

ATTACHMENT A

FDIC RULES AND REGULATIONS

PART 339 - LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

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Sec.

- 339.1 Authority and scope.
339.2 Definitions.
339.3 Requirement to purchase flood insurance.
339.4 Exemption.
339.5 Records of compliance.
339.6 Notice of special flood hazard and of the availability of Federal disaster relief assistance.

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SOURCE: The provisions of this Part 339 appear at 45 Fed. Reg. 56028, August 22, 1980, effective September 22, 1980, except as otherwise noted.

§ 339.1 Authority and scope.

This part is issued under section 1364 of the Housing and Community Development Act of 1974 and sections 102(b) and 202(b) of the Flood Disaster Protection Act of 1973 as amended by section 703 of the Housing and Community Development Act of 1977. Its provisions apply to loans which are secured by improved real estate or mobile homes and are made by insured State nonmember banks or insured State branches of foreign banks.

[Codified to 12 C.F.R. § 339.1]

§ 339.2 Definitions.

(a) The term "bank" means an insured State nonmember bank and an insured State branch of a foreign bank.

(b) The term "loan" means an extension of credit secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards.

[Codified to 12 C.F.R. § 339.2]

§ 339.3 Requirement to purchase flood insurance.

No bank shall make, increase, extend, or renew any loan as defined in § 339.2(b) when the improved real estate or mobile home securing the loan is located or is to be located in an area in which flood insurance has been made available under the National Flood Insurance Act of 1968,¹ unless the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance. The amount of the insurance must be at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available for the particular type of property under the Act, whichever is less.

[Codified to 12 C.F.R. § 339.3]

§ 339.4 Exemption.

Flood insurance shall not be required on any State-owned property that is covered under an adequate policy of self-insurance satisfactory to the Director of the Federal Emergency Management Agency who will publish and periodically revise the list of States falling within the exemption provided by this section.

[Codified to 12 C.F.R. § 339.4]

§ 339.5 Records of compliance.

Each bank shall maintain for all extensions of credit secured by improved real estate or a mobile home sufficient records to indicate the method used by the bank to determine

¹ Flood insurance is available to a community when the community is participating in the National Flood Insurance Program.

whether the extensions of credit fall within the provisions of § 339.3 or § 339.4 of this part.

[Codified to 12 C.F.R. § 339.5]

§ 339.6 Notice of special flood hazard and of the availability of Federal disaster relief assistance.

(a) *Notice requirement.* In making, increasing, extending, or renewing a loan as defined in Section 339.2(b), each bank shall mail or deliver a written notice to the borrower stating: (1) that the property securing the loan is or will be located in an area identified as a flood hazard area (or in lieu of such notification, the bank may obtain satisfactory written assurance from the seller or lessor that the seller or lessor has notified the borrower, before the execution of any agreement for sale or lease, that the property securing the loan is or will be located in such an area); and (2) whether Federal disaster relief assistance will be available for the property if the property is damaged by a flood in a federally declared disaster. The notice must be mailed or delivered as soon as feasible but not later than 10 days before the closing of the transaction (or not later than the bank's commitment if any, if the period between commitment and closing is less than 10 days). Each bank shall require the borrower, before closing, to provide the bank with a written acknowledgment that the borrower realizes the property securing the loan is or will be located in an area identified as a flood hazard area and that the borrower has received the required notice regarding Federal disaster relief assistance.

(b) *Sample notices.* A bank providing written notice containing language substantially similar to that presented below, as appropriate, within the time limits prescribed in paragraph (a) will be considered to be in compliance with the notice requirements of paragraph (a).

(1) *Notice to borrower of special flood hazard area.* Notice is hereby given to _____ (Name of borrower) that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. This area is delineated on _____ (Name of community) Flood Insurance

Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM). The area has at least a 1 percent chance of being flooded within any given year. The risk of exceeding the 1 percent chance increases with time periods longer than one year. For example, during the life of a 30-year mortgage, a structure located in a special flood hazard area has a 26 percent chance of being flooded.

(2) *Notice to borrower about federal disaster relief assistance.—* (i) *Notice in participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance Program. If the property is damaged by flooding in a federally declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if your community has been identified as a flood-prone area for one year or longer and is not participating in the National Flood Insurance Program when the assistance is approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

(ii) *Notice in nonparticipating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is not participating in the National Flood Insurance Program. This means that the property is not eligible for Federal flood insurance. If the property is damaged by flooding in a federally declared disaster, Federal disaster relief assistance for the property will be unavailable if your community has been identified as a flood-prone area for one year or longer. Such assistance may be available only if, at the time the assistance would be approved, your community is participating in the National Flood Insurance Program or has been identified as a flood-prone area for less than one year.

[Codified to 12 C.F.R. § 339.6]

NOTE

Guidelines for extending and administering loans in special flood hazard areas.

When federal flood insurance is available for a community in a designated flood hazard area (i.e., when the community is participating in the National Flood Insurance Program), an insured nonmember bank cannot make loans secured by improved real estate or a mobile home located in the community unless the property securing the loan is covered by appropriate flood insurance. However, Part 339 permits an insured nonmember bank to make loans secured by improved real estate or a mobile home located or to be located in a designated flood hazard area where the community is not participating in the National Flood Insurance Program if the bank gives the proper notices as required by section 339.6. Sample notices are provided in this section.

The following two examples are included to assist you in determining which notices must be given to the borrower when making, increasing, extending, or renewing any loan secured by improved real estate or mobile home located or to be located in an area that has been identified by the Directors of the Federal Emergency Management Agency as an area having special flood hazards. In both instances two notices must be either mailed or delivered as soon as feasible but not less than ten days in advance of the closing of the transaction (or not later than the bank's commitment, if any, if the period between commitment and closing is less than ten days).

NOTICES TO BE GIVEN WHEN THE COMMUNITY IS PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM.

1. Notice to the borrower that the property is or will be located in a flood hazard area. With regard to the sample notice in section 339.6 pertaining to special flood hazards the bank should complete the notice by entering the name of the borrower in the first blank space and the name of the relevant community for which the flood map was issued in the second blank space.

2. Notice to the borrower about the availability of Federal Disaster Relief Assistance. This notice states that in the event such property is damaged by flooding in a

federally declared disaster, federal disaster relief assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of the flood insurance.

NOTICES TO BE GIVEN WHEN THE COMMUNITY IS NOT PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM.

1. Notice to the borrower that the property is or will be located in a flood hazard area. Again, the bank should complete the notice by entering the name of the borrower in the first blank space and the name of the relevant community for which the flood map was issued in the second blank space.

2. Notice to the borrower about unavailability of Federal Disaster Relief Assistance. This notice states that the community is not participating in the National Flood Insurance Program and the property is not eligible for federal flood insurance. If the property is damaged by flooding in a federally declared disaster, federal disaster relief assistance will not be available if the community has been identified as a flood-prone area for one year or longer.

Section 339.6 further states that each insured nonmember bank shall require the borrower, prior to closing, to provide the bank with a written acknowledgement that the borrower realizes the property securing the loan is or will be located in a special flood hazard area and that the borrower has received the appropriate notice regarding federal disaster relief assistance.

Part 339 does not preclude a bank from requiring on its own that flood insurance be obtained for improved real estate or a mobile home securing a loan when the property is located or to be located in a designated flood hazard area where the community is not participating in the National Flood Insurance Program. Nor would it preclude the Veterans Administration or other federal agencies from imposing a similar flood insurance requirement before providing assistance through a mortgage insurance, loan, or grant program.

To avoid possible delays in the closing of the loans in areas having special flood hazards, a bank could accept as proof of flood insurance at the time of loan closings a

copy of the flood insurance application indicating that the full premium has been paid, a copy of the mortgagor's check issued in payment of the premium, or the insurance agent's certification that the mortgagor has purchased the requisite flood insurance.

The Federal Emergency Management Administration (FEMA) is currently distributing flood maps to lenders to use in determining whether improved real estate or a mobile home is located in a designated flood hazard area. The *Community Status Book*, a quarterly publication, provides the following information to the lender with respect to a community: a) the communities participating in the National Flood Insurance Program; b) the effective date of currently effective flood maps; and c) the communities which are not participating in the National Flood Insurance Program, but

which have a FEMA flood map showing special flood hazard areas.

FEMA has provided the following information regarding flood insurance:

For program information, such as community eligibility, call toll-free 800-638-6620. In Maryland call 800-492-6605, and in Alaska, Guam, Hawaii, Puerto Rico and U.S. Virgin Islands call 800-638-6831.

For general information, write:

Federal Insurance Administration
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

For map requests and *Community Status Book* information, write:

Federal Emergency Management Agency
Flood Map Distribution Center
6930 (A-F) San Tomas Road
Baltimore, Maryland 21227-6227
Or, call toll-free 800-638-6620

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