

FEDERAL RESERVE BANK
OF NEW YORK

St. Louis No. 10349

June 6, 1990

FLOOD INSURANCE PURCHASE REQUIREMENTS
Guidelines

*To All State Member Banks
in the Second Federal Reserve District:*

The enclosed booklet, Mandatory Purchase of Flood Insurance Guidelines, published by the Federal Emergency Management Agency (FEMA), contains Federal Insurance Administration Guidelines to address numerous questions that have arisen since the last revision.

The Guidelines interpret statutory provisions that, among other things, require lenders to compel borrowers to purchase flood insurance as added protection for a loan where the security consists of improved real estate or a mobile home that is located in a special flood hazard area and is eligible for flood insurance under the National Flood Insurance Program (NFIP).

Where property is security for a loan and is located in a special flood hazard area, but is not eligible for flood insurance under the NFIP, the lender must notify the borrower as to whether Federal disaster relief will be available to the property in the event of a flood. The lender must also notify the purchaser or lessee of the improved real property or mobile home, in writing, of the special flood hazard to which the property is exposed, or obtain satisfactory assurances that the seller or lessor has provided such notification.

These Guidelines supplement regulations issued by Federal agencies to implement the statutory requirements. They are designed to promote greater uniformity and understanding of the flood-insurance purchase requirements among Federal agencies, private lending institutions and their trade associations, and the public. Although the Guidelines are not binding on the Federal agencies responsible for implementing the statutory provisions, the Federal Financial Institutions Examinations Council cooperated in the revision of the Guidelines and has agreed to disseminate them.

Questions regarding the Guidelines may be directed to the Compliance Examinations Department of this Bank (Tel. No. 212-720-8136). A copy of the Guidelines brochure is being sent to all member banks in this District; additional copies may be obtained directly from FEMA by calling (202) 646-3484 or writing to FEMA, P.O. Box 70274, Washington, D.C. 20024.

MARGARET E. BRUSH,
Assistant Chief Examiner.

AT - Civ. No. 10349

Mandatory Purchase of Flood Insurance Guidelines



July 13, 1989

Federal Emergency Management Agency

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

MANDATORY PURCHASE OF FLOOD INSURANCE

Guidelines

Agency: Federal Emergency Management Agency, Federal Insurance Administration

Action: Issuance of Guidelines

Summary: These Guidelines pertain to the mandatory flood insurance purchase requirements contained in Sections 102(a) and 102(b) of the Flood Disaster Protection Act of 1973, as amended, (codified as Sections 4012a(a) and 4012a(b) of 42 USC), (Public Law 93-234, 87 Stat.975), December 31, 1973, and reflect experience gained by the Federal Insurance Administration (FIA) in its administration of the National Flood Insurance Program over the past twenty years following the enactment of the National Flood Insurance Act of 1968, as amended. (Public Law 90-448, 82 Stat.572, 42 USC 4001-4128). They revise and replace Guidelines previously published in the Federal Register on July 17, 1974, at pages 26186-93; as revised on February 17, 1978, at pages 7142-48; on March 22, 1978, at page 11862; and on July 21, 1980, at pages 48711 and 48712.

Supplementary Information: The implementation of the statutory mandatory flood insurance purchase requirements of the 1973 Act cited above is the responsibility of Federal Agencies and Federal Instrumentalities and does not rest upon the Federal Insurance Administration (FIA). However, Section 205(b) of the 1973 Act (42 USC 4128(b)) provides that Federal Agencies and Federal Instrumentalities shall, in cooperation with the Director of the Federal Emergency Management

Agency, issue appropriate rules and regulations to govern the carrying out of the Agencies' and Instrumentalities' responsibilities under the 1973 Act.

Pursuant to this mandate for cooperation, during the period in which FIA was a part of the United States Department of Housing and Urban Development, FIA issued Guidelines designed to provide such guidance concerning the insurance purchase requirements as might be helpful in promoting greater uniformity and understanding of the requirements among Federal agencies, Federal instrumentalities, private lending institutions, and their trade associations, and the public. Over the past ten years, numerous questions of interpretation have arisen which have been discussed at many productive meetings between FIA and representatives of Federal instrumentalities and agencies. While FIA's Guidelines are not binding upon these groups, FIA was encouraged by the Federal Financial Institutions Examination Council to update the earlier Guidelines, and the Council members, who have reviewed interim drafts of these Guidelines and offered valuable suggestions, have agreed to disseminate this final edition. FIA wishes to express its deep appreciation for the assistance and suggestions received not only from the Council, but from others within the agencies and instrumentalities involved in the mandatory flood insurance purchase requirements. In publishing these Guidelines, FIA invites continuing dialogue with all interested parties.

Effective Date: Upon publication in the Federal Register of July 13, 1989 at pages 29666 - 29695.

FOR FURTHER INFORMATION CONTACT:

James M. Rose, Jr., Executive Assistant to the Federal Insurance Administrator, Federal Emergency Management Agency, Federal Insurance Administration, Washington, D.C. 20472, (202) 646-2780.

Mandatory Purchase of Flood Insurance Guidelines

CONTENTS

The Guidelines are intended to provide guidance to Federal agencies, Federal Financial Regulatory Agencies (defined by statute as "Federal Instrumentalities"), lenders, borrowers and the general public. They are divided into six sections, A through F, as follows:

Page

05	Section A, an introduction describing the National Flood Insurance Program (NFIP), and, through a tracing of its legislative history, providing the events and rationale which led to the enactment of the mandatory flood insurance purchase requirement.	11	3. Effect of Letters of Map Amendment and Letters of Map Revision on the flood insurance purchase requirement
5	1. Statutory authority for the NFIP	11	4. What is "Financial Assistance" under the 1973 Act?
5	2. Background history and brief description of the NFIP	12	5. How much flood insurance is available?
6	3. Status of studies and maps for the NFIP as of January 1, 1989	13	6. How much flood insurance must be purchased?
7	4. Letters of Map Amendment and Letters of Map Revision	13	7. Mandatory flood insurance purchase requirements as determined by the Small Business Administration
8	Section B, describing the legislative background and the provisions of the Mandatory Flood Insurance Purchase Requirements of the 1973 Act, and listing six fundamental facts necessary for an understanding of the requirements.	14	8. Restrictions on federal financial assistance by Federal officers and agencies in nonparticipating communities
8	1. Background and legislative history of the Flood Disaster Protection Act of 1973	14	Section D, describing the application of the 1973 Act to Federal instrumentalities and private lenders subject to their jurisdiction.
9	2. Basic description of Mandatory Flood Insurance Purchase Requirements	14	1. Application of the 1973 Act to Federal instrumentalities and to private lenders
9	3. Six basic components of the 1973 Act	14	(a) Federal Instrumentalities defined
10	Section C, describing the application of the 1973 Act to Federal Officers and Agencies.	15	(b) Legislative purposes and specific mandate
10	1. Federal Agencies defined	15	(c) How much flood insurance must be purchased, for how long, and to what transactions does the purchase requirement apply?
10	2. Application of the 1973 Act to Federal Officers and Agencies in communities participating in the NFIP	15	2. Coastal Barrier Resources Act (COBRA)
		16	3. Effect of Letters of Map Amendment and Letters of Map Revision
		17	4. Application of 1973 Act upon conventional loans in nonparticipating communities
		17	(a) What is a conventional loan?
		17	(b) Authority for lenders to make conventional loans in special

Federal Emergency Management Agency

- flood hazard areas of nonparticipating communities
- 17(c) Notification requirements and Notice Form
- 18 Section E, consisting of Guidelines to an interpretation of the 1973 Act, with nine subsections discussing:
- 181. Standards by which lenders are judged
- 18(a) Significance of the location of the structure
- 18(b) Examination of the map
- 19(c) The "Good Faith Standard"
- 19(d) The lender's reliance upon assistance
- 19(e) Who must make determinations?
- 19(f) What is determined?
- 20(g) How to record that a determination was made
- 20(h) The ultimate responsibility of the lender
- 202. Should the amount of insurance required reflect the value of the land?
- 20(a) The 1973 Act refers to buildings and mobile homes
- 21(b) What the NFIP Policy covers
- 21(c) What if the loan is secured only by land upon which there are no structures?
- 21(d) What if a detached garage of a residential property, to which 10 percent of the principal structure's insurance is applicable, is in the special flood hazard area, while the principal structure is outside and what is the status of a tool shed or shack similarly located?
- 223. What is the impact of the flood insurance purchase requirement if improvements on the real property are of nominal value, and the purpose of the loan transaction is primarily to facilitate the purchase of land for subsequent development?
- 22(a) Status of surplus buildings of nominal value on land purchased for development
- 22(b) What if there is a structure in a special flood hazard area which is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building?
- 23(c) NFIP deductibles and definition of structure
- 23(d) Buildings in the course of construction
- 244. Unavailability of flood insurance for specific buildings in communities participating in the NFIP
- 24(a) Coastal Barrier Resources Act (COBRA)
- 24(b) Section 1316 of the 1973 Act and buildings in violation of State or local laws
- 25(c) Section 1316, as applicable to Federal officers and agencies
- 25(d) NFIP underwriting restrictions on eligibility or availability of flood insurance
- 255. Applicability of the 1973 Act to purchase of mortgages by lenders
- 256. Acceptance of private flood insurance policies and "Write Your Own" policies
- 267. Lenders' remedies in the event of prior failure to require flood insurance
- 278. Home Equity Loans under the 1973 Act
- 289. Federal Financial Institutions Interagency Examination Council

Mandatory Purchase of Flood Insurance Guidelines

- | | | | | | | | |
|----|--|--|--|----|-----------------------------------|-----|--|
| | procedures and examiner checklist for compliance | 33 | ..... | 7. | Residential coverage - unit owner | | |
| 30 | ..... | Section F describing requirements of the 1973 Act as to condominiums | | 34 | ..... | 8. | Residential coverage - condominium association |
| 30 | ..... | 1. | Insurance/property repair responsibilities of condominium associations | 34 | ..... | 9. | Condominium Master Policy (CMP) under the NFIP |
| 31 | ..... | 2. | Lenders' interest | 35 | ..... | 10. | Non-residential coverage - condominiums |
| 31 | ..... | 3. | Nature of condominium ownership/lenders exposure | 35 | ..... | 11. | Coverage options |
| 32 | ..... | 4. | Peril of flood | 35 | ..... | (a) | Individual Dwelling Policy |
| 32 | ..... | 5. | Changes in the market place | 35 | ..... | (b) | General Property Policy |
| 33 | ..... | 6. | NFIP coverage - satisfying lender requirements | 35 | ..... | (c) | Condominium Master Policy |
| | | | | 44 | ..... |  | An index follows these sections |

A. INTRODUCTION

1. STATUTORY AUTHORITY FOR THE NATIONAL FLOOD INSURANCE PROGRAM

The National Flood Insurance Program (NFIP) became effective on January 28, 1969, (33 FR 17804) and was authorized by the National Flood Insurance Act of 1968, (Title XIII of the Housing and Urban Development Act of 1968, as amended, Public Law 90-448, 82 Stat 476, 42 U.S.C. 4001-4128). The position of Federal Insurance Administrator was authorized by the Urban Property Protection and Reinsurance Act of 1968, (Title XI of the Housing and Urban Development Act of 1968, and the Federal Insurance Administration was established under the Housing and Urban Development Act of 1968 as part of the United States Department of Housing and Urban Development (HUD). The Secretary of HUD delegated to the Federal Insurance Administrator the responsibility for administering the NFIP.

Subsequently, on June 19, 1978, President Carter forwarded to the Congress Reorganization Plan No. 3 of 1978 (43 FR 41493) (which had the effect of a Federal statute). This plan, in addition to creating the Federal Emergency Management Agency (FEMA), transferred the functions authorized and described in the National Flood Insurance Act of 1968 and the position of Federal Insurance Administrator to FEMA. The organization of FEMA was further defined in Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Executive Order 12148, dated June 20, 1979. On April 1, 1979, in a notice published in 44 FR 20962, and later codified at 44 CFR 2.64, the Director of FEMA delegated responsibility for the administration of the NFIP to the Federal Insurance Administrator of the Federal Insurance Administration (FIA), which had become a Directorate within FEMA.

2. BACKGROUND HISTORY AND BRIEF DESCRIPTION OF THE NATIONAL FLOOD INSURANCE PROGRAM

Between 70 and 80 percent of all natural disasters in the United States involve flooding, and from its earliest days the Federal government has been involved with the peril of flooding. Through re-channeling, or through dams and levees, restricting the flow of waters, as well as through the development of hydroelectric power and irrigation, the Federal government has attempted to ameliorate the effects of flooding. But in spite of all these actions, vast sums of money have had to be expended through the response mechanism of Federal Disaster Assistance.

In 1968 the Congress embarked upon a new course of action and focused upon ways in which flood damage could be avoided or reduced by making the public aware of its potential exposure to flooding and by providing, through the authorization of a Federal flood insurance program, an incentive to encourage communities to adopt floodplain management ordinances that would mitigate the effects of flooding upon new construction. Taking note of the fact that insurance coverage against the peril of flooding was virtually unavailable in the private sector, the Congress enacted the National Flood Insurance Act of 1968, and authorized the National Flood Insurance Program, which represented a new approach to assisting the victims of flooding by providing an opportunity for property owners to purchase from the Federal government insurance protection for structures and contents exposed to the peril of flooding.

Because the availability of government flood insurance without hazard mitigation would only have increased the potential for flood damage by encouraging unwise construction,

Mandatory Purchase of Flood Insurance Guidelines

FIA was directed under the 1968 Act to conduct studies throughout the United States to determine in each community the location of areas of special flood hazard and to issue Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) showing the location of these areas and to notify each community of such identification.

Eligibility for the purchase of flood insurance was made available only to those individuals or corporations whose insurable property is located within a community that has agreed with the Federal government to adopt ordinances that will mitigate the impact of future flooding. The most significant of these required ordinances are those which, for example, condition the issuance of building permits for new residential construction in areas of special flood hazard upon the requirement that the building be constructed so that the lowest floor will be located above the base flood elevation, if that figure is provided on a Flood Insurance Rate Map issued by FIA.

Participating communities that fail to adequately enforce their floodplain management ordinances may be placed on probation if they do not take corrective actions within a specified time period. NFIP policyholders in that community will be notified of the pending probation and that their policies may become subject to a surcharge on their flood insurance premiums. If a community which has been placed on probation fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, a step which would terminate its status as a participating community. In that event, NFIP policies would not be renewed for property owners in that community and no new policies would be issued. Experience shows that the probation process leads to compliance and, as of January 1989, only three communities have had to be suspended for lack of compliance. However, communities are routinely suspended for failure to adopt or amend their floodplain management ordinances to incorporate new flood hazard information

or revisions to NFIP regulations. Experience shows that within a very short time most of these communities become participating again.

3. STATUS OF STUDIES AND MAPS FOR THE NATIONAL FLOOD INSURANCE PROGRAM AS OF JANUARY, 1989

Some 18,642 communities have been identified as flood prone through the publication of a flood map by FIA. The total number of communities participating in the NFIP is 17,797, including some 1,851 communities for which no special flood hazards have been identified and for which no map has been published. Property owners within these participating communities are eligible to purchase flood insurance to protect buildings located anywhere within such communities, both inside and outside of special flood hazard areas (subject to restrictions of the Coastal Barrier Resources Act, discussed below). Some 2,700 communities which have been mapped do not presently participate, and property owners in those communities are not eligible to purchase flood insurance.

While these figures constantly change, as a benchmark it may be useful to record the fact that as of January, 1989, of the 17,797 participating communities, 16,537 are in the Regular Program. Their property owners, therefore, are eligible to purchase the maximum amounts of insurance coverage available under the Program.

Presently, only 1,260 participating communities remain in the Emergency Program phase, where only limited amounts of insurance are available. Flood risk studies currently underway in these communities are scheduled for completion before September 30, 1991. Upon their completion, Flood Insurance Rate Maps will be issued and will replace the Flood Hazard Boundary Maps currently in effect for each of these communities. At that time, these communities will, also, be eligible for conversion

Federal Emergency Management Agency

to the Regular Program phase and eligible for higher amounts of insurance coverage.

Special flood hazard areas are determined with reference to the "100- year" flood standard, which is the national standard on which NFIP regulations are based. It is also the standard adopted by virtually every federal agency and most state agencies for the administration of their floodplain management programs. The 100-year flood, also referred to as a "base flood," is defined as the flood having a 1 percent probability of being equalled or exceeded in any given year. The risk of experiencing a flood of this magnitude increases with the length of time considered.

Of special interest to lenders is the fact that within the special flood hazard area there is a 26 percent chance (about one in four) of experiencing such a flood over a typical 30 year mortgage period. By contrast, during the term of a 30-year mortgage, there is only a 1 percent chance of suffering a fire loss.

But, while necessary for applying floodplain management requirements and establishing uniform flood insurance rates, the term 100-year flood can be misleading. Although it represents the long term average recurrence interval for a flood of this magnitude, such floods may be experienced in any given year. There have been numerous instances since the NFIP was established where communities have sustained two, and even three, 100- year or greater floods within a several year period. A notable example took place in the 1970s when within five years after experiencing Tropical Storm Agnes in 1972, Pennsylvania was battered by another 100-year flood, demonstrating the value of the standard as a tool for measuring exposure to a 100 year flood, but not for predicting its timing. The 100-year flood might be more properly termed the "1 percent annual chance flood", which represents its true probability of being equalled or exceeded in any year.

Special flood hazard areas include only those areas which are in the 100- year floodplain.

The delineation of areas subject to such inundation is determined by FEMA through engineering studies. Special flood hazard areas are usually refined into Zones A, AO, AH, AE, A99, VO, VE, or V. (Older maps utilize numbered A Zones, e.g. A1, A2,...A30, and numbered V Zones, e.g. V1, V2,...V30 in lieu of the newer AE and VE Zones, respectively. (New maps use fewer zone designations for purposes of simplicity). The term special flood hazard area does not include areas outside the 100-year floodplain, which are referred to as moderate to minimal risk and are designated Zone X. (Older maps differentiate the X Zone into Zones B and C, which represent moderate and minimal flood risks, respectively). Areas for which no flood hazard evaluation has been made by FEMA are designated as Zone D.)

4. LETTERS OF MAP AMENDMENT OR MAP REVISION REMOVING PROPERTIES FROM SPECIAL FLOOD HAZARD PROGRAMS

Situations occasionally arise in which a piece of real property is shown on a flood map as being in a special flood hazard area even though the property is, in fact, above the 100 year flood level. This happens because flood insurance maps cannot reflect every rise in terrain and there will be instances where there will be "natural islands" of high ground in the special flood hazard area that were inadvertently included in the special flood hazard area. Nevertheless, until the map has been changed, lenders are bound by the information shown on FIA maps and cannot validly make a determination on their own that is inconsistent with the map.

Fortunately, there is a very workable mechanism for resolving such problems. FIA has created an efficient procedure by which a property owner can submit elevation materials in support of a request for a Letter of Map Amendment (LOMA) removing the property from the special flood hazard area. Such a process involves only the property owner and the FIA and does not require that the community become involved.

Mandatory Purchase of Flood Insurance Guidelines

A related but different situation is presented when a property owner, whose land is within a special flood hazard area below the 100 year flood level, grades and fills the site to raise the level of the land above the 100 year flood level. This situation differs from the one above because in the previous situation the natural level of the land at the time that the map was issued was above the 100 year flood level and no artificial improvement was needed to accomplish that level. In cases where physical changes have had to be made to raise the level of the property above the base flood elevation, FIA will not issue a letter of map amendment. However, with the concurrence of the community FIA will issue a Letter of Map Revision (LOMR) which, for the purposes of the property owner will accomplish the same purpose. A LOMR can also be used to correct a mistake made in the original analysis or when conditions have changed as in the case of the construction or removal of a dam or other flood control structure.

The request must be made, or concurred in, by the community because changes in land level that result from grading and the placing of fill on the property may have an impact upon other property owners. The submission of a request for a letter of map revision from the community evidences that the change in land level has been reviewed by the community and been found to be compatible with the community's planning. Letters of map revision may be also be granted in situations where channels have been dug or reservoirs built to reduce base flood elevations and where levees or floodwalls have been constructed to protect areas. (It should be noted that in floodways of special flood hazard areas, which include the channel of a river and the adjacent floodplain that must be reserved in an unobstructed condition, the placing of fill or other development is not allowed if it will result in increased flood levels.) A seemingly related, but different, situation is presented when a property owner, whose land is at a level below the 100-year flood level, i.e., the base flood elevation, in a special flood hazard area, builds an elevated

building, supported by walls or pilings, whose lowest floor is above the 100-year flood level. In this situation there is no basis for the issuance of either a letter of map amendment or map revision. The building is still in the designated special flood hazard area and its foundation can come into direct contact with flood waters. However, the elevation of the building will be reflected in the lower insurance rate and premium that such elevation will have made possible. Only the Federal Insurance Administration can amend an official map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

B. THE MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENT

1. BACKGROUND AND LEGISLATIVE HISTORY OF THE FLOOD DISASTER PROTECTION ACT OF 1973

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. Unfortunately, despite the availability of the insurance, after major flooding disasters in 1972 it became evident that relatively few flood victims had purchased flood insurance. From the standpoint of the Federal government the question has been not whether the Federal government would be called upon to provide relief to those who suffered from flooding, but, rather, through what mechanism would Federal funds be made available. Therefore, the failure of the public to avail itself of the benefits of flood insurance as an alternative to the disaster assistance approach became a matter of concern to the Congress.

This concern was expressed by the Congress in the findings contained in Sections 2(a)(2), (3), (4) and (5) (42 USC 4002) of the Flood Disaster Protection Act of 1973, which noted

Federal Emergency Management Agency

"the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial and residential facilities" and that "property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended" and that "the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief".

The Congress defined its purpose in Section 2(b)(4) of the 1973 Act as being to "require the purchase of flood insurance by property owners who are being assisted by Federal programs or by Federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards".

2. BASIC DESCRIPTION OF MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS, AS CONTAINED IN THE FLOOD DISASTER PROTECTION ACT OF 1973

Since March 2, 1974, the Flood Disaster Protection Act of 1973, hereinafter the "1973 Act", has required the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance from any Federal officer or agency for acquisition or construction purposes with respect to any building or mobile home located in any area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, within any community participating in the National Flood Insurance Program. (Recent terminology adopted by the Department of Housing and Urban Development and regulatory changes in the language of the National Flood

Insurance Program's Standard Flood Insurance Policy refer to "mobile homes" as "manufactured homes.")

The Act also requires Federal Financial Regulatory Agencies (Federal Instrumentalities) to direct lenders subject to their regulatory jurisdiction to require borrowers, whose security consists of buildings or mobile homes located in a special flood hazard area in a participating community, to purchase flood insurance. Contents coverage is not required unless, as specified in the statute, there is any "personal property securing the loan", as well as improved real property.

3. SIX FUNDAMENTAL COMPONENTS OF THE 1973 ACT

In assessing the impact of the 1973 Act and gaining an understanding of its provisions, the six most important factors to keep in mind are:

(a) Although the intent of the statute is to require the purchase of flood insurance by borrowers in special flood hazard areas, the directives and prohibitions contained in the 1973 Act apply only to Federal officers and agencies, and to Federal Instrumentalities that are required by the statute to issue implementing rules. The 1973 Act, by itself, does not require or prohibit action on the part of communities, owners of improved real property, or lending institutions.

(b) The directives and prohibitions of the 1973 Act require implementing rules only as to transactions that involve improved real estate located in special flood hazard areas designated by FEMA on its Flood Hazard Boundary Maps and Flood Insurance Rate Maps, and whose Zone designations are A or V. Improved real estate, for purposes of the act, is property on which there is already standing, or in the course of construction, a walled and roofed building insurable under an NFIP flood insurance policy.

(c) Inasmuch as the NFIP does not insure land and provides coverage only for buildings, the fact that part of the borrower's real property may be located in a special flood hazard area

Mandatory Purchase of Flood Insurance Guidelines

does not require that flood insurance be purchased for a building located on that real property unless some portion of the building itself, and not just a portion or portions of the real property, is located in a special flood hazard area.

(d) Because the NFIP and its flood insurance policies are not available in communities that are not participating in the NFIP, the mandatory flood insurance purchase requirement applies only with respect to property located in special flood hazard areas in communities participating in the NFIP.

(e) As to properties located outside the special flood hazard areas, and whose Zone designations are B, C, X, or D, the 1973 Act does not apply and, therefore, there is no mandatory flood insurance purchase requirement.

(f) Lenders are free to consider requiring flood insurance in a participating community on the basis of their own business judgment, even if the building that is the security for a loan is located outside of a special flood hazard area. While the mandatory flood insurance purchase requirement applies only to properties located in special flood hazard areas of participating communities, it is important to remember that flood insurance is available throughout participating communities. This is especially significant in light of the fact that, historically, the NFIP's loss ratio indicates that one-third of claims paid have actually been outside of special flood hazard areas. Areas where lenders and property owners may wish to exercise additional caution include, but are not limited to, areas subject to flooding due to stormwater, areas where the NFIP has used approximate methods to map flood hazard areas, and the more remote areas where no flood hazard areas have been designated by FEMA. To facilitate the purchase of flood insurance outside of special flood hazard areas, in January, 1989, the NFIP began offering a low cost "preferred risk" policy for structures located in Zones B, C, and X.

Some properties in a participating community may be ineligible for flood insurance because

of statutory restrictions or underwriting rules of the the NFIP. The consequences of the unavailability of flood insurance in such instances will be discussed further along.

C. APPLICATION OF THE 1973 ACT TO FEDERAL OFFICERS AND AGENCIES

1. FEDERAL AGENCIES DEFINED

Federal Agencies are defined in Section 3(a)(2) of the 1973 Act (42 USC 4003(a)(2)), as "any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation".

2. APPLICATION OF THE 1973 ACT IN COMMUNITIES THAT ARE PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM

The first application of the mandatory flood insurance purchase provision of the 1973 Act is contained in Section 102 (a), 42 USC 4012a(a), which addresses the responsibility of Federal officers and agencies in approving financial assistance for acquisition or construction purposes for use in any special flood hazard area in communities that are participating in the NFIP. A community participates in the NFIP by entering into an agreement with the FIA to adopt and enforce ordinances which are designed to reduce the vulnerability of property in that community to the peril of flooding. In return for that participation, most owners of residential and commercial property in that community become eligible to purchase flood insurance for their buildings from the NFIP. If the community is participating in the NFIP, that participation makes flood insurance available to the property owners in that community and Federal officers and agencies are authorized to provide financial assistance in that community.

Federal Emergency Management Agency

But, under Section 102 (a) of the 1973 Act, Federal officers and agencies are prohibited from providing financial assistance unless the property to which that financial assistance is applicable is protected by flood insurance (if the particular property is eligible for flood insurance under the rules of the NFIP) and must, therefore, require the purchase of flood insurance as a condition of making such financial assistance available. The term "property" to which the mandatory flood insurance purchase requirement applies is described as "the building or mobile home and any personal property to which such financial assistance relates". The flood insurance must remain in force "during the anticipated economic life of the project" and the insurance coverage must be "in an amount that is at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less." (But note that when the amount of flood insurance that can be purchased was raised by the Congress in 1977, a statutory cap on the amount that must be purchased was established by the Congress.)

3. EFFECT OF LETTERS OF MAP AMENDMENT AND MAP REVISION UPON PURCHASE REQUIREMENT

Questions are frequently asked concerning buildings that are located on ground that is shown as being in a special flood hazard area, but that is actually above the 100 year flood level. As noted above, under Section A 4., there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property and the improvements thereon out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or a Letter of Map Revision, moving the improved real property from the special flood hazard area, Federal agencies (as well as lenders regulated by Federal Instrumentalities) must rely only upon flood hazard boundary maps and flood insurance rate maps.

Thus, if a building is shown as being in a special flood hazard area, the purchase requirements of the 1973 Act apply. When the property owner obtains a Letter of Map Amendment or Letter of Map Revision, he may submit the letter to the Federal agency and the Federal Agency may release the property owner from the obligation to purchase flood insurance. However, even though a Federal Agency is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the Agency has the discretionary right to continue to require flood insurance if the Agency chooses to do so. It must also be kept in mind that when a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the issuance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply.

The reason for requiring the insurance is that the foundation on which the house is elevated is still below the base flood elevation in the special flood hazard area where it remains exposed to the action of floodwaters.

4. WHAT IS "FINANCIAL ASSISTANCE?"

Federal "financial assistance" and federal "financial assistance for acquisition or construction purposes" are defined in Sections 3 (a)(3) and (4) of the 1973 Act (42 USC 4003), "Financial assistance" is defined as any "loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States," and similar forms of direct and indirect assistance from Federal agencies, such as Federal Housing Administration or Veterans Administration loans, insurance or guaranties. Federal "financial assistance for acquisition or construction purposes" is defined as "any form of financial assistance which is intended in whole or in part for the acquisition, con-

Mandatory Purchase of Flood Insurance Guidelines

struction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, whether or not the building is enhanced, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans."

Federal Agencies, such as the Federal Housing Administration, the Veterans Administration and the Small Business Administration and the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), the latter two having been specifically included in the definition contained in Section 3(a)(2) of the 1973 Act, are forbidden by the Act from approving any financial assistance in the form of a loan or guaranty of a loan in the case of a building to which such financial assistance relates which is located in a special flood hazard area unless flood insurance has been purchased to protect that building against the peril of flooding, thereby protecting the interests of the Federal entity against the consequences of flood damage to the property.

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corpo-

ration of the Department of Housing and Urban Development have interpreted the term "financial assistance" to include their purchase of mortgage loans from lending institutions and include in their definition of hazard insurance, the peril of flood. It should be noted that the servicing guidelines of FNMA and FHLMC require that the current servicer of loans sold to those agencies assume responsibility for flood insurance renewals. The term Federal financial assistance includes loans, grants, guarantees and similar forms of direct and indirect assistance from Federal agencies such as HUD, the Federal Housing Administration (FHA) and the SBA. The 1973 Act applies and thus restricts flood-related Federal financial assistance pursuant to the Disaster Relief Act of 1974. However, the current definition of financial assistance contained in Section 3(a)(4) of the 1973 Act does not apply to and, therefore, does not restrict assistance for disasters that are not related to flooding.

5. HOW MUCH FLOOD INSURANCE IS AVAILABLE?

The amounts of flood insurance currently available under the NFIP are as follows:

	Emergency program	Regular Program Maximum Insurance Available	Maximum Amount of Insurance Required by 1973 Act, as Amended in 1977*
Building Coverage			
Single-family dwelling	\$35,000	\$185,000	\$ 70,000
Other residential	100,000	250,000	200,000
Non-residential	100,000	200,000	200,000
Small Business	100,000	250,000	200,000
Contents Coverage (Per Unit)			
Residential	\$ 10,000	\$ 60,000	\$ 20,000
Non-Residential	100,000	200,000	200,000
Small Business	100,000	300,000	200,000
(Higher limits of basic coverage are available under the Emergency Program in Hawaii, Alaska, U.S. Virgin Islands, and Guam.)			
*Federal Instrumentalities, as well as lenders, while not required by statute, may choose to require insurance above this amount on the basis of their evaluation of the risk to which the property is exposed.			

6. HOW MUCH FLOOD INSURANCE MUST BE PURCHASED?

In addressing the question of how much insurance must be purchased, Section 102(a) of the 1973 Act prohibits the providing of financial assistance "unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan".

However, on October 12, 1977, the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised and made subject to a statutory cap by Section 1306(b)(6) of the National Flood Insurance Act of 1968, 42 USC 4013(b)(6)), which states: "the Flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973 do not apply to the additional flood insurance limits made available in excess of twice the limits made available under paragraph 1306(b)(1)".

Section 1306 (b)(1) authorizes the Federal Insurance Administration to make available under the lower limits of the Emergency Program \$35,000 of coverage for any single family dwelling and \$100,000 for any residential structure containing more than one dwelling unit. In the States of Alaska and Hawaii and in the Virgin Islands and Guam the figures are \$50,000 and \$150,000). Section 1306 (b)(1) makes available \$100,000 for commercial structures. Thus the maximum cap on the mandatory flood insurance purchase requirements provided by Section 1306(b)(6) is two

times these amounts, namely, \$70,000 for single family dwellings, and \$200,000 for other structures.

7. ARE THE AMOUNTS OF FLOOD INSURANCE THAT MUST BE PURCHASED ALWAYS THE SAME, REGARDLESS OF WHICH FEDERAL AGENCY OR INSTRUMENTALITY IS RESPONSIBLE FOR ENFORCING THE FLOOD INSURANCE PURCHASE REQUIREMENT?

In the exercise of its statutory responsibilities, the Small Business Administration has made an interpretation of the statutory provisions cited above and requires insurance up to the value of a property, or the maximum amount of insurance that can be purchased, whichever is less, regardless of the actual amount of the loan. In this way, the borrower becomes more fully protected against the peril of flooding. While the Act does not require insurance to value, a practice normal in property insurance, neither does it prohibit it, and SBA has used its authority to align the treatment of flood insurance with the standard treatment of other hazard insurance.

The basic amounts of insurance required by statute are discussed above in Section C.5. of these guidelines. Some of the Federal agencies, however, such as the Federal National Mortgage Association (FNMA), have adopted different requirements to protect their interests. The FNMA requires, "the amount of flood insurance to be equal to the lesser of 100% of the insurable value of the (condominium) facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program...." Thus, for a lender to be absolutely sure that it is complying with the specific requirements of the Federal agency that regulates, supervises or insures that institution, it should carefully review the requirements of such agencies or Instrumentalities and not rely solely on these guidelines.

In those cases where the amount of the loan or the insurable value of the property exceeds the statutorily required amount of flood insurance, it would seem to be a wise business practice to encourage the purchase of enough flood insurance to protect the interests of both the mortgagor and the mortgagee, to the extent that such interests can be protected, by the coverages under the NFIP.

8. RESTRICTION ON FEDERAL FINANCIAL ASSISTANCE BY FEDERAL OFFICERS AND AGENCIES IN COMMUNITIES THAT ARE NOT PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM

Section 202(a) of the 1973 Act (42 USC 4106(a)) addresses the responsibility of Federal officers and agencies with respect to Federal financial assistance in areas of special flood hazard of communities that are not participating in the National Flood Insurance Program and in which flood insurance is not available. In order to prevent the Federal government from being financially exposed to potential loss as a result of flood damage to uninsured buildings located in areas of special flood hazard, Federal officers and agencies are specifically prohibited by Section 202 (a) from providing financial assistance for acquisition or construction purposes, for use in areas of special flood hazard if the community is not participating in the NFIP.

Section 202 (a), read by itself, has a very broad scope, for its prohibition refers to any assistance for acquisition or construction purposes that would be used in any special flood hazard area. However, read in conjunction with the definition of financial assistance contained in paragraph (4) of Section 3 of the 1973 Act, as discussed above, it becomes clear that Section 202 (a) limits financial assistance to "financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and

furnishings contained or to be contained therein".

Thus, for example, Section 202 (a) does not prevent financial assistance for the construction of roads and bridges in special flood hazard areas of nonparticipating communities. But it does prohibit assistance for constructing any building. This prohibition applies even if the building would not have been eligible for flood insurance had it been located in a participating community, as in the case of a building that is partially underground and used as a pumping station in a sewer system. The prohibition against providing financial assistance in nonparticipating communities, therefore, is based not so much upon the fact that the protection of NFIP flood insurance is not available in nonparticipating communities as it is to the fact that the community has not agreed to mitigate the hazard of flooding through floodplain management.

D. APPLICATION OF THE 1973 ACT TO FEDERAL INSTRUMENTALITIES AND TO PRIVATE LENDERS WHO ARE SUBJECT TO THEIR JURISDICTION

Of special significance to Federal Instrumentalities and the lenders regulated by, or whose deposits are insured by, the Instrumentalities is the second area to which the 1973 Act applies in Sections 102 (b) and 202 (b), which address conventional loans by such lenders, distinguished from Federal financial assistance.

1. IN COMMUNITIES THAT ARE PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM AND WHERE FEDERAL FLOOD INSURANCE CAN THEREFORE BE MADE AVAILABLE

(a) Instrumentalities defined

The term "Federal Instrumentality" defined in Section 3(a)(5) of the 1973 Act

Federal Emergency Management Agency

(42 USC 4003(a)(5)), as the "Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board (currently, Office of Thrift Supervision), the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration."

(b) Legislative purpose and specific mandate

The purpose behind these Sections is seen in the Congressional finding in Section 2(a)(4) of the 1973 Act that "Federal Instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides". As noted above, the Act does not, by itself, require or prohibit activities on the part of lenders. Section 102(b) of the Act (42 USC 4012a(b)) directs the Federal Instrumentalities to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in a special flood hazard area in a community that is eligible for the purchase of National Flood Insurance, if the building, mobile home, and any personal property securing such loan, is to be the security for the loan. (The requirement only applies if the particular property is eligible for flood insurance under the rules of the NFIP.)

(c) How much insurance must be purchased and for how long must it be in force, and to what transactions does the requirement apply?

The Act requires that "the building or mobile home and any personal property securing the loan" be covered "for the term of the loan by flood insurance in an amount at least equal to the outstanding

principal balance of the loan, or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less". However, as noted above, on October 12, 1977, the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised by Section 1306(b)(6) of the National Flood Insurance Act of 1968, (42 USC 4013(b)(6)), and made subject to a statutory cap of twice the limits made available under paragraph 1306(b)(1).

The specific language of the Act describes very broadly the transactions that come within the purchase provisions and includes instances in which lenders "make, increase, extend, or renew any loan secured by improved real property or a mobile home located or to be located" in a special flood hazard area of a community "in which flood insurance has been made available under the National Flood Insurance Act of 1968". This also includes such transactions as second mortgages and home equity loans.

NOTE: IN ALL OF THESE INSTANCES, LENDERS SHOULD BE AWARE THAT, SUBJECT TO AVAILABLE POLICY LIMITS, THEY HAVE THE DISCRETION TO REQUIRE HIGHER AMOUNTS OF COVERAGE THAN REQUIRED BY LAW IF THEY CONSIDER IT NECESSARY TO PROTECT THE FULL AMOUNT OF THEIR INTERESTS, AS WELL AS THOSE OF THE BORROWER.

2. IN PORTIONS OF PARTICIPATING COMMUNITIES THAT HAVE BEEN DESIGNATED BY THE DEPARTMENT OF THE INTERIOR AS UNDEVELOPED AREAS UNDER THE THE COASTAL BARRIER RESOURCES ACT (COBRA)

While ordinarily almost any building in a community that is participating in the NFIP is

eligible for flood insurance, there is one significant situation in which Congress has chosen to deny residents of a participating community eligibility for flood insurance. The Coastal Barrier Resources Act (COBRA), Public Law 97-348, was adopted by Congress in October of 1982 to amend the National Flood Insurance Act of 1968, as amended, by adding Section 1321 (42 USC 4028). Section 1321 prohibits the NFIP from providing flood insurance protection for structures built or substantially improved after October 1, 1983, in any of the areas designated by the Department of the Interior as an undeveloped coastal barrier.

Buildings already located in the designated areas and walled or roofed prior to October 1, 1983 remain eligible for coverage. If a building built in a designated area prior to October 1, 1983 sustains major damage as a result of a fire, hurricane or other causes, the restored structure would not be eligible for flood insurance coverage. Major damage is considered to be damage in an amount of 50% or more of the structure's pre-damage fair market value. Similarly, improvements to a structure built prior to October 1, 1983, on a designated undeveloped coastal barrier area which total 50% or more of the structure's pre-improvement fair market value would eliminate the structure's eligibility for coverage under the NFIP. Only the undeveloped coastal barrier portion of each community is affected by COBRA's insurance limitation. The remainder of the participating community remains eligible under the NFIP for flood insurance coverage for new and existing construction. The Department of the Interior was assigned the task of determining which of the coastal areas were undeveloped coastal barriers and of submitting a list to the Congress. The final Congressional designation included 187 undeveloped portions of 134 coastal communities. Additional areas are currently under consideration for inclusion in the Coastal Barrier Resources System.

The question as to whether any requirements are placed upon lenders who wish to make

conventional loans with respect to uninsurable property on an undeveloped coastal barrier in a special flood hazard area of a participating community is specifically answered by Section 1321 of the 1968 Act, (42 USC 4028). That section provides:

"A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance under this title by reason of subsection (a)"

Thus, while lenders would still have to notify borrowers that the property was in a special flood hazard area, as required by Section 1364 of the 1968 Act, the unavailability of flood insurance does not prevent the making of the conventional loan. However, the lender would be well advised to assess the flood risk at the site and make a decision on granting the loan based on that assessment.

3. IN COMMUNITIES THAT ARE PARTICIPATING IN THE NFIP - PROPERTY SUBJECT TO LETTERS OF MAP AMENDMENT OR MAP REVISION

As noted above, there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property, and the improvements thereon, out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or Letter of Map Revision, the lender must rely only upon Flood Hazard Boundary and Flood Insurance Rate Maps. If a particular piece of property is shown as being in a special flood hazard area, the lender is bound by the information and must apply the insurance purchase requirements of the 1973 Act in accordance with the map.

However, even though a lender is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the lender has the discretionary right to continue to require flood insurance if the lender

chooses to do so. When a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the issuance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply, because the foundation supporting the elevated building in the special flood hazard area is still below the base flood elevation where it is exposed to the action of the water. However, premium levels may reflect reduced exposure to damage.

4. IN COMMUNITIES THAT ARE NOT PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM

It is important to note that while Federal officers and agencies are still prohibited by Section 202 (a) of the 1973 Act, (42 USC 4106(a)) from providing financial assistance with respect to improved real property in areas of flood hazard in communities that are not participating in the NFIP and in which the sale of National Flood Insurance is not authorized, the making of conventional loans in such communities by private lenders became permissible in 1977.

(a) What is a conventional loan?

A conventional loan is a loan by a private lender, as distinguished from a loan by a Federal government agency, that is not secured, insured or guaranteed by a Federal government agency. Such a loan, even when made by a lender that is regulated by or has its deposits insured by a Federal Financial Regulatory Agency (Federal Instrumentality), remains a conventional loan because the loan itself is not secured, insured or guaranteed by a Federal government agency.

(b) Authority for lenders to make conventional loans in special flood hazard areas of nonparticipating communities

An amendment to the 1973 Act (frequently referred to as "The Eagleton Amendment") contained in the Housing and Community Development Act of 1977 (Public Law 95-128), deleted from the Act its original Section 202(b) (42 USC 4106(b)) requirement that Federal Instrumentalities issue regulations prohibiting lenders from making conventional loans with respect to property in nonparticipating communities. The original prohibition was replaced by a new Section 202(b) which substituted in its place a notification requirement. Consequently, lenders regulated by, or whose deposits are insured by Federal Instrumentalities may make conventional loans secured by mortgages on improved real property and mobile homes in areas of special flood hazard in communities that are not participating in the NFIP. They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance, and, thus, the mandatory flood insurance purchase requirement does not apply with respect to such loans. However, lenders should carefully evaluate the underwriting risk involved in making such loans.

(c) Requirements for notification to the borrower if improved real property that is the security for the loan is in a special flood hazard area.

The notice requirements, by their specific language, apply only when improved real property is the security for a loan. The requirements do not apply to unsecured loans or to loans secured by improved real property that is not located in a special flood hazard area. While the Housing and Community Development Act of 1977 removed the prohibition against making conventional loans in nonparticipating communities, the "notice" provision, which is the current Section 202(b) of the Flood Disaster Protection Act of 1973, requires the instrumentalities to compel lenders to notify borrowers as to whether Federal

disaster relief will be available to the property in the event of a disaster caused by flood. For the convenience of lenders, FIA has drafted a notice form, FEMA Form 81-2.

An additional requirement, mandated by Section 1364 of the National Flood Insurance Act of 1968, as amended, (42 USC 4104a), directs the Instrumentalities to compel lenders to notify the purchaser or lessee of the improved real property or mobile home in writing of the special flood hazard to which the property is exposed or obtain satisfactory assurances that the seller or lessor has so notified the purchaser or lessee. These notifications are to be made "a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction". Consistent with the recommendation by the Federal Financial Institutions Examination Council, FIA believes that the "reasonable time" requirement is satisfied if the notices are provided ten days before the closing, or at the time of commitment if this occurs less than ten days before the closing.

E. GUIDELINES TO AN INTERPRETATION OF THE 1973 ACT

The paragraphs above constitute a descriptive analysis of the provisions of the 1973 Act. What follows is an analysis of some of the issues that have arisen under the Act based upon the experience that the Federal Insurance Administration has gathered over the past twenty years and the discussions we have had with representatives of Federal agencies and Instrumentalities. The views expressed below represent our best effort toward providing guidance and we welcome the views of other Federal agencies and the Federal Instrumentalities on these subjects.

1. WHAT IS THE STANDARD BY WHICH A LENDER SHOULD BE

JUDGED IN CONSIDERING ITS DETERMINATION AS TO WHETHER A STRUCTURE IS OR IS NOT IN AN AREA OF SPECIAL FLOOD HAZARD?

(a) Significance of the location of the structure

As pointed out above, the mandatory flood insurance purchase requirements of the 1973 Act apply only where improved real property, i.e., a structure, is located in a special flood hazard area in a community that is participating in the National Flood Insurance Program. Such a structure must be insurable under the NFIP, and under NFIP rules an insurable "structure" means any walled and roofed improvement predominately above ground or in the course of construction. Even though a portion of real property on which a structure is located may lie within an area of special flood hazard, the purchase and notice requirements of the 1973 Act do not apply unless the structure itself, or some part of the structure is in the special flood hazard area. Prudence may suggest the wisdom of the lender's choosing as a matter of its own discretion to require the purchase of flood insurance where the distance from the structure to the edge of the special flood hazard area is minimal, but such a decision is not compelled by the 1973 Act.

(b) Examination of the map

In order to determine whether a structure is located in an area of special flood hazard it is necessary to examine the location of the structure in relationship to the area of special flood hazard shown on Flood Hazard Boundary Maps or Flood Insurance Rate Maps. However, despite FEMA's efforts to make the maps as useful as possible, the descriptions of special flood hazard areas contained in some maps may, in some instances, not be clear enough to permit lenders to decide with certainty and precision whether or not property

SUGGESTED LENDER'S NOTICE

SATISFIES NOTICE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED, AND THE FLOOD DISASTER PROTECTION ACT OF 1973

NOTICE TO BORROWER OF PROPERTY IN SPECIAL FLOOD HAZARD AREA

Notice is given to _____ that the

 (Borrower)

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 _____'s Flood

 (Community Name)

Insurance Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM0. This area has a 1% chance of being flooded within any given year. The risk of exceeding the 1% 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% chance of being flooded.

NOTICE TO BORROWER ABOUT FEDERAL FLOOD DISASTER ASSISTANCE

(Lender Check One)

Notice in Participating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is now participating in the National Flood Insurance Program. In the event your property is damaged by flooding in a Federally declared disaster, Federal disaster relief may be available. However, such relief will be unavailable if your community is not participating in the National Flood Insurance Program at the time such assistance would be approved, (assuming your community has been identified as flood-prone for at least one year). 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.

Notice in Nonparticipating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is not participating in the National Flood Insurance Program. This means that you are not eligible for Federal flood insurance. In the event your property is damaged by flooding in a Federally declared disaster, Federal disaster relief will be unavailable, (assuming your community has been identified as flood-prone for at least one year). Federal flood disaster relief will be available only if your community is participating in the National Flood Insurance Program at the time such assistance would be approved.

 (Bank Official's Name)

 (Borrower's Name)

 (Date)

Federal Emergency Management Agency

which is the security for a loan or which is the subject of financial assistance is located in such an area. It is for this reason that FEMA has recommended a "Good Faith Standard".

(c) The "Good Faith Standard"

As in its earlier editions of these Guidelines, FIA recommends that for the purposes of the 1973 Act, a lender's decision, made in the exercise of due diligence and good faith as to the location of a property which is the subject of a loan on such a map, be considered final and sufficient to comply with the 1973 Act. In such instances, it is FIA's view that where a good faith finding has been made by a lender or its agent, acting pursuant to the requirements of the 1973 Act, that the property is outside the special flood hazard area, such finding as to the location of the property should be considered final with respect to such property regardless of any change of ownership of the property or status of the loan. In FIA's view, under the 1973 Act, subsequent revision of the map would not necessitate the making of a new determination or require the lender to go back and compel the borrower to purchase flood insurance, even if the new map clearly showed the structure to be in a special flood hazard area. However, prudence might suggest the desirability of so doing.

However, if there should be any subsequent making, increasing, extension, or renewal of a loan with respect to which the property is subject, in FIA's view, the original finding should remain final only if the map upon which the original finding was based was still in effect and unrevised as to the property in question. Thus, if a map was subsequently revised, any subsequent making, increasing, extension, or renewal of the loan should take into account the new map, and a new determination should be made at that time as to whether flood insurance must be required for the subsequent transaction.

(d) Lenders' reliance upon assistance

Lenders may reasonably seek assistance from firms or individuals, including map determination service organizations, that have demonstrated their knowledge concerning flood maps, and reasonable reliance upon such guidance in the making of a lender's determination should, for most practical purposes, be regarded as consistent with due diligence and good faith. In many instances Community officials and appraisers may be a helpful and knowledgeable resource. FIA does not believe that there would be reason for objection to having the costs passed on to borrowers if permitted by the loan contract and applicable State and Federal law.

(e) Who must make determinations?

An insurance company, insurance agent or appraiser is under no statutory or regulatory duty to make determinations as to whether a structure is exempt from the flood insurance purchase requirement and any "determination" made by them does not alter the regulatory responsibility of the lender to make such determinations. Circumstances could be contemplated in which an insurance company, insurance agent or appraiser might have expertise that a lender would find helpful and persuasive, but whatever determination is made remains the full responsibility of the lender.

(f) What is determined?

The determinations referred to above address only the question as to whether the location of a particular structure is within the area on a map which is designated by the Federal Insurance Administrator as being a special flood hazard area (SFHA), which is the area inundated by a flood having a one percent chance of annual occurrence (Zones A, AE, A1-A-30, AH, AO, V, VE, V1-30). Any question concerning the correctness of the map or whether the exact location of the structure

Mandatory Purchase of Flood Insurance Guidelines

in the special flood hazard area should have been designated by the FIA as being in a SFHA is totally beyond the authority of the lender.

Only the Federal Insurance Administration can amend an official map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

(g) How to record that a determination was made?

FEMA Forms 81-3 and 81-2 were developed by FIA to help lenders notify borrowers of their status under the NFIP maps and to enable them to document any changes in NFIP maps which may have altered the boundaries of special flood hazard areas in such a way as to cause a borrower's structure to no longer be located in an area of special flood hazard. These notices create a record showing that the lender has made a determination or a redetermination as to the status of the borrower's structure and when placed in the files of the lender demonstrate to examiners of Federal Instrumentalities that there is a proper basis for a borrower to have been required to purchase flood insurance, or permitted not to purchase, or to drop a flood insurance policy after a map revision. Additionally, many lenders, as well as the Federal agencies, such as FNMA, Freddie Mac, FMHA, HUD and VA, use the Uniform Residential Appraisal Report form which contains, amongst other things, questions on the location of a property relative to flood hazard areas. When a determination is made that a structure is not in a special flood hazard area, evidence should be recorded showing, at the least, the map panel used, the date and number of the map, the name of the community, the zone in which the property is located, and the address of the structure. A

photocopy of the official map, marked to show the location of the property would provide a convenient record.

(h) The ultimate responsibility of the lender

But, in all these situations the lender, using such evidence as is reasonable, must take the responsibility for making determinations and redeterminations, regardless of whether the lender actually makes the determination or hires someone else to do it. Because it is the lender that requires the purchase of flood insurance, only the lender can make a determination or a redetermination, and only the signature of a representative or duly authorized agent of the lender on Form 81-2 and 81-3 can make the form take on any significance in terms of establishing the status of the improved real property and providing the lender with a record of the determination or redetermination.

2. SHOULD THE AMOUNT OF INSURANCE REQUIRED REFLECT THE VALUE OF LAND?

(a) The 1973 Act refers to buildings and mobile homes

Section 102(a) of the 1973 Act conditions the granting of financial assistance by Federal officers and agencies upon there being flood insurance coverage with respect to "the building or mobile home and any personal property to which such financial assistance relates" in an amount at least equal to "its development or project cost (less estimated land cost)." Thus this section of the statute clearly expresses the intent of Congress that the amount of insurance be related only to the cost of the building and not include the cost of the land. Section 102(b) describes the flood insurance purchase requirement for lenders making conventional loans in terms of "improved real estate or a mobile home located or to be located" in a special flood

FEDERAL EMERGENCY MANAGEMENT AGENCY

CERTIFICATION OF REDETERMINATION OF A PROPERTY'S LOCATION
RELATIVE TO SPECIAL FLOOD HAZARD AREAS

TO: _____ Date: _____
(NAME OF GRANTEE, BORROWER, INSURED)

RE: (Loan) (Transaction) No: _____

RE: Flood Insurance Policy No. _____

This will certify that, as of this date, authorized personnel of this institution have examined the latest (Flood Hazard Boundary Map/Flood Insurance Rate Map) now in effect for _____ (NAME OF COMMUNITY, COUNTY, STATE) effective _____ and have determined that the property which is the (DATE) subject of the above-referenced loan/transaction is not located in a special flood hazard area as represented on the above-referenced, revised map.

Flood insurance had been required as a condition for the loan/transaction in question because the property was shown as located in a special flood hazard area on _____'s Flood Hazard Boundary Map/Flood (NAME OF COMMUNITY) Insurance Rate Map effective _____ at the time the loan/transaction was (DATE) processed.

This institution now deems _____ waived (NAME OF GRANTEE, BORROWER, INSURED) from maintaining flood insurance coverage, on the basis of the Federal Insurance Administration's latest map now in effect for _____ (COMMUNITY'S NAME, COUNTY, STATE) effective _____ which in our judgment excludes the (DATE) property in question from an identified special flood hazard area.

Address of Institution: _____

Institution: _____

By: _____
(Authorized Signature)

Federal Agency _____

By: _____
(Authorized Signature)

FEMA FORM 81-3 (11/79)

CONTROL NO. 593-213

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 458-454

hazard area and uses the language similar to that in Section 102(a), conditioning the making of a loan in a participating community upon there being flood insurance covering "the building or mobile home and any personal property securing such loan".

This reference to "buildings and mobile homes" is consistent with the fact that the National Flood Insurance Program insures only buildings, including manufactured homes (mobile homes), and does not insure land. Thus improved real estate, as used in Section 102(b) of the 1973 Act means land with a building on it and the mandatory flood insurance purchase requirement applies only to the buildings and manufactured homes which constitute the improvements on the land.

(b) What the NFIP policy covers

Moreover, it should be kept in mind that the NFIP policy does not provide insurance coverage for losses in excess of the value of a structure. The determination of whether the loss will be paid on the basis of replacement value or actual cash value depends upon whether the residence is primary, and whether the insured has purchased insurance of up to at least 80% of the replacement cost of the structure. Under the NFIP policy, "replacement value" means that the coverage is intended to include the full cost of repair or replacement without deduction for depreciation. The term "actual cash value" means that the coverage is intended to include repair or replacement less depreciation. A dwelling which is the principal residence of an insured may be insured for its replacement cost value, but secondary residences, condominium units in vertical high rise buildings and commercial buildings may be insured only for their actual cash value.

In light of the above, in requiring the purchase of flood insurance the lender should first calculate the amount of the loan, or the maximum amount of insur-

ance available under the National Flood Insurance Program, whichever is less. Having developed that figure, the lender may, depending upon its view of the flood risk, take into account the statutory "cap" of Section 1306(b)(6), which, for example, limits the mandatory purchase to \$70,000 for single-family residential structures). Then, the value of the land should be subtracted from the overall value of the property in reaching a determination as to the value of the improved property, i.e., the structure, that is to be insured. This is especially significant in cases where the proposed loan clearly exceeds the value of the insurable buildings. In instances where the lender does not take into account separate valuations of land, which is not insurable under the NFIP, and improvements, which are insurable, the insured may, unfortunately, be paying for coverage that is in excess of the amount that the NFIP will pay in the event of a loss. In FIA's view, lenders should avoid creating such a situation.

(c) What if the loan is secured only by land upon which there are no structures?

If a lender makes a loan which does not give the lender a lien on any land upon which there is a building i.e. improved real property, no flood insurance purchase requirement applies. Thus, if a lender can separate his loan so as to become the holder of a mortgage that is secured by land alone, no flood insurance purchase requirement applies because the NFIP does not insure land, and the 1973 Act does not address mortgages secured by land alone.

d) What if a detached garage of a residential property, to which 10 percent of the principal structure's insurance is applicable, is in the special flood hazard area, while the principal structure is outside of the special flood hazard area?

Flood insurance on the principal structure would not be required because of its location outside the special flood hazard area.

But if the detached garage is part of the security for the loan, flood insurance on the garage would be required and could be purchased through a separate policy on the General Property form, covering just the garage. However, if the value of the principal structure is sufficient to serve as security for the loan, the requirement would not apply if the lender was willing to delete the garage from the description of improved real property securing the loan. In agreeing to do this, a prudent lender would consider the value of the garage and the likely degree of its exposure to damage in the event of flooding, as well as whether the close proximity of the house to the special flood hazard area raised questions as to the safety of the house, itself.

If, instead of a detached garage in the special flood hazard area, there was a tool shed or similar shack with no foundation and not attached to the land, such property would not be insurable under the NFIP. Being more in the nature of personalty as opposed to realty, it would not be part of the security for the loan, and no flood insurance would be required.

3. WHAT IS THE IMPACT OF THE FLOOD INSURANCE PURCHASE REQUIREMENT IF IMPROVEMENTS ON THE REAL PROPERTY ARE OF NOMINAL VALUE, AND THE PURPOSE OF THE LOAN TRANSACTION IS TO FACILITATE THE PURCHASE OF LAND FOR SUBSEQUENT DEVELOPMENT?

(a) Surplus buildings of nominal value on land purchased for development

Instances arise when real estate is purchased for the purpose of development and the presence of a structure on the land is not a factor in the purchase of the land. In fact, in many such situations, the developers' plan may call for the structure to be demolished as soon as development oc-

curs. But, because the 1973 Act speaks of "improved real estate" in triggering the mandatory flood insurance purchase requirement, questions are frequently asked as to whether flood insurance must be required in such situations. It is FIA's view that the answers to such questions should be approached through a view of the purposes for which the purchase requirements of the 1973 Act were adopted, namely to protect lenders and the Federal resources against potential losses resulting from unsecured loans, and to protect unwary borrowers against financial losses resulting from uninsured buildings.

In these situations the acquisition of the building is not the primary purpose behind the purchase of the land, and frequently the structure is not intended to remain in place when the property is developed. If the value of the building was less than the NFIP \$500 deductible, clearly there would be no requirement for the purchase of flood insurance. But, even if the value exceeded \$500, given the fact that the transaction involves primarily land, this would be an appropriate situation for wording the mortgage so as to specifically exclude such a building as part of the security for the loan. In this kind of situation where the structure is not being used for residential or commercial purposes and where there is no intent to improve it or use it for such purposes, and where the loan is adequately secured without including the building, in FIA's view, the flood insurance purchase requirement would not apply.

(b) What if there is a structure in a special flood hazard area which is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building?

The 1973 Act does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even

though the land may be so valuable that it would provide more than adequate security for the amount of the loan, without taking into account the value of the building on the land. If the land has a building upon it, and the lender has a security interest in that building, the Act requires the lender to require the purchase of flood insurance to protect its security interest. In so doing, the lender is also protecting the government's interests by preserving the assets of agencies which insure the lender's deposits.

(c) NFIP deductibles and definition of structure

It should be kept in mind that the NFIP has a minimum \$500 deductible, which means that if the actual cash value of a structure, taking into account depreciation, did not exceed \$500, the structure would for practical purposes be uninsurable because there could never be any claim payment in the event of flood damage. It should also be kept in mind that the NFIP insures only walled and roofed structures which are principally above ground and are permanently affixed to sites. Also eligible are silos and grain storage buildings, and buildings in the course of construction, i.e. under construction, but before they have become walled and roofed. Buildings are walled and roofed when they have two or more rigid external walls in place and are roofed and adequately anchored so that they will resist flotation, collapse and lateral movement.

The Flood Insurance Manual lists as ineligible for insurance coverage gazebos, pavilions, pole barns, pumping stations, and storage tanks, and thus, the presence of such structures would not give rise to any question as to the purchase of flood insurance.

(d) Buildings in the course of construction

However, when a structure is to be built which when completed will be a walled and roofed structure that will be eligible

for coverage, flood insurance must be purchased. Therefore, where a development loan is made for the purpose of constructing insurable improvements on land, flood insurance coverage must be purchased to keep pace with the new construction. The only practical way of implementing the flood insurance coverage is to require the purchase of the policy at the time that the development loan is made and requiring that the policy be purchased to cover the eventual value of the property to be constructed.

Since October 1, 1986, buildings that are in the course of construction but have yet to be walled and roofed are eligible for flood insurance, subject to certain underwriting restrictions. The 1986 regulations and policy changes resolved a prior problem which arose out of the fact that lenders had to require the purchase of flood insurance policies that could not provide any coverage until a future date when the building would be considered to be walled and roofed. This significant change recognizes the flood peril faced by a builder during the process of construction and brings the NFIP more into conformity with the practices of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place. Unless defined stages of development can be identified, the most practical way of implementing the flood coverage may be to require the purchase of the policy at the time that the development loan is made and funds are disbursed.

For new construction in Regular Program communities, where elevation certificates are required, the certificate and the premium will be based upon an elevation figure derived from construction drawings. However, the policy will not be renewed until a new certificate based upon actual construction has been submitted. In any event, the point of the 1986 change is that coverage under the policy becomes

available immediately when the construction starts and is not delayed until the building has reached a roofed and walled condition.

4. WHAT ARE THE CONSEQUENCES IF A STRUCTURE IS LOCATED IN A COMMUNITY THAT IS PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM, BUT FLOOD INSURANCE IS NOT AVAILABLE WITH RESPECT TO THAT PARTICULAR STRUCTURE?

It is the view of FIA that in using the words "the sale of flood insurance has been made available" the Congress meant the mandatory flood insurance purchase requirement of Section 102 (b) to address the situation where FIA, through the NFIP, offers to sell a flood insurance policy to the owner of the particular structure that is the subject of the transaction. Where the Federal government has chosen to limit the availability of flood insurance in a participating community, the inability of the property owner to purchase flood insurance does not require a lender to refrain from making a conventional loan with respect to that property.

(a) Coastal Barrier Resources Act

There are several reasons why flood insurance might not be available to a particular structure. One of the most significant is the Coastal Barrier Resources Act (COBRA), Public Law 97-348, mentioned above, which was adopted by Congress in October of 1982 to reduce or restrict Federal government actions that were believed to be encouraging the development of certain coastal barrier areas, including both islands and mainland property, that are currently undeveloped. While COBRA does not prevent private financing and development, it limits financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to the saving of

lives and the protection of property and the public health and safety. Such emergency assistance would not include disaster assistance and government loans.

(b) Section 1316 of the 1973 Act and buildings in violation of state or local laws

Another statutory provision which prohibits the sale of flood insurance as to particular properties is Section 1316 of the 1968 Act (42 USC Section 4023) which prohibits the sale of new flood insurance for any property which the Director finds "has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas." Questions have arisen as to whether a conventional loan can be made when the building is located in a special flood hazard area of a community that is participating in the NFIP, but where the particular building is not eligible for flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Under Section 102 (b) of the 1973 Act, which makes the flood insurance purchase requirement applicable to properties to which flood insurance has been made available, the making of a conventional loan would not be prohibited with respect to a building cited under Section 1316 of the 1968 Act. Nevertheless, compliance with the provision notifying the borrower that the building is in a special flood hazard area would be especially important.

It is important that Federal Instrumentalities and lenders subject to their jurisdiction be aware that properties which come under the provisions of Section 1316 of the 1968 Act because of violations which relate to protection against flooding will, in most cases, be highly susceptible to flood damages, and are a far greater risk to

the lender than structures that are compliant with floodplain management ordinances.

(c) Section 1316, as applicable to Federal Officers and Agencies

Questions have arisen as to the applicability of Section 1316 to Section 102(a), which applies to the approval of financial assistance by Federal officers and agencies. Federal officers and agencies should make their own determinations as to whether they should approve financial assistance with respect to a building that the community has declared to be in violation of local ordinances designed to reduce the peril of flood damage to such building. And in coastal barrier areas they must consider the restrictions placed on Federal assistance by COBRA.

(d) NFIP underwriting restrictions on eligibility for flood insurance

In addition to COBRA and Section 1316 of the 1968 Act, there are policy provisions and underwriting rules of the Standard Flood Insurance Policy sold under the NFIP which preclude certain properties from eligibility for coverage. For example, structures built over water cannot be insured under the Program, nor can boat houses. The NFIP coverages also contain restrictions on insurance coverage, such as the portions of homes consisting of finished basements where only enumerated and limited coverage is available.

5. THE APPLICABILITY OF THE 1973 ACT TO THE PURCHASE OF MORTGAGES BY LENDERS

Among the Federal Instrumentalities two different views have been expressed on the subject of the applicability of the Act to transactions involving the purchase of mortgages by lenders. The Federal Home Loan Bank Board has taken a position which is similar to that expressed by the Federal Insurance Administration in FIA Guidelines dated 1978, and has

interpreted the Act as including not only the origination of mortgage loans, but also the purchase of mortgage loan portfolios in the secondary market and participations thereof. Thus, under this view purchased mortgage loans secured by improved property in a SFHA must be covered by flood insurance, where applicable, unless the original loan was made pursuant to a formal loan commitment issued prior to March 2, 1974.

On the other hand, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency have interpreted the Act to apply only to the origination of mortgage loans and not the purchase of mortgage loans in the secondary market. Lenders should, therefore, follow the interpretations of the particular Federal Instrumentality to whose examinations they are subject for authoritative guidance. In FIA's view, the term "where applicable", as used in connection with the position that the statute does apply to the purchase of mortgages, means that such a requirement pertains only to mortgage loans involving improved real property in areas of special flood hazard in communities participating in the National Flood Insurance Program, and in which flood insurance is thereby available through the NFIP.

6. ACCEPTANCE OF PRIVATE FLOOD INSURANCE POLICIES TO MEET STATUTORY REQUIREMENT AND THE ACCEPTANCE OF NFIP "WRITE YOUR OWN POLICIES"

FIA would welcome the availability of adequate flood insurance from the private insurance market. Had adequate and assured flood insurance protection been available through the private insurance market in 1968, the NFIP might not have been necessary. To give the public the benefits of the marketing and servicing expertise of the private insurance industry, FIA has since 1983 been making flood insurance available through the NFIP "Write Your Own" Program (WYO) which enables

Mandatory Purchase of Flood Insurance Guidelines

the public to purchase the same NFIP coverage from private companies that have agreed to enter into agreements with FIA.

The coverage, eligibility and premiums are the same on WYO policies as in the case of policies that are issued directly by the FIA through its servicing company. The FIA has guaranteed that in the event that any WYO company is required by State regulatory authorities to cease writing insurance and is unable to pay flood insurance claims under any WYO policy, FIA will assume all obligations for the payment of covered claims under that policy. Thus, lenders and insureds should not hesitate to accept NFIP policies written either directly by FIA or through a WYO company.

In the event of a submission of a flood insurance policy that is not issued by the NFIP through FIA or a WYO company, FIA believes that the following criteria should be met with respect to any flood insurance policy submitted to a lending institution or a Federal agency in purported satisfaction of the insurance purchase requirements of the 1973 Act.

(a) The insurer should be licensed to do business in the jurisdiction where the property is located, by the Insurance Department of that jurisdiction, except as indicated in (b) below.

(b) In the case of a non-residential commercial property insured pursuant to a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, it should be sufficient if the insurer is recognized, or not disapproved, as a surplus lines insurer by the Insurance Department of the jurisdiction where the property is located.

(c) The flood insurance policy issued by the insurer should include an endorsement which requires that the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage and that to be effective such notice must be mailed to both the insured and the lender or Federal agency

and must include information as to the availability of flood insurance coverage under the NFIP.

(d) The policy should guarantee that the flood insurance coverage, considering both deductibles and exclusions or conditions offered by the insurer, is at least as broad as the coverage offered by the NFIP policies.

(e) Lenders should satisfy themselves that a mortgagee interest clause similar to that contained in NFIP policies is contained in the policy. In the opinion of the FIA, an insurance policy that meets all of the above criteria meets the insurance purchase requirements of Section 102 of the 1973 Act. To the extent that the policy differs from the FIA policy, the differences should be carefully examined before consideration is given to acceptance of the policy as sufficient protection under the 1973 Act.

7. LENDERS' REMEDIES IN THE EVENT OF PRIOR FAILURE TO REQUIRE FLOOD INSURANCE

The history of the NFIP since the enactment of the 1973 Act indicates that lenders have not consistently required the purchase and renewal of flood insurance policies as required by regulations issued by Federal Instrumentalities pursuant to the 1973 Act. Questions arise as to what steps are available for lenders whose attention has been directed to the situation at a later time. The issue has been raised to FIA with growing frequency that because of the rapid turnover of the servicing of mortgages, some loan originators may be paying little or no attention to the flood insurance purchase requirement because the servicing is sold so quickly.

This could result in no flood coverage being written to protect the interests of either the mortgagor or the mortgagee. It also means that any subsequent servicer of that loan would be provided with no basis upon which it can know that the property is located in the floodplain

and therefore maintain the flood insurance coverage. Also when a flood insurance policy is written in conjunction with a closing, FIA fears that subsequent servicers may not be notifying the insurance agent who originally wrote that policy of the change in mortgagee (or servicer) to enable renewal and/or cancellation notices to be sent to the proper party (lender) servicing the loan.

Thus, in the case where the insurance payments were not escrowed, the mortgage servicer would have no way of knowing whether or not the borrower continued to renew the policy or allowed it to lapse. Lenders selling mortgages in the secondary market to FNMA, FHLMA or GNMA, (Federal Agencies under the 1973 Act) should be aware that those Agencies will be requiring that the security for such mortgages in special flood hazard areas be protected by flood insurance. The remedies available to the lenders will vary depending upon the language in the loan agreements. Most mortgages require that the borrower obtain and maintain hazard insurance. This provision was originally developed with a view to fire insurance at a time when flood insurance was not available. But in light of the fact that flood insurance under the NFIP has been offered for twenty years, the term "hazard insurance" should be broad enough to include flood insurance. On the basis of discussions FIA has had with Federal Instrumentalities and the U. S. Department of Housing and Urban Development, it is FEMA's view that, if the loan agreement is specific in requiring hazard insurance, that provision, especially when coupled with the regulatory obligation upon the lender to require the borrower to purchase flood insurance, gives the lender ample authority to require the borrower to purchase flood insurance, even at a date subsequent to the date on which the loan was initiated. On the basis of these same discussions, FEMA believes that if the borrower refused to purchase flood insurance, the bank would be justified in purchasing the insurance for the borrower and charging the borrower for the cost. In the case of loans that are being paid off through escrow agreements, this process

would be greatly facilitated. For new construction in Regular Program communities, NFIP rules require the submission of an elevation certificate with the application, and that certificate is, in FEMA's view, a cost of the procurement of flood insurance.

FIA's same discussions lead FEMA to conclude that, where appraisal procedures include an analysis as to whether the improved real estate is in a special flood hazard area, the costs attributable to that process would be proper expenses in connection with the costs of appraisal. FIA is in the course of exploring the feasibility of a forced-placement capability for flood insurance to facilitate the prompt procurement of flood insurance when there is doubt that flood insurance has been purchased or kept in force by the borrower.

8. HOME EQUITY LOANS UNDER THE 1973 ACT.

The currently popular Home Equity Loans are clearly secured loans of the kind covered under the 1973 Act and trigger the flood insurance purchase requirement. The simplest way in which a lender could protect its interests and comply with the purchase requirements would be to consider that, when the bank has filed its lien, based on the signing of the Home Equity Loan agreement, the purchase of insurance becomes mandatory to the amount of the loan authority (subject to the limit on insurance available and the insurance requirement cap) if the improved real property is located in a special flood hazard area of a participating community. This procedure would be similar in concept to the way in which many mortgage lenders have typically handled their property insurance requirements for building construction loans prior to the existence of an actual insurable building. However, the difficulty with this solution lies in the fact that the Home Equity Loan is more like an approved line of credit to be utilized in the future. A borrower could argue that so long as the lender has not paid out any money, there is no flood exposure and consequently no flood insurance purchase

requirement. But to impose the requirement each time that a borrower drew a check on his loan authority might be administratively difficult. An alternative, therefore, might be for the lender to examine its books each calendar year, and when a loan has actually been made under the Home Equity loan authority, require flood insurance to protect that loan on the basis of the information at year end. The Lender would then require updates each year to take into account additional loans actually made during the preceding year. While this would create a time lag in the procurement of flood insurance, it would seem to tie the requirement directly into the use of the funds. It is the view of FIA that such flexibility of compliance options would be reasonable, considering that the statute may not have been enacted with the Home Equity Loan concept in mind. In any event, the Federal Instrumentalities have the final responsibility for determining how Home Equity Loans shall be handled under the 1973 Act.

9. FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL INTERAGENCY EXAMINATION PROCEDURES AND EXAMINER CHECKLIST FOR COMPLIANCE WITH THE MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS OF THE FLOOD DISASTER PROTECTION ACT OF 1973

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 special flood hazard areas, and whether or not any of the communities are participating in the National Flood Insurance Program.
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 the special flood hazard areas. 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 special flood hazard area and whether or not federal disaster relief assistance will be available if the property is damaged by flooding (refer to sample notices).
 - c. Written acknowledgements from borrowers indicating their understanding that the property securing the loan is or will be located in a special flood hazard area 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:

Federal Emergency Management Agency

- a. that the institution's stated method of determining whether loans secured by improved real estate or a manufactured home are located in a special flood hazard area is followed in practice;
 - b. that the institution requires flood insurance for covered loan related property located in a special flood hazard area of a community that participates in the National Flood Insurance Program;
 - c. that the institution does not make covered loans located in a special flood hazard area if the community does not participate in the National Flood Insurance Program and the loan is insured or guaranteed by an agency of the Federal government, such as the Federal Housing Administration, the Veterans Administration, and the Small Business Administration;
 - 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.

EXAMINATION CHECK LIST

1. Does the institution offer or extend consumer or business loans (purchase or nonpurchase)* 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 special flood hazard areas which refer to an official Federal Emergency Management Agency eligibility list? If yes, complete the following sections:

Yes No

- * 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.

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 determination (and does not have this function performed by an outside agent through a contract), are all 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

6. Indicate the method(s) used to make special flood hazard area 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

Mandatory Purchase of Flood Insurance Guidelines

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 special flood hazard area prior to the execution of the 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 special flood hazard area?

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

NONPARTICIPATING COMMUNITIES

14. If the institution grants federally related loans (such as Federal Housing Administration, Veterans Administration,

and Small Business Administration loans) does it refrain from granting such loans when the property securing the loan is or will be located in a special flood hazard area of a nonparticipating community?

Yes No

15. Are proper notices of the unavailability of Federal Disaster relief assistance (conventional loans only) given to borrower whose property is located in a special flood hazard area of a non-participating community?

Yes No

F. THE REQUIREMENTS OF THE 1973 ACT AS TO CONDOMINIUMS

1. Insurance/Property Repair Responsibility of Condominium Associations Condominium Associations, by both State law and association by-laws, typically have the responsibility to purchase and maintain adequate insurance on their buildings and common areas of those buildings. In addition, they also have the responsibility to make repairs to all commonly owned property, regardless of whether or not there is adequate insurance to cover damage to the property.

However, it must also be kept in mind that, typically, it is the condominium association unit owners who actually own property. In almost all situations, the condominium association itself does not own the property, but is only the governing body for the condominium and contractually responsible for representing and protecting the unit owners' undivided interests in the common areas. The "condominium" in the aggregate sense, therefore, would be the collection of property rights comprising all individual units and common elements.

From an insurance point of view, the representative capacity of the condominium association gives it the insurable interest in common areas, and even gives it the right to purchase coverage on individual units as a means of protecting the entire condominium community. It is only in that sense that the association might be thought of as having a quasi-ownership interest.

In the past, Associations have traditionally fulfilled their insurance responsibility by purchasing some form of master "Difference in Conditions" policy. Because of the unique nature of condominium ownership, these policies have provided protection for the structural portion of the buildings, usually including most of the internal portions of the individual units as well. Individual policies were also available from the private insurance industry, but typically provided coverage for the unit owner and only for things unique to him, such as his contents and physical surface changes made by him to the internal portion of his unit, such as new wall, floor or ceiling coverings, all of which was of little interest to the lender as their mortgagee interests were considered protected by the Association's master policy.

2. Lender's Interest

The interests of individual lenders in the mortgages they have provided on individual units have typically been satisfied by obtaining evidence of the existence of these master insurance policies, even though the Associations, unlike the unit owners, normally do not have mortgages. Such insurance by Associations has proven a convenience to lenders since, in essence, full hazard insurance coverage is provided through one policy, alleviating the need to deal with a separate policy for each individual unit's mortgage.

3. Nature of Condominium Ownership/Lenders Exposure

The concept of condominium ownership shapes not only the nature of the borrower's exposure to insurable risk, but also the kind of property interest that the lender receives as security for the loan. While the owner of a unit in a condominium building, especially in the case of a townhouse, may appear to have the same kind of property interest as the owner of a separately owned detached house, there is, in fact, a vast difference between their interests.

In its simplest terms, the owner of a condominium unit does not have exclusive ownership of the walls, floor and roof of his residence or of the land upon which it rests. His exclusive property interest is limited to the space within the walls, floor and roof. Although he typically retains the exclusive right to occupy and sell his unit, all of his other interests in the common areas of the condominium are shared in common with the owners of the other units owned by the members of the condominium association.

There are various kinds of structures involving condominium ownership. A condominium building may be a vertical, multiple story unit building (often called a "high rise"), a townhouse or row house or, infrequently, a single unit building. The ownership interest of a purchaser of a unit usually includes (1) the airspace in the individual unit; (2) certain property attached to the building but within the unfinished perimeter walls, floor and ceiling of the unit; and (3) an undivided interest with all other unit owners in the common elements.

The items attached to the building within the perimeter walls, floor and ceiling, are often referred to as "improvements and betterments" or "additions and betterments", which include floor, wall and ceiling coverings, cabinets, wallpaper, paneling, fixtures, built in appliances,

partition walls, tubs, toilets, sinks, counter areas, etc. If a flood damages one or more units in a condominium building, and the individual unit owner of a damaged unit sustains damage to the improvements and betterments within his unit, he is not entitled to financial assistance from his fellow unit owners as to such property and must look to his own insurance protection.

But unlike the owner of a detached individually owned non-condominium home, he is not primarily responsible for repairing the common elements in which he has an undivided interest, such as building walls, roofs, floors, stairways, lobbies, lawns, parking lots, sidewalks, and recreational facilities. Because of the multiplicity of these ownership interests, a condominium association is typically the corporate entity responsible for the operation, maintenance and repair of a condominium. Its membership is made up of the condominium unit owners, all of whom collectively have an obligation to each other to maintain and repair the commonly owned property. This specific obligation is customarily authorized and spelled out in the by-laws of an association and is included in the condominium unit owner's contract agreement which requires each unit owner to pay a proportionate share of the amount of money needed to perform maintenance and repair, as well as other administrative and operating expenses, including the building up of reserves. They are usually collected monthly in order to provide a dependable source of operating funds for the association.

The by-laws and unit owner's agreement will also confer upon the Board of Directors of an association the authority, following loss or damage to the common elements, to levy special assessments, as necessary, to provide for the repair or reconstruction of loss or damage to the common elements. Thus, the funds for

repair and/or reconstruction can be obtained from the association's own funds and from the proceeds from claims filed against insurance policies and/or assessments levied against the individual unit owners.

4. Peril of Flood

Traditionally, the peril of flood was covered in the Difference in Conditions policies mentioned earlier. Associations that wished even more complete protection against the peril of flood than these policies offered, i.e., coverage for the deductible, would also purchase a policy under the NFIP for each building in the floodplain. The motivation for such purchases stems from the fact that Associations have the responsibility to purchase insurance in general to protect their property. Thus, it was not driven by lender's insurance requirements placed on individual unit owners. However, those requirements were nonetheless able to be satisfied by that broad policy coverage purchased by the association.

As a result of this, few individual flood insurance policies were purchased under the NFIP covering the individual mortgages issued by lenders for units involving condominium ownership in buildings located in flood hazard areas, as such coverage was evidently deemed by lenders to be unnecessary and possibly duplicative.

5. Changes in the market place

In the mid 1980's, conditions in the property insurance market changed, however, resulting in insurance companies either not continuing to offer such broad based coverage at all or continuing to offer such coverage, only on a much more limited basis and virtually without any protection from the peril of flood. At that time Associations, insurance agents, and lenders began to bring the issue to the attention of

the Federal Insurance Administration. This brought focus on the flood insurance available from the FIA, as more and more the NFIP became virtually the only flood insurance available for most types of residential property.

6. NFIP Coverage - Satisfying Lender Requirements

In one sense, in a manner similar to that followed in the private insurance sector, the NFIP has provided two different policies, one for individual unit owners, regardless of the type of configuration employed for their units, and another for the Associations. Unlike the private insurance sector, however, the insurance policies of the NFIP can only be issued as authorized by the National Flood Insurance Act of 1968, as amended, and, consequently NFIP policies are required to have various limitations and differences that distinguish them from insurance policies provided by the private insurance sector. Most significantly, NFIP insurance policies are limited as to the amount of coverage that they can provide for individual unit owners as well as for the Association. Again, as differentiated from the insurance coverage provided by the private sector, the NFIP's unit owner policy provides coverage for the unit owners's interest in the common areas of all buildings "owned" by the Association, as well as for the internal portion of his own unit.

7. Residential Coverage - Unit Owner

Regardless of the type of building a residential condominium unit may be located in, the NFIP considers the unit to be a single family dwelling (except for the limitation of its value to actual cash value rather than replacement value). The unit owner can purchase in his own name a flood insurance policy on his unit within a building involving condominium ownership. In addition, if the unit owner has not

already insured that same unit, the condominium association may separately insure a particular unit in the name of the owner of record, specifying the unit number and the name of the association, as their interests may appear. This would provide the same kind of coverage as could be purchased individually by the unit owner. Such a policy will cover the improvements and betterments the unit owner has made within that unit. It will also respond to assessments levied upon the residential unit owner by his condominium association for flood damages which occur in the building in which the unit owner resides as well as the structural and or common elements of other buildings owned by the condominium association for the repair of which he may be subject to assessment. However, because the NFIP policy does not cover lawns, parking lots, sidewalks and other improvements away from the building, the portion of any assessment attributable to damage to such items would not be covered under an NFIP policy.

Insurance policies covering an individual residential unit are available in amounts up to the limits of coverage, and at the rates available, for a "single family" dwelling, regardless of the type of building in which the unit is located. But it must be noted that only those residential condominium units that are separate structures or are located in a townhouse or rowhouse configuration are eligible for replacement cost coverage.

However, coverage is available to owners of units in other types of buildings, including high rise condominium buildings, on an actual cash value basis. Building coverage under a unit owners policy applies first to his or her individually owned building improvements and betterments and, then, to the damage to the building's overall common elements, which are the unit owner's responsibility and for which he or she is subject to assessment.

The unit owner's policy described above will cover the owner's personal contents, such as furniture, but only if separate contents coverage is purchased by the unit owner.

8. Residential Coverage - Condominium Association

However, inasmuch as the unit owners collectively have the responsibility of repairing the common elements, the condominium association has been the traditional logical entity to be the purchaser of flood insurance. By insuring the overall condominium structure, the Association can reduce the likelihood that it will have to assess unit owners for funds with which to make repairs. A condominium association may, in addition to purchasing policies on each individual unit, purchase insurance coverage on a residential building containing five or more units under a separate General Property Form. The policy will cover building common elements as well as the building elements (improvements and betterments) within all units in the building.

The reason that condominium associations had to purchase the the General Property Form and supplement it with separate policies on the individual units is that the statute governing the NFIP limits the amount of coverage available on multi-unit residential buildings to only \$250,000, without regard to the size, value or type of ownership involved. This has posed a problem because such an amount is in most cases NOT sufficient to meet the collective, individual, and statutory flood insurance requirements with respect to all the mortgages for all the units located in a specific building.

For this reason, FIA has encouraged lenders to treat the flood insurance requirement on individual mortgages for individual units in buildings involving condominium ownership in the same way as

they would for single family detached properties, and to require that flood coverage be purchased to protect their interests in those mortgages by having unit owners, or the Association, purchase individual unit owners Dwelling Policies. When this practice is followed, there should be every reason to believe that the mandatory flood insurance purchase requirement for lenders has been satisfied.

9. Condominium Master Policy (CMP) Under the NFIP

Beginning in early 1989, FIA made available to Condominium Associations, only, a Master Policy that provides flood insurance coverage on each residential condominium building separately, on one form, in much the same way that the private sector does for other hazards, without imposing the burden of purchasing individual policies for each unit. Initially this policy is being made available only for such buildings with three or more floors and five or more units. In addition to these benefits, the cost of such a policy will in most cases be significantly less expensive than the cost of multiple individual policies, while at the same time providing even more coverage, at the lower price.

The rationale for making the Condominium Master Policy available at a lower cost is that by offering a more attractive and comprehensive policy, the NFIP will be in a position to issue more policies that will be in amounts reflecting the total value of the insured properties rather than issuing policies which cover only a fraction of the total value of the properties. In insurance terminology this is referred to as realizing "more insurance to value". This should prove to be a great advantage to lenders, Associations, unit owners and insurance agents as it will provide more complete flood insurance protection for less cost. In short, in a greatly simplified fashion it will assist the unit owners and

their mortgage lenders in meeting the mandatory flood insurance purchase requirements.

Mortgage lenders should realize, however, that it would be impractical to expect that every mortgagee with an interest in one or more units in such buildings will be able to be listed as such on the CMP. Associations that purchase this policy in most cases do not have a mortgage on the property, and therefore would have no reason to list mortgagees on such policies. Other property insurance policies purchased by associations in the private sector to protect such buildings against other perils, typically, do not list mortgagees for the above reason, as well as because of the practical aspects of the difficulty the insurers would have in keeping current with the names and addresses of all such mortgagees. Thus, the protection that exists for the interests of the mortgagees on their mortgages in condominium buildings under Master Policies purchased in the private sector has always had to consist of the fiduciary responsibility that is placed on the association's Board of Directors in the By-Laws of the associations for insuring the property and maintaining the property in a proper state of repair.

10. Non-Residential Coverage - Condominiums

Individual units in multi-unit nonresidential condominium buildings are treated differently by the NFIP. The commonly owned structural elements of such buildings, together with any community owned contents for that building, may not be insured by the individual unit owners. They may, however, be insured in the name of the association. Owners of non-residential units may purchase individual contents coverage in their own name for their own contents.

11. Coverage Options - For Lenders

(a) Individual Dwelling Policies - A lender can require the borrower to purchase and maintain an individual Dwelling Policy for the appropriate amount, as discussed previously.

(b) General Property Policy - A lender might accept evidence of a General Property Policy purchased by the association. However, as mentioned previously, the coverage limits available under this policy are only \$250,000, and that amount is the total for the entire building. It is therefore unlikely that this will be sufficient insurance to cover all mortgages in the building. Even though such an amount might appear to be sufficient to cover an individual mortgage, its actual ability to provide protection with respect to that mortgage will have to be significantly reduced at the time of loss, as any benefits arising out of that coverage will be shared with all of the other unit owners in that building, regardless of whether or not they have a mortgage.

NOTE: LENDERS SHOULD BE CAUTIONED THAT THEY SHOULD NOT ACCEPT EVIDENCE OF THIS POLICY AS AUTOMATICALLY FULFILLING THEIR STATUTORY REQUIREMENT WITHOUT FURTHER REVIEWING THE POLICY'S DETAILS AS TO THE AMOUNT OF COVERAGE BEING PROVIDED EACH UNIT IN THAT BUILDING.

(c) Condominium Master Policy - A lender could accept evidence of this policy being purchased by the association to meet the lenders regulatory requirement. The lender should be

careful to assure that the amount of coverage purchased will be sufficient to meet its regulatory requirements.

It will be easier for this to be the case because this policy is a compilation of individual Dwelling policies. Therefore, because the coverage limits available under the Condominium Master Policy are \$185,000 times the number of units, the association may purchase up to that amount. The simplest way for a lender to be certain that the coverage on such a policy is sufficient is for the lender to divide the coverage purchased by the number of units in the building. If the resulting amount is at least \$70,000, and the value of the average unit is at least that amount, then the total coverage purchased under that policy is probably sufficient to meet the lender's basic requirements, on the basis of the statutory cap of \$70,000.*

IF SUFFICIENT AMOUNTS OF FLOOD INSURANCE ARE PURCHASED BY THE ASSOCIATION UNDER OPTION (C), THIS MIGHT BE THE BEST OPTION FOR A LENDER TO CONSIDER, AS IT WILL BE THE

ONE MOST LIKELY TO FULFILL THE MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS. SINCE IT IS LIKELY THAT IT WILL BE HANDLED ADMINISTRATIVELY BY THE ASSOCIATION IN THE SAME MANNER AS IN THE CASE OF THEIR OTHER FORMS OF PROPERTY INSURANCE, IT SHOULD ASSURE A HIGHER LIKELIHOOD THAT THE ASSOCIATION WILL RENEW THE POLICY.

* In this connection it should be noted that \$70,000 is the maximum amount of insurance required for single-family residential dwellings by Section 1306(b)(6) of the 1968 Act (Section 1413(b)(6) of Title 42 USC), which on October 12, 1977, modified the language of Section 102 of the original 1973 Act, which defined the purchase requirement as being "at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to this particular type of property under the [1968] Act, whichever is less."

Federal Emergency Management Agency

**NATIONAL FLOOD INSURANCE PROGRAM APPLICATION TO
CONDOMINIUMS**

PROPERTY/LOCATION <u>Within Unit</u>	<u>OWNERSHIP</u>		<u>INSURABLE INTEREST</u>		<u>FLOOD COVERAGE AVAILABLE</u>	
	Unit		Unit		Unit	
	<u>Owner</u>	<u>Association</u>	<u>Owner</u>	<u>Association</u>	<u>Owner</u>	<u>Association</u>
air space	Y	N	N	N	N	N
wall, floor and ceiling coverings, improvements and betterments	Y	N	Y	N	Y5	Y6
common structural elements	N	Y	Y5	Y	Y5	Y6
contents	Y	N1	Y	N1	Y	N7
<u>Outside Unit</u>						
Common Structural elements of all buildings owned by Association	Y2	Y3	Y	Y	Y5	Y
Common Areas (non-structural)	Y2	Y3	N4	N4	N4	N4
Common contents	Y2	Y3	Y	Y	Y	Y

NOTES:

- (1) Except when contents of unit are commonly owned.
- (2) The unit owner owns a proportional share of the total common elements.
- (3) Ownership divided proportionally amongst all unit owners.
- (4) NFIP covers only buildings and their contents.
- (5) The Dwelling Policy covers both the unit owner's insurable interest in structural elements of the unit as well as those for all the common structural elements of the NFIP insured buildings. This policy may be purchased by either the unit owner or the association. Associations may, in certain cases, also purchase a Condominium Master Policy, which gives similar coverage of both units and common elements.
- (6) Only the association may purchase a General Property Policy. It covers all common structural elements of the building, including those within a unit, to the extent that adequate amounts of coverage have been purchased. This would include the improvements and betterments within the units.
- (7) Except when the association owns the contents in a unit as common property. For more detailed information on the condominium concept, see the four examples and descriptive exhibits which follow:

Mandatory Purchase of Flood Insurance Guidelines

Example 1

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Pre-FIRM Construction, Zone A)

		<u>CURRENT DWELLING POLICY</u> <i>(Actual)</i>	<u>NEW CONDOMINIUM MASTER POLICY</u> <i>(Estimates)</i>
• AMT. OF COVERAGE/UNIT	\$70,000	\$70,000	\$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	\$7 MILLION	\$7 MILLION	\$7 MILLION
• RATES		\$.55/.17	\$.55/.17
D.P.—Single Family		400 × \$.55 = \$220	1,150 × \$.55 = \$ 633
C.M.P.—Other Residential/ Single Family		300 × \$.17 = 51	68,850 × \$.17 = \$11,705
• PREMIUM—UNIT/BLDG.		\$271	\$12,338
• EXPENSE CONSTANT		\$45/UNIT	\$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		\$ 316	\$12,383
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		\$ 31,600	\$12,383
• DEDUCTIBLE—UNIT/BLDG.		\$500/UNIT × 100 = \$ 50,000	\$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	\$19,217
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	\$ 49,500
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• BOARD FIDUCIARY RESPON- SIBILITY MET	
	• ONE APPLICATION FORM	
	• ONE POLICY	
	• ONE DECLARATIONS PAGE	
	• ONE SET OF NOTICES	

January 1989

CONDO 13

Federal Emergency Management Agency

Example 2

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction,
Zones AI-30, Lowest Floor At BFE)

		<u>CURRENT DWELLING POLICY</u> <i>(Actual)</i>	<u>NEW CONDOMINIUM MASTER POLICY</u> <i>(Estimates)</i>
• AMT. OF COVERAGE/UNIT	\$70,000	\$70,000	\$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	\$7 MILLION	\$7 MILLION	\$7 MILLION
• RATES		\$.30/.06	\$.35/.06
D.P.—Single Family		$400 \times \$.30 = \120	$1,150 \times \$.35 = \$ 403$
C.M.P.—Other Residential/ Single Family		$300 \times \$.06 = 18$	$68,850 \times \$.06 = \$ 4,131$
• PREMIUM—UNIT/BLDG.		\$138	\$ 4,534
• EXPENSE CONSTANT		\$45/UNIT	\$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		\$ 183	\$ 4,579
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		\$ 18,300	\$ 4,579
• DEDUCTIBLE—UNIT/BLDG.		$\$500/\text{UNIT} \times 100 = \$ 50,000$	\$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	\$13,721
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	\$ 49,500
	• BOARD FIDUCIARY RESPON- SIBILITY MET	
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM	
	• ONE POLICY	
	• ONE DECLARATIONS PAGE	
	• ONE SET OF NOTICES	

CONDO 14

January 1989

Mandatory Purchase of Flood Insurance Guidelines

Example 3

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

*(Regular Program, Post-FIRM Construction,
Zone AO-AH, No Basement, Without Certification)*

	<u>CURRENT DWELLING POLICY</u> <i>(Actual)</i>	<u>NEW CONDOMINIUM MASTER POLICY</u> <i>(Estimates)</i>
• AMT. OF COVERAGE/UNIT	\$70,000	\$70,000
• NO. OF UNITS	100	
• AMT. OF COVERAGE/BLDG.	\$7 MILLION	\$7 MILLION
• RATES	\$.55/.17	\$.65/.17
D.P.—Single Family	$400 \times \$.55 = \220	$1,150 \times \$.65 = \$ 748$
C.M.P.—Other Residential/ Single Family	$300 \times \$.17 = 51$	$68,850 \times \$.17 = \$11,705$
• PREMIUM—UNIT/BLDG.	\$271	\$12,453
• EXPENSE CONSTANT	\$45/UNIT	\$ 45/ BLDG.
• TOTAL PREMIUM/UNIT	\$ 316	\$12,498
• NO. OF UNITS	X 100	N/A
• TOTAL PREMIUM/BLDG.	\$ 31,600	\$12,498
• DEDUCTIBLE—UNIT/BLDG.	$\$500/\text{UNIT} \times 100 = \$ 50,000$	\$ 500

<ul style="list-style-type: none"> • NET SAVINGS/BENEFIT TO THE ASSOCIATION 	<ul style="list-style-type: none"> • ANNUAL PREMIUM • LOWER DEDUCTIBLE/ INCREASED COVERAGE AT NO ADDITIONAL COST • BOARD FIDUCIARY RESPON- SIBILITY MET
<ul style="list-style-type: none"> • NET BENEFIT TO THE PRODUCER/WYO COMPANY 	<ul style="list-style-type: none"> • ONE APPLICATION FORM • ONE POLICY • ONE DECLARATIONS PAGE • ONE SET OF NOTICES

January 1989

CONDO 15

Federal Emergency Management Agency

Example 4

**FLOOD INSURANCE COVERAGE/COSTS
FOR
CONDOMINIUMS IN MULTI-STORY BUILDINGS**

**CURRENT INDIVIDUAL DWELLING POLICIES
VERSUS
NEW CONDOMINIUM MASTER POLICY**

*(Regular Program, Post-FIRM Construction,
Zones AO-AH, No Basement, With Certification)*

		<u>CURRENT DWELLING POLICY</u> <i>(Actual)</i>	<u>NEW CONDOMINIUM MASTER POLICY</u> <i>(Estimates)</i>
• AMT. OF COVERAGE/UNIT	\$70,000	\$70,000	\$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	\$7 MILLION	\$7 MILLION	\$7 MILLION
• RATES		\$.17/.06	\$.17/.06
D.P.—Single Family		$400 \times \$.17 = \$ 68$	$1,150 \times \$.17 = \$ 195$
C.M.P.—Other Residential/ Single Family		$300 \times \$.06 = 18$	$68,850 \times \$.06 = \$ 4,131$
• PREMIUM—UNIT/BLDG.		\$ 86	\$ 4,326
• EXPENSE CONSTANT		\$45/UNIT	\$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		\$ 131	\$ 4,371
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		\$ 13,100	\$ 4,371
• DEDUCTIBLE—UNIT/BLDG.		\$500/UNIT \times 100 = \$ 50,000	\$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	\$8,729
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	\$49,500
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• BOARD FIDUCIARY RESPON- SIBILITY MET	
	• ONE APPLICATION FORM	
	• ONE POLICY	
	• ONE DECLARATION'S PAGE	
	• ONE SET OF NOTICES	

CONDO 16

January 1989

National Flood Insurance Program

Condominium Master Policy

Major Benefits

- Significant cost savings to the association
- Increased coverage at no cost
- Assists unit owners with mortgage insurance requirements
- Assists in meeting Federal mortgage assistance requirements
- Allows Association to treat same as other property insurance
- Provides greater protection against liability issues to association and board members
- Allows association full central control over coverage, renewals, claims and repairs
- Simple to process

Federal Insurance Administration
National Flood Insurance Program
Condominium Master Policy

Individual Features

Policy in effect:	<ul style="list-style-type: none">• As of January 1, 1989
Insured:	<ul style="list-style-type: none">• Association only
Buildings Eligible:	<ul style="list-style-type: none">• 3 or more floors / 5 or more units
Property Covered:	<ul style="list-style-type: none">• All common structural building elements• Internal unit elements<ul style="list-style-type: none">– Wall, floor, ceiling coverings– Improvements and betterments
Assessment Coverage:	<ul style="list-style-type: none">• Yes*
Coverage Limits:	<ul style="list-style-type: none">• \$185,000 x no. of units in bldg. or actual cash value of bldg. (whichever is less)
Coverage Type:	<ul style="list-style-type: none">• Actual cash value
Deductible:	<ul style="list-style-type: none">• \$500 <u>per building</u> (not unit)
Expense Constant:	<ul style="list-style-type: none">• \$45 <u>per building</u> (not unit)
Rates:	<ul style="list-style-type: none">• Lower than with other NFIP policies• Used differently - results in lower premium
Premium:	<ul style="list-style-type: none">• Significantly lower - up to 60% plus
Minimum Coverage Requirement?	<ul style="list-style-type: none">• Insurance to value strongly urged

* So long as the following assessment criteria are met.

1. Other bldgs. of association covered by General Prop. policy.
2. Association flood coverage must be NFIP coverage.
3. Coverage amount must be ACV or maximum available, whichever is less.

Mandatory Purchase of Flood Insurance Guidelines

INDEX

Actual Cash Value Coverage	21, 33
Additions and Betterments	31
Airspace	31
Amount of Flood Insurance Available	12
Assessments for Condominium Unit Owners	32, 34
Base Flood Elevation	6
Basements, Limitations on Coverage	25
Buildings Built Over Water	25
Buildings in the Course of Construction	23
Buildings Built in Violation of Local Ordinances	24
Certificate of Redetermination	20, 20a
Coastal Barriers Resources Act (COBRA)	15, 24
Common Interests of Condominium Unit Owners	31
Communities, Number Participating in NFIP	6
Comptroller of the Currency	15, 25
Condominiums	30
Condominium Associations	30
Condominium Master Policy	34
Condominium Unit Owners	30
Contents Coverage, Requirement For	9
Conventional Loans	17
Costs Incurred by Lenders	27
Deductible under Insurance Policy	22
Department of the Interior	16
Department of Housing and Urban Development (HUD)	27
Depreciation	21
Detached Garage of Residence	21
Determination of Lenders	18, 19
Development Loan	22
Difference in Conditions, Policies of Insurance	32
Disaster Relief Act of 1974	12

Federal Emergency Management Agency

Disaster Assistance	12, 24
Eagleton Amendment	17
Elevated Building	8, 11, 17
Elevation Certificate	23
Emergency Program under the NFIP	6
Escrow	27
Federal Agencies	10, 11
Federal Deposit Insurance Corporation	15, 25
Federal Financial Institutions Examination Council	18
FFIEC Examination Procedures and Examiner Checklist	28
Federal Home Loan Bank Board	15, 25
Federal Home Loan Mortgage Association	12
Federal Housing Administration	12
Federal Instrumentalities	14
Federal Insurance Administrator	5
Federal National Mortgage Association Requirements	13
Federal Reserve Board	15, 25
FEMA Form 81-2	18, 18a
FEMA Form 81-3	20, 20a
Flood Hazard Boundary Maps (FHBM)	6
Flood Insurance Rate Map (FIRM)	6
Floodway	8
Financial Assistance, Federal Financial Assistance	10, 11, 14
Forced Placement	27
Garages, Detached	21
Gazebos	23
General Property Policy	35
Good Faith Standard by Which Lenders Are Judged as to Determinations	19
Guidelines, Mandatory Flood Insurance Purchase	18
Hazard Insurance, Term Used in Mortgages	27
High Rise Buildings	31

Mandatory Purchase of Flood Insurance Guidelines

Home Equity Loans	15, 27
How Much Flood Insurance Must Be Purchased	13, 15, 21
How Long Must Insurance Coverage Be Kept	15
HUD Uniform Residential Appraisal Form	20
Improved Real Estate, Improved Real Property	20, 21
Improvements and Betterments	31
Ineligibility of Property for Flood Insurance	23, 24, 25
Insurable Structures	18
Insurance To Value	34
Lenders's Remedies to Achieve Compliance After Initiation of Loan	26
Letter of Map Amendment (LOMA)	7, 11, 16
Letter of Map Revision (LOMR)	7, 8, 11, 16
Local Floodplain Management Ordinances	5
Loss Ratio Outside Special Flood Hazard Areas	10
Maximum Amount of Flood Insurance Coverage Required by Law	13, 15, 21
Maximum Amount of Flood Insurance Coverage Available under NFIP	12, 15, 21, 36
Mobile Homes and Manufactured Homes	9
National Credit Union Administration	15
Non Participating Communities	14
Notification under Coastal Barrier Resources Act	16
Notification of Borrowers of Flood Hazards	17
Notification of Borrowers, Reasonable Time For	18
Number of Communities in NFIP	6
Office of Thrift Supervision	15
One Hundred Year Flood (100 Year Flood)	7
Participation by Communities in NFIP	6, 9
Personal Property	9
Personal Property, Requirement of Coverage For Purchasers of Improved Real Estate	9
Personalty, such as Tool Sheds or Shacks	22
Pole Barns	23

Federal Emergency Management Agency

Preferred Risk Policy	10
Principal Property, Principal Residence of an Insured Homeowner	21
Private Policy of Flood Insurance, Acceptability by Lenders	25
Probation, Imposed on Communities For Non Compliance	6
Purchase of Mortgages Loans	25
Purchase of Mortgage Loans by Federal Agencies	12
Regular Program of the National Flood Insurance Program	6, 23
Reliance by Lenders on Outside Advice in Making Determinations	19
Replacement Cost Coverage in Connection with Loss Payments	21, 33
Roads and Bridges, Federal Financial Assistance	14
Row Houses	31
Second Mortgages	15
Secondary Residences of Insureds	21
Secondary Mortgage Market	25
Section 1364 of 1968 Act Concerning Notice to Borrowers	18
Section 1316 of 1968 Act Concerning Non Compliant Structures	24
Small Business Administration, Loans By	13
Special Flood Hazard Area, Area of Special Flood Hazard	6, 7
Standards by Which Lenders are Judged in Making Determinations	18
Status of Studies and Maps	6
Storage Tanks	23
Structures, Walled and Roofed	18
Subsequent Revision of Flood Maps, Impact on Prior Loans	19
Subsequent Revision of Flood Maps, Impact on Subsequent Loans	19

Mandatory Purchase of Flood Insurance Guidelines

Suspension of Communities for Non Compliance Problems	6
Tool Sheds or Shacks	22
Town Houses	31
Undivided Interest of Condominium Unit Owners	30, 31
Universal Residential Appraisal Report Form	20
Value of Land	20
Veterans Administration	11
Walled and Roofed Structures	18
Write Your Own Program	25
Zones, Flood Zones for Mapping and Rating Purposes	7

Harold T. Duryee

Federal Insurance Administrator

July 13, 1989

Date

Billing Code 6718-01