

# FEDERAL RESERVE BANK OF NEW YORK

[ Circular No. 8100  
April 27, 1977 ]

## LOANS ON PROPERTY IN FLOOD HAZARD AREAS

### Technical Amendment and Proposed Amendment to Regulation H

To All State Member Banks, and Others Concerned,  
in the Second Federal Reserve District:

Following is the text of a statement issued April 13 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today proposed a regulatory amendment that generally would prohibit State member banks from purchasing loans on improved real estate or mobile homes located in a flood hazard area if the property is not covered by flood insurance.

The Board will receive comment through May 20, 1977.

At the same time the Board announced adoption of four technical amendments to the flood insurance provisions of its Regulation H (State member banks) to make the regulation conform to recent changes in the Flood Disaster Protection Act of 1973 ("Flood Act").

Regulation H now provides, pursuant to the Flood Act, that State member banks may not make, increase, extend or renew loans on property located in areas identified by the Department of Housing and Urban Development as a flood hazard area, unless the property is covered by Federally subsidized flood insurance. Under the proposed amendment, the prohibition would be extended to the purchase of loans on property in flood hazard areas not covered by flood insurance. The prohibition on purchases of such loans would apply also to participation in them.

The technical amendments to Regulation H adopted by the Board exempt from the flood insurance requirements of the regulation:

- Loans secured by a dwelling occupied as a residence before March 1, 1976.
- Loans on an office or other building of a small business occupied before January 1, 1976, up to a dollar limit to be established by the Secretary of Housing and Urban Development. The Secretary has proposed a \$100,000 ceiling.
- Improvement or rehabilitation loans on residences occupied before January 1, 1976 where such loans do not exceed \$5,000.
- Loans to finance nonresidential additions or improvements on a farm, up to a dollar limit to be established by the Secretary of Housing and Urban Development. The Secretary has proposed a \$25,000 ceiling.

Printed below is an excerpt from the *Federal Register* of April 20, containing the text of the proposed amendment. Comments thereon should be submitted by May 20, 1977, and may be sent to our Regulations Division.

In addition, enclosed is a copy of the technical amendment to Regulation H. Questions thereon may be directed to our Regulations Division (Tel. No. 212-791-5914).

PAUL A. VOLCKER, *President.*

#### FEDERAL RESERVE SYSTEM

[ 12 CFR Part 208 ]

[ Reg. H; Docket No. R-0096 ]

#### MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

##### Loans by State Member Banks in Flood-Prone Areas

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed Rule.

**SUMMARY:** The Board proposes to amend its Regulation H in order to pro-

vide that State member banks may not purchase a loan secured by improved real estate or by a mobile home located in an identified flood hazard area when such property is not covered by flood insurance (hereinafter an "uninsured loan"). Presently, Regulation H provides that no State member bank shall "make, increase, extend or renew" an uninsured loan in a flood hazard area. The addition of the word "purchase" to these sections would further implement the purposes of the Act and prevent possible circumvention of its provisions by prohibiting State member banks from purchasing an uninsured loan which, if directly made by the bank, would be required to be accompanied by flood insurance.

**DATE:** Comments must be received on or before May 20, 1977.

**ADDRESS:** Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the docket No. R-0096.

**FOR FURTHER INFORMATION CONTACT:**

Allen L. Raiken, Assistant General Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. (202-452-3625).

(OVER)

**SUPPLEMENTARY INFORMATION:**  
The Board proposes to take this action pursuant to its rulemaking authority under the Flood Disaster Protection Act of 1973, as amended ("Act") (42 U.S.C. 4012a(b), 4104(b), and 4128).

The Act provides for a national flood insurance program generally administered by the Federal Insurance Administration within the Department of Housing and Urban Development. The principal thrust of the program is to provide Federally subsidized flood insurance to owners of improved real property that is located in a flood hazard area. To accomplish this and to promote prudent land use techniques, the Act requires State and local communities to participate in the flood insurance program (through the adoption of adequate flood plain management standards) before Federally subsidized insurance is made available to local property owners. The subsidized flood insurance is issued and sold by a pool of insurance companies that generally share in the risks of the policies. The purposes of the structure of the Federally subsidized private insurance pool are, among other things, to provide a preventive alternative to massive doses of Federal disaster relief funds that would normally be made available in areas struck by floods and to promote the financial stability of Federally insured financial institutions whose assets include mortgage loans secured by property in flood-prone areas.

Under the Act, Federally regulated banks are generally prohibited from "making, increasing, extending, or renewing" a loan not covered by flood insurance that is secured by improved real estate or a mobile home located in a flood hazard area. The Act does not specifically mention the "purchase" of a loan and the Board's flood insurance regulation does not specifically include purchases of uninsured loans within its prohibitions. However, Congress stated in the preamble of the Act that a purpose of the statute is to require the purchase of flood insurance by property owners who are assisted by Federally regulated or insured financial institutions in acquiring property in a flood hazard area. In light of this and the other purposes of the Act, particularly the financial stability of Federally insured financial institutions, it appears that a broad construction of the Act's provisions is appropriate to ensure, to the extent possible, the lessening of financial losses that may be suffered by property owners and others in flood-prone areas.

The Acting Administrator of the Federal Insurance Administration has requested that the Board consider amending Regulation H to specifically apply its requirements to loans purchased by member banks from third parties. In view of this request, the Board has reviewed this matter, including previous opinions issued by the Board's staff, and believes that its Regulation H should be amended to include loan purchases within its flood insurance requirements.

The Board is of the opinion that since the word "make" is not defined in the Act, it is appropriate in order to carry out the underlying purposes of the Act to specifically include the purchase of a loan in the Board's regulation. The Board believes that without such an amendment, the Act could easily be circumvented and the Congressional purposes behind its enactment thwarted. For example, under the present regulation a State member bank wishing to avoid the Act's requirements could purchase an uninsured loan in the secondary market which if directly made by the bank would be required to be accompanied by flood insurance. In the Board's opinion, to allow such an obvious method for circumvention to exist is directly opposed to the Congressional intent behind the Act.

The Board believes that in situations where a State member bank purchases uninsured loans after they are originated, whether the purchase is accomplished under a formal agreement or merely in the normal course of business, or whether the purchaser is affiliated with the seller of the loan, the loan should be deemed to have been "made" by the bank for purposes of the Act. Purchases covered by this amendment may take the form of a direct purchase by a State member bank from a mortgage broker of a small number and amount of loans, or it may involve the purchase of a participation interest in one or more loans originated by a lead bank, insurance company, or other financial corporation.

With respect to the effective date of the amendments, it is proposed that the amendments apply to uninsured loans purchased after the date of final publication of the amendments, but they would not apply to: (a) such loans originated prior to the publication date, or (b) loans purchased after the publication date that are purchased pursuant to a contractual commitment existing prior to the publication date. The Board believes that "prospective" amendments are appropriate since they represent an extension of the Board's regulation in this area.

Accordingly, it is proposed to amend § 208.8(e) of Regulation H by adding the term "purchase" to paragraphs (1), (4), and (5) thereof, and by adding a new paragraph (6) to provide a "grandfather" provision for the purchase of uninsured loans. The provisions of Regulation H proposed to be amended would read as follows:

§ 208.8 Banking practices.

(e) *Loans by State member banks in identified flood hazard areas.* (1) No State member bank shall make (including purchase, except as provided in paragraph (e) (6) of this section), increase, extend or renew any loan \* \* \*.

(4) Each State member bank shall as a condition of making (including purchasing, except as provided in paragraph

(e) (6) of this section), increasing, extending, or renewing any loan \* \* \*.

(5) Except as provided in paragraph (e) (6) of this section, on and after one year following the date of official notification to the chief executive officer of a community that the community is one containing special flood hazard areas no State member bank shall make (including purchase, except as provided in paragraph (e) (6) of this section), increase, extend, or renew any loan \* \* \*.

(6) *Purchase of loans.* The provisions of this section do not prohibit the purchase of a loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards without compliance with the flood insurance requirements in said paragraphs (1) and (5), if:

(i) With respect to paragraph (e) (1) of this section, such loan was closed before the effective date of this amendment, or was closed pursuant to a loan commitment outstanding as of such date and such loan has not thereafter been increased, extended, or renewed;

(ii) With respect to the first sentence of paragraph (e) (5) of this section, such loan was closed before the effective date of this amendment or one year after notification that the community is one containing special flood hazard areas, whichever is later, or was closed pursuant to a loan commitment outstanding as of the applicable date, and has not thereafter been increased, extended, or renewed; or

(iii) Such loan qualifies for exemption pursuant to paragraph (e) (5) (i), (ii), (iii), or (iv) of this section.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, comments, views, or arguments. Any requests for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

Any views or requests for a hearing should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 20, 1977. All material submitted should include the docket No. R-0096. All views expressed in written comments on the proposal and received by that date will be considered by the Board. Such material will be made available for inspection and copying upon request, except as provided in the Board's Rules Regarding Availability of Information (12 CFR Part 261).

By order of the Board of Governors,  
April 13, 1977.

RUTH A. REISTER,  
Assistant Secretary of the Board.

[FR Doc.77-11390 Filed 4-19-77;8:45 am]

Board of Governors of the Federal Reserve System

MEMBERSHIP OF STATE BANKING INSTITUTIONS  
IN THE FEDERAL RESERVE SYSTEM

AMENDMENT TO REGULATION H

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. H; Doc. No. R-0095]

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Loans by State Member Banks in Flood-Prone Areas

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: These amendments to the flood insurance provisions of the Board's Regulation H allow State member banks to make certain real estate loans (on residences, small business property and farm buildings) in identified flood hazard areas of communities that are not participating in the National Flood Insurance Program. This action, which liberalizes the flood insurance purchase requirements of the Board's Regulation H, is necessary to conform the Board's Regulation to legislative amendments to the Flood Disaster Protection Act of 1973.

EFFECTIVE DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Assistant General Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3274.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 ("Flood Act") (42 U.S.C. 2001 et. seq.) generally provides that federally regulated lending institutions are prohibited from making loans not covered by flood insurance on improved real estate located in flood hazard areas. Since its enactment in 1973, the Flood Act has been amended several times, thereby necessitating conforming amendments to the flood insurance portion of the Board's Regulation H. During 1976, Pub. L. No. 94-375 amended section 202(b) of the Flood Act by adding the following four provisions liberalizing the Flood Act's insurance purchase requirements:

1. Amended section 202(b) generally permits loans not covered by flood insurance to be made by federally chartered, supervised or insured lending institutions for the purchase of a residential dwelling that is located in an identified flood hazard area and that was occupied as a residence prior to March 1, 1976, or one year following identification of the area as containing special flood hazards, whichever is later. This section previously provided, among other things, that such mortgage loans not covered by flood insurance could only be made until March 1, 1976 (or one year from the date of notification that the area is flood-prone, whichever is later). Thus, the amendment liberalizes the flood insurance program by exempting certain loans from the Flood Act's insurance purchase requirements, so long as the relevant dwelling was occupied as such prior to the March 1 date (or one year from the notification date, whichever is later).

2. The 1976 amendments also provide that loans on a small business' office or other building occupied prior to January 1, 1976 may be made without flood insurance coverage. This exemptive provision provides that the Secretary of Housing and Urban Development prescribe limits for such loans and the Secretary has recently proposed that the loans limit be \$100,000 (42 FR 16254, March 25, 1977). The provision is a new exemption from the Flood Act's insurance purchase requirements.

3. Another new exemptive provision provides that improvement or rehabilitation loans on residences occupied prior to January 1, 1976 may be made without flood insurance coverage when such loans in the aggregate do not exceed \$5,000.

4. The last amendment, also a new exemptive provision, provides that certain loans to finance nonresidential additions or improvements on a farm may be made without flood insurance coverage. The Secretary of HUD has the authority to set limits for such loans, comparable to the Secretary's authority regarding small business property loans, and has proposed that the loan limit be \$25,000 (42 FR 16254, March 25, 1977).

The purpose of the amendments to § 208.8 is to conform the provisions of existing Board regulations to the amendments to the Flood Act. Accordingly, ef-

fective immediately the last sentence of § 208.8(e) (5) of Regulation H shall be amended by deleting the language that follows " \* \* \* Provided," and adding the following:

§ 208.8 Banking practices.

\* \* \* \* \*

(e) Loans by State member banks in identified flood hazard areas.

\* \* \* \* \*

(5) \* \* \* that the prohibition contained in this section shall not apply to (i) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing in connection with such a dwelling, (ii) any loan, which does not exceed an amount prescribed by the Secretary of Housing and Urban Development, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (iii) any loan or loans, which in the aggregate do not exceed \$5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (iv) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.

\* \* \* \* \*

The provisions of section 553 of Title V, United States Code, relating to notice, public participation and deferred effective date were not followed in connection with these amendments because the amendments merely clarify Regulation H by implementing a statutory provision of Pub. L. 94-375 (August 3, 1976) without significant exercise of administrative discretion or interpretation.

By order of the Board of Governors, effective April 13, 1977.

RUTH A. REISTER,  
Assistant Secretary of the Board.

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