

## Summary Guidance Interagency Question and Answers Regarding Flood Insurance

*Prepared by NASCUS Legislative & Regulatory Affairs Department  
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NCUA, together with the OCC, Federal Reserve Board, the FDIC, and FCA (together, the Agencies) have published [revised guidance](#) to assist lenders in meeting their responsibilities under Federal flood insurance law and increase public understanding of the Agencies' respective flood insurance regulations.

In the [2021 proposed Q&A](#) regarding private flood insurance and request for comment the Agencies indicated a plan to publish a final document in the Federal Register consolidating the proposed private flood insurance questions and answers, and [the July 2020 questions and answers](#) into one set of guidance. Those two documents have now been consolidated into one set of Interagency Questions and Answers Regarding Flood Insurance. The new guidance replaces the previously published versions from 2009 and 2011.

### **Summary**

The newly consolidated guidance consists of 144 Questions and Answers (including 24 private flood insurance questions and answers). The full Q&A begins on page 153 covering a broad range of topics. Some key topics addressed by the revisions include guidance related to amendments to the flood insurance laws as they apply to the escrow of flood insurance premiums, certain exemptions for detached structures, procedures for the force placement of insurance, and the acceptance of flood insurance policies issued by private insurers.

For ease of reference, the Agencies have reorganized the Q&As to provide a more “logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders.” Rather than numbering the Q&As successively through each category, each Q&A is designated by the category to which it belongs and then designated in numerical order for that category.

Furthermore, the Agencies have added three new Q&As, Applicability, Amount, and Condo and Co-op, to better address comments received and for organizational purposes.

The following table outlines the newly organized Section, specific category within that section and the number of questions per section.

<b>Section</b>	<b>Category</b>	<b>No. of Questions</b>
I	Determining the Applicability of Flood Insurance Requirements for Certain Loans <b>[Applicability]</b>	15
II	Exemptions from the Mandatory Flood Insurance Purchase Requirements <b>[Exemptions]</b>	7
III	Private Flood Insurance – Mandatory Acceptance <b>[Mandatory]</b>	9
IV	Private Flood Insurance – <b>[Discretionary]</b>	4
V	Private Flood Insurance – General Compliance <b>[Private Flood Insurance]</b>	11
VI	Required Use of Standard Flood Hazard Determination Form <b>[SFHDF]</b>	4
VII	Flood Insurance Determination Fees <b>[Fees]</b>	2
VIII	Flood Zone Discrepancies <b>[Zone]</b>	3
IX	Notice of Special Flood Hazards and Availability of Federal Disaster Relief	7
X	Determining the Appropriate Amount of Flood Insurance Required <b>[Amount]</b>	9
XI	Flood Insurance Requirements for Construction Loans <b>[Construction]</b>	6
XII	Flood Insurance Requirements for Residential Condominiums and Co-Ops <b>[Condo and Co-Op]</b>	10
XIII	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA <b>[Other Security Interests]</b>	12
XIV	Requirement to Escrow Flood Insurance Premiums and Fees – General <b>[Escrow]</b>	7
XV	Requirement to Escrow Flood Insurance Premiums and Fees – Small Lender Exception <b>[Escrow Small Lender Exception]</b>	7
XVI	Requirement to Escrow Flood Insurance Premiums and Fees – Loan Exceptions <b>[Escrow Loan Exceptions]</b>	5
XVII	Force Placement of Flood Insurance <b>[Force Placement]</b>	16
XVIII	Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights <b>[Servicing]</b>	7
XIX	Mandatory Civil Money Penalties <b>[Penalty]</b>	2

The following highlights pertinent sections of the Q&A for ease of reference.

## ***Escrow of Flood Insurance Premiums***

<i>Requirement to Escrow Flood Insurance Premiums and Fees – General (Escrow)</i>
<p>Establishment of Escrow Accounts</p> <ul style="list-style-type: none"> <li>• Requirement for any designated loan secured by residential real estate or a mobile home that is made, increased, extended or renewed on or after 1/1/2016</li> <li>• A lender must escrow for flood insurance under the Regulation even if it does not escrow for taxes and insurance.</li> <li>• Lenders must escrow force-placed insurance – unless the lender qualifies for an exception.</li> </ul> <p>Loan-related exceptions:</p> <ul style="list-style-type: none"> <li>○ A loan is an extension of credit primarily for business, commercial, or agricultural purposes;</li> <li>○ A loan that is in a subordinate position to a senior lien secured by the same property for which the borrower has obtained adequate flood insurance coverage;</li> <li>○ A loan that is covered by a condo association, cooperative or homeowners association or other applicable group’s adequate flood insurance policy;</li> <li>○ A loan that is a home equity line of credit;</li> <li>○ A loan that is a nonperforming loan that is 90 days or more past due; or</li> <li>○ A loan that has term not longer than 12 months.</li> <li>• Small lender exception <ul style="list-style-type: none"> <li>○ If a lender no longer qualifies for the small lender exception, it must escrow all premiums and fees for any flood insurance required</li> </ul> </li> </ul>
<p>Subordinate Lienholder</p> <ul style="list-style-type: none"> <li>• Subordinate lienholders are not required to escrow for flood insurance as long as the borrower has obtained flood insurance coverage that meets the mandatory purchase requirement. The junior lienholder or its servicer must ensure that adequate flood insurance is in place.</li> <li>• If adequate insurance has not been obtained by the first lienholder and insurance must be purchased in connection with the second mortgage to meet the mandatory purchase requirement, the junior lender or its servicer would need to escrow the insurance obtained in connection with the second mortgage.</li> <li>• Does not apply to subordinate lien if subordinate lien is a HELOC</li> </ul>
<i>Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Small Lender Exception (Escrow Small Lender Exception)</i>
<p>Small Lender Exception Applicability – on or after July 6, 2012</p> <ul style="list-style-type: none"> <li>• Lender 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 any loan secured by residential improved real estate or a mobile home; and</li> </ul>

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

#### HMPL Loans

- Federal law in effect on or before July 6, 2012, permitted a borrower to request cancellation of the escrow rather than apply for the entire term of the loan – therefore HPML escrow requirements would not result in the loss of the escrow exception for a small lender that made an HPML – covered loan prior to 1/6/2012

#### USDA/FHA Loans

- Such loans under Federal law, require the deposit of taxes, insurance premiums, fees, and other charges in an escrow account for the entire term of the loan – therefore the small lender exception would not apply.

#### Option to Escrow Notice

- Loans outstanding as of 1/1/2016, must receive notice only to lenders who have a change in status & no longer qualify for the small lender exception
- Such lenders are required to provide the option to escrow notice by September 30 of the first calendar year in which the lender has had a change in status pursuant to the regulation.
- The notice does not apply to outstanding loans or lenders that are excepted from the general escrow requirement under the regulation.
- Option to escrow notice does not apply to loans that are not subject to the mandatory flood insurance purchase requirement.
- Lenders that qualify for the small lender exception are not required to provide borrowers the escrow notice or the option to escrow unless the lender no longer qualifies for the small lender exception.

#### Waiver of Escrow

- If a borrower waives escrow of flood insurance premiums and fees, the lender exception for sending a notice no longer applies. The Regulation does not exclude loans for which borrowers have previously waived escrow from the requirement to offer and make available the option to escrow flood insurance premiums and fees.
- Lenders/Service providers must send a notice of the option to escrow to borrowers who waived escrow

#### *Requirement to Escrow Flood Insurance Premiums and Fees – Escrow Loan Exceptions*

#### Exceptions

- Extensions of credit primarily for business, commercial or agricultural purposes are not subject to the escrow requirement for flood insurance premiums and fees, even if such loans are secured by residential improved real estate or a mobile home.
- Escrow requirements would not apply to a loan secured by a particular unit in a multi-family residential building if a condo association, cooperative,

homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense.

- Construction to permanent loans do not qualify for the 12-month exception from escrow, even if one phase of the loan is 12 months or less, given that these loans are generally 20 – 30-year loans. A 12-month phase is not considered a true closing.
- If at any time during the term of the loan a lender determines that a subordinate lien exception no longer applies, the lender must begin escrowing flood insurance premiums and fees as soon as reasonably practicable (unless another exception applies).
  - Lenders should ensure that loan documents for subordinate liens permit the lender to require an escrow if the loan takes a first lien position.

## ***Exemptions for Detached Structures***

### *Exemptions from the Mandatory Flood Insurance Purchase Requirements*

#### Detached Structures

- The Regulation does not apply a structure that is detached from the primary residential structure and does not serve as a residence.
  - A borrower may still elect to purchase flood insurance
- The lender does not have to take a security interest in the primary residential structure for detached structures to be eligible for exemption.
  - The term “a structure that is part of a residential property” in the detached structure exemption applies only to structures for which there is a residential use and not to structures for which there is a commercial, agricultural or business use.
- A flood hazard determination is required even when the secured property contains detached structures for which coverage is not required, in order to determine whether a building or mobile home securing a loan is or will be located in an SFHA.
- If a borrower has flood insurance on a detached structure that is part of the residential property but does not serve as a residence, the lender is no longer mandated by the Act to require flood insurance on that structure and may allow the borrower to cancel the policy.
- If a triggering event occurs the lender is required to examine the status of detached structures to determine whether the structure exemption still applies.

## ***Procedures for Force Placement of Insurance***

### *Force Placement of Flood Insurance – Force Placement*

#### Force Placement

- When a lender makes the determination that the collateral securing the loan is uninsured or underinsured, it must begin the force placement process. The

lender or servicer must notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the regulation.

- If the borrower fails to obtain appropriate insurance within 45 days of the lender's notification the lender must purchase flood insurance on the borrower's behalf.
- It must be the full amount required under Regulation
- The lender must provide notice to the borrower of force placement of insurance upon making the determination that the loan is not covered by flood insurance or in an amount less than the amount required
- When force placement occurs, the Regulation requires a minimum amount of flood insurance to 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."

Charging for Force Placed Insurance – What is considered a triggering event?

- Capitalizing the premium and fees into outstanding principal balance
  - If the lender's loan contract with the borrower includes a provision permitting the lender to advance funds for flood insurance as additional debt to be secured by the building/mobile home – such an advancement would be considered part of the loan and would not be considered a triggering event.
  - **IF** there is no explicit provision permitting this type of advancement of funds in the loan contract the capitalization of premiums would be considered an "increase" in the loan amount and thus considered a triggering event because no advancement of funds was contemplated as part of the loan.
- Adding the premium and fees to a separate account
  - If the lender accounts for and tracks the amount owed on force placed insurance premiums and fees in a separate account, this is not considered a triggering event
- Advancing funds from the escrow account to pay for the premium and fees
  - If the lender's contract permits the advancement of premiums from the borrower's escrow account – this is not considered a triggering event
- Billing the borrower directly for the premiums and fees
  - If the lender bills the borrower directly for the cost of force placed insurance, this is not considered a triggering event

Refunding premiums

- The Regulation requires the refund of force placed insurance premiums and any related fees charged to the borrower for any overlap period within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage without exception.

Expiration

<ul style="list-style-type: none"> <li>The Regulation does not require a lender to send a notice to the borrower prior to renewing a force placed policy. The lender may notify the borrower if they are planning to renew or have renewed the policy.</li> </ul>
<p><b>Monitoring Coverage</b></p> <ul style="list-style-type: none"> <li>There is no regulatory requirement to monitor coverage over the life of the loan. For purposes of safety and soundness many lenders choose to monitor for continuous coverage.</li> </ul>

## ***Acceptance of Private Flood Insurance***

<p><i>Private Flood Insurance – Mandatory Acceptance</i></p> <ul style="list-style-type: none"> <li>Lenders are only required to accept flood insurance policies issued by a private insurer that meet the definition of private flood insurance under the Regulation, as long as the policy meets the amount of insurance required. <ul style="list-style-type: none"> <li>A lender is not required to accept flood insurance that only meets the criteria set forth in discretionary acceptance.</li> </ul> </li> <li>Lenders are not required to originate a loan that does not meet their underwriting criteria, e.g., a loan in non-participating communities or coastal barrier regions where the NFIP is not available.</li> </ul>
<p><i>Use of Compliance Statement</i></p> <ul style="list-style-type: none"> <li>A lender may choose to rely upon the compliance aid statement and would not need to review the policy further to determine if the policy meets the definition of “private flood insurance.” <ul style="list-style-type: none"> <li>A lender may not reject the policy solely on the lack of the compliance aid statement and not required to accept it on the statement alone, but rather may choose to review the policy in its entirety to determine if it meets the definition of “private flood insurance.”</li> </ul> </li> <li>In order for the lender to rely on the compliance aid statement without further review of the policy, the language of the statement must be stated in the policy, or as an endorsement to the policy. <ul style="list-style-type: none"> <li>If the language is different the lender cannot rely on the protections of the compliance aid statement.</li> </ul> </li> </ul>
<p><i>Private Flood Insurance – Discretionary Acceptance</i></p> <p><b>Policy acceptance</b></p> <ul style="list-style-type: none"> <li>Lenders are not required to accept flood insurance policies that only meet the discretionary criteria. Discretionary criteria are set forth in the Regulation <ul style="list-style-type: none"> <li>It is at the lender’s discretion to accept a policy that meets the discretionary acceptance criteria</li> </ul> </li> <li>If a lender accepts a policy that they determine meets the discretionary criteria the lender must document its conclusion in writing that the policy provides sufficient protection of the loan, consistent with general safety and soundness principles.</li> </ul>

**Factors to consider:**

- A policy’s deductible is reasonable based on the borrower’s financial condition;
- The insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force-placement of flood insurance, if necessary
- The terms and conditions of the policy, with respect to payment per occurrence or per loss and aggregate limits, are adequate to protect the regulated lending institution’s interest in the collateral;
- The flood insurance policy complies with applicable State insurance laws; and
- The private insurance company has the financial solvency, strength, and ability to satisfy claims.

*Private Flood Insurance – General Compliance*

**Maximum Deductible**

- For purposes of compliance with the mandatory acceptance provision, the Regulation provides that a policy must provide coverage at least as broad as the coverage provided under an SFIP for the same type of property, including a deductible that is no higher than the specified amount under an SFIP for any total coverage amount up to the maximum available under the NFIP at the time the policy is provided to a lender.
- The lender should consider whether the deductible is reasonable based on the borrower’s financial condition and other factors.
- If a lender is accepting a private flood insurance policy under the mandatory acceptance provision, the Regulation requires that the private flood insurance policy be at least as broad as an SFIP, which includes a requirement that the private flood insurance policy contain a deductible *no higher* than the specified maximum deductible for an SFIP

**Private Flood Insurance & Secondary Market Investors**

- The requirements for secondary market are separate from Regulation and lenders must comply with Federal flood insurance requirements.
- Lenders should carefully review the separate requirements for secondary market investors to determine what is acceptable regarding private flood insurance if the lender plans to sell the loan to such investors.

**New Policy**

- Any time a borrower presents the lender with a new flood insurance policy issued by a private insurer the lender must review the policy to determine whether it meets the private flood insurance requirements.