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Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury
Office of Thrift Supervision

Farm Credit Administration

National Credit Union Administration

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC 2009–0014]

FEDERAL RESERVE SYSTEM

[Docket No. R–1311]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2009–0005]

FARM CREDIT ADMINISTRATION

RIN 3052–AC46

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AD41

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

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

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are issuing final revisions to the Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers). The Agencies are also soliciting comments on proposed revisions to the Interagency Questions and Answers. To help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public understanding of the flood insurance regulation, the Agencies are finalizing new and revised guidance, as well as proposing new and revised guidance that address the most frequently asked questions about flood insurance. The revised Interagency Questions and Answers contain staff guidance for agency personnel, financial institutions, and the public.

DATES: *Effective date:* September 21, 2009. *Comment due date:* Comments on the proposed questions and answers must be submitted on or before September 21, 2009.

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

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Communications Division, Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2009–0014'' 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, e-mail 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 notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Communications Division, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling in advance (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

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

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

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

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

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

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

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

OTS: You may submit comments, identified by OTS–2009–0005, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2009–0005 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2009–0005.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G

Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2009–0005.

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

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/?p=opencomment1.*

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

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

- *E-mail:* Send us an e-mail at *regcomm@fca.gov*.
- *Agency Web Site: http://www.fca.gov.* Once you are at the Web site, select ''Legal Info,'' then ''Pending Regulation and Notices.''
- *Federal eRulemaking Portal: http://www.Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

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

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

- *Federal eRulemaking Portal: http://www.Regulation.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

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

FOR FURTHER INFORMATION CONTACT:

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

Board: Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–2412; Tracy Anderson, Senior Supervisory Consumer Financial Services Analyst (202) 736–1921; or Brad Fleetwood, Senior Counsel, Legal Division, (202) 452–3721, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

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

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

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

NCUA: Justin M. Anderson, Staff Attorney, Office of General Counsel, (703) 518–6540; or Pamela Yu, Staff Attorney, Office of General Counsel, (703) 518–6593, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

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

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

In response to issues that had been raised, the Agencies, in coordination with the Federal Emergency Management Agency (FEMA), released for public comment proposed revisions to the 1997 Interagency Questions and Answers. 73 FR 15259 (March 21, 2008) (March 2008 Proposed Interagency Questions and Answers). Among the changes the Agencies proposed were the introduction of new questions and answers in a number of areas, including second lien mortgages, the imposition of civil money penalties, and loan syndications/participations. The Agencies also proposed substantive modifications to questions and answers previously adopted in the 1997 Interagency Questions and Answers pertaining to construction loans and condominiums. Finally, the Agencies proposed to revise and reorganize certain of the existing questions and answers to clarify areas of potential misunderstanding and to provide clearer guidance to users.

The Agencies received and considered comments from 59 public commenters, and are now adopting the Interagency Questions and Answers, comprising 77 questions and answers, revised as appropriate based on comments received. The Agencies made nonsubstantive revisions to certain answers upon further consideration either to more directly respond to the question asked or to provide additional clarity. The Agencies are also proposing five new questions and answers for public comment. These Interagency Questions and Answers supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies and FEMA.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final flood insurance rule.[1]

Section-by-Section Analysis

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

The Agencies proposed this new section to address specific circumstances a lender may encounter when deciding whether a loan should be a designated loan for purposes of flood insurance. The proposed new section was intended to replace the previous section I in the 1997 Interagency Questions and Answers entitled ''Definitions'' and to incorporate existing questions from other sections addressing this topic and two new questions.

Proposed question and answer 1 addressed the applicability of the Regulation to loans made in a nonparticipating community. One commenter suggested the Agencies mention that a lender may choose to require private flood insurance per its loan agreement with the borrower, for buildings or mobile homes located outside a community in the National Flood Insurance Program (NFIP). The Agencies agree that lenders have such discretion, but do not believe that the question and answer requires further elaboration. Another commenter suggested the Agencies mention that Government Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, may not purchase loans made on properties in a Special Flood Hazard Area (SFHA) in communities that do not participate in the NFIP. The Act does require GSEs to have procedures in place to ensure that purchased loans are in compliance with the mandatory purchase requirements. The Agencies do not believe that further elaboration is necessary and adopt the question and answer as proposed.

Proposed question and answer 2 explained that, upon a FEMA map change that results in a building or mobile home securing a loan being removed from an SFHA, a lender is no longer obligated to require mandatory flood insurance. However, the lender may choose to continue to require flood insurance for risk management purposes. The Agencies received one comment from an industry group suggesting the guidance in proposed question and answer 2 be amended to add language encouraging lenders to promptly remove the flood insurance requirement from a loan when the building or mobile home securing the loan is removed from an SFHA by way of a map change. The decision to require flood insurance in these instances is typically made on a case-by-case basis, depending on a lender's risk management practices. The Agencies do not believe that a blanket statement encouraging lenders to remove flood insurance in such instances is an appropriate position; therefore, the question and answer is adopted as proposed.

Proposed question and answer 3 addressed whether a lender's purchase of a loan, secured by a mobile home or building located in an SFHA in which flood insurance is available under the Act, from another lender triggers any requirements under the Regulation. The Agencies received several comments opposing the reference to safety and soundness necessitating a due diligence review prior to purchasing the loan. The Agencies note that although lenders are not required to review loans for flood insurance compliance prior to purchase, depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence. As such, the Agencies do not concur with the commenter's opposition and adopt question and answer 3 as proposed.

The Agencies are adopting a new question and answer 4 addressing syndicated and participation loans following question and answer 3, which deals with purchased loans, to emphasize the need for similar treatment of purchased loans and syndicated and participation loans. The new question and answer was initially proposed as question and answer 40 under section VIII. Proposed section VIII on loan syndications and participations and the accompanying question and answer are removed and the remaining sections are renumbered accordingly.

Proposed question and answer 40 explained that, with respect to loan syndications and participations, individual participating lenders are responsible for ensuring compliance with flood insurance requirements. The proposed answer further explained that participating lenders may fulfill this obligation by performing upfront due diligence to ensure that the lead lender or agent has undertaken the necessary activities to make sure that appropriate flood insurance is obtained and has adequate controls to monitor the loan(s) on an on-going basis.

The Agencies received several comments from financial institutions and industry trade groups opposing the

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

differences between the guidance in proposed question and answer 3 regarding the purchase of a loan and the guidance in proposed question and answer 40. A majority of the commenters argued that loan participations and syndications should be treated the same as other loan purchases for purposes of flood insurance. Several of these commenters suggested that the Agencies' proposed treatment of loan syndications and participations appeared to be inconsistent with proposed question and answer 3 pertaining to purchased loans.

In response to these comments, the Agencies are revising the relevant question and answer to reflect that, as with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication, after that loan has been made, does not trigger the requirements of the Act and Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

If a regulated lender is involved in the making of the underlying loan, but does not purchase a loan participation or syndication after the loan has been made, the flood requirements of the Act and Regulation would apply to the lender. The Agencies believe that lenders who pool or contribute funds that will be advanced simultaneously to a borrower as a loan secured by improved real estate would *all* be considered to have ''made'' the loan under the Act and Regulation. In such circumstances, each participating lender in a loan participation or syndication is responsible for compliance with the Act and Regulation. This does not mean that each participating lender must separately obtain a flood determination or monitor whether flood insurance premiums are paid. Rather, it means that each participating lender subject to Federal flood insurance requirements should perform upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to make sure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an on-going basis for compliance with the flood insurance requirements. The participating lender should require as a condition to the loan-sharing agreement that the lead lender or agent will provide participating lenders with sufficient information on an ongoing basis to monitor compliance with flood insurance requirements. A written representation provided by the lead lender or syndication agent certifying that the borrower has obtained appropriate flood insurance would be sufficient. Alternatively, the lead lender or syndication agent could provide participants and syndication lenders with a copy of the declaration page or other proof of insurance. The Agencies have incorporated minor revisions to the question and answer to clarify this guidance.

Proposed question and answer 4 (final question and answer 5) addressed the applicability of the Regulation to loans being restructured because of the borrower's default on the original loan. In light of the many loan modifications being made, the Agencies have revised the question to address loan modifications as well as loans being restructured because of the borrower's default on the original loan. The guidance provided in the answer is applicable to either situation. The Agencies received one comment asking whether capitalization of a loan in the event of a default would constitute an increase in the loan, triggering the requirements of the Regulation. If the capitalization results in an increase in the outstanding principal balance of the loan, then the requirements of the Regulation will apply. Conversely, a loan restructure that does not result in an increase in the amount to the loan (or an extension of the term of the loan) will not trigger the requirements of the Regulation. The Agencies do not believe further elaboration addressing this comment is necessary. The Agencies adopt the question and answer as proposed with the changes made to include loan modifications, as well as restructuring of loans.

Proposed question and answer 5 (final question and answer 6), addressed whether table funded loans are treated as new loan originations. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 6 (final question and answer 7) explained that a lender is not required to perform a review of its existing loan portfolio for purposes of the Act or Regulation; however, sound risk management practices may lead a lender to conduct periodic reviews. The Agencies received several comments opposing the reference to safety and soundness necessitating a due diligence review of a lender's portfolio. Although lenders are not required to review existing loan portfolios for flood insurance compliance under the Act or Regulation, the Agencies believe safety and soundness considerations may sometimes necessitate such due diligence and therefore adopt the question and answer as proposed.

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

The Agencies proposed this section to provide guidance on how lenders should determine the appropriate amount of flood insurance to require the borrower to purchase. The Agencies received numerous comments on this proposed section. As a result of these comments, the Agencies have made both significant revisions to proposed questions and answers as well as proposed new questions and answers submitted for comment to provide greater clarity on this important area. The proposed new questions and answers are addressed in the **SUPPLEMENTARY INFORMATION** immediately following the Redesignation Table.

Proposed question and answer 7 (final question and answer 8) addressed what is meant by the ''maximum limit of coverage available for the particular type of property under the Act.'' The first part of the question and answer discussed the maximum caps on insurance available under the Act. The Agencies did not receive any substantive comments on this part of the question and answer and adopt it as proposed in final question and answer 8. The second part of the question and answer discussed the maximum limits on the coverage in the context of the regulation that provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located,'' commonly referred to as insurable value. In response to the numerous comments received on the insurable value part of the proposed question and answer, the Agencies are proposing new questions and answers 9 and 10 for public comment. The Agencies otherwise adopt question and answer 7 (final question and answer 8) as proposed.

Proposed questions and answers 8 and 9 (final questions and answers 11 and 12 respectively) more fully defined the terms ''residential building'' and ''nonresidential building.'' One commenter suggested that the Agencies define residential and nonresidential buildings based on the percentage of the building used in a certain way to account for mixed use buildings.

Proposed question and answer 8 (final question and answer 11) provides that a residential building may have incidental nonresidential use as long as such incidental use is limited to less than 25 percent of the square footage of the building. A mixed use residential building where greater than 25 percent of the square footage of the building is devoted to incidental nonresidential use will be considered a nonresidential building. Proposed question and answer 9 (final question and answer 12) provides that a mixed use nonresidential building with less than 75 percent of the square footage of the building used for residential purposes will still be considered nonresidential. The commenter also asked whether a farm house is residential or nonresidential. If the farmhouse is used as a dwelling, then it will be considered residential.

Another commenter asked whether a lender is obligated to determine the amount of nonresidential use in a residential building and whether there are any record maintenance requirements. Typically, whether a building is nonresidential or residential is of most importance in determining the maximum limits of a general property form NFIP policy. A residential building covered under a general property form will have a maximum coverage limit of $250,000, while a nonresidential building covered under the same type of policy will have a maximum coverage limit of $500,000. Therefore, the lender needs to know whether the building is considered residential or nonresidential when it determines the amount of flood insurance coverage to require. Finally, a commenter asked whether a designated loan, secured by a residential building and a detached nonresidential building, such as a garage, would require separate nonresidential coverage on the detached nonresidential building. If the residential building is a one-to-four family dwelling that is covered by a dwelling form NFIP policy, that policy will cover a detached garage at the same location as the dwelling, up to 10 percent of the limit of liability on the dwelling, so long as the detached garage is not used or held for use as a residence, a business or for farming purposes. In other cases, the lender must require the borrower to obtain coverage for each building securing the loan. The Agencies believe no further clarification is necessary and adopt the questions and answers as proposed.

Proposed question and answer 10 (final question and answer 13) illustrated how to apply the ''maximum limit of coverage available for the particular type of building under the Act.'' The majority of the comments received are addressed in the discussion below pertaining to new proposed questions and answers 9 and 10. The Agencies adopt question and answer 10 (final question and answer 13) as proposed.

Proposed questions and answers 11 and 12 (final questions and answers 14 and 15 respectively) were originally adopted in the 1997 Interagency Questions and Answers. The changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning.

Four commenters addressed proposed question and answer 11, which dealt with flood insurance requirements where a designated loan is secured by more than one building. One commenter supported the proposed question and answer, but suggested that where the collateral is worthless and would not be replaced, lenders should not have to require the borrower to obtain flood insurance. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low-value nonresidential buildings. Another commenter asked whether a lender would be liable if the lender allocates the overall required flood insurance over several buildings and one building suffers flood damage and is underinsured. In such a circumstance, the lender would have complied with the Act and the Regulation. Of course, the lender has the option to require the borrower to obtain more flood insurance coverage than the minimum amount required if the lender believes there is a high risk of flood loss (*see* final question and answer 16). Two commenters suggested that the Agencies should explain how the lender should allocate the required amount of coverage for multiple buildings of different values that secure a single loan. One of these commenters suggested that allocation could be made by a square footage method. The Agencies agree that this is one reasonable method that could be used. Other methods may include a value-based method, splitting the total coverage pro rata based on replacement cost value, or a functionality method, requiring a higher proportional share of coverage to those buildings that are most important to the ongoing operation of the borrower. The apportionment of the required coverage in any particular situation should reflect consideration by both the lender and borrower of their needs and risks. The Agencies believe no further clarification is necessary but revised the answer to address the technical issue that single-family dwellings are considered residential if less than 50 percent of the square footage is used for an incidental nonresidential purpose.

Twenty commenters addressed proposed question and answer 12, which addressed the flood insurance requirements where the insurable value of a building securing a designated loan is less than the outstanding principal balance of the loan. The comments generally raised concerns about the lack of a definition of ''insurable value,'' discussed above in connection with proposed question and answer 7. As previously mentioned, the Agencies are proposing new questions and answers 9 and 10 for public comment to address the issue of insurable value. One commenter also asked whether the Agencies will require a lender to review flood insurance policies annually at renewal and increase coverage as the replacement cost value increases. The Agencies typically will not require such a review. However, if at any time during the term of the loan, the lender determines that flood insurance coverage is insufficient, the lender must comply with the force placement procedures in the Regulation. The Agencies believe no further clarification is necessary and adopt the question and answer as proposed.

Proposed question and answer 13 (final question and answer 16) clarified that a lender can require more flood insurance than the minimum required by the Regulation. The Regulation requires a minimum amount of flood insurance; however, lenders may require more coverage, if appropriate. Two commenters asked the Agencies to specify that lenders may never require coverage that exceeds the insurable value of a building. As stated in the question and answer, lenders should avoid creating situations where a building is over-insured. Further, the Agencies state in final question and answer 8 that ''an NFIP policy will not cover an amount exceeding the insurable value of the structure.'' Another commenter asked what penalties, if any, would be imposed on a lender that requires over insurance. The Agencies note that there are no penalties for over insurance under the Act and Regulation. However, there may be penalties for over-insurance under applicable State law. Finally, a commenter suggested that flood insurance should not be required where the collateral building is worthless and would not be replaced. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings. Other than a nonsubstantive revision to provide additional clarity, the Agencies adopt the question and answer as proposed.

Proposed question and answer 14 (final question and answer 17) addressed lender considerations regarding the amount of the deductible on a flood insurance policy purchased by a borrower. Generally, the proposed guidance advised a lender to determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. The Agencies received nine comments addressing proposed question and answer 14. Four commenters suggested that borrowers with low-value buildings should be able to choose a deductible that exceeds the value of the building with a result that flood insurance would not be required. The Act and Regulation require flood insurance on all buildings at the lesser of the outstanding principal balance of the loan or the maximum amount available under the Act. A high deductible does not provide a de facto waiver of this requirement. One commenter suggested that the Agencies' position regarding not allowing a de facto waiver of the flood insurance requirement on low-value buildings based on the deductible amount contradicts the NFIP's policy of following the standard practice in the financial industry of allowing lenders to dictate the amount of the deductible according to the authority found in the loan agreement. Other commenters stated that a lender should not be required to determine deductibles on a case-by-case basis but rather through adoption of credit guidelines that apply across-the-board to all loans. In general, the Agencies agree that lenders may adopt credit guidelines that apply to most loans. However, such guidelines cannot work to waive the flood insurance requirements of the Act and Regulation. Finally, one commenter suggested that the Agencies should mention that the GSEs may have maximum allowable deductibles. The Agencies decline to revise the question and answer based on this comment because information about GSE requirements is outside the scope of this guidance. The Agencies adopt the question and answer as proposed.

Section III. Exemptions From the Mandatory Flood Insurance Requirements

This section contains only one question and answer, which describes the statutory exemptions from the mandatory flood insurance requirements. Proposed question and answer 15 (final question and answer 18) was revised from the 1997 Interagency Questions and Answers to provide greater clarity, with no intended change in substance or meaning. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Section IV. Flood Insurance Requirements for Construction Loans

The Agencies proposed this new section to clarify the requirements regarding the mandatory purchase of flood insurance for construction loans to erect buildings that will be located in an SFHA in light of concerns raised by some regulated lenders regarding borrowers' difficulties in obtaining flood insurance for construction loans at the time of loan origination. The Agencies received a number of comments on the proposed questions and answers concerning construction loans. Several commenters asked for guidance in determining the appropriate amount of flood insurance for a loan secured by a building during the course of construction. This guidance is provided in the discussion of the proposed new questions and answers 9 and 10 for public comment that addresses insurable value.

Proposed question and answer 16 (final question and answer 19) revises existing guidance to limit its scope and explained that a loan secured only by land located in an SFHA is not a designated loan that would require flood insurance coverage. The Agencies received one comment addressing this question and answer from a financial institution commenter that asked whether a loan secured by developed land without a structure on it, which, during the course of the loan, will not have any structure on it, necessitates a flood determination as it is considered residential real estate. The Agencies believe that the commenter has raised a valid point and have revised the proposed question and answer by removing the reference to ''raw'' land. The revised question and answer discusses loans secured only by ''land.'' Since a designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA, any loan secured only by land that is located in an SFHA is not a designated loan since it is not secured by a building or mobile home. In the case of this particular comment, the loan is not secured by either a building or mobile home; therefore, it is not a designated loan. The Agencies adopt the question and answer as proposed with the modification described above.

Proposed question and answer 17 (final question and answer 20) addressed whether a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act is a designated loan. The proposed answer provided that a lender must make a flood determination prior to loan origination for a construction loan. If the flood determination shows that the building securing the loan will be located in an SFHA, the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements.

One financial institution commenter asked whether the lender/servicer must provide continuing flood insurance coverage where a structure in an SFHA covered by flood insurance is considered a total loss/demolished and only the land remains and the structure is to be rebuilt. The Agencies believe that if there is remaining insurable value in the building, flood insurance should continue to be maintained. If the building has no remaining insurable value, then flood insurance is not required. Under these circumstances, the total loss situation is akin to a loan secured only by land located in an SFHA, which is addressed in final question and answer 19 discussed above, and is not a designated loan that would require flood insurance coverage. If the building is a total loss/demolished and has no remaining insurable value, but a new structure is going to be built in its place, it should be treated like a new construction loan as discussed below in proposed question and answer 19 (final question and answer 22). To the extent that any new structure that will be built is, or will be, located in an SFHA, then the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements as outlined in proposed questions and answers 18 and 19 (final questions and answers 21 and 22). The lender can, of course, elect to maintain the flood insurance that had previously been in place on the prior demolished structure to avoid having to monitor the reconstruction as discussed below.

Another financial institution commenter asked whether a building in the course of construction that will be a condominium building when finished can be insured under a Residential Building Condominium Association Policy (RCBAP) during the construction period. The RCBAP can be sold to a condominium association only. Therefore, unless the building is under the condominium form of ownership with a condominium association formed at the time of construction, no RCBAP can be written. If there is no condominium association, the lender should require the builder/developer to obtain flood insurance under the NFIP General Property form or private equivalent. If the building will be a residential condominium, then the lender must require flood insurance to meet the statutory requirements, up to the $250,000 flood insurance limit under the NFIP for an ''other residential'' building.

Finally, a loan servicer commenter asked the Agencies to clarify when flood insurance coverage takes effect when a lender opts to require flood insurance at origination of a construction loan. This comment is addressed in final question and answer 21. The Agencies adopt the final question and answer 20 as proposed.

Proposed question and answer 18 (final question and answer 21) explained that, generally, a building in the course of construction is eligible for coverage under an NFIP policy, and that coverage may be purchased prior to the start of construction. One financial institution commenter asked whether the definition of a ''building'' in the proposed question and answer has the same meaning as FEMA's definition in its *Mandatory Purchase of Flood Insurance Guidelines.*[2] The Agencies believe that the definitions of ''building,'' as well as the definition of ''building in the course of construction,'' used by FEMA are fully consistent with the definition in the Regulation. The Agencies adopt the question and answer as proposed with only minor clarifications to the citation of FEMA's *Flood Insurance Manual.*

Proposed question and answer 19 (final question and answer 22), addressed when flood insurance must be purchased for buildings under the course of construction. The answer provided lenders with flexibility regarding the timing of the mandatory purchase requirement for construction loans in response to concerns raised by lenders that borrowers have encountered difficulties in obtaining flood insurance for construction loans at the time of origination. Specifically, the Agencies proposed to permit lenders to allow borrowers to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued. Lenders choosing this option, however, must require the borrower to have flood insurance in place before funds are disbursed to pay for building construction on the property securing the loan (except as necessary to pour the slab or perform preliminary site work). A lender who elects this approach and does not require flood insurance at loan origination must have adequate internal controls in place to ensure compliance. Moreover, lenders must still ensure that the required flood determination is completed at origination and that notice is given to borrowers if the property is located in an SFHA.

A financial institution and a financial institution membership organization commented that requiring lenders to have monitoring procedures in place to ensure that the borrower obtains flood insurance as soon as the foundation is complete or the elevation certificate issued is too burdensome. The Agencies note that if a lender determines that this option is too burdensome they may continue the practice of requiring flood insurance at origination. The monitoring procedures are only necessary in the event that lenders choose to require flood insurance at the time the foundation pad is completed and/or the elevation certificate is obtained. Therefore, the Agencies believe that no revision to the proposed question and answer is necessary.

Several commenters, including four financial institutions and a law firm that advises financial institutions, asked the Agencies for clarification regarding the ''timing'' options available for determining whether flood insurance is required for buildings in the course of construction, that is, the foundation alone and/or the issuance of an elevation certificate. Either the pouring of the foundation slab or the issuance of an elevation certificate provides sufficient information for a lender to determine whether the collateral building is located in an SFHA for which flood insurance is required. The Agencies believe that no further elaboration is necessary to address this issue in the question and answer.

Finally, one individual commenter indicated that it is unclear whether an NFIP policy can be purchased before two walls and a roof have been erected. FEMA guidance provides that buildings yet to be walled and roofed are generally eligible for coverage after an elevation certificate is obtained or a foundation slab is poured, except where either construction is halted for more than 90 days or if the lowest floor used for rating purposes is below Base Flood Elevation (BFE). If the lowest floor is under BFE, then the building must be walled and roofed before flood insurance coverage is available.[3] The Agencies believe that the commenter has raised a valid point and have clarified the proposed question and answer accordingly. The Agencies otherwise adopt the question and answer as proposed.

The Agencies also proposed new question and answer 20 (final question and answer 23) to clarify whether the 30-day waiting period for an NFIP policy applies when the purchase of flood insurance is deferred in connection with a construction loan since there has been confusion among lenders on this issue in the past. Per guidance from FEMA, the answer provided that the 30-day waiting period would not apply in such cases.[4] The NFIP would rely on the insurance agent's representation that the exception applies unless a loss has occurred during the first 30 days of the policy period. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Section V. Flood Insurance Requirements for Nonresidential Buildings

The Agencies proposed this new section to address the flood insurance requirements for agricultural buildings that are taken as security for a loan, but that have limited utility to a farming operation, and loans secured by multiple buildings where some are located in an SFHA and others are not. Six commenters suggested that this section should be broadened to include all nonresidential buildings, including multiple nonresidential buildings over a large geographic area, not just those related to agriculture. The Agencies concur and have changed the title to section V to read ''Flood Insurance Requirements for Nonresidential Buildings'' and modified proposed questions and answers 21 and 22 (final question and answers 24 and 25) accordingly. Several commenters asked for guidance in determining the appropriate amount of flood insurance for loans secured by a nonresidential building, particularly for nonresidential buildings of low to no value. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings.

[2] FEMA, Mandatory Purchase of Flood Insurance Guidelines (September 2007) at GLS—1–2. FEMA has made this booklet available electronically at *http://www.fema.gov/library/viewRecord.do?id=2954.* Hard copies are available by calling FEMA's Publication Warehouse at (800) 480–2520.

[3] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 30–31.

[4] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 30.

Proposed question and answer 21 (final question and answer 24) explained that all buildings taken as security for a loan and located in an SFHA require flood insurance. The question and answer also explained that lenders may consider ''carving out'' a building from the security for a loan; however, it may be inappropriate for credit risk management reasons to do so. One commenter questioned whether lenders need to require flood insurance when the collateral is only a building (in the commenter's case, a grain bin) and not the real property where the building is located. Further, the commenter stated that they only use a UCC fixture filing to secure the building. Flood insurance is required for any building taken as collateral when that building is located in an SFHA in a participating community. This requirement is not predicated on whether the underlying real estate is also included in the loan collateral or the method used by the lender to secure its collateral. FEMA answered the question of whether a grain bin is a building by specifically including a grain bin in its definition of a nonresidential building, therefore flood insurance is required.[5]

A commenter stated that if the value of a building is worthless or nearly zero then flood insurance should not be required. The Act requires all buildings located in an SFHA and in a participating community to have flood insurance with only two exemptions—when a building is State-owned and covered by self-insurance satisfactory to the Director of FEMA; and when the original loan balance is $5,000 or less and the original repayment term is one year or less. All other buildings are required to be covered by flood insurance. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings.

Another commenter suggested that in determining ''insurable value,'' institutions should be permitted to place good faith reliance on insurance agents who are better equipped to make these determinations. Federally regulated lenders may solicit assistance when evaluating insurable value and this assistance could include an insurance professional. However, it is ultimately the lender's responsibility to determine the insurable value of a building and, as such, it must concur with the determination. The same commenter also asked the Agencies to explain the rationale for treating hazard insurance and flood insurance differently. The reason for treating flood insurance and hazard insurance differently is that flood insurance includes coverage for the repair or replacement cost of the foundation and supporting structures whereas hazard insurance typically does not include coverage of the foundation. Therefore, the calculation of insurable value for flood insurance includes these repair or replacement costs while the calculation of insurable value for hazard insurance does not.

Lastly, a commenter suggested that the Agencies include additional questions and answers about other problems that arise between lenders and insurance companies, such as insurance companies requiring higher amounts of coverage than the appraised value of a structure of minimal value. The amount of flood insurance required by the Act is the lesser of the outstanding principal balance of the loan, the maximum allowed under the Act, or the insurable value. The appraised market value of the structure is not a factor in determining the amount of required insurance. The Agencies adopt question and answer 21 with the changes made to include all nonresidential buildings and not just agricultural buildings.

Proposed question and answer 22 (final question and answer 25) addressed the flood insurance requirements for multiple agricultural buildings located throughout a large geographic area, some in an SFHA and some not. One commenter suggested that the Agencies modify the first sentence in the proposed answer to refer to ''improved property'' rather than ''property.'' The Agencies concur with this recommendation and have inserted ''improved real estate'' in the place of the term ''property'' throughout the answer. The term ''improved real estate,'' instead of the suggested ''improved property,'' was added because it is the term used in the Act.

A commenter asked the Agencies to address the situation where an insurance company requires flood insurance on all buildings on the property, not just those inside an SFHA and another commenter asked the Agencies to mention that a lender can require flood insurance on buildings not located in an SFHA. The Act does not prohibit a lender from requiring more flood insurance than the minimum required by the Act; a lender may have legitimate business reasons for requiring more flood insurance than that required by the Act and neither the Act nor the Regulation prohibits this additional flood insurance. Finally, a commenter suggested that the Agencies modify the second to last sentence in the answer to refer to ''improved property securing the loan'' rather than ''designated loan.'' The Agencies have deleted this sentence entirely as it is not needed to answer the question. The Agencies adopt the question and answer with the modifications discussed above.

Section VI. Flood Insurance Requirements for Residential Condominiums

The Agencies proposed this new section to address flood insurance requirements for residential condominiums. The proposed section contained two previously existing questions and answers, which were modified and expanded, and five new questions and answers. The Agencies received numerous comments addressing this section.

A number of commenters addressed the 2007 FEMA requirement that insurance companies providing a Residential Building Association Policy (RCBAP) include the replacement cost value of the condominium building and the number of units in the building on the declaration page.[6] Two commenters suggested that the Agencies should enforce this requirement over all insurance companies. The Agencies strongly support this FEMA requirement; however, the Agencies may only enforce the requirement against those entities over which the Agencies have jurisdiction.

Proposed question and answer 23 (final question and answer 26) explained that residential condominiums were subject to the statutory and regulatory requirements for flood insurance. The Agencies received only one comment addressing this question and answer, which was in agreement with the guidance. The Agencies adopt the question and answer as proposed.

One commenter suggested that an RCBAP should be described in a separate question and answer in this section. Although the RCBAP was described within the proposed questions and answers, the Agencies have compiled the information from proposed questions and answers 24 and 25 into new question and answer 27 to specifically describe an RCBAP, and renumbered the remaining questions and answers accordingly.

Proposed question and answer 24 (final question and answer 28)

[5] FEMA, Flood Insurance Manual, GR 2.

[6] FEMA Memorandum for Write Your Own (WYO) Principal Coordinators and NFIP Servicing Agent (Apr. 18, 2004) (subject: Oct. 1, 2007 Program changes).

discussed the amount of flood insurance that a lender must require with respect to residential condominium units to comply with the mandatory purchase requirements under the Act and the Regulation. The Agencies received a number of comments addressing various aspects of this question and answer.

Several commenters suggested that lenders should be able to rely on the replacement cost value and number of units provided on the declaration page of the RCBAP in determining the insurable value of a condominium unit. The Agencies generally agree that a lender may rely on the replacement cost value and number of units provided on the declaration page unless it has reason to believe that such amounts conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage. The Agencies have modified the question and answer accordingly.

Several commenters asked about other types of valuation information that may be appropriate to use in determining the insurable value of a condominium unit when the insurance provider does not include the replacement cost value and number of units on the RCBAP's declaration page. While the Agencies believe that the question and answer does not require further elaboration on this point, the Agencies note that consistent with safe and sound lending practices, lenders should maintain information about the value of their collateral. Even if the insurance provider does not include the replacement cost value of the condominium building and the total number of units on the declaration page, lenders typically have other sources of valuation information, including cost-approach appraisals, automated valuation systems, and tax assessments. Further, many lenders' policies and procedures include obtaining specific documentation related to condominium collateral that may provide information about the condominium's insurable value, including copies of condominium master insurance policies or the declaration pages of such policies. The Agencies generally will not criticize a lender that, in good faith, has used a reasonable method to determine the insurable value.

Several commenters agreed that RCBAP coverage written at replacement cost value, assuming that value is less than the outstanding principal amount of the loan or the maximum available under the Act, is the appropriate insurable value for a condominium building and that an RCBAP with that coverage would meet the mandatory purchase requirement for an individual unit borrower. The 1997 Interagency Questions and Answers stated that RCBAP coverage of 80 percent of replacement cost value was sufficient to meet the mandatory purchase requirement. Because of this change in policy, commenters urged the Agencies to ensure that the new guidance will apply only prospectively. Consistent with the stated intention in the March 2008 Proposed Interagency Questions and Answers, the Agencies intend that this guidance will apply to any loan that is made, increased, extended, or renewed on or *after* the effective date of these Interagency Questions and Answers.

The Agencies had previously indicated in the **SUPPLEMENTARY INFORMATION** to the March 2008 Proposed Interagency Questions and Answers that the new guidance would apply to a loan made prior to the effective date of this guidance, but only as of the first flood insurance policy renewal following the effective date of the guidance. Three commenters asked the Agencies to reconsider this position. The commenters asserted that lenders making loans secured by individual condominium units generally do not receive RCBAP renewal notifications from the insurance providers; therefore, the lender may not be in a position to make a determination at the first RCBAP renewal period following the effective date of this guidance.

Lenders are required to ensure that designated loans are covered by flood insurance for their term. However, the Agencies recognize that lenders made loans and required coverage amounts in reliance on the previous guidance. Therefore, the Agencies have agreed that the revised guidance will not apply to any loan made prior to the effective date of this guidance unless a trigger event occurs in connection with the loan (that is, the loan is refinanced, extended, increased, or renewed). Because the Agencies provided supervisory guidance that stated that an RCBAP with coverage at 80 percent of replacement cost value was sufficient, any loan for a condominium unit relying on an RCBAP with coverage that complied with that guidance was in compliance at the time it was made. Absent a new trigger event, the Agencies, therefore, will not require lenders to ensure that RCBAP coverage is increased to 100 percent on previously compliant loans made prior to the effective date of this new guidance. The Agencies have revised the proposed question and answer accordingly. The Agencies anticipate that the universe of loans affected by this policy will be relatively small and diminishing due to refinancing and other loan prepayments that typically occur in the first five years of a home mortgage.

Proposed question and answer 25 (final question and answer 29) addressed what a lender that makes a loan on an individual condominium unit must do if there is no RCBAP coverage. Three commenters addressed this question and answer. One commenter suggested that, in the example, the Agencies should clarify that the amount of insurance required is the "minimum amount" because that value ($175,000) is based on the principal amount of the loan, which is less than either the insurable value of the unit ($200,000) or the maximum amount available in a dwelling policy ($250,000). In response to this comment, the Agencies have added the qualifier "at least" before the amount of $175,000 to clarify that $175,000 is the minimum amount of insurance that must be required. As in other situations, a lender may require additional coverage.

Another commenter asked whether a unit owner's dwelling policy will respond at all if there is no RCBAP on the condominium building. Although this is a general insurance question that is outside the Agencies' purview, FEMA guidance provides that, when there is no RCBAP coverage on the condominium building, the unit owner's dwelling policy will respond to losses to improvements owned by the insured and to assessments charged by the condominium association, up to the building coverage limits of the dwelling policy purchased.[7] Finally, one other commenter suggested that, when a condominium association refuses to purchase an RCBAP, the lender should refuse to make a loan to a unit owner because the unit owner's dwelling policy is not adequate to protect the lender. The Agencies agree that there is risk to the lender in accepting a dwelling policy as protection for the collateral. However, this is a risk that the lender must weigh. Such policy, however, does fulfill the mandatory purchase requirement. The Agencies have amended the proposed question and answer to include additional discussion on dwelling policies in response to these comments. The

[7] *See* FEMA, Mandatory Purchase of Flood Insurance Guidelines at 48–49; FEMA Flood Insurance Manual at p. POL 8 (FEMA's Flood Insurance Manual is updated every six months).

Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 26 (final question and answer 30) discussed what a lender must do if the condominium association's RCBAP coverage is insufficient to meet the mandatory purchase requirements for a loan secured by an individual residential condominium unit. Several commenters suggested changes to FEMA's flood insurance policies. It is beyond the Agencies' jurisdiction to address these suggestions, which are within the purview of FEMA. Interested parties should appropriately consult with FEMA concerning the actual operation of flood insurance policies.

Several other commenters noted that the purchase of a unit owner's dwelling policy may not provide adequate coverage to the unit owner or the lender as a supplement to an RCBAP providing insufficient coverage to meet the mandatory purchase requirement. As noted in the proposed question and answer, a dwelling policy may contain claim limitations; therefore, it is incumbent upon a lender to understand these limitations.

Several commenters also suggested that the Agencies should not put forth guidance encouraging lenders to apprise borrowers that there is risk involved when flood coverage is maintained under a unit owner dwelling policy along with an RCBAP that does not provide replacement cost coverage. The Agencies believe that although insurance professionals are in the best position to adequately explain the implications of such coverage, lenders should still be encouraged to alert their borrowers to the risk. FEMA's brochure, *National Flood Insurance Program: Condominium Coverage*, may provide some helpful information for borrowers. The Agencies adopt the question and answer as proposed.

Proposed question and answer 27 (final question and answer 31) discussed what a lender must do when it determines that a loan secured by a residential condominium unit is in a complex with a lapsed RCBAP. One commenter requested that the Agencies provide more guidance on the steps a lender should take to determine if there is a lapse in existing RCBAP coverage. As mentioned above, the Agencies are aware that, generally, a lender that is the mortgagee of a unit owner's loan would not receive notice that the condominium association's RCBAP has expired. However, if a trigger event occurs (that is, the lender makes, increases, extends, or renews a loan to the borrower secured by the unit) or if the lender otherwise makes a determination that the RCBAP has expired, then the lender will be required to follow the procedure outlined in final question and answer 28 and discussed above. The Agencies adopt the question and answer as proposed.

Proposed question and answer 28 (final question and answer 32) provided examples of how the co-insurance penalty applies when an RCBAP is purchased at less than 80 percent of replacement cost value, unless the amount of coverage meets the maximum coverage of $250,000 per unit. Two commenters asked about the purpose of this question and answer. The Agencies intended this question and answer to provide information on the topic to lenders. The Agencies adopt the question and answer as proposed.

Proposed question and answer 29 (final question and answer 33) addressed the major factors that are involved with coverage limitations of the individual unit owner's dwelling policy with respect to the condominium association's RCBAP coverage. One commenter asked the purpose of this question and answer and further asserted that lenders should not be required to explain to borrowers about the limitations in coverage. The Agencies intended this question and answer to be informative in nature and agree that insurance professionals are in a better position to explain policy limitations to their policyholders. The Agencies adopt the question and answer as proposed.

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

Proposed Section VII addressed flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA. The proposed questions and answers primarily proposed only minor wording changes or clarifications to questions and answers in the 1997 Interagency Questions and Answers without any change in the substance or meaning. Several commenters addressed questions and answers in this section.

Proposed question and answer 30 (final question and answer 34), addressed when a home equity loan is considered a designated loan that requires flood insurance. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 31 (final question and answer 35), addressed when a draw against an approved line of credit secured by property located in an SFHA requires flood insurance. Nine commenters questioned the statement that a designated loan requires a flood determination when application is made for that loan. The commenters noted that under the Act and Regulation, a lender or its servicer is responsible for performing a flood determination upon the making, increase, extension, or renewal of a loan, and not when a loan application is submitted. They further noted that applications are often withdrawn and that lenders usually have a flood determination performed when they are reasonably certain that one of the previously listed ''trigger'' events (*e.g.*, the making or increasing) will occur. The commenters requested that this point be clarified. The Agencies agree with the commenters and are deleting the statement that a designated loan requires a flood determination when application is made for that loan. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 32 (final question and answer 36) addressed how much flood insurance is required when a lender makes a second mortgage secured by property located in an SFHA. Six commenters argued that a junior lienholder should not have to take senior liens into account when determining the required amount of flood insurance coverage. They asserted that the current requirement causes substantial cost and delay, resulting in an undue burden due to the need for either the junior lienholder or its servicer to engage in an expensive, time-consuming search for prior liens. One commenter contended that the question and answer should state that the amount of coverage for a junior lien would be 100 percent of the insurable value of the property. Alternatively, the same commenter suggested multiple flood insurance policies on buildings with multiple liens as a means to address the problem. On the other hand, one commenter believed that the question and answer should remind lenders to add secondary loans to any existing flood insurance policy's mortgagee clause. Three commenters requested more guidance on how and when a lienholder should determine the value of any other liens on improved collateral property. One of these mentioned closing or upon renewal of a loan as two possible dates for such activity.

The Agencies believe that, given the provisions of an NFIP policy, a lender cannot comply with Federal flood insurance requirements when it makes, increases, extends, or renews a loan by requiring the borrower to obtain NFIP flood insurance solely in the amount of the outstanding principal balance of the lender's junior lien without regard to the flood insurance coverage on any liens senior to that of the lender. As illustrated in the examples in the question and answer, a junior lienholder's failure to take such a step can leave that lienholder partially or even fully unprotected by the borrower's NFIP policy in the event of a flood loss.

The final question and answer provides that a junior lienholder should work with the borrower, senior lienholder, or both these parties, to determine how much flood insurance is needed to adequately cover the improved real estate collateral to the lesser of the total of the outstanding principal balances on the junior loan and any senior loans, the maximum available under the Act, or the insurable value of the structure. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to an existing flood insurance policy.

The final question and answer also provides that a junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder. Commenters also contended that privacy concerns make it difficult for junior lienholders to obtain information from servicers or lenders about loan balances and existing flood insurance coverage. However, the Agencies have determined that the privacy provisions of the Gramm-Leach-Bliley Act, as implemented in the Agencies' regulations, do not prohibit sharing of the loan and flood insurance information between two lenders with liens on the same property, even without the borrower's consent.

One commenter noted that it is sometimes difficult to obtain information about the outstanding principal balance of other liens once a loan has been closed, such as at loan renewal, and asked what steps might be taken in that regard. The final question and answer states that junior lienholders have the option of obtaining a borrower's credit report to establish the outstanding balances of senior liens on property to aid in determining how much flood insurance is necessary upon increasing, extending or renewing a junior lien.

In the limited situation where a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the final question and answer provides that the junior lienholder may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance coverage relating to the senior lien was adequate at the time) continues to be sufficient.

The Agencies have revised the proposed question and answer to respond to these comments. The question and answer also provides examples illustrating the application of these methods of dealing with adequate flood insurance coverage for junior and senior liens. Specifically, the examples illustrate how a junior lienholder should handle situations such as: when a senior lienholder has obtained an inadequate amount of flood insurance coverage, when a senior lienholder is not subject to the Act's and Regulation's requirements; and when insurance coverage in the amount of the improved real estate's insurable value must be obtained by the junior lienholder.

Commenters also raised other issues related to ongoing flood insurance coverage on existing second lien loans in the context of force placement. The final question and answer addresses the triggering events of making, increasing, extending, and renewing a second lien loan.

Proposed question and answer 33 (final question and answer 37) addressed flood insurance requirements in connection with home equity loans secured by junior liens. Ten commenters requested that the question and answer be clarified to address other subordinate lien loans, not just junior lien home equity loans. The Agencies agree with the commenters and, therefore, have revised the question and answer to clarify that it applies to all subordinate lien loans.

Another commenter recommended that the ''same lender'' exception also apply to a lender's affiliates. The Act provides that a person who increases, extends, renews, or purchases a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards, if the previous determination was made no more than seven years before the date of the transaction and there have been no subsequent map revisions. 42 U.S.C. 4104b(e). The Act further defines the term ''person'' to include any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof. 42 U.S.C. 4121(a)(5). The Agencies do not interpret the definition as providing for the inclusion of affiliates within a corporate entity as constituting a single ''person'' except for treating a regulated lending institution and its operating subsidiaries as a single entity. The Agencies believe that no further revision of the question and answer is appropriate on this point. The Agencies adopt the question and answer as proposed subject to the revisions discussed above.

Proposed question and answer 34 (final question and answer 38) addressed the issue of whether a loan secured by inventory stored in a building located in an SFHA, when the building is not collateral for the loan, requires flood insurance. One commenter asked what sort of legal instrument would have to be filed by a lender to result in the need for flood insurance coverage for a borrower's contents. The Agencies decline to respond to this inquiry because it involves a business and legal decision beyond the interpretation of the Act and Regulation. The Agencies adopt the question and answer as proposed.

Proposed question and answer 35 (final question and answer 39) addressed flood insurance requirements when building contents are security for a loan. Seven commenters requested further guidance and clarification on how to calculate flood insurance contents coverage in compliance with Federal regulation. Five commenters specifically requested that the Agencies give examples to illustrate how flood insurance coverage works for building and contents. Two commenters asked whether a lender should consider the total amount of coverage for both contents and building together or should consider the two separately. One commenter asked whether a lender could do the same with contents and building coverage as is the practice with coverage for multiple buildings, that is, the contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes as long as some amount of insurance is allocated to each category.

The Agencies agree that the practice for flood insurance coverage for multiple buildings would also be applicable to coverage for both contents and building. That is, both contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes as long as some reasonable amount of insurance is allocated to each category. The Agencies have added an example to this question and answer to illustrate this point. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 36 (final question and answer 40), addressed the flood insurance requirements applicable to collateral or contents that do not secure a loan. The Agencies did not receive any substantive comments and adopt it as proposed.

Proposed question and answer 37 (final question and answer 41) addressed the Regulation's application where a lender places a lien on property out of an ''abundance of caution.'' One commenter recommended that flood insurance coverage should not be required when an interest is taken by a lender in improved real estate in a flood hazard zone out of an ''abundance of caution.''

The Agencies decline to accept this recommendation. The Act provides that a lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home in a flood hazard area unless the building or mobile home is covered for the term of the loan by flood insurance. 40 U.S.C. 4012a(b)(1). The statute makes no exception for property taken as collateral by a lender out of an abundance of caution. The Agencies adopt the question and answer as proposed.

Proposed question and answer 38 (final question and answer 42) addressed loans secured by a note on a single-family dwelling, but not the dwelling itself. Proposed question and answer 39 (final question and answer 43) pertained to loans personally guaranteed by a third party who gave the lender a security interest in improved real estate owned by the guarantor. One commenter stated that the two proposed questions and answers conflicted. The Agencies do not believe there is a conflict between the two questions and answers. In the former question and answer, the Agencies concluded that Federal flood insurance requirements did not apply because the loan was not secured by improved real estate, but was instead secured by a note. In the latter question and answer, the lender was given a security interest in improved real estate by a third party in connection with the third party providing a personal guarantee on a loan. In each situation, the absence or presence of a security interest in improved real estate determined whether Federal flood insurance requirements would apply. The Agencies believe that no further elaboration is necessary and adopt these questions and answers as proposed.

Section VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

Proposed Section IX (final Section VIII) addressed flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers, and any changes proposed by the Agencies in the March 2008 Proposal were designed to provide greater clarity with no intended change in substance and meaning. The comments received by the Agencies regarding the questions and answers in this section were generally supportive.

Proposed question and answer 41 (final question and answer 44) addressed the application of the flood insurance requirements under the Regulation to lenders/loan servicers under different scenarios. Upon consideration of the various comments, the Agencies have clarified the question and answer to apply to both regulated and nonregulated lenders. One commenter was supportive of the guidance, but recommended that lenders be allowed to assign a certain level of responsibility for flood insurance compliance through contractual arrangements to the servicer. The commenter asserted that this approach would not absolve lenders of liability and ultimate responsibility, but would make for a less burdensome and logical approach. The Agencies believe that the lender's responsibilities are sufficiently clear in the question and answer and that further elaboration on this point is unnecessary.

Another commenter asked that the Agencies expressly indicate that no servicing obligations need be followed by a lender who has sold both the loan and the servicing rights to a nonregulated party. The Agencies have elected to clarify in the answer that once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan. The Agencies have also elected to clarify in the answer that, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. Moreover, if the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 42 (final question and answer 45), addressed when a lender is required to notify FEMA or the Director's designee. Proposed question and answer 43 (final question and answer 46), addressed whether a RESPA Notice of Transfer sent to the Director of FEMA satisfies the Act and Regulation. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Proposed question and answer 44 (final question and answer 47), indicated that delivery of the notice can be made electronically, including by batch transmission if acceptable to the Director or the Director's designee. The Agencies did not receive any substantive comments and adopt this question and answer as proposed.

Proposed question and answer 45 (final question and answer 48) indicated that if a loan and its servicing rights are sold by the lender, the lender is required to provide notice to the FEMA Director or the Director's designee. The Agencies received one comment that was supportive of the proposed question and answer. The Agencies adopt the question and answer as proposed.

Proposed question and answer 46 (final question and answer 49), indicated that a lender is not required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer; rather the servicer is obligated to provide the notice. Proposed question and answer 47 (final question and answer 50) indicated that in the event one institution is acquired by or merges with another institution, the duty to provide the notice for loans being serviced by the acquired institution falls to the successor institution if notification is not provided by the acquired institution prior to the effective date of the acquisition or merger. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Section IX. Escrow Requirements

Proposed Section X (final Section IX) addressed escrow requirements for flood insurance premiums. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers, and any changes proposed by the Agencies were designed to provide greater clarity with no intended change in substance and meaning. The Agencies received few comments on this section.

Proposed question and answer 48 (final question and answer 51), addressed when multifamily buildings and mixed-use properties are considered residential real estate. A financial institution commenter requested two clarifications. First, the commenter noted that the proposed answer indicated that lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for designated loans if the lender requires the escrow of taxes, hazard insurance premiums, ''or other loan charges'' for loans secured by residential improved real estate. The commenter questioned whether lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for designated loans if the lender requires the escrow of mortgage insurance premiums. The Agencies believe that escrowing flood insurance premiums and fees for mandatory flood insurance for designated loans is required by the Act and Regulation where the lender requires the escrowing of mortgage insurance premiums. The Act and Regulation require escrowing if a regulated lending institution requires the escrowing of ''taxes, insurance premiums, fees, or any other charges.'' Mortgage insurance is a form of insurance. It is also an ''other charge'' under the Regulation. To provide greater consistency with the Act and Regulation, the Agencies are inserting the word ''any'' into the answer so that it refers to taxes, insurance premiums, fees, ''or any other charges.''

The commenter also asked the Agencies to expressly state in the answer that a lender is not required to escrow flood insurance premiums if it chooses to make an exception on a loan-by-loan basis not to escrow other items such as taxes, hazard insurance premiums, or other loan charges. In response, the Agencies have added a sentence to the answer providing that a lender is not required to escrow flood insurance premiums and fees for a particular loan if it does not require escrowing of any other charges for that loan.

Finally, because the Agencies are adopting questions and answers providing examples of residential and nonresidential properties, the discussion of mixed-use properties has been revised to refer the reader to those questions and answers. If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 49 (final question and answer 52) addressed when escrow accounts must be established for flood insurance purposes and indicated that escrow accounts should look to the definition of ''Federally related mortgage loan'' contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to RESPA's escrow requirements. The Agencies did not receive any substantive comments on the proposed question and answer; however, the Agencies made nonsubstantive revisions to the answer to more directly respond to the question asked and to provide additional clarity.

The Agencies received no comments on proposed questions and answers 50 and 51 (final questions and answers 53 and 54 respectively). Proposed question and answer 50 (final question and answer 53) indicated that voluntary escrow accounts established at the request of the borrower do not trigger a requirement for the lender to escrow premiums for required flood insurance. Proposed question and answer 51 (final question and answer 54) indicated that premiums paid for credit life insurance, disability insurance, or similar insurance programs should not be viewed as escrow accounts requiring the escrowing of flood insurance premiums. The Agencies did not receive any substantive comments on these questions and answers and adopt them as proposed.

Proposed question and answer 52 (final question and answer 55) advised that only certain escrow-type accounts for commercial loans secured by multifamily residential buildings trigger the escrow requirement for flood insurance premiums. The Agencies did not receive any substantive comments and adopt this question and answer as proposed.

Proposed question and answer 53 (final question and answer 56) addressed escrow requirements for condominium units covered by RCBAPs. The Agencies received several comments on this question and answer. Two financial institution commenters reiterated their comments pertaining to proposed question and answer 24 (final question and answer 28) that lenders or servicers of a loan to a condominium unit owner do not receive a copy of the RCBAP renewal information because they are not loss payees on the policy. This comment was addressed in the **SUPPLEMENTARY INFORMATION** pertaining to Section VI above. A financial institution requested clarification that regardless of whether the lender makes a loan for the purchase or refinance of a condominium unit, an escrow account is not required if dues to the condominium association apply to the RCBAP premiums. The proposed question and answer only addressed purchase loans; however, the Agencies agree with the commenter that the same principle should apply to refinancings. The Agencies, therefore, are clarifying the question and answer to provide that when a lender makes, increases, renews, or extends a loan secured by condominium unit that is adequately covered by an RCBAP, and dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. However, if the RCBAP coverage is inadequate and the unit is also covered by a dwelling form policy, premiums for the dwelling form policy would need to be escrowed. The Agencies otherwise adopt the question and answer as proposed.

X. Force Placement of Flood Insurance

Proposed Section XI (final Section X) addressed issues concerning the force placement of flood insurance. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers and any changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning.

The Agencies received several comments on proposed question and answer 54 (final question and answer 57), which provided general guidance on the force placement requirement under the Act and Regulation. Six commenters requested further guidance regarding the exact point at which lenders must commence the force placement process. Similarly, commenters requested clarification as to precisely when the 45-day notice period begins after which a lender or its servicer must force place insurance. One of these commenters specifically asked the Agencies to clarify whether insurance is required 45 days from the date the institution received the cancellation notice, the date of cancellation on that notice, or the date that the borrower receives notice from the lender or servicer. One commenter requested clarification from the Agencies whether the 45-day notice could be sent prior to the actual date of expiration of flood insurance coverage.

As discussed in the proposed question and answer, the Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage. The Act does not permit a lender or its servicer to send the required 45-day notice to the borrower prior to the institution's making a determination that flood insurance is insufficient or lacking (for example, the actual expiration date of the flood insurance policy). If adequate insurance is not obtained by the borrower within the 45-day period, then the insurance must be obtained by the lender on behalf of the borrower.

Another commenter stated that if a lender decides to pay a borrower's current policy premium, this should not be considered to be purchasing a force placed policy. The Agencies agree that it is within a lender's discretion to absorb the costs of a borrower's flood insurance policy anytime during the term of the designated loan. This should not, however, eliminate the borrower's opportunity to obtain appropriate flood insurance coverage, especially during the 45-day period after receiving a force placement notice from the lender. The Agencies revised proposed question and answer 54 (final question and answer 57) to address these commenters' points.

The Agencies also received questions from commenters regarding coverage during the 45-day notice period. Two commenters asked how to ensure that collateral property is protected against flood damage during the 45-day notice period prior to actual force placement. Another commenter asked for more explanation about the coverage that continues in effect for 30 days after the date that a Standard Flood Insurance Policy (SFIP) expires under the NFIP.

Coverage under FEMA's SFIP continues in effect for 30 days from the date that the SFIP lapses. An SFIP specifically provides that, if the insurer decides to cancel or not renew a policy, it will continue in effect for the benefit of only the mortgagee for 30 days after the insurer notifies the mortgagee of the cancellation or nonrenewal. No coverage will be provided for a borrower under the SFIP during this 30-day period. If a lender monitors a mortgage loan with respect to the need for flood insurance coverage, the lender can time the 45-day period to start with the lapse of insurance coverage. Assuming notification is made immediately upon policy cancellation or nonrenewal, coverage will continue in place for the lender/mortgagee's benefit for 30 days of the 45-day notice period. To cover the risk during the remaining 15-day ''gap,'' lenders may purchase private flood insurance to cover the collateral property, as discussed further in section XI below regarding private insurance policies. Lenders in these situations, often purchase what is known in the insurance industry as a ''30-day binder,'' a form of temporary private insurance. The insurance provided by such a binder will cover the 15-day gap and the 15 days subsequent to the end of the notice period. Because these issues lie outside the scope of the Agencies' purview, however, the Agencies decline to include this guidance in the question and answer.

One commenter contended that one of the criteria for force placement in proposed question and answer 54 (final question and answer 57) should be changed from ''[t]he community in which the property is located participates in the NFIP'' to ''flood insurance under the Act is available for improved property securing the loan,'' because properties may also be in Coastal Barrier Resource Areas, Otherwise Protected Areas, or areas designated under section 1316 of the Flood Act. The Agencies have revised final question and answer 57 to reflect this requested change. Another commenter asked whether the citation to ''Appendix A of the FEMA publication'' in proposed question and answer 54 was a reference to the immediately previously cited FEMA procedures that were published in the **Federal Register**. The Agencies have revised final question and answer 57 to clarify the citation.

Proposed question and answer 55 (final question and answer 58), addressed whether a servicer can force place insurance on behalf of a lender. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 56 (final question and answer 59) addressed the amount of insurance required when force placement occurs. The Agencies received one comment suggesting that the proposed answer to proposed question 56 not only cross-reference Section II of the Interagency Questions and Answers, but also refer to Section VII, because proposed question and answer 36 in that section pertains to the required amount of flood insurance for home equity loans. The Agencies have made minor clarifications based upon this comment, but otherwise adopt the question and answer as proposed.

The Agencies received comments regarding terminology used in this section. Specifically, two commenters took exception to the use of the term ''force placement,'' arguing that the term conveys an incorrect impression that the borrower is being forced to accept the purchase of flood insurance coverage when the reverse of the situation applies. These commenters suggested that the alternative term ''lender placed'' should be used instead. The current term ''force placement'' is used in the Regulation. Moreover, the term has been widely used since the enactment of the National Flood Insurance Reform Act of 1994. Changing the term may cause confusion. For this reason, the Agencies decline to accept this suggested change.

Another commenter recommended that ''lender single interest policies'' should not be allowed and should be considered in violation of the legal requirements of the Act and Regulation since they are not purchased on the borrower's behalf and do not offer the same or better policy terms to the borrower. As discussed in further detail in the discussion to section XI below, private insurance policies may only be considered an adequate substitute for an SFIP if the policy meets the criteria set forth by FEMA, including the requirement that the coverage be as broad as an SFIP. The Agencies have declined to address this comment specifically because it is believed that the comment is addressed by the general guidance in section XI.

In response to comments received regarding the force placement of flood insurance, the Agencies are proposing three new questions and answers (60, 61, and 62), which are discussed in the **SUPPLEMENTARY INFORMATION** immediately following the Redesignation Table, to be added to Section VII to address the following force-placement issues: when the 45-day notice period should begin, how soon a lender should take action after learning that improved real estate that secures a loan is uninsured or underinsured, and whether a borrower may be charged for the cost of flood insurance coverage during the 45-day notice period.

XI. Private Insurance Policies

Proposed Section XII (final Section XI) addressed the appropriateness of gap or blanket insurance policies, often purchased by lenders to ensure adequate life-of-loan flood insurance coverage for designated loans. The proposed answer to question 57 (final question and answer 63) explained, generally, that gap or blanket insurance is not an adequate substitute for NFIP insurance. The proposed answer, however, did acknowledge that in limited circumstances, a gap or blanket policy may satisfy flood insurance obligations in instances where NFIP and private insurance for the borrower are otherwise unavailable.

The Agencies received several comments regarding the proposed question and answer. Some industry commenters argued that gap or blanket insurance is a cost-effective alternative to NFIP insurance and should be permitted as a substitute for NFIP insurance in all cases. Other industry commenters argued that gap or blanket insurance should be permitted as a substitute for NFIP insurance under certain circumstances, such as for construction loans or underinsured properties. Still other industry commenters asked the Agencies to clarify the use of the terms ''gap'' and ''blanket'' policies, noting that the common industry understanding is that ''gap'' policies are distinguishable from ''blanket'' policies. In particular, these commenters requested that the Agencies eliminate the prohibition on ''gap'' policies that are meant to cover the deficiency between a borrower's coverage and the amount of insurance required under the Act and Regulation. One industry commenter also noted that there are different types of ''gap'' policies and suggested that the Agencies clarify its intentions to prohibit only certain types of ''gap'' policies. Lastly, commenters also requested general guidance on whether non-NFIP private insurance policies were permitted.

Based on these comments, the Agencies have decided to modify the question and answer to address broader issues of the appropriateness of private insurance. Instead of focusing on whether a policy is called a ''gap'' insurance policy or a ''blanket'' insurance policy, which may depend on how the policy is marketed by the insurer, the Agencies have decided that it is more appropriate to provide guidance to lenders on private insurance policies in general.

The Agencies have revised the answer to the question to provide that a private insurance policy may be an adequate substitute for an NFIP policy if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.*[8] As FEMA has stated in its *Mandatory Purchase of Flood Insurance Guidelines,* to the extent there are any differences between the private insurance policy and an NFIP Standard Flood Insurance Policy, those differences must be evaluated carefully by the lender to determine whether the policy would provide sufficient protection under the Act and Regulation. Lenders must consider the suitability of a private insurance policy only when the mandatory purchase requirements apply. Therefore, if the Act or Regulation does not require the purchase of flood insurance, the lender need not evaluate the policy to determine whether it meets the criteria set forth by FEMA.

The guidance proposed in March 2008 on the limited circumstances when gap or blanket policies are permissible has been revised and is being addressed in a new separate question and answer 64. The answer to final question 64 provides that in the event that a flood insurance policy has expired and the borrower has failed to renew coverage, a private insurance policy that does not meet the criteria set forth by FEMA may nevertheless be useful in protecting the lender during a gap in coverage in the period of time before a force placed policy takes effect. However, the answer further states that the lender must force place NFIP-equivalent coverage in a timely manner and may not rely on non-equivalent coverage on an on-going basis. This is consistent with guidance proposed in March 2008, though the language has been modified in response to commenters who thought this guidance was confusing as worded in the proposal.

Section XII. Required Use of the Standard Flood Hazard Determination Form (SFHDF)

Proposed Section XIII (final Section XII) addressed the required use of the Special Flood Hazard Determination Form (SFHDF). This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers. The changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning. The agencies received a number of comments on this section.

Proposed question and answer 58 (final question and answer 65), addressed whether the SFHDF replaces the borrower notification form. One commenter suggested the answer clarify the SFHDF's use to the lender and the notification form's use to benefit the borrower. The Agencies agree with the commenter and have revised the proposed answer to be more responsive to the question and to more clearly set out the respective uses of the SFHDF and the borrower notification form. Information about the notice of special flood hazards may be found in section XV. The commenter also suggested that the Agencies should amend the proposed answer to provide that the SFHDF must be used by the lender to determine if the ''improved'' property securing the loan is located in an SFHA. The Regulation specifically provides that a lender must make a flood hazard determination and use the SFHDF when determining whether the ''building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act.'' The Agencies agree that it is appropriate to revise the proposed question and answer to conform to the language of the Regulation and have done so.

Proposed question and answer 59 (final question and answer 66), addressed whether a lender is required to provide a copy of the SFHDF to the applicant/borrower. The Agencies received two comments concerning the proposed question and answer. The commenters suggested that the answer should state that the Act does not require that the lender provide the borrower with a copy of the SFHDF. The Agencies have revised the proposed question and answer to note that, while not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

Proposed question and answer 60 (final question and answer 67) addressed the use of the SFHDF in electronic format. The Agencies did not receive any substantive comment and adopt the question and answer as proposed.

Proposed question and answer 61 (final question and answer 68) addressed the circumstances when a lender may rely on a previous special flood hazard determination. The Agencies received several comments concerning this question and answer. One commenter suggested that, if a lender maintains life-of-loan tracking, there is little benefit in obtaining a new special flood hazard determination

[8] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 57–58.

when renewing, refinancing, or extending a loan if the original determination is older than seven years. The authority to rely on a previous determination made within the previous seven years if that determination meets certain requirements is statutory (42 U.S.C. 4104b(e)). Accordingly, seven years is the maximum period during which a lender may rely on a previous determination, even if the lender has maintained life-of-loan tracking.

Two commenters suggested that the proposed question and answer should also address whether a lender may rely on one determination if a lender makes multiple loans to one borrower, all of which are secured by the same improved property. For example, it should address when a lender may rely on a single determination when making a home purchase loan and a subsequent home equity loan, both secured by the same residence. The situation described by the commenters is similar to the example of a refinancing or assumption by a lender, which obtained the original flood determination on the same security property. In that case, the question and answer states that the lender may rely on the original determination if the original determination was made not more than seven years before the date of the transaction, the basis of the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. The Agencies based this interpretation on the premise that a refinancing would be the functional equivalent of either a loan extension or renewal. Subsequent loans to the same borrower secured by the same improved real estate could be deemed to be the functional equivalent of increasing the amount of the original loan. Therefore, if the original determination was made not more than seven years before the date of the transaction, the basis of the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made, a lender may similarly rely on a previous determination if the lender makes multiple loans that are secured by the same building or mobile home. The Agencies have revised the proposed question and answer to also address subsequent loans by the same lender secured by the same improved real estate.

Section XIII. Flood Determination Fees

Proposed Section XIV (final Section XIII) consisted of proposed questions and answers 62 and 63 (final questions and answers 69 and 70 respectively), which addressed fees charged when making a flood determination and charging fees to cover life-of-loan monitoring of a loan, respectively. The Agencies received two comments on these questions and answers. One commenter supported them; the other commenter asked whether a lender could charge an up-front, nonrefundable, composite determination and life-of-loan fee regardless of whether the loan application closes. The Act and Regulation allow a lender to charge a reasonable fee for determining whether a building or mobile home securing a loan is located or will be located in a special flood hazard area if the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower. In the commenter's situation, the Agencies would agree that a fee for an initial determination could be charged when the determination is procured in connection with an application initiated by an applicant, even if the application does not close. However, a lender cannot charge a life-of-loan fee if the application does not close. Such a fee would be an unearned fee and, as such, charging such a fee would be prohibited by section 8 of RESPA. Therefore, a lender may not charge a nonrefundable, composite determination and life-of-loan fee when a loan application does not close. The Agencies have adopted the former question and answer as proposed. The Agencies have revised the latter question and answer in response to the comment.

Section XIV. Flood Zone Discrepancies

Proposed Section XV (final Section XIV) addressed flood zone discrepancies between the flood hazard designation documented by the lender on the SFHDF and the one documented on the flood insurance policy and used to rate the policy. There were numerous negative comments concerning the Agencies' proposed guidance for dealing with such discrepancies.

Proposed question and answer 64 (final question and answer 71) addressed lenders' recourse when confronted with a flood zone discrepancy. Nineteen commenters were generally opposed to the proposed treatment of a discrepancy as set forth in the proposed question and answer. Several of these commenters argued that the Act does not require lenders to identify and resolve flood zone discrepancies and ensure that a flood insurance policy is properly rated. Other commenters argued that it is an undue burden to expect financial institutions to resolve discrepancies between the SFHDF and the flood insurance policy. Six commenters maintained that it is an insurance agent's responsibility to determine the correct flood zone and that a lender should not be responsible for auditing an NFIP-authorized insurance agent. These commenters argued that requiring lenders to document every flood zone discrepancy would be costly and burdensome and require extensive loan servicing system changes.

Two commenters stated that the Agencies need to clearly define ''zone discrepancy.'' Another commenter asked what action would be required to correct any ''violation'' and further inquired how much flood insurance should be force placed in such a situation if a lender wants to correct a discrepancy by means of force placement. Two other commenters said that a borrower will not want to obtain a Letter of Determination Review from FEMA at a cost of $80 when there is a dispute between the lender and insurance company over a flood zone discrepancy, while three other commenters noted that it is unreasonable to expect the parties to wait 45 days for a FEMA determination review. Finally, two commenters noted that if a coverage error occurs, the borrower or lender may reconcile this through payment of the premium differential (the amount of premium that would have been charged if the policy had been correctly rated) or FEMA may reduce the amount of claim payment.

The Agencies disagree with those commenters who argued against a lender being responsible for resolving flood zone designation discrepancies, either as a legal matter or because the requirement would be burdensome and costly. The Agencies agree, and FEMA concurs, that Federal law places the ultimate responsibility to ensure appropriate flood insurance coverage on the lender. The Agencies note that, although coverage errors can be mitigated after a flood loss by paying premium differentials or reducing the claim payment, these mitigation techniques do not relieve a lender of the responsibility to ensure that an appropriate amount of flood insurance coverage is in place when a loan is made.

Commenters, however, raised valid points with respect to the proposed process for resolving flood zone discrepancies. To address these points, the Agencies have revised final question and answer 71 to specify that lenders need only address discrepancies between high-risk zones (Zones A or V) and moderate- or low-risk zones (Zones B, C, D, or X). The revised question and answer further specifies the actions a lender should take if such a zone discrepancy is found to exist. Those steps continue to include attempting to determine whether the discrepancy is a result of a legitimate reason, such as grandfathering, or is a mistake. In certain circumstances, submitting a request for a Determination Review to FEMA may be an appropriate means of resolving discrepancies; however, it is not required in all situations. The question and answer explains that if the discrepancy is not resolved, the lender should send a letter to the insurance agent and/or the insurance company reminding them of FEMA's April 16, 2008, instruction that, in cases of determination discrepancies, the policy should be written to cover the higher risk zone. Beyond that, no further action by the lender is required. If, for its own purposes, the lender believes force placement is appropriate, then it should consult the guidance on that topic found in Sections II and X.

Proposed question and answer 65 (final question and answer 72), addressed whether lenders can be found in violation of the Act and Regulation for flood zone discrepancies. Seven commenters either registered their opposition to the proposed question and answer or recommended that it be deleted outright. These commenters argued, similar to their comments on proposed question and answer 64, that the lender is the wrong person to resolve flood zone discrepancies, that it is instead the responsibility of the insurance agent and the company issuing the flood insurance policy to ensure that the flood zone is correct, and that imposing this requirement on lenders is an unnecessary burden not mandated by law. Another commenter argued that by sanctioning lenders for not successfully identifying and resolving flood zone discrepancies, the two proposed questions and answers would create a duty to ensure that the flood policy is rated properly that does not presently exist under the Act or the Regulation.

As noted above, the Act and the Regulation require lenders to ensure that an appropriate amount of flood insurance coverage is purchased; lenders, therefore, should take steps to identify and address flood zone discrepancies. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio, due to a lack of effort on the lender's part to resolve such discrepancies using the process outlined in final question and answer 71, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

Section XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

Proposed Section XVI (final Section XV) addressed the notice of special flood hazards and the availability of Federal disaster relief that lenders are generally required to provide to borrowers. The proposed questions and answers primarily proposed only minor wording changes or clarifications to questions and answers in the 1997 Interagency Questions and Answers without any change in the substance or meaning.

Proposed question and answer 66 (final question and answer 73), addressed whether the notice had to be provided to each borrower for each real estate related loan. The proposed answer explained that in a transaction involving multiple borrowers, the lender is only required to send notice to one borrower, but may provide multiple notices if the lender chooses. The Agencies received a comment on a related issue asking who should receive the notice if, at the time of increase, real estate collateral has been hypothecated by a guarantor as security on the borrower's loan. If a lender takes a security interest in improved real estate owned by a guarantor (not simply pledged by a guarantor) located in an SFHA, then flood insurance is required and the notice should be sent to both the borrower and the guarantor.

Another commenter asked when borrowers have to be notified that their secured property is in a flood zone. The commenter noted that their examiners have previously said ten days prior to loan closing. As noted in the Regulation, lenders are required to provide notice within a reasonable time before completion of the transaction (loan closing). What constitutes ''reasonable'' notice will necessarily vary according to the circumstances of particular transactions. Regulated lending institutions should bear in mind, however, that a borrower should receive notice timely enough to ensure that (1) the borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. In light of these considerations, the final question and answer does not establish a fixed time period during which a lender must provide the notice to the borrower. The Agencies generally continue to regard ten days as a ''reasonable'' time interval. The Agencies adopt the question and answer as proposed.

Proposed question and answer 67 (final question and answer 74) addressed how the notice requirement applied to loans secured by mobile homes where the location of the mobile home may not be known until just prior to, or sometimes after, the loan closing. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 68 (final question and answer 75), addressed when the lender is required to provide notice to the loan servicer that flood insurance is required. Proposed question and answer 69 (final question and answer 76) addressed what constitutes appropriate notice to the loan servicer. Proposed question and answer 70 (final question and answer 77) addressed whether it was necessary for the lender to provide notice to a loan servicer affiliated with the lender. Proposed question and answer 71 (final question and answer 78) addressed how long a lender has to maintain the record of receipt by the borrower of the notice. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Proposed question and answer 72 (final question and answer 79), addressed whether a lender can rely on a previous notice that is less than seven years old and was given to the same borrower for the same property by the same lender. Two commenters stated that lenders should be able to waive a notice to a borrower when they already have adequate flood insurance and one commenter said that notice should not be required when there has not been a change in the flood map. The Act and Regulation require lenders to send notice when a lender 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. Therefore, as a statutory requirement, the notice may not be waived. The Agencies adopt the question and answer as proposed.

Proposed question and answer 73 (final question and answer 80), addressed whether the use of the sample form of notice is mandatory. The Agencies received one comment that was supportive of the proposed question and answer; however, another commenter asked whether lenders should use the revised version of the Sample Form of the Notice provided by FEMA in 2007 or the sample notice that accompanies the Regulation. The Agencies do not require the use of a specific form so long as the form contains the required information as specified by the Act and Regulation. The Agencies revised the answer, to reflect that the sample form of the notice provided by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines* is also not required to be used.

Section XVI. Mandatory Civil Money Penalties

Proposed Section XVII (final Section XVI) addressed the imposition of mandatory civil money penalties for violations of the flood insurance requirements. Proposed question and answer 74 (final question and answer 81) listed the sections of the Act that trigger mandatory civil money penalties when examiners find a pattern or practice of violations of those sections and included information about statutory limits on the amount of such penalties. The Agencies did not receive any comments and adopt the question and answer as proposed.

Proposed question and answer 75 (final question and answer 82) addressed the general standards the Agencies consider when determining whether violations constitute a pattern or practice for which civil money penalties are mandatory. The Agencies received one industry trade group comment suggesting that proposed question and answer 75 be amended to clarify that the assessment of civil money penalties be based on an overall assessment of the entire loan portfolio and not randomly selected representations. The Agencies believe that the guidance in this question and answer properly sets forth the general standards the Agencies consider when determining whether a pattern or practice of violations has occurred. As discussed in the March 2008 Proposed Interagency Questions and Answers, the considerations listed in the proposed question and answer are not dispositive of individual cases, but serve as a reference point for reviewing the particular facts and circumstances. The Agencies adopt the question and answer as proposed.

Redesignation Table

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

1997 Interagency questions and answers	Current questions and answers
Section I. Definitions	
Section I, Question 1	Section IV, Question 20.
Section I, Question 2	Section IV, Question 19.
Section I, Question 3	Section VII, Question 34.
Section I, Question 4	Section VII, Question 35.
Section I, Question 5	Section VII, Question 38.
Section I, Question 6	Section VII, Question 39; and Section VII, Question 40.
Section I, Question 7	Section VII, Question 41.
Section I, Question 8	Section VII, Question 42.
Section I, Question 9	Section I, Question 5.
Section I, Question 10	Section VII, Question 43.
Section II. Requirement to Purchase Flood Insurance Where Available.	
Section II, Question 1	Section I, Question 1.
Section II, Question 2	Section I, Question 3.
Section II, Question 3	Section I, Question 6.
Section II, Question 4	Deleted as obsolete.
Section II, Question 5	Section II, Question 15.
Section II, Question 6	Section VIII, Question 44.
Section II, Question 7	Section II, Question 14; and Section V, Question 25.
Section II, Question 8	Section VI, Question 28.
Section II, Question 9	Section VI, Question 31.
Section III. Exemptions.	Section III. Exemptions from the mandatory flood insurance requirements.
Section III, Question 1	Section III, Question 18.
Section IV. Escrow Requirements.	Section IX. Escrow requirements.
Section IV, Question 1	Deleted as obsolete.
Section IV, Question 2	Section IX, Question 51.
Section IV, Question 3	Section IX, Question 52.
Section IV, Question 4	Section IX, Question 53.
Section IV, Question 5	Section IX, Question 54.
Section IV, Question 6	Section IX, Question 55.
Section IV, Question 7	Section IX, Question 56.
Section V. Required Use of Standard Flood Hazard Determination Form (SFHDF).	Section XII. Required use of Standard Flood Hazard Determination Form (SFHDF).
Section V, Question 1	Section XII, Question 65.
Section V, Question 2	Section XII, Question 66.
Section V, Question 3	Section XII, Question 67.
Section V, Question 4	Section XII, Question 68.
Section V, Question 5	Section VII, Question 36; and Section VII, Question 37
Section VI. Force Placement of Flood Insurance.	Section X. Force placement of flood insurance.
Section VI, Question 1	Section X, Question 57.
Section VI, Question 2	Section X, Question 58.
Section VI, Question 3	Section X, Question 59.
Section VII. Determination Fees.	Section XIII. Flood determination fees.
Section VII Question 1	Section XIII, Question 69.
Section VII Question 2	Section XIII, Question 70.
Section VIII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief.	Section XV. Notice of special flood hazards and availability of Federal disaster relief.
Section VIII, Question 1.	Section XV, Question 73
Section VIII, Question 2.	Section XV, Question 74.
Section VIII, Question 3.	Section XV, Question 75.
Section VIII, Question 4.	Section XV, Question 76.
Section VIII, Question 5.	Section XV, Question 77.
Section VIII, Question 6.	Section XV, Question 78.
Section IX. Notice of Servicer's Identity.	Section VIII. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
Section IX, Question 1	Section VIII, Question 45.
Section IX, Question 2	Section VIII, Question 46.
Section IX, Question 3	Section VIII, Question 47.
Section IX, Question 4	Section VIII, Question 48.
Section IX, Question 5	Section VIII, Question 49.
Section IX, Question 6	Section VIII, Question 50.
Section X Appendix A to the Regulation—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.	Section XV. Notice of special flood hazards and availability of Federal disaster relief.
Section X, Question 1	Section XV, Question 80.

Proposed Questions and Answers and Request for Comment

The Agencies are proposing five new questions and answers for public comment upon consideration of various comments received on the March 2008 Proposed Interagency Questions and Answers. The new proposed questions and answers concern the determination of insurable value in calculating the maximum limit of coverage available for the particular type of property under the Act and force placement of required flood insurance. In anticipation of the possible adoption of these proposed questions and answers, the applicable question and answer numbers have been reserved and the remaining questions and answers have been renumbered accordingly.

Insurable value. The Agencies received numerous comments to proposed question and answer 7 stating that implementing insurable value was confusing and that the term needed clear and objective standards. Commenters asked for guidance on the terms ''overall value'' and ''repair or replacement cost'' as they relate to a lender's determination of the required amount of flood insurance for a designated loan. Commenters similarly asked the Agencies to define the term ''actual cash value.'' In response to these comments, the Agencies are proposing new questions and answers 9 and 10 for public comment to address how to calculate insurable value. Calculating insurable value is important because in addition to the maximum caps under the Act, the Regulation provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.'' The Agencies use the term ''insurable value'' in the proposed question and answer to mean the overall value minus the value of the land.

FEMA guidelines state that the full insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building.[9] Replacement cost value, according to FEMA's *Mandatory Purchase of Flood Insurance Guidelines,* is the cost to replace property with the same kind of material and construction without deduction for depreciation.[10] As such, it is important to make clear that the RCV of a building is not its contributory value to the overall appraised value of the collateral and does not include any value for any land that is also part of collateral. When determining the RCV of a building, lenders (either by themselves or in consultation with the flood insurance provider or other professionals) should consider the replacement cost value under a hazard insurance policy, an appraisal based on a cost-value before depreciation deductions (not a market-value) approach, and/or a construction cost calculation.

The statutory and regulatory requirement that flood insurance be obtained in the amount of the lesser of the principal balance of the designated loan or the maximum limit of coverage available for the particular type of building under the Act is separate from the amount of a recovery if the improved property is destroyed by flood. Insurable value is replacement cost value and would be the amount required for adequate insurance coverage assuming that amount does not exceed the principal balance of the designated loan or the maximum limit of coverage under the Act. Actual cash value, which would be determined by a claims adjuster at the time of loss, is the amount that will be paid by the NFIP for nonresidential properties and certain residential properties. To lessen the effect of a potential difference between the two values with certain nonresidential buildings, the Agencies, with FEMA's concurrence, are proposing new questions and answers 9 and 10.

It is important for lenders to recognize that insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP. Therefore, if the insurable value of a building is the lesser of the outstanding principal balance of the loan or the maximum amount of insurance allowable under the NFIP, then the building must be insured at its insurable value, which for single family, 2–4 family, other residential or nonresidential buildings, is equivalent to its RCV. The Agencies are proposing new question and answer 9 to provide more concrete guidance on insurable value.

►*9. What is the insurable value of a building?*

Answer: Per FEMA guidelines, the insurable value of a building is the same as 100 percent replacement cost value of the insured building. FEMA's Mandatory Purchase of Flood Insurance Guidelines defines replacement cost as ''The cost to replace property with the same kind of material and construction without deduction for depreciation.'' When determining replacement cost value of a building, lenders (either by themselves or in consultation with the flood insurance provider or other professionals) should consider the replacement cost value used in a hazard insurance policy (recognizing that replacement cost for flood insurance will include the foundation), an appraisal based on a cost-value approach before depreciation deductions (not a market-value), and/or a construction cost calculation.◄

In considering the comments submitted on the subject of insurable value, the Agencies recognized that there are situations when insuring some nonresidential buildings at RCV would result in the building being over-insured. The Agencies, in consultation with FEMA, are proposing two alternatives to determine replacement cost value for nonresidential buildings used for ranching, farming, or industrial purposes, which the borrower either would not replace if damaged or destroyed by a flood or would replace with a structure more closely aligned to the function the building is providing at the time of the flood. Industrial use, as opposed to the broader commercial use, is defined as those buildings not directly engaged in the retail and/or wholesale sale of the business's goods, such as warehouses or storage, manufacturing, or maintenance facilities.

The first alternative is the ''functional building cost value,'' which is the cost to repair or replace a building with commonly used, less costly construction materials and methods that are functionally equivalent to obsolete, antique, or custom construction materials and methods used in the original construction of the building. Borrowers and/or lenders can choose this alternative when the building being insured is important to the business operation and would be replaced if damaged or destroyed by a flood, but not to its original condition. The ''functional building cost value'' recognizes that insurance to the replacement cost is not needed as the borrower would not repair or replace the building back to its original form but to a condition that represents the function the building is providing to the business operation.

The second alternative is the ''demolition/removal cost value,'' which is the cost to demolish the remaining structure and remove the debris after a flood. Borrowers and/or lenders can choose this alternative when the building being insured is not important to the business operation and would not be repaired or replaced if damaged or destroyed by a flood. The ''demolition/removal cost value'' recognizes that the building has limited-to-no-value and

[9] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 27.

[10] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at GLS10.

that it does not provide an important enough function to necessitate that the business repair or replace it.

When a borrower or lender chooses one of these two replacement cost value alternatives they have determined that the building to be insured will not be insured to its full replacement cost value. Both the borrower and the lender should ensure that they consider the impact this may have on the ongoing nature of the business and the value of the collateral securing the loan. Full replacement cost is always the preferred insurance amount. These alternatives are available only for those situations where full replacement cost would result in a building used for farming, ranching, or industrial purposes being over-insured. The Agencies are proposing new question and answer 10 to address this issue.

►*10. Are there alternative approaches to determining the insurable value of a building?*

Answer: Yes, in the case of buildings used for ranching, farming, and industrial purposes, insurable value may also be determined by the functional building cost value or the demolition/removal cost value. The Agencies recognize that there are situations where insuring some nonresidential buildings to the replacement cost value will result in the building being over-insured. Therefore, borrowers and/or lenders have two alternative approaches to determine the insurable value for buildings used in ranching, farming, and for industrial purposes when the borrower would either not replace the building if damaged or destroyed by a flood or would replace the building with a structure more closely aligned with the function the building is presently providing. Industrial use, as opposed to the broader commercial use, means those buildings not directly engaged in the retail and/or wholesale sale of the business's goods, such as warehouses, storage, manufacturing, or maintenance facilities.

• The lender may calculate the insurable value as the ''functional building cost value,'' that is, the cost to replace a building with a lower-cost functional equivalent. The ''functional building cost value'' is the cost to repair or replace a building with commonly used, less costly construction materials and methods that are functionally equivalent to obsolete, antique, or custom construction materials and methods used in the original construction of the building. The determination of the appropriate ''functional building cost value'' amount of insurance should be made by the lender and/or borrower. This alternative may be chosen when the building is important to the ongoing nature of the business and would be replaced if damaged or destroyed in a flood, but not to its original form. For example, a farming operation would replace an old dairy barn currently used for storage with a storage building of pole, or some other type of less costly construction found currently in storage buildings.

• The lender may calculate the insurable value as the ''demolition/removal cost value,'' that is the cost to demolish the remaining structure and remove the debris. The ''demolition/removal cost value'' may be used when a building is not important to the ongoing nature of the business and as such would not be replaced if damaged or destroyed by a flood. The amount of flood insurance should be calculated by the lender and/or borrower to be at least the cost of demolition and removal of the insured debris.

Regardless of what method the lender and/or borrower selects to determine insurable value (replacement cost value or one of the two alternatives), all terms and conditions of the Standard Flood Insurance Policy apply including its Loss Settlement provision.◄

Force placement. In response to comments received regarding the force placement of flood insurance, the Agencies are proposing new questions and answers 60, 61, and 62, which would be added to Section X to address the following force-placement issues: whether a borrower may be charged for the cost of flood insurance coverage during the 45-day notice period, when the 45-day notice period should begin, and how soon a lender should take action after learning that improved real estate that secures a loan is uninsured or under-insured.

Several commenters requested clarification regarding timing issues related to the 45-day notice. One commenter requested clarification on whether the 45-day notice could be sent prior to the actual date of expiration of flood insurance coverage. The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. The borrower must obtain flood insurance within 45 days after notification by the lender; however, the 45-day period cannot begin until the lender or servicer has sent notice to the borrower. Furthermore, the Act does not permit a lender or its servicer to send the 45-day notice to the borrower prior to the actual expiration date of the flood insurance policy.

Another commenter suggested that flood insurance be force placed through private insurers since this would allow flood insurance coverage to be immediately available instead of having to wait 45 days. Whether the lender plans to force place coverage through FEMA or private insurers, lenders must allow the borrower 45 days in which to obtain flood insurance. The Agencies are proposing new question and answer 60 to address these commenters' issues.

►*60. Can the 45-day notice period be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage?*

Answer: No. Although a lender or servicer may send a notice warning a borrower that flood insurance on the collateral is about to expire, the Act and Regulation do not allow a lender or its servicer to shorten the 45-day force-placement notice period by sending notice to the borrower prior to the actual expiration date of the flood insurance policy. The Act provides that a lender or its servicer must notify a borrower if it determines that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property. 42 U.S.C. 4012a(e). A lender must send the notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. This notice must allow the borrower 45 days in which to obtain flood insurance.◄

Three commenters asserted that it would be appropriate for the Agencies to allow a reasonable period to implement force placement after the end of the 45-day notice period. The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. Given that the lender is already aware during the 45-day notice period that it may be required to force place insurance if there is no response from the borrower, any delay should be brief. Where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay. The Agencies are proposing new question and answer 61 to address these commenters' concern.

One commenter suggested that a lender's procurement of the flood insurance binder should be acceptable under the Act and Regulation to satisfy the force placement requirement. The Agencies believe that the insurance binder may provide a reasonable explanation for a delay in force placing the formal flood insurance policy. However, an insurance binder is proof only of temporary coverage for a limited period of time until the formal insurance policy is either accepted or denied. Lenders should have sufficient internal controls in place to ensure that if a formal policy is not issued, it should force place required insurance immediately.

►*61. When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within the 45-day notice period?*

Answer: The Regulation provides that the lender or its servicer *shall* purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay.◄

Two commenters asked whether it is permissible to charge a borrower for the cost of insurance during all or a portion of the 45-day notice period. Regardless of whether the flood insurance coverage is obtained through FEMA or by private means, under the Act and Regulation, lenders may not impose the cost of coverage for that 45-day period at any time. The Agencies are proposing new question and answer 62 to address this comment.

►*62. Does a lender or its servicer have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period?*

Answer: No. There is no authority under the Act and Regulation to charge a borrower for a force-placed flood insurance policy until the 45-day notice period has expired. The ability to impose the costs of force placed flood insurance on a borrower commences 45 days after notification to the borrower of a lack of insurance or of inadequate insurance coverage. Therefore, lenders may not charge borrowers for coverage during the 45-day notice period. This holds true regardless of whether the force placed flood insurance is obtained through the NFIP or a private provider.◄

Public Comments

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

Solicitation of Comments Regarding the Use of "Plain Language"

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

The text of the Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the Act and Regulation. For ease of reference, the following terms are used throughout this document: "Act" refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). "Regulation" refers to each agency's current final rule.[11] The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, "the Agencies") are providing answers to questions pertaining to the following topics:

I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation
II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation
III. Exemptions From the Mandatory Flood Insurance Requirements
IV. Flood Insurance Requirements for Construction Loans
V. Flood Insurance Requirements for Nonresidential Buildings
VI. Flood Insurance Requirements for Residential Condominiums
VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA
VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights
IX. Escrow Requirements
X. Force Placement of Flood Insurance
XI. Private Insurance Policies
XII. Required Use of Standard Flood Hazard Determination Form (SFHDF)
XIII. Flood Determination Fees
XIV. Flood Zone Discrepancies
XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief
XVI. Mandatory Civil Money Penalties

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

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

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

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

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

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

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

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

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

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

Answer: As with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of Act or Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would all be subject to the requirements of Act or Regulation. Federal flood insurance requirements would also apply to those situations where such a group of lenders decides to extend, renew or increase a loan. Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.

5. Does the Regulation apply to loans that are being restructured or modified?

Answer: It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.

6. Are table funded loans treated as new loan originations?

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

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

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

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

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

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

In addition to the maximum caps under the NFIP, the Regulation also provides that "flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located," which is commonly referred to as the "insurable value" of a structure. The NFIP does not insure land; therefore, land values should not be included in the calculation.

An NFIP policy will not cover an amount exceeding the "insurable value" of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

9. What is insurable value?

Answer: [Reserved]

10. Are there any alternatives to the definition of insurable value?

Answer: [Reserved]

11. What are examples of residential buildings?

Answer: Residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental nonresidential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building, or 50 percent for single-family dwellings.

12. What are examples of nonresidential buildings?

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

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

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

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

Example: (Calculating insurance required on a nonresidential building):

Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Exemptions From the Mandatory Flood Insurance Requirements

18. What are the exemptions from coverage?

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

IV. Flood Insurance Requirements for Construction Loans

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

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

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

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

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

Answer: Yes. FEMA's *Flood Insurance Manual*, under general rules, states:

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

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

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

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

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an elevation certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed.[12] However, the lender must require the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

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

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

V. Flood Insurance Requirements for Nonresidential Buildings

24. Some borrowers have buildings with limited utility or value and, in many cases, the borrower would not replace them if lost in a flood. Is a lender required to mandate flood insurance for such buildings?

Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA and in a participating community.

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

[12] FEMA, *Mandatory Purchase of Flood Insurance Guidelines*, at 30.

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

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

VI. Flood Insurance Requirements for Residential Condominiums

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

Answer: Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

27. What is an NFIP Residential Condominium Building Association Policy (RCBAP)?

Answer: The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

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

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

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

Effective October 1, 2007, FEMA required agents to provide on the declaration page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the replacement cost value and number of units on the RCBAP declaration page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage.

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

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain a dwelling policy if there is no RCBAP, as explained in question and answer 29, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in question and answer 30.

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

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

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

The guidance in this question and answer will apply to any loan that is made, increased, extended, or renewed after the effective date of this revised guidance. This revised guidance will not apply to any loans made prior to the effective date of this guidance until a trigger event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new trigger event, loans made prior to the effective date of this new guidance will be considered compliant if they complied with the Agencies' previous guidance, which stated that an RCBAP that provided 80 percent RCV coverage was sufficient.

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

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 28.

A dwelling policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP coverage. When coverage by an RCBAP is inadequate, the dwelling policy may provide individual unit owners with supplemental building coverage to the RCBAP. The RCBAP and the dwelling policy are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

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

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

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of at least $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

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

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*see* question and answer 28). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (*see* question and answer 29).

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

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

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

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

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

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

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* question and answer 28). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* questions and answers 29 and 30). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

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

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

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

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

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

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

Example 1: (Inadequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $180,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: 180,000 ÷ 200,000 = .90

(90% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 × .90 = 135,000

Step C: 135,000 − 500 = 134,500

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

Example 2: (Adequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $200,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: 200,000 ÷ 200,000 = 1.00

(100% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 × 1.00 = 150,000

Step C: 150,000 − 500 = 149,500

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

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

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

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

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

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

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

Example 3: (No RCBAP),

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

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

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

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

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

Answer: No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations. However, a request made for an *increase* in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* response to question 68 in Section XIII. Required use of Standard Flood Hazard Determination Form.)

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

Answer: The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to the existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

A junior lienholder should work with the senior lienholder, the borrower, or with both of these parties, to determine how much flood insurance is needed to cover improved real estate collateral. A junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

Junior lienholders also have the option of pulling a borrower's credit report and using the information from that document to establish how much flood insurance is necessary upon increasing, extending or renewing a junior lien, thus protecting the interests of the junior lienholder, the senior lienholders, and the borrower. In the limited situation where a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the lender may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance relating to the senior lien was adequate at the time) continues to be sufficient.

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

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

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on improved real estate with a fair market value of $150,000. The insurable value of the residential building on the improved real estate is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $70,000 loss payment towards the insurable value of $90,000.

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

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

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

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

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

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

Example: Lender A makes a loan for $200,000 that is secured by a warehouse with an insurable value of $150,000 and inventory in the warehouse worth $100,000. The Act and Regulation require that flood insurance coverage be obtained for the lesser of the outstanding principal balance of the loan or the maximum amount of flood insurance that is available under the NFIP. The maximum amount of insurance that is available for both building and contents is $500,000 for each category. In this situation, Federal flood insurance requirements could be satisfied by placing $150,000 worth of flood insurance coverage on the warehouse, thus insuring it to its insurable value, and $50,000 worth of contents flood insurance coverage on the inventory, thus providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $200,000.

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

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

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

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

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

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

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

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

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

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

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

Answer: The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee. Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

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

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position, as described in the preamble to the Regulation that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

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

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a regulated lender makes, increases, extends, or renews a designated loan. A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the regulated lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IX. Escrow Requirements

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

Answer: "Residential improved real estate" is defined under the Regulation as "real estate upon which a home or other residential building is located or to be located." A loan secured by residential improved real estate located or to be located in an SFHA in which flood insurance is available is a designated loan. Lenders are required to escrow flood insurance premiums and fees for mandatory flood insurance for such loans if the lender requires the escrow of taxes, hazard insurance premiums or any other charges for loans secured by residential improved real estate. A lender is not required to escrow flood insurance premiums and fees for a particular loan if it does not require escrowing of any other charges for that loan.

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

Mixed-use properties. The lender should look to the primary use of a building to determine whether it meets the definition of "residential improved real estate." (*See* questions and answers 11 and 12 for guidance on residential and nonresidential buildings.) If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply.

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

Answer: If a lender requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home, the lender must also require the escrow of all flood insurance premiums and fees. When administering loans secured by one-to-four family dwellings, lenders should look to the definition of "Federally related mortgage loan" contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to the escrow requirements in Section 10 of RESPA. (This includes individual units of condominiums. Individual units of cooperatives, although covered by Section 10 of RESPA, are not insurable under the NFIP and are not covered by the Regulation.) Loans on multi-family dwellings with five or more units are not covered by RESPA requirements. Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes, such as hazard insurance or taxes.

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

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

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

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

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

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

56. Which requirements for escrow accounts apply to properties adequately covered by RCBAPs?

Answer: RCBAPs (Residential Condominium Building Association Policies) are policies purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. A portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. However, if the RCBAP coverage is inadequate and the unit is also covered by a dwelling form policy, premiums for the dwelling form policy would need to be escrowed if the lender requires escrow for other purposes, such as hazard insurance or taxes. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

X. Force Placement of Flood Insurance

57. What is the requirement for the force placement of flood insurance under the Act and Regulation?

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

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

The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage. The Act does not permit a lender or its servicer to send the required 45-day notice to the borrower prior to making a determination that flood insurance coverage is inadequate. If adequate insurance is not obtained by the borrower within the 45-day notice period, then the lender must purchase insurance on the borrower's behalf. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of FEMA's September 2007 *Mandatory Purchase of Flood Insurance Guidelines* sets out the MPPP Guidelines and Requirements, including force placement procedures and examples of notification letters to be used in connection with the MPPP.

58. Can a servicer force place on behalf of a lender?

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

59. When force placement occurs, what is the amount of insurance required to be placed?

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (*See* Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation and also Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA.)

60. Can the 45-day notice period be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage?

Answer: [Reserved]

61. Is a reasonable period of time allowed after the end of the 45-day notice period for a lender or its servicer to implement force placement?

Answer: [*Reserved*]

62. Does a lender or its servicer have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period?

Answer: [Reserved]

XI. Private Insurance Policies

63. May a lender rely on a private insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance?

Answer: It depends. A private insurance policy may be an adequate substitute for NFIP insurance if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.* Similarly, a private insurance policy may be used to supplement NFIP insurance for designated loans where the property is underinsured if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.* FEMA states that, to the extent that a private policy differs from the NFIP Standard Flood Insurance Policy, the differences should be carefully examined before the policy is accepted as sufficient protection under the law. FEMA also states that the suitability of private policies need only be considered when the mandatory purchase requirement applies.

64. When may a lender rely on a private insurance policy that does not meet the criteria set forth by FEMA?

Answer: A lender may rely on a private insurance policy that does not meet the criteria set forth by FEMA only in limited circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies that do not meet the criteria set forth by FEMA, such as private insurance policies providing portfolio-wide blanket coverage, may be useful protection for the lender for a gap in coverage in the period of time before a force placed policy takes effect. However, the lender must still force place adequate coverage in a timely manner, as required, and may not rely on a private insurance policy that does not meet the criteria set forth by FEMA on an ongoing basis.

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

65. Does the SFHDF replace the borrower notification form?

Answer: No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act. The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform them about flood insurance requirements and the availability of Federal disaster relief assistance.

66. May a lender provide the SFHDF to the borrower?

Answer: Yes. While not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

67. May the SFHDF be used in electronic format?

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

68. May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?

Answer: It depends. Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing, or purchasing a loan secured by a building or a mobile home. Under the Act, the ''making'' of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made.

XIII. Flood Determination Fees

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

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

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

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

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

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

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to Question 69 occur. Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because the life-of-loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.

XIV. Flood Zone Discrepancies

71. What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

A lender should only be concerned about a discrepancy on the Standard Flood Hazard Determination Form (the SFHDF) and the one on the flood insurance policy if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D, or X). In other words, a lender need not be concerned about subcategory differences between flood zones on these two documents. Once in possession of a copy of the flood insurance policy, a lender should systematically compare the flood zone designation on the policy with the zone shown on the SFHDF. If the flood insurance policy shows a lower risk zone than the SFHDF, then lender should investigate. As noted in FEMA's *Mandatory Purchase of Flood Insurance Guidelines,* Federal law sets the ultimate responsibility to place flood insurance on the lender, with limited reliance permitted on third parties to the extent that the information that those third parties provide is guaranteed.

A lender should first determine whether the difference results from the application of the NFIP's ''Grandfather Rule.'' This rule provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located. The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable rating for particular pieces of improved property. A discrepancy resulting from application of the NFIP's Grandfather Rule is reasonable and acceptable, but the lender should substantiate these findings.

A lender should also determine whether a difference in flood zone designations is the result of a mistake. To do so, a lender should facilitate communication between itself or the third-party service provider that performed the flood hazard determination for the lender. If it appears that the discrepancy is the result of a mistake, a lender should recheck its determination. If there still appears to be a discrepancy after this step has been taken, a lender and borrower may jointly request that FEMA review the determination to confirm or review the accuracy of the original determination performed by a lender or on the lender's behalf. However, FEMA will only conduct this review if the request is submitted within 45 days of the date the lender notified the borrower that a building or manufactured home is in an SFHA and flood insurance is required.

If, despite these efforts, the discrepancy is not resolved, or in the course of attempting to resolve a discrepancy, a borrower or an insurance company or its agent is uncooperative in assisting a lender in this attempt, the lender should notify the insurance agent about the insurer's duty pursuant to FEMA's letter of April 16, 2008 (W–08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also notify the insurance company itself. The lender should substantiate these communications in its loan file.

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

Answer: As noted in question and answer 71 above, lenders should have a process in place to identify and resolve flood zone discrepancies. A lender is in the best position to coordinate between the various parties involved in a mortgage loan transaction to resolve any flood zone discrepancy. If a lender is able to substantiate in its loan file a *bona fide* effort to resolve a discrepancy, either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy, for example, by contacting FEMA to review the determination, no violation will be cited. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio due to a lack of effort on the lender's part to resolve such discrepancies, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to provide the notice to the borrower.

Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

80. Is use of the sample form of notice mandatory?

Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A of the Regulation or in Appendix 4 of FEMA's *Mandatory Purchase of Flood Insurance Guidelines* is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

XVI. Mandatory Civil Money Penalties

81. Which violations of the Act can result in a mandatory civil money penalty?

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

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- Force placement of flood insurance (42 U.S.C. 4012a(e));
- Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations ''shall be assessed a civil penalty'' by its Federal supervisor in an amount not to exceed $350 per violation, with a ceiling per institution of $100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). Each Agency adjusts these limits pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note.[13] Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

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

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

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

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

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

- Whether the conduct resulted from a common cause or source within the financial institution's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);
- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

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

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

Dated: May 15, 2009.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 14, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of July, 2009.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: April 2, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

Date: July 8, 2009

Roland E. Smith,

Secretary, Farm Credit Administration Board.

By the National Credit Union Administration Board, on June 5, 2009.

Mary F. Rupp,

Secretary of the Board.

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[13] Please refer to 12 CFR 19.240(a) (OCC); 12 CFR 263.65(b)(10) (Board); 12 CFR 308.132(c)(xvi) (FDIC); 12 CFR 509.103(c) (OTS); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001(a) (NCUA) for the Agencies' current civil penalty limits.