the loan, the System institution must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is 6 months from the transfer date of the loan.

**§ 614.4940 Required use of standard flood hazard determination form.**

(a) *Use of form.* A System institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic

manner. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A System institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the System institution owns the loan.

**§ 614.4945 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a System institution, or a servicer acting on its behalf, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 614.4930, then the System institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the System institution or its servicer shall purchase insurance on the borrower's behalf. The System institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a System institution, or its servicer, of a confirmation of a borrower's existing flood insurance coverage, the System institution or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the System institution or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the System institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the System institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the System institution or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's

existing flood insurance coverage under paragraph (b) of this section, a System institution or its servicer shall 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 agent.

**§ 614.4950 Determination fees.**

(a) *General.* Notwithstanding any federal or state law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any System institution, or a servicer acting on its behalf, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

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

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

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

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

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

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

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

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the System institution shall mail or deliver a written notice to the borrower and to the servicer of the loan. Notice

is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

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

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP; and

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from a private insurance company that issues policies on behalf of the company.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

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

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

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a System institution may obtain satisfactory written assurance from a

seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The System institution shall retain a record of the written assurance from the seller or lessor for the period of time the System institution owns the loan.

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

**§ 614.4960 Notice of servicer's identity.**

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the System institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The System institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

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

We are giving you this notice to inform you that:

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

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special

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

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

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

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

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

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

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

Flood insurance coverage under the NFIP is limited to the improvements that have been made to the real property that secure the loan and not the land itself.

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

#### Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

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

#### Appendix B to Subpart S of Part 614— Sample Form of Notice of Requirement to Escrow for Outstanding Loans

##### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### *How the Escrow Will Work*

Federal law requires that you pay flood insurance premiums and fees with the same frequency as your loan payments for the duration of your loan. Your premiums will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### *When the Escrow Will Start*

*When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.*

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the institution will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert

Name of Lender or Servicer] at [Insert Contact Information].

#### Appendix C to Subpart S of Part 614— Sample Escrow Requirement Clause for Loans That Become Designated Loans

##### Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

#### National Credit Union Administration

##### 12 CFR CHAPTER VII

##### Authority and Issuance

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

#### PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

##### Sec.

760.1 Authority, purpose, and scope.

760.2 Definitions.

760.3 Requirement to purchase flood insurance where available.

760.4 Exemptions.

760.5 Escrow requirement.

760.6 Required use of standard flood hazard determination form.

760.7 Force-placement of flood insurance.

760.8 Determination fees.

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

760.10 Notice of servicer's identity.

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

Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

Appendix C to Part 760—Sample Escrow Requirement Clause for Loans that Become Designated Loans

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

##### § 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope*. This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

#### § 760.2 Definitions.

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

(b) *Administrator of FEMA* means the Administrator of the Federal Emergency Management Agency.

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

(d) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(e) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

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

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term “mobile home” does not include a recreational vehicle. For purposes of this part, the term “mobile home” means a mobile home on a permanent foundation. The term “mobile home” includes a manufactured home as that term is used in the NFIP.

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

(i) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State where the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring non-residential commercial policies;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to the insured and the credit union;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

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

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

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(l) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(m) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

#### § 760.3 Requirement to purchase flood insurance where available.

(a) *In general*. A credit union shall not make, increase, extend, or renew any

designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loan*. A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

(c) *Private flood insurance*.

(1) *Mandatory acceptance*. A credit union must accept private flood insurance, as defined in § 760.2(i), as satisfaction of the flood insurance coverage requirement, provided that coverage under the flood insurance policy meets the requirement for coverage under paragraph (a) of this section.

(2) *Safe harbor*. A flood insurance policy shall be deemed to meet the definition of private flood insurance in § 760.2(i) for purposes of paragraph (a) of this section if a State insurance regulator makes a determination in writing that the policy meets the definition of private flood insurance in § 760.2(i).

#### § 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

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

#### § 760.5 Escrow requirement.

(a) *In general*. (1) *Applicability*. Except as provided in paragraph (c) of this section, a credit union, or a servicer acting on behalf of the credit union, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) for any loan secured by residential improved real estate or a mobile home that is outstanding or entered into on or after July 6, 2014, payable with the same frequency as payments on the loan are

made for the duration of the loan, unless the credit union has determined that:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The borrower has obtained flood insurance coverage that meets the requirement of § 760.3(a) for the residential improved real estate or mobile home securing the loan and is currently paying premiums and fees through an escrow account established by another lender; or

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that is purchased by a common interest community instead of the borrower, such as an NFIP Residential Condominium Building Association Policy (RCBAP), that meets the requirements of § 760.3(a).

(2) *Timing.* A credit union that is subject to paragraph (a) of this section, other than due to a change in status under paragraph (c)(2) of this section or for acquired loans subject to paragraph (d) of this section, shall begin escrowing premiums and fees for flood insurance:

(i) For any designated loan outstanding on July 6, 2014, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 6, 2014;

(ii) For any designated loan made on or after July 6, 2014, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 6, 2014, with the first loan payment after the flood insurance policy is established.

(3) *Escrow account.* The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* A credit union that is required to comply with paragraph (a) of this section, or a servicer acting on behalf of the credit union, shall mail or

deliver a written notice informing the borrower that the credit union is required to escrow all premiums and fees for required flood insurance:

(1) For loans subject to paragraphs (a)(2)(i), (c)(2)(i), or (d) of this section, at least 90 days before the escrow of premiums and fees under paragraphs (a)(2)(i), (c)(2)(i), or (d), using language that is substantially similar to the model form in appendix B;

(2) For loans subject to paragraphs (a)(2)(ii) or (c)(2)(ii) of this section, with the notice provided under § 760.9, using language that is substantially similar to model clauses on the escrow requirement in appendix A; or

(3) For loans subject to paragraphs (a)(2)(iii) or (c)(2)(iii) of this section, with the notice provided under § 760.7, using language that is substantially similar to model clauses on the escrow requirement in appendix C.

(c) *Exception.*

(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a)(1) and (2) of this section do not apply to a credit union:

(i) That has total assets of less than \$1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of a loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a credit union previously qualified for the exception in paragraph § 760.5(c)(1), but no longer qualifies for the exception because it had assets of \$1 billion or more for two consecutive calendar year ends, the credit union must begin escrowing premiums and fees for flood insurance pursuant to § 760.3(a):

(i) For any designated loan outstanding on July 1 of the succeeding calendar year, with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after July 1 of the succeeding calendar year;

(ii) For any designated loan made on or after July 1 of the succeeding calendar year, upon loan consummation; or

(iii) For any loan that becomes a designated loan after July 1 of the succeeding calendar year, with the first loan payment after the flood insurance policy is established.

(d) *Change in ownership.* If a credit union that is required to comply with paragraph (a) of this section acquires a designated loan covered by flood insurance required under § 760.3(a) that becomes subject to paragraph (a) of this section as a result of the credit union's acquisition of the loan, the credit union must begin escrowing premiums and fees for flood insurance pursuant to paragraph (a) of this section with the first loan payment on or after the first renewal date of the borrower's flood insurance policy on or after the date that is six months from the transfer date of the loan.

#### **§ 760.6 Required use of standard flood hazard determination form.**

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

#### **§ 760.7 Force-placement of flood insurance.**

(a) *Notice and purchase of coverage.* If a credit union, or a servicer acting on behalf of the credit union, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance, or is covered by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage

beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance.* (1) *Termination and refund.* Within 30 days of receipt by a credit union, or a servicer acting on the credit union's behalf, of a confirmation of a borrower's existing flood insurance coverage, the credit union, or its servicer shall:

(i) Notify the insurance provider to terminate any insurance purchased by the credit union or its servicer under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a credit union or its servicer shall 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 agent.

#### **§ 760.8 Determination fees.**

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

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

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

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

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

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

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

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

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

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

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company;

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and

comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

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

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

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

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

#### **§ 760.10 Notice of servicer's identity.**

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic

transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

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

We are giving you this notice to inform you that:

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

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

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

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

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

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

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

Flood insurance coverage under the NFIP is limited to the building or mobile home and

any personal property that secures your loan and not the land itself.

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

#### Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the insurance provider.]

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

#### Appendix B to Part 760—Sample Form of Notice of Requirement to Escrow for Outstanding Loans

##### Notice of Escrow Requirement

We are giving you this notice to inform you that Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers the building or mobile home securing your loan(s).

##### How the Escrow Will Work

Federal law requires that you pay flood insurance premiums and fees with the same

frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account so that when we receive a notice from your flood insurance provider that your flood insurance premiums are due, we will make payment from the escrow account to the insurance provider on your behalf.

##### When the Escrow Will Start

When you receive your next flood insurance bill with the renewal of your policy from your flood insurance provider, you are responsible for making that payment directly to your insurance provider.

We will begin collecting the premiums and fees for your flood insurance escrow account with your mortgage loan payment following this renewal date for the next policy term. For example, if your flood insurance policy renewal date is September 15 and your next mortgage loan payment is October 1, the credit union will begin collecting the flood insurance premiums and fees for escrow with the October 1 mortgage loan payment.

The escrow amount for flood insurance will be added to your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy at the next policy renewal date.

Any questions regarding this new escrow requirement should be directed to [Insert Name of Lender or Servicer] at [Insert Contact Information].

#### Appendix C to Part 760—Sample Escrow Requirement Clause for Loans That Become Designated Loans

##### Escrow Requirement Clause

Federal law requires a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. You must make payments of these premiums and fees to [Insert Name of Lender or Servicer] with the same frequency as your loan payments for the duration of your loan. Your payments will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the flood insurance premium is due, [Insert Name of Lender or Servicer] will pay the premium from the escrow account to the insurance provider.

Dated: October 9, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, October 10, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

By order of the Board of Directors of the Federal Deposit Insurance Corporation.  
Dated at Washington, DC, this 8th day of October, 2013.

**Robert E. Feldman,**

*Executive Secretary.*

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 10th day of October, 2013.

**Dale Aultman**

*Secretary.*

By order of the Board of the National Credit Union Association.

Dated at Alexandria, VA, this 9th day of October, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013-24724 Filed 10-29-13; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6705-01-P; 7535-01-U**