TESTIMONY OF

JANICE M. SMITH
DIRECTOR
OFFICE OF CONSUMER AFFAIRS
FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

ON

THE NATIONAL FLOOD INSURANCE PROGRAM

BEFORE THE

House SUBCOMMITTEE ON POLICY RESEARCH AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

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Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to be here today to present the views of the Federal Deposit Insurance Corporation on the compliance examination procedures for enforcement of the Flood Disaster Protection Act of 1973 ("FDPA").

The FDIC's Responsibility Under the FDPA

Under the FDPA, the FDIC is required to ensure that FDIC-supervised institutions do not make loans secured by real estate or mobile homes situated in a flood-prone area of a community participating in the National Flood Insurance Program ("NFIP") unless such property is covered by flood insurance. The FDIC also must require FDIC-supervised institutions, as a condition to making such loans, to notify the purchaser or lessee of the availability of federal disaster relief assistance and of the flood hazard possibility.

In order to enforce compliance with the FDPA, the FDIC has adopted flood insurance regulations (Attachment A) and specific and detailed examination procedures (Attachment B). The examination procedures have the primary objectives of determining whether an FDIC-supervised institution:

- Has established an effective system for ascertaining whether property that secures a loan requires flood insurance;

- Provides the required flood insurance disclosures; and

- Maintains sufficient records to evidence compliance with flood insurance requirements.

FDIC Compliance Examination Procedures

The FDIC administers a comprehensive consumer compliance examination program of which monitoring and enforcing adherence with the requirements of the FDPA is an integral part. FDIC-supervised institutions, numbering about 9,000, are regularly examined, evaluated and rated as to compliance with all pertinent consumer compliance laws. The FDIC completed 1,228 compliance examinations in 1986, 2,242 in 1987 and 3,041 in 1988.

It is noteworthy that the trend of FDIC consumer compliance examinations over the past three years is upward, even though the FDIC has had to devote significant resources to safety and soundness banking problems and, beginning in February 1989, to its interim supervisory role under President Bush's savings-and-loan rescue plan. As the number of bank failures begins to abate, the FDIC's savings-and-loan conservatorship role diminishes, and more FDIC examiners are hired and trained, we anticipate further progress in our compliance examination program.

In the flood insurance examination process, FDIC examiners review and assess an institution's applicable policies, procedures, and internal controls -- particularly the methods used by the institution to make the flood hazard determination -- provide proper notification, and ensure that sufficient insurance coverage remains in effect for the term of the loan. Examiners discuss their findings with bank management and determine the action necessary for the institution to correct any noted violations and deficiencies.

Examiners also may offer appropriate information and technical assistance, thereby helping institutions to understand their obligations under the flood insurance regulations and the FDIC's enforcement role. After the examination is completed, the appropriate FDIC Regional Office follows up on the examination findings to assure that necessary corrective actions are taken by the institution.

The FDIC normally takes progressively stringent administrative actions until banks comply with the applicable corrective actions. The FDIC's available enforcement tools include assigning unsatisfactory ratings, issuing memoranda of understanding, and, ultimately, issuing cease-and-desist orders and imposing civil money penalties.

Bank Compliance With the FDPA

We have found that FDIC-supervised institutions generally comply with consumer protection and civil rights laws and regulations, including flood insurance. Of the 3,041 institutions examined for all applicable consumer compliance laws and regulations in 1988, 422 (or 14 percent) were assigned less than satisfactory ratings. Moreover, violations found at examinations are generally of a technical nature and correctable in the normal course of business. Our overall experience has been that when a compliance problem is brought to an institution's attention steps are taken to correct it.

For the last three years, from 34 to 38 percent of the institutions examined by the FDIC for consumer compliance were found to be in violation of flood insurance regulations. These violations, however, were largely technical and correctable in the normal course of business. In most cases, banks were cited for lacking the appropriate records to indicate the method used to determine whether applicable properties are located in a designated flood area. In addition, from four percent to five percent of the examined institutions had violated the regulations pertaining to granting, increasing, extending, or renewing loans secured by properties located in a designated flood area when the underlying security is not covered by flood insurance. The FDIC's previously described follow-up steps were taken to ensure that these violations were corrected and that the institutions complied in the future with the flood insurance requirements.

Consumer Complaints and Inquiries

In addition to our examination efforts, the FDIC's Office of Consumer Affairs ("OCA") coordinates the processing of consumer-type complaints filed against banks. Such complaints are either investigated by the FDIC or, if other than a FDIC-supervised institution is involved, referred to the appropriate regulator.

From the beginning of 1987 until mid-May of this year, OCA processed over 8,400 written consumer-related complaints and inquiries, only four of which involved flood insurance-related issues. Three of these matters were outside the FDIC's jurisdiction. The one complaint within the FDIC's jurisdiction involved a bank customer who was not informed of the flood insurance requirement. At the FDIC's direction, the bank instituted procedures to ensure future compliance with the FDIC's flood insurance regulations.

During the same time frame, OCA -- via its toll-free hotline -- and our Regional Offices received approximately 81,000 telephone calls for information and assistance. Of this number, less than 1,700 (2 percent) were calls involving flood insurance. Most of these calls were inquiries posed by bankers and involved whether the purchase of flood insurance is mandatory in a specific circumstance and general questions on the flood insurance requirements for home equity loans and mobile homes.

FDIC Education and Training

We recognize the importance of keeping FDIC-supervised institutions informed about flood insurance. For example, the FDIC recently issued two "Bank Letters" concerning the mandatory purchase of flood insurance and changes in the NFIP. One deals with several issues, including the application of the FDPA to the increasingly popular home equity loans (Attachment C), and the other with new flood insurance policies (Attachment D). Examiners also are available during the course of compliance examinations for guidance as to the requirements of flood insurance and the implementation of procedures designed to ensure compliance.

For the past few years, OCA and other FDIC employees, especially Regional Office personnel, have participated in several banker compliance seminars sponsored by the industry and the FDIC in which flood insurance has been discussed. These programs are generally designed to help bankers better understand and fulfill their responsibilities under the consumer protection and civil rights laws and regulations.

The FDIC also has a program to keep examiners updated on consumer-related issues, including flood insurance. The FDIC's Division of Bank Supervision

Training Center administers the Corporation's Consumer Protection School ("CPS"). Most CPS attendees are examiners with a minimum of two years' bank supervision experience.

In addition, OCA conducts an annual compliance seminar for Regional Office Consumer Affairs and Civil Rights examiners and their assistants and field examiners. Many of these examiners then provide training for their respective regional examination staffs. Flood insurance has been addressed at many of these training sessions. Our active interest and support in the NFIP has been shown in part by the participation of representatives from the Federal Insurance Administration ("FIA") in various regional training seminars for field examiners and the participation of FDIC staff in the annual NFIP meetings.

Comments and Conclusion

We would like to make the following comments on the "NFIP."

First, the FIA has reported that a significant number of flood insurance policies originally required are not being renewed in subsequent years. The FDIC has requested detailed information from the FIA on this issue so we can contact the banks in question to determine what is taking place with these mortgage loans.

It is likely that many of these mortgage loans have been sold in the secondary market. In other cases, the loans may have been refinanced. In either case, neither the bank nor the FDIC may have any control over third party purchasers.

If these loans continue to be held by FDIC-supervised institutions, however, the FDIC will take the necessary steps to ensure that coverage is renewed and maintained for the life of the loan.

On a different issue, we believe it would be beneficial for both examiners and bankers if an improved flood analysis system were developed to determine whether a property is located in a special flood hazard area. Compliance with the FDPA is often difficult and often involves extremely technical requirements. For example, flood maps are confusing, but they must be used to determine whether a property is within a special flood hazard area. If the FIA could develop a flood analysis system keyed to the property's address, description or location, both compliance with and supervision of the requirements of the FDPA would be greatly simplified.

Finally, because of the importance of the flood insurance purchase requirements, we believe that the existing law should be expanded to cover <u>all</u> mortgage lenders. The inconsistent treatment between mortgage companies and depository institutions is unfair and anti-competitive. We would prefer more uniform treatment within the mortgage lending industry. Such uniformity would be consistent with the purposes of the FDPA.

Thank you, Mr. Chairman and members of the Subcommittee, for giving the FDIC an opportunity to express its views on this important consumer issue. We will be pleased to respond to any questions.

Attachments

ATTACHMENT A

FDIC RULES AND REGULATIONS

PART 339 - LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

AUTHORITY: Secs. 102(b) and 202(b), Pub. L. No. 93-234, 87 Stat. 978, 982 as amended by Secs. 704(a) and 703(a), Pub. L. No. 95-128, 91 Stat. 1145 (42 U.S.C. §§ 4012a(b), 4106(b)); Sec. 1364, Pub. L. No. 93-383, 88 Stat. 739 (42 U.S.C. § 4104a).

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

§ 339.1 Authority and scope.

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

[Codified to 12 C.F.R. § 339.1]

§ 339.2 Definitions.

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

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

[Codified to 12 C.F.R. § 339.2]

§ 339.3 Requirement to purchase flood insurance.

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

[Codified to 12 C.F.R. § 339.3]

§ 339.4 Exemption.

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

[Codified to 12 C.F.R. § 339.4]

§ 339.5 Records of compliance.

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

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

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

[Codified to 12 C.F.R. § 339.5]

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

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

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

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

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

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

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

[Codified to 12 C.F.R. § 339.6]

NOTE

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

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

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

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

2. **Notice to the borrower about the availability of Federal Disaster Relief Assistance.** This notice states that in the event such property is damaged by flooding in a federally declared disaster, federal disaster relief assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of the flood insurance.

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

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

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

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

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

To avoid possible delays in the closing of the loans in areas having special flood hazards, a bank could accept as proof of flood insurance at the time of loan closings a copy of the flood insurance application indicating that the full premium has been paid, a copy of the mortgagor's check issued in payment of the premium, or the insurance agent's certification that the mortgagor has purchased the requisite flood insurance.

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

FEMA has provided the following information regarding flood insurance:

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

For general information, write:
Federal Insurance Administration
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

For map requests and *Community Status Book* information, write:
Federal Emergency Management Agency
Flood Map Distribution Center
6930 (A-F) San Tomas Road
Baltimore, Maryland 21227-6227
Or, call toll-free 800-638-6620

[The page following this is 2705.]

ATTACHMENT B

FLOOD DISASTER PROTECTION ACT

EXAMINATION PROCEDURES

The Flood Disaster Protection Act of 1973 (FDPA)(42 U.S.C. 4003) prohibits federally regulated financial institutions from making, increasing, extending or renewing any loan (applicability of the FDPA is not limited to consumer loans) secured by improved real estate or a manufactured home if:

- the property securing the loan is located in an area having special flood, mudslide or flood-erosion areas, as identified by the Federal Emergency Management Agency (FEMA) and
- the community is participating in the National Flood Insurance Program (NFIP) and
- flood insurance is not purchased for the property securing the loan.

The FDPA also prohibits the use of federal financial assistance for the acquisition or construction of a structure in a special flood hazard area (SFHA) unless the community participates in the NFIP and flood insurance has been purchased. The term "federal financial assistance" includes loans, grants, guarantees, and similar forms of direct and indirect assistance from Federal agencies, such as FHA or VA mortgage insurance. For communities participating in the NFIP, the term federal financial assistance also includes coventional loans from federally insured, supervised or approved lending institutions.

The principal objectives of the FDPA are:

- To ensure that flood insurance is available at reasonable cost to owners of improved real property located in SFHA of communities that participate in the NFIP;
- To reduce or avoid future flood losses and provide a preventive alternative to massive doses of federal disaster relief funds normally made available to flood stricken areas.

FLOOD INSURANCE PROGRAMS

The FDPA expands the provisions of the original National Flood Insurance Act of 1968 (NFIA). The NFIA provisions created the National Flood Insurance Program, originally operated by the federal government through the Department of Housing and Urban Development (HUD). The program is now administered by the Federal Emergency Management Agency (FEMA). Although some flood insurance policies are underwritten by the

United States government, many policies are now written by private insurance carriers for FEMA. Direct participants of the the NFIP are state and local governments, lenders, and insurance agents.

In addition to supervising the insurance aspects of the NFIP, FEMA identifies communities with special flood-hazard areas, issues maps for those areas, helps communities qualify for the NFIP, and assists them in adopting flood plain management requirements.

Every state has appointed an agency that serves as a liason between the federal government and communities in the state for developing the NFIP. These state coordinating agencies work with FEMA to distribute program information.

Licensed property and casualty insurance agents and brokers provide the main connection between the program and the insured. Licensed agents sell flood insurance, complete the insured's application form, and follow up with the insured for renewals. They also handle claims.

There are two phases of the NFIP. Communities entering the NFIP become eligible for the sale of flood insurance in the Emergency Flood Insurance Program (Emergency Program). Under this program, insurance is provided for lower limits of coverage (first layer) at federally subsidized rates on eligible structures. Flood Hazard Boundary Maps issued in conjunction with the Emergency Program, are used to determine whether properties are located in flood plain areas having special flood or mudslide hazards.

The second phase of the NFIP is the Regular Program. A community enters the Regular program once a detailed study of the community has been completed and the Flood Insurance Rate Maps for the area have been issued by FEMA. The Regular Program provides full insurance coverage (first and second layers), Flood Insurance Rate Maps, and additional flood plain management requirements for the community. These Flood Insurance Rate Maps delineate communities by degrees of probability of flood hazard and include more specific area identification than the Flood Hazard Boundary Maps issued in conjunction with the Emergency Program. The maps indicate base flood elevations, which are elevations where there is at least a 1 percent chance of flood loss each year.

SCOPE

The FDPA expands the provisions of the NFIA by:

° Requiring flood-prone communities to participate in the NFIP as a condition of future financial assistance for flood-related damage to property.

° Requiring land use measures in certain flood-prone areas as a condition for making flood insurance available in those areas.

° Directing financial regulatory agencies to ensure that their institutions do not make loans secured by real estate or manufactured homes located, or to be located, in a SPHA if the community participates in the NFIP unless the property securing the loan has flood insurance.

° Directing financial regulatory agencies to require their institutions, as a condition to making flood-related loans, to notify the purchaser or lessee of the availability of federal disaster relief assistance and of the possibility of flood hazards.

° Directing federal agencies such as FHA and VA not to subsidize, insure, guarantee or approve any flood-related loan if the property securing the loan is located in a SFHA of a nonparticipating community.

PROPERTY ELIGIBLE FOR FLOOD INSURANCE

The NFIP covers improved real estate or manufactured homes located, or to be located, in an area that has been identified by the FEMA as having special flood hazards, including:

° Construction loans for buildings under construction;

° Condominiums or townhouses that are contiguous to the ground, capable of separate ownership and having legal description

° High-rise condominums with common ownership

° Other types of residential, industrial, commercial and agricultural buildings with any walled and roofed structure that is principally above ground and affixed to a permanent site

° Mobile homes*

° Dealers' inventories of mobile homes on foundations*

* (after October 1, 1982, mobile homes must be on a permanent foundation and anchored to resist floatation, callapse and lateral movement. Foundations may consist of poured masonry, block walls or pier or block supports, provided no weight is supported by the wheels and axles of the mobile home. Double wide mobile homes of at least 16 feet wide with an area of 600 square feet are not subject to tie down requirements, but are treated as any other building.)

Each building is insured separately, as is each manufactured home, including those in dealer inventories that are eligible for coverage. Policies for high-rise condominiums may be issued individually, as well as to the condominium owners' association. Each unit, however, is eligible for contents coverage on personal property contained within a fully enclosed structure.

Personal property insurance coverage is available for machinery, equipment, fixtures, and furnishings contained in real property or a manufactured home. Insurance coverage for on contents of basements or rooms with floor below grade on all sides may be subject to certain restrictions.

EXEMPTIONS

Types of property for which flood insurance policies are not available include: unimproved property, such as land, bridges, dams, roads, manufactured homes not on foundations, travel trailers, converted buses, and campers. In addition, property constructed or substantially improved on or after October 1, 1983 and located seaward of mean high tide, or entirely in, on, or over water is excluded from coverage. New construction or substantial improvements to property located on undeveloped coastal barriers is also excluded from coverage.

Flood insurance is not required on any state-owned property that is covered under an adequate policy of self-insurance satisfactory to FEMA. FEMA publishes and periodically revises the list of states falling within its exemption.

FLOOD INSURANCE DETERMINATION

Under the FDPA, financial institutions are responsible for determining whether property connected with a loan application is located in a special flood hazard area. If so, the financial institution must also determine whether the property is located in a community that participates in the NFIP. A financial institution may make, increase, extend or renew any direct conventional loan secured by improved real estate or a manufactured home located in a SFHA when all three of the following conditions exist:

- A flood hazard boundary map or a flood insurance rate map has been published for the community in which the property is located;
- The community in which the area is located participates in the NFIP; and
- The property is covered for the entire term of the loan with flood insurance.

If the community in which the area is located does not participate in the NFIP, the financial institution is not restricted in making, increasing, extending or renewing a loan. Potential borrowers, however, must be notified that the community is not participating in the NFIP and that, in the event of a federally declared flood disaster, they would not be eligible for federal disaster relief funds.

Additional requirements are placed on financial institutions in connection with loans insured or guaranteed by an agency of the federal government, such as VA, FHA, and SBA. In this case, loans to construct or acquire real property or a manufactured home located in a SFHA may be made only if the community in which the property is located participates in the NFIP.

Personal property may require flood insurance if:

° Property is located in a flood hazard area as shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map; and

° the personal property secures a conventional loan that is also secured by real property or a manufactured home required to be covered by flood insurance; or

° the loan for the property is insured or guaranteed by an agency of the federal government.

If the loans for personal property does not involve federal financial assistance, flood insurance is not required.

Flood insurance requirements with respect to a particular community are altered by the issuance or withdrawal of FEMA's official flood maps. If the FEMA withdraws a Flood Hazard Boundary Map (for any reason), the insurance purchase requirement is completely suspended during the period of withdrawal. However, if the community is in the Regular Program and only the Flood Insurance Rate Map (which controls actuarial rates) is withdrawn, the financial institution should contact FEMA for a determination of flood insurance availability.

NOTICE REQUIREMENTS

When a loan is secured by improved real estate or a manufactured home located, or to be located, in a community that has been identified by the Director of FEMA as an area having special flood hazards, regardless of whether the community is participating or not participating in the NFIP, a financial institution must mail or deliver at least 10 days prior to the closing of a flood-related loan a written notice to the borrower which states:

° That the property securing the loan is or will be located in a flood hazard area (in lieu of such notification, a financial institution may obtain satisfactory written assurances from a seller or lessor that the borrower has been notified, prior to the execution of any agreement for sale or lease, that the property securing the loan is, or will be located, in a flood hazard area); and

° Whether or not federal disaster relief assistance will be available for such property in the event of damage to the property caused by flooding in a federally-declared disaster area (see sample notices). Community participation in the NFIP will determine if federal disaster relief assistance will be available and which notice the borrower will receive.

SAMPLE NOTICES*

(1) Notice to Borrower of Special Flood Hazards

Notice is hereby given to ____________ that the improved real estate or mobile home described in the attached instrument is, or will be, located in an area designated by the Director of the Federal Emergency Management Agency as an area having special flood hazards. This area is delineated on <u>(name of community)</u> Flood Insurance Rate Map ("FIRM") or, if the FIRM is unavailable, on the community's Flood Hazard Boundary Map ("FHBM"). (This area has at least a one per cent chance of being flooded within any given year. The risk of exceeding the one per cent chance increases with time periods longer than one year.) For example, during the life of a 30-year mortgage, a structure located in a special flood hazard area has at least 26 per cent chance of being flooded.

(2) Notice to Borrower about Federal Disaster Relief Assistance

(a) Notice to participating communities

The improved real estate or mobile home securing your

* These sample notices provide the required information. However, the indicated formats are not required.

loan is, or will be located, in a community that is now participating in the National Flood Insurance Program. In the event such property is damaged by flooding in a federally declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if your community has been identified as a special flood hazard area for one year or longer and is not participating in the National Flood Insurance Program at the time the assistance would be approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

(b) Notice in non-participating communities

The improved real estate or mobile home securing your loan is, or will be located, in a community that is not participating in the National Flood Insurance Program. This means that such property is not eligible for Federal flood insurance. In the event such property is damaged by flooding in a federally declared disaster, federal disaster relief assistance will be unavailable if your community has been identified as a special flood hazard area for one year or longer. Such assistance may be available only if at the time assistance would be approved your community is participating in the National Flood Insurance Program or has been identified as a special flood hazard area for less than one year.

WRITTEN ACKNOWLEDGEMENT

In addition, a financial institution must obtain from the borrower, prior to closing, a written acknowledgment that the property securing the loan is, or will be located, in a SFHA and that the borrower has received the mandatory notice regarding federal disaster relief assistance.

AMOUNT OF FLOOD INSURANCE

When flood insurance is required, the policy must cover the amount of the loan or the maximum amount available under the NFIP, whichever is less. When a community participates in the Emergency Program under NFIP, the amount of flood insurance available may not be sufficient to cover the amount of a flood-related loan since only first layer coverage is available under the Emergency Program. When community subsequently enters the Regular Program, the financial institution has no obligation to increase the amount of flood insurance required. However, it has the option to do so in order to protect its investment. In any event, the maximum insurance required by law for communities in the Regular Program is never more than twice the amount of coverage under the Emergency Program. Of course, the lender may require up to the amount of coverage available or the amount of the loan, whichever is less.

At the time of loan closing, a copy of the flood insurance application or the FEMA Proof of Purchase Certificate, indicating that the full premium has been paid, is sufficient evidence that application has been made for the purchase of flood insurance. If there is a transfer of title, the new owner applies for coverage at or before closing and the insurance goes into effect at 12:01 a.m. on the day following application and payment.

When no transfer of title occurs, the waiting period for flood insurance coverage is five days. Financial institutions may close a loan during that waiting period, knowing that the policy is not yet in effect. Lenders should, however, require the borrower to purchase coverage in a timely manner so that the policy becomes effective on or about the date of closing.

Flood insurance is written annually. Financial institutions are responsible for ensuring that the coverage is renewed and maintained for the duration of the loan. If the borrower does not renew the policy, the financial institution may renew it or call the loan (assuming the ability to call the loan is written into the contract). When designated as mortgagee, the financial institution generally receives a copy of the policy, as well as all renewal notices.

The loan closing and lien recording for construction loans may occur before any disbursement of funds. Flood insurance required for those loans need not exceed the amount of the financial institution's total disbursement to date. In those situations, proof of purchase is required only at the time funds are disbursed and not at the time of closing.

Limits of coverage under the Emergency Program and the Regular Program are listed in FEMA's latest publication concerning mandatory flood insurance purchase requirements. In general, the maximum amount of <u>required</u> flood insurance for covered property located in a community participating in the Emergency Program is also the maximum amount of <u>available</u> insurance. The maximum amount of <u>required</u> insurance for covered property located in a community participating in the Regular Program is only twice the coverage required by the Emergency Program, and is less than the maximum amount of <u>available</u> coverage.

RECORDKEEPING

Financial institutions must maintain sufficient records (e.g. copies of official maps, written contracts between the institution and the appraiser who has performed the flood check) to indicate the method used to determine whether improved real estate or a mobile home offered as security for a loan is located in a SFHA. Although not a requirement, financial institutions may also retain copies of the notices provided to the borrower, the borower's written acknowledgement of receipt, and if the purchase requirement applies, a copy of the flood insurance policy. Financial institutions should, but are not required to note that a flood hazard check has been performed on the property. Such a notation could be placed on the appraisal form or elsewhere in the loan application or loan docket file.

PENALTIES AND LIABILITIES

No specific civil or criminal penalties or liabilities are provided for in the FDPA. Administrative actions for violations may be pursued under the general regulatory powers of the respective supervisory agency. However, if the financial institution has not met all of the requirements of the FDPA and the borrower sustains a loss due to flooding, a financial institution may run the risk of being held liable in a negligence suit. Recent court decisions have stated that the FDPA does not grant a borrower a federal cause of action against a lender who violates the provisions of the FDPA or regulations issued by the regulatory agencies implementing the FDPA. However, these court decisions have not completely foreclosed borrowers from suing a depository institution on the basis of State statutes or common law. In fact, borrowers have successfully sued lenders in state courts.

FLOOD INSURANCE

EXAMINATION OBJECTIVES

1. To determine whether an institution has established an effective system for ascertaining whether property that secures a loan requires flood insurance.
2. To determine whether the institution provides the required flood insurance disclosures.
3. To determine whether the institution maintains sufficient records to evidence compliance with the flood insurance requirements of its supervisory agency.

EXAMINATION PROCEDURES

1. Determine whether any of the communities in the institution's trade area have designated SFHA, and whether or not any of the communities are participating in the NFIP.
2. Review the institution's policies, both written and informal, and internal controls concerning flood insurance, particularly, the method used by the institution to make the flood hazard determination. Interview the appropriate personnel to ascertain that these policies are implemented in the prescribed manner.
3. Obtain and review copies of the following:
   a. All records and other information, i.e., flood maps and appraisal forms, used to determine whether improved real estate or mobile homes are located in SFHA. 1/ Check these records to determine whether they are up-to-date. If the institution uses flood maps, verify that the institution has a flood map for each community in the trade area.
   b. Written notices (forms) that inform borrowers that the property securing a loan is in a SFHA and whether or not federal disaster relief assistance will be available if the property is damaged by flooding (refer to sample notices).

1/ In order to ascertain whether a community has been identified as flood prone and eligible for participation in the NFIP or to obtain the date of the current flood map, one may call the regional FEMA office.

c. Written acknowledgements from borrowers indicating their understanding that the property securing the loan is or will be located in a SFHA and that they have received the notice regarding the availability of federal disaster relief assistance.

4. Review an adequate sample of loan files to ascertain:

   a. that the institution's stated method of determining whether loans secured by improved real estate or a manufactured home are located in SFHA is followed in practice;

   b. that the institution requires flood insurance for covered loan related property located in a SFHA of a community that participates in the NFIP;

   c. that the institution does not make covered loans located in SFHA if the community does not participate in the NFP <u>and</u> the loan is insured or guaranteed by an agency of the federal government such as FHA, VA, SBA;

   d. that sufficient flood insurance coverage is provided when flood insurance is required; and

   e. that proper notifications are furnished to borrowers, as well as written acknowledgements are received from borrowers, within the required time limits.

   f. that lapsed policies are renewed where applicable.

5. Determine whether the institution has taken steps to correct violations regarding flood insurance which may have been cited in previous examinations.

FLOOD INSURANCE

EXAMINATION CHECKLIST

1. Does the institution offer or extend consumer or business loans (purchase or nonpurchase) 1/ that are secured by improved real property or manufactured homes as defined in the provisions of the National Flood Insurance Program, and if yes, does a review of loan records indicate that covered loans are offered or extended in communities with officially designated SFHA refer to official FEMA eligibility list)? Yes No

   If yes, complete the following sections.

Methods of Flood Hazard Determination

2. Does the review of records indicate the use of a satisfactory method of making flood hazard determinations? Yes No

3. Is a proper method used by branch and subsidiary offices? Yes No

4. If the institution makes the flood hazard determination (and does not have this function performed by an outside agent through a contract), are current flood maps maintained for all communities in the institution's trade area? Yes No

5. Does the institution ensure that flood insurance is obtained where appropriate? Yes No

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1/ The Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency interpret the term financial assistance to include only the origination of mortgage loans and not the purchase of loans.

6. Indicate the method(s) used to make SFHA determinations.

____

____

Consumer Notification Procedures

7. Does a review of forms and procedures indicate that proper written notices are provided in connection with covered loans? Yes No

8. If the institution does not provide such notification, does it obtain satisfactory written assurances from a seller or lessor that the borrower has been properly notified of the fact that the property is located in a SFHA prior to the execution of an agreement? Yes No

9. Are notifications provided within the required time limit? Yes No

10. Prior to closing, does the institution obtain a satisfactory written acknowledgement from the borrower that the improved property or manufactured home securing the loan is or will be located in a SFHA? Yes No

11. Indicate the method(s) of notification used.

____

____

Sufficiency of Coverage

12. Does a review of files (or procedures) indicate that a sufficient amount of flood insurance coverage is required of loans granted within communities in:

a. the Emergency Program? Yes No

b. the Regular Program? Yes No

13. Does a review of files (or procedures) indicate that insurance policies are renewed annually? (Refer to workpapers from past examinations and list applicable customer names.) Yes No

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Nonparticipating Communities

14. If the institution grants federally related loans (such as FHA, VA, SBA loans) does it refrain from granting such loans when the property securing the loan is or will be located in a SFHA of a non-participating community? Yes No

15. Are proper notices of the unavailability of Federal disaster relief assistance (conventional loans only) given to borrowers whose property is located in a SFHA of a non-participating community? Yes No

ATTACHMENT C

MANDATORY PURCHASE OF FLOOD INSURANCE

(FDIC BANK LETTER-39-88 (DECEMBER 5, 1988))

FDIC
Federal Deposit Insurance Corporation
Washington, D.C. 20429-9990

Office of Consumer Affairs
(202) 898-3536
(800) 424-5488

National Flood Insurance Program

BL-39-88
December 5, 1988

TO: CHIEF EXECUTIVE OFFICERS OF INSURED STATE NONMEMBER BANKS

SUBJECT: Mandatory Purchase of Flood Insurance

The results of a recent Flood Insurance Administration study reveal that only 13 percent of insurable household units in special flood hazard areas are covered by flood insurance. The study also indicates that there are at least nine million sales or resales of household units each year, of which approximately one million involve units in special flood hazard areas. For these one million units in special flood hazard areas, only 400,000 new flood insurance policies are added each year, offset by virtually the same number of policies that are not being renewed.

Banks should review their procedures to ensure that they are not making, increasing, extending or renewing any loan (including home equity loans) secured by improved real estate or a mobile home located in a flood hazard area of a community participating in the National Flood Insurance Program unless flood insurance has been purchased by the borrower. Banks must also ensure that coverage is renewed and maintained for the duration of the loan.

The booklet, Questions and Answers on the National Flood Insurance Program, and an order form for flood insurance public awareness materials are enclosed.

Janice M. Smith

Janice M. Smith
Director

Enclosures

Distribution: Insured State Nonmember Banks (Commercial and Savings)

FLOOD INSURANCE
PUBLIC AWARENESS MATERIALS
ORDER FORM

Please send me the flood insurance materials indicated below, available in any quantity, and at no charge.

Form Number	Title	Quantity Circle One	Quantity Over 100
900-114	Spring Floods...More Than Just a Threat *(Spring Stuffer)*	5 15 50 100	________
900-090	Is There a Leak in Your Protection? *(All Season Stuffer)*	5 15 50 100	________
900-153	Summer Storms, Summer Floods *(Summer Stuffer)*	5 15 50 100	________
900-148	Hurricanes & Summer Storms *(Hurricane Stuffer)*	5 15 50 100	________
593-238B	Worst Guest List *(Hurricane Stuffer)*	5 15 50 100	________
593-248B	Season's Warnings *(Winter Stuffer)*	5 15 50 100	________
593-236	Flood...Are You Protected from the Next Disaster? *(Brochure)*	5 15 50 100	________
593-237	In the Event of a Flood *(Brochure)*	5 15 50 100	________
593-190	NOTICE: This Policy Does Not Cover Flood Loss *(Stuffer)*	5 15 50 100	________
593-222	Questions and Answers on the NFIP *(Booklet)* New Edition	5 15 50 100	________
593-192	NOTICE: This Policy Does Not Cover Flood Loss *(Sticker)*	5 15 50 100	________
900-149	In the Calm Before the Storm *(Mini-Poster)*	5 15 50 100	________
900-113	Spring Floods...More Than Just a Threat *(Mini-Poster)*	5 15 50 100	________
Other	________ (Please Give Title or Description)	5 15 50 100	________
	________	5 15 50 100	________
	________	5 15 50 100	________

Fill out your name, title, agency/organization, address, city, state, zip code, and telephone number.
Mail to: P.O. Box 499, Lanham, MD 20706, Attention: Public Affairs Office.

NAME: ________

TITLE: ________

ORGANIZATION: ________

ADDRESS: ________
(NO P.O. BOXES)

CITY: ________ STATE: ________ ZIP: ________

TELEPHONE: ________

593-125B (1/88)

—PRODUCERS NOTICE—

Under the terms of the new contract with Computer Sciences Corporation to act as the servicing agent for the NFIP, the NFIP Regional Offices will be realigned as of October 1, 1988. The five remaining Regions will be supported by additional offices in the Philadelphia area, Puerto Rico, and New Orleans.

The reduction of these offices reflects the fact that the Write Your Own companies now write 74 percent of the flood business and are performing many of the activities previously handled by the NFIP Regional Offices.

The toll-free numbers should be used for all technical inquiries. The NFIP toll-free numbers are unchanged and are available from 8 a.m. to 8 p.m. Eastern Time.

Nationwide 1-800-638-6620

Maryland 1-800-492-6605

Alaska, Hawaii, Puerto Rico,
Guam, and the Virgin Islands
1-800-638-6831

REVISED NFIP REGIONAL OFFICE LOCATIONS AND STAFF

TERRITORY	NFIP REGIONAL OFFICE	NFIP REGIONAL STAFF
CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WVA	NFIP NORTHEASTERN REGION Suite 301 639 Granite Street Braintree, MA 02184 (617) 848-1908	Thomas Gann, Regional Manager Leslie Gray, Marketing Representative
	P.O. Box 1238 Havertown, PA 19083 (215) 254-0181	Mary Welsh, Marketing Representative
Puerto Rico Virgin Islands	NFIP PUERTO RICO P.O. Box 41261 Minillas Station San Juan, PR 00940 (809) 722-6790	Samuel Arana, Marketing Representative
AL, FL, GA, KY, MS, NC, SC, TN	NFIP SOUTHEASTERN REGION 5775 Peachtree Dunwoody Road Building C, Suite 350 Atlanta, GA 30342 (404) 843-0222	Donald Evans, Regional Manager Roger Widdifield, Marketing Representative
CO, IA, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WI, WY	NFIP NORTH CENTRAL REGION 800 Roosevelt Road Building B, Suite 418 Glen Ellyn, IL 60137 (312) 790-9680	Pete Yarnot, Regional Manager Valerie Schmitt, Marketing Representative
AR, LA, NM, OK, TX	NFIP SOUTH CENTRAL REGION Suite 105 7035 W. Tidwell Road Houston, TX 77092 (713) 690-0115	Bill Barton, Regional Manager Deborah Frank, Marketing Representative
	P.O. Box 29492 New Orleans, LA 70189-0492 (504) 243-0248	Brenda Johnson, Marketing Representative
AK, AZ, CA, GUAM, HI, ID, NV, OR, WA	NFIP WESTERN REGION 1311 Clegg Street Petaluma, CA 94952 (707) 765-1363	John Bessermin, Regional Manager Brom Hunt, Marketing Representative

Effective 10/01/88

ATTACHMENT D

NEW PREFERRED RISK AND CONDOMINIUM MASTER POLICIES

FROM NATIONAL FLOOD INSURANCE PROGRAM

(FDIC BANK LETTER-19-89 (APRIL 14, 1989))

FDIC
Federal Deposit Insurance Corporation
Washington, D.C. 20429-9990

Office of Consumer Affairs
(202) 898-3536
(800) 424-5488

NATIONAL FLOOD INSURANCE

BL-19-89
April 14, 1989

TO: CHIEF EXECUTIVE OFFICERS OF
INSURED STATE NONMEMBER BANKS

SUBJECT: New Preferred Risk and Condominium Master Policies From National Flood Insurance Program

Two new flood insurance policies are now available from the National Flood Insurance Program: A Preferred Risk policy for one-to-four family residences; and a Condominium Association Master Policy that provides higher insurance limits on losses from flooding for condominium buildings.

Banks should be aware of these policies, which are intended to make flood insurance more affordable for property owners in moderate and minimal risk areas, and to provide greater amounts of flood coverage to the growing number of condominium areas.

A copy of the Federal Emergency Management Agency's news release announcing the availability of these new policies is attached for your information.

Janice M. Smith
Janice M. Smith
Director

Attachment

Distribution: FDIC-Supervised Banks (Commercial and Savings)

FEDERAL EMERGENCY MANAGEMENT AGENCY

News

Office of Public Affairs / Washington, DC 20472

Media Contact:
David L. Cobb
(202) 646-2774

Release No. 88-69
Release Date:
27 December 1988

NEW CONDO MASTER, PREFERRED RISK POLICIES ANNOUNCED BY NFIP

WASHINGTON -- Two new flood insurance policies will be available from the National Flood Insurance Program (NFIP) effective Jan. 1, 1989.

The Federal Insurance Administration (FIA), which oversees the NFIP, has developed these new policies to make flood insurance more affordable for property owners in moderate and minimal flood risk areas and provide greater amounts of flood coverage to the growing number of condominium owners. FIA is a part of the Federal Emergency Management Agency.

The new Preferred Risk policy can be written for one-to-four family residential structures only. Highlights of this easy-to-rate, easy-to-sell policy include:

- o Residential buildings in zones B, C, and X with minimal claim history will be eligible.
- o Only three levels of coverage and premiums will be available, thus eliminating the need to refer to the Flood Insurance Manual to provide a quote.

(more)

The amounts of coverage and their premiums are:

Coverage	Premium: Buildings without basements	Premium: Buildings with basements
$20,000 (building) $ 5,000 (contents)	$ 75	$100
$30,000 (building) $ 8,000 (contents)	$100	$125
$50,000 (building) $12,000 (contents)	$125	$150

The second new policy is the Condominium Association Master Policy which will be available to insure high-rise residential buildings with the usual "unit owners as their interest may appear" caveat. The main feature of this policy is that it will provide higher insurance limits to protect the association from losses resulting from flooding.

All units within the condominium association will be covered. The building should be insured to value or carry to maximum amounts of insurance available under this program.

This policy will allow the purchase of insurance coverage up to the actual cash value of the building or to the total number of units multiplied by the maximum insurance available to an individual unit, whichever is less.

For example, for a 10-unit, $2-million condominum building, the association may purchase up to $1.85 million of coverage (10 units times $185,000 maximum coverage per unit) because the actual cash value of the building is higher and the condominium is in a Regular Program Community.

(more)

NEW CONDO MASTER, PREFERRED RISK - Add Two

Additional features of this new policy are:

- o The current NFIP application and General Property policy form will be used.
- o Only one expense constant will be applied to the premium.
- o Only one deductible will apply to each coverage.
- o Unit owners will remain eligible for individual personal contents policies.

Additional information on these new coverages may be obtained by contacting the NFIP at 1-800-638-6620. In Maryland, call 1-800-492-6605, and outside continental United States call 1-800-638-6831.