FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10811**
November 15, 1995]

LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Proposed Amendments to Regulation H

Comments Invited by December 18

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

Enclosed — for State member banks and domestic bank holding companies — is an excerpt from the *Federal Register* of October 18, 1995, containing the text of an interagency notice announcing a proposed joint rulemaking concerning lending in areas having special flood hazards. The proposal, which is being issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Farm Credit Administration, and the National Credit Union Administration, is intended to implement the provisions of the National Flood Insurance Reform Act of 1994. Among other mandated provisions, the proposal would (1) establish new escrow requirements for flood insurance premiums, (2) require lenders and servicers to "force-place" flood insurance on behalf of a borrower under certain circumstances, (3) enhance flood hazard notice requirements, and (4) allow lenders to charge fees for determining if a property is located in a special flood hazard area.

Beginning on page 13 of the enclosed excerpt are the proposed changes to Regulation H, "Membership of State Banking Institutions in the Federal Reserve System," of the Board of Governors. (The related proposals issued by the other Federal agencies are not included in the enclosure.) Copies of the enclosure will be furnished to others on request directed to the Circulars Division of this Bank (by phone: 212-720-5215 or 5216; by fax: 212-720-6767.)

Comments on the Board's proposal should be submitted by December 18, and may be sent to the Board of Governors, as specified in the notice, or to our Compliance Examinations Department. Questions on this matter may also be directed to our Compliance Examinations Department (Tel. No. 212-720-5914).

WILLIAM J. MCDONOUGH,
President.

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federal register

Wednesday
October 18, 1995

Part II

Federal Reserve System
12 CFR Part 208

Loans in Areas Having Special Flood Hazards; Proposed Rule

[Enc. Cir. No. 10811]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 95–24]

RIN 1557–AB47

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R–0897]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AB66

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 572

[No. 95–179]

RIN 1550–AA82

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB57

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are proposing to amend their regulations, and the Farm Credit Administration (FCA) is proposing to issue new regulations, regarding loans in areas having special flood hazards. This action is required by statute and is intended to implement the provisions of the National Flood Insurance Reform Act of 1994. Among other statutorily mandated provisions, the proposal would establish new escrow requirements for flood insurance premiums, explicit authority and the requirement for lenders and servicers to "force-place" flood insurance under certain circumstances, enhanced flood hazard notice requirements, and new authority for lenders to charge fees for determining if a property is located in a special flood hazard area.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–24. Comments may be inspected and photocopied at the same location. In addition, comments may be sent by facsimile transmission to FAX number 202/874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, Attention: Docket No. R–0897, or delivered to room B–2222, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board of Governors' rules regarding availability of information, 12 CFR 261.8.

FDIC: Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be delivered to Room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. or sent by facsimile transmission to FAX number 202/898–3838. Internet: COMMENTS@FDIC.GOV. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 8:30 a.m. and 5:00 p.m. on business days.

OTS: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 95–179. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days or may be sent by facsimile transmission to FAX number (202/906–7755). Comments will be available for inspection at 1700 G Street NW., from 1:00 p.m. until 4:00 p.m., on business days.

FCA: Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all comments will be available for examination by interested parties in Regulation Development, Office of Examination, Farm Credit Administration.

NCUA: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments will be available for inspection at the same location. Send comments to Ms. Baker via the bulletin board by dialing 703/518–6480. Send one copy by U.S. mail or fax to FAX number 703/518–6319.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist (202/874–4858), Compliance Management; Margaret Hesse, Attorney, Community and Consumer Law Division (202/874–5750), Jacqueline Lussier, Senior Attorney, or Saumya Bhavsar, Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of Chief Counsel.

Board: Diane Jackins, Senior Review Examiner, Jennifer Lowe, Review Examiner (202/452–3946), Division of Consumer and Community Affairs; Lawranne Stewart, Senior Attorney (202/452–3513), or Rick Heyke, Attorney (202/452–3688), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

FDIC: Mark Mellon, Senior Attorney, Regulation and Legislation Section (202/898–3854), Legal Division, or Ken Baebel, Senior Review Examiner (202/942–3086), or Barbara L. Boehm, Consumer Affairs Specialist (202/942–3631), Division of Compliance and Consumer Affairs.

OTS: Larry Clark, Program Manager, Compliance and Trust, Compliance Policy (202/906–5628); Catherine Shepard, Senior Attorney, Regulations and Legislation Division (202/906–7275), Office of Chief Counsel.

FCA: Robert G. Magnuson, Policy Analyst, Regulation Development (703/883–4498), Office of Examination; or William L. Larsen, Senior Attorney, Regulatory Operations Division (703/883–4020), Office of General Counsel. For the hearing impaired only, TDD (703/883–4444).

NCUA: Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance; or Jeffrey

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Mooney, Staff Attorney (703/518–6563), Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Riegle Community Development and Regulatory Improvement Act, Pub. L. 103–325, 108 Stat. 2160 (CDRI Act), which the President signed into law on September 23, 1994, comprehensively revised the Federal flood insurance statutes. The flood insurance provisions of the CDRI Act require the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations. The FCA is required to promulgate flood insurance regulations for the first time. The six agencies are issuing this proposal jointly in order to fulfill these statutory requirements. All six of the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain of the CDRI Act flood insurance provisions.[1]

This preamble first briefly describes the National Flood Insurance Program (NFIP), then highlights the CDRI Act amendments to it that are of significance to the institutions supervised by the six agencies. Institutions are encouraged to consult the CDRI Act for further detail about the provisions described here as well as for amendments to the NFIP that do not require rulemaking by the six agencies.[2]

Following the description of the statutory background is a discussion of the substance of the proposed regulations. The agencies' proposals are substantively consistent, although the format of the regulatory text varies in order to accommodate the format currently in use at each agency.[3] With respect to flood insurance regulations, these proposals satisfy the statutory obligations of the OCC, Board, FDIC, and OTS under section 303(a) of the CDRI Act. That section requires each of these agencies to review and streamline its regulations and to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

B. The National Flood Insurance Program

The NFIP is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act). These statutes are codified at 42 U.S.C. 4001–4129.[4] The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the NFIP. A special flood hazard area (SFHA) is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year.[5] SFHAs are delineated on maps issued by FEMA for individual communities.[6] A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.[7]

The 1973 Act amended the NFIP by requiring the OCC, Board, FDIC, OTS, and NCUA to issue regulations governing the lending institutions they supervise. The regulations directed lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (security property) if the security property was located in a SFHA in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that security property is located in a SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

C. CDRI Act Amendments

Title V of the CDRI Act, the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revises the NFIP. The Reform Act is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[8]

The Reform Act changed some of the terms used to refer to regulators and entities subject to the NFIP. The Reform Act refers to the six regulators collectively as the Federal entities for lending regulation. This preamble discussion refers to the six regulators as the Federal entities for lending regulation or the agencies. The Reform Act, and this preamble discussion, refer to the institutions supervised by the six agencies collectively as regulated lending institutions or lenders.[9]

The following provisions of the Reform Act are especially significant to regulated lending institutions. References to the appropriate sections of the CDRI Act are given in parentheses.

Scope of coverage (sections 511, 512, 522). The Reform Act expanded the scope of coverage of the NFIP in several ways. First, it added the FCA to the list of regulators covered by the NFIP and added Farm Credit banks and other lenders supervised by the FCA to the list of covered financial institutions.

Second, the Reform Act directed the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to implement procedures "reasonably designed to ensure" that property securing the residential mortgage loans they purchase is covered by flood insurance if the security property is located in a SFHA in a community that participates in the NFIP. Thus, entities not directly covered by Federal flood insurance laws will indirectly be required to satisfy the statutory flood insurance requirements if they sell residential mortgage loans to Fannie Mae or Freddie Mac.

Third, as discussed more fully below, some of the Reform Act's provisions apply to loan servicers. The Reform Act defines the term servicer to include any person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing a loan, and making the payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

Dates of Applicability. Except for the standard flood hazard determination

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[1] The heads of five of the six agencies (OCC, Board, FDIC, OTS, and NCUA) comprise the membership of the FFIEC.

[2] *See, e.g.*, CDRI Act sections 521 (flood insurance purchase requirement for Federal disaster relief recipients may not be waived), 522 (Federal agency lenders subject to provisions of statute), 573 (increase in maximum flood insurance coverage amounts), 579 (delay of effective date of flood insurance policies), and 582 (flood disaster assistance barred in certain circumstances; duty to provide certain notices on transfer of property).

[3] This proposal is also a component of the OCC's Regulation Review Program. Each of the agencies involved in this rulemaking is engaged in a similar effort to reduce unnecessary regulatory burden and to simplify and clarify its regulations.

[4] The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 50–79 (1995).

[5] 44 CFR 59.1.

[6] 44 CFR part 65.

[7] 44 CFR part 60.

[8] H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 195 (1994) (Conference Report).

[9] In the statute, the term lender also refers to a Federal agency lender, which means a Federal agency that makes direct loans secured by improved real estate or a mobile home. This proposal does not apply to Federal agency lenders. *See* CDRI Act sections 511, 512, 522.

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form and escrow provisions described later in this preamble, the flood insurance provisions in the Reform Act that apply to insured banks, savings associations, and credit unions took effect on September 23, 1994, the date of enactment of the Reform Act. The Reform Act specifically provides that the regulations implementing the flood insurance purchase requirement promulgated by the OCC, Board, FDIC, OTS, and NCUA that were in effect immediately before the date of enactment remain in effect until these agencies issue the new rules that the Reform Act requires. Thus, loans in compliance with the agencies' existing flood insurance rules that are made before new rules are finalized do not violate the requirements imposed by Federal flood insurance laws.

The statutory provisions that apply to Fannie Mae and Freddie Mac take effect on September 23, 1995. Unlike the regulated lending institutions supervised by the other Federal entities for lending regulation, Farm Credit System (System) institutions were not part of the NFIP before passage of the Reform Act and are not subject to any current flood insurance regulations. In section 522 of the Reform Act, Congress made clear that System participation in the NFIP would not be required for a minimum of one year after enactment of the Reform Act, thus ensuring a transition period for integration of the System into the NFIP.

As set forth below, a number of the Reform Act provisions require agency implementing regulations. These regulations will establish the basic framework for participation by System institutions in the NFIP. While it could be argued that System institutions should be required to comply as of September 23, 1995, with applicable statutory requirements of the Reform Act that do not require FCA regulations, the FCA believes that piecemeal applicability of Reform Act requirements before the fundamental regulatory framework envisioned by Congress is in place might be unfairly burdensome to institutions and unnecessarily difficult for the FCA to enforce.

Further, the FCA believes that System lenders should have the opportunity to comment on NFIP implementing regulations before their requirements go into effect. Accordingly, the FCA will not criticize System institutions in examinations for failure to follow the requirements of the Reform Act until FCA implementing regulations are effective. Notwithstanding this interpretation of R form Act applicability, to ensure a smooth integration of the System into the NFIP, the FCA encourages System lending institutions to initiate adequate preparations so that their lending activities will comply with NFIP requirements by the time final flood insurance regulations are adopted.

Flood insurance requirement (section 522). Under the 1973 Act, regulated lending institutions could not "make, increase, extend, or renew" any loan secured by improved real estate or a mobile home located in a SFHA in a participating community unless the security property and any personal property securing the loan was covered for the life of the loan by flood insurance. The Reform Act continues this basic requirement but adds a new exemption for small, short-term loans—those with an original principal balance of $5,000 or less and a repayment term of one year or less.

Escrow of flood insurance payments (section 523). The Reform Act directs the agencies to issue rules imposing a new escrow requirement for flood insurance payments. Under these rules, a regulated lending institution that requires the escrow of taxes, property insurance premiums, fees, or other charges for a loan secured by residential improved real estate must require the escrow of flood insurance premiums and fees as well. Loans secured by commercial property are not subject to this escrow requirement.

Forced placement of flood insurance (section 524). The 1973 Act did not expressly authorize lenders to purchase—or force place—flood insurance on behalf of a borrower. The Reform Act explicitly confers forced placement authority on both lenders and servicers, and requires lenders and servicers to force place insurance under certain circumstances. If, at the time of origination or at any time during the term of a loan, the lender or servicer determines that the security property and any personal property securing the loan lack adequate flood insurance coverage, the lender or servicer must notify the borrower of the borrower's responsibility to obtain coverage at the borrower's expense. If the borrower fails to purchase flood insurance within 45 days after that notification, the lender or servicer must purchase the insurance on the borrower's behalf.

The forced placement authority and requirement are self-implementing, and apply to all loans outstanding on or after September 23, 1994.[10] In forced placement situations, the lender or servicer may pass the cost of the insurance—premiums and fees—on to the borrower.

The Reform Act also provides procedures for the resolution of disputed flood hazard determinations that would trigger the mandatory purchase requirement. At the joint request of the borrower and regulated lending institution, the Director of FEMA will review the determination and within 45 days make the final decision whether or not the building or mobile home is located in an area having special flood hazards. Review of a flood insurance determination may be requested whenever a determination occurs, either at origination or at any time during the term of the loan. FEMA published a notice of proposed rulemaking with respect to these procedures on June 15, 1995, 60 FR 31442. The comment period closed on August 15, 1995.

Penalties (section 525). The Reform Act authorizes the appropriate Federal entity for lending regulation to impose civil money penalties against a regulated lending institution that engages in a pattern or practice of violating the flood insurance statute or regulations. Notice and opportunity for hearing are required before civil money penalties may be imposed. Penalties may be assessed in amounts of up to $350 for each violation, not to exceed $100,000 per calendar year, for any single regulated lending institution.

The agencies note that liability for civil money penalties remains with the regulated lending institution that committed the violation. Transfer of the loan does not extinguish the liability of the transferring lender; conversely, the transferee is not liable for violations committed by another lender that previously held the loan.

The agencies also note that a lender that purchases or renews flood insurance in the appropriate amount on a borrower's behalf under the statute's forced placement provisions is deemed by the express language of the statute to have complied with the agencies' regulations requiring lenders to ensure adequate coverage on security property located in a SFHA.

Flood determination fees (section 526). The 1973 Act did not expressly authorize regulated lending institutions to charge borrowers for the cost of making a flood insurance determination. The Reform Act provides that any person making a loan secured by improved real estate or a mobile home, or any servicer for such a loan, may charge a reasonable fee for the costs of determining whether the building or mobile home is located in a SFHA. The

[10] With regard to the timing of the applicability of this requirement to System institutions, *see* discussion under "Dates of applicability," *supra*.

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lender or servicer acting on behalf of the lender may charge the determination fee to the borrower or, in the case of a loan transfer or sale, the loan purchaser under prescribed circumstances. These include when the determination (1) is made in connection with the making, increasing, extending, or renewing of the loan that the borrower initiates, (2) is made in response to map changes by FEMA, or (3) results in the purchase of flood insurance under the forced placement provisions.

Notice requirements (section 527). The 1968 Act, as amended, required regulated lending institutions to provide notice to purchasers or lessees if the property securing the loan is located in a SFHA. The Reform Act further amends the 1968 Act: (1) to add detail to the required contents of the notice; (2) to require regulated lending institutions to give notice of special flood hazards to loan servicers, as well as to purchasers or lessees; and (3) to require lenders to notify FEMA of the identity of the servicer of a loan subject to flood insurance requirements and of the identity of the new servicer if there is a change in loan servicers.

The Reform Act also requires the Director of FEMA (or the Director's designee) to provide advance notice of the expiration of any flood insurance contract to the owner of the property covered by the contract, the loan servicer of any loan secured by such insured property, and (if known to the Director) the owner of the loan.

Standard flood hazard determination form (section 528). The Reform Act requires FEMA to develop a standard form for recording a lender's determination whether security property for a given loan is located in a SFHA for which flood insurance is available. The Reform Act mandates that the form be developed by regulations issued 270 days after September 23, 1994, the date of enactment. FEMA published a notice of proposed rulemaking with respect to the form on April 7, 1995, 60 FR 17758, and a final rule on July 6, 1995, 60 FR 35276. FEMA's final rule was effective upon publication in the **Federal Register**.

The Reform Act also requires the Federal entities for lending regulation to issue regulations requiring regulated lending institutions to use the standard form developed by FEMA. The Reform Act mandates that the agencies' regulations be issued together with FEMA's rule establishing the form. The agencies published a final rule that complies with this statutory requirement on July 6, 1995. 60 FR 35286. Under this rule, as mandated by the Reform Act, regulated lending institutions must use the form beginning 180 days after the issuance of the rule, or January 2, 1996.

Examination regarding compliance (section 529). The Reform Act requires each appropriate Federal entity for lending regulation to assess compliance with the NFIP when it conducts examinations of the regulated lending institutions it supervises. The OCC, Board, FDIC, OTS, and NCUA are required to report to Congress on compliance by insured depository institutions and insured credit unions with the requirements of the NFIP. The FCA has authority under the Farm Credit Act (12 U.S.C. 2001–2279bb–6) to assess compliance by Farm Credit System institutions with the NFIP.

Availability of flood maps (section 575). Under the Reform Act, FEMA must make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation (and certain other governmental entities) and at a reasonable cost to all other persons. FEMA also must provide notice of any change to flood insurance map panels, including changes effected by letter of map amendment or letter of map revision, not later than 30 days after the map change or revision becomes effective. FEMA must either publish this notice in the **Federal Register** or provide notice by another, comparable method. Finally, every six months FEMA must publish a compendium of all changes and revisions to flood insurance map panels and all letters of map amendment and revision for which it published notice during the preceding six months. These compendia are available free of charge to the Federal entities for lending regulation (and certain other governmental entities) and for a fee set by FEMA to all other persons.

II. Description of the Proposal

A. Overview

The Reform Act directs the Federal entities for lending regulation to write regulations implementing certain of its provisions and specifies their content. The OCC, Board, FDIC, OTS, and NCUA are proposing to revise their current flood insurance regulations [11] to reflect the changes required by the Reform Act. The FCA is proposing new flood insurance regulations for the institutions it regulates. All of the agencies were mindful of the need to keep regulatory burden to a minimum as they prepared this proposal, and, accordingly, are proposing only regulatory requirements necessary to implement the Reform Act.

The purpose of the Reform Act is to strengthen and enhance the NFIP. It does not focus on the safety and soundness of financial institutions. Depending on the location and activities of a lender, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. Accordingly, this preamble notes issues that may raise safety and soundness concerns in some circumstances and invites comment on these issues so that the agencies can consider whether to provide informal guidance, separate from these implementing regulations, that addresses safe and sound banking practices with respect to flood insurance.

In deciding whether guidance of this type is appropriate, the agencies will consider the fact that a lender's needs with respect to flood insurance vary widely depending on the type of lending the institution does and the geographic areas it serves. Therefore, each lender is generally in the best position to tailor its flood insurance policies and procedures to suit its business. The agencies encourage lenders to evaluate and, when necessary, modify their flood insurance programs to comport with both the requirements of Federal flood insurance laws and regulations and principles of safe and sound banking.

B. Topic-by-Topic Discussion

Authority, Purpose and Scope

The agencies have expanded this section to add detailed statements of authority, purpose and scope. The FCA is proposing language similar to that proposed by the other agencies. The NCUA is proposing to replace the current question and answer format of its flood insurance regulations with standard regulation text so that its flood insurance regulations are consistent with the other agencies.

Loan Servicers

The agencies propose to apply their regulations implementing the escrow, forced placement, and flood hazard determination fee provisions of the Reform Act to regulated lending institutions and to loan servicers acting on behalf of regulated lending institutions. The agencies propose to cover loan servicers in this way for several reasons. First, the agencies do

[11] OTS's current flood insurance regulation is codified at 12 CFR 563.48. For ease of reference, the OTS is creating a new part 572 for its flood insurance regulation and repealing 12 CFR 563.48.

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not have jurisdiction over all servicers. Some servicers are not regulated lending institutions or their affiliates.

Second, the agencies do not interpret the NFIP to impose obligations on loan servicers independent from the obligations it imposes on the owner of a loan.

The NFIP looks to activities that are conducted by lenders rather than loan servicers—that is, the making, increasing, extending, or renewing of a loan—as the triggers for ensuring adequate flood insurance coverage. The mandatory purchase requirement under section 102 of the 1973 Act (42 U.S.C. 4012a(b)) applies only to lenders.

Moreover, the Conference Report indicates that a principal reason for the adoption of the forced placement provision was to remove any doubt that lenders have the legal authority to require borrowers to purchase flood insurance or, if the lender purchases the insurance, to require the borrower to pay for it. Conference Report at 199. The agencies conclude that loan servicers were covered by the provision so that they could perform for the lender the administrative tasks related to the forced placement of flood insurance—including providing the requisite notices to borrowers, arranging for the insurance, and collecting and transmitting insurance premiums—without fear of liability to the borrower for the imposition of unauthorized charges.

Finally, section 102(f) of the 1973 Act (42 U.S.C. 4012a(f)) as added by section 525 of the CDRI Act does not authorize the agencies to seek civil money penalties against loan servicers that are not regulated lending institutions. The statute's failure to impose liability on servicers independent of lenders reinforces the conclusion that a servicer's obligation to comply with NFIP requirements arises from its contractual relationship with a lender. A lender thus may fulfill its duties under the NFIP by imposing its responsibilities on the servicer under a servicing contract. Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will take all necessary steps with respect to escrow requirements, forced placement of flood insurance, flood hazard determinations, and notices if the lender or its servicer should determine that there are deficiencies in any of these aspects of servicing agreements.

Definitions

The agencies have added or revised certain definitions, including definitions of the terms "building," "designated loan," [12] "mobile home," and "servicer." The agencies also added certain definitions that enable them to streamline the operative provisions of the regulation, including definitions of the terms "Director," "residential improved real estate," and "special flood hazard area."

Flood Insurance Requirement

The Reform Act did not change the basic requirement for the purchase of flood insurance when a security property is located in a special flood hazard area in a participating community, nor did it modify the minimum required amount of the insurance.[13] The minimum amount continues to be the lesser of the amount of the outstanding principal balance of the loan or the maximum limit for coverage under the 1968 Act.[14] Accordingly, the five agencies that currently have flood insurance regulations are not proposing any substantive amendment to the text that implements this portion of the statute.

Loan Purchase as Equivalent to Loan Origination

The agencies' current regulations differ in their treatment of the issue whether the purchase of a loan constitutes the making of a loan for purposes of flood insurance. The OCC and the Board take the position that a loan purchase is not an event that triggers the obligation to make a flood hazard determination. The FDIC has not previously had an opportunity to express an opinion on the question.

The OTS's current regulations, on the other hand, view the purchase of a loan as the equivalent of the making of a loan for flood determination purposes. In an effort to promote uniformity among the agencies, the OTS is considering aligning its position with that of the OCC and the Board, so that a loan purchase by a savings association would not trigger an obligation to make a flood hazard determination.[15] Based on its regulations governing loan purchasing, NCUA previously took the position that if flood insurance would have been required for a Federal credit union to grant the loan, flood insurance would be necessary for the credit union to purchase the loan.

The OCC and the Board do not propose to revise their current regulatory language to add a loan purchase as a "tripwire" for determining whether adequate flood insurance exists. The statute identifies the events—the making, increasing, extending, or renewing of a loan—that trigger a lender's obligation to review the adequacy of flood insurance coverage on an affected loan. The Reform Act does not include loan purchase in this list of specified tripwires. The OCC and the Board note that a loan purchaser may always require as a condition of purchase that the seller determine whether the security property is located in a SFHA. The Reform Act authorizes the seller to charge a fee to the purchaser for making this determination.

With respect to residential mortgage loans sold in the secondary market, the inclusion of loan purchase as a tripwire event may be unnecessary because of the expansion of the scope of the NFIP's coverage with regard to Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac are the largest volume purchasers of residential mortgage loans. As a practical matter, these entities establish the industry standards not only for the residential mortgage loans that they buy, but for all residential mortgage loans that the originator does not intend to keep in portfolio. The bulk of home loans sold to other purchasers, including regulated lending institutions, typically conform with Fannie Mae and Freddie Mac standards. Pursuant to the Reform Act amendments,[16] those standards will include adequate flood insurance coverage on collateral securing loans sold to these entities. The OCC and the Board believe that including loan purchase as a regulatory tripwire could result in the imposition of duplicative (and potentially

[12] The definition of the term "designated loan" refers to loans "secured by a building or mobile home" because, as a practical matter, flood insurance is generally available only with respect to a structure or mobile home and not with respect to the land on which the structure or mobile home sits. This definition is unique to the agencies' flood insurance regulations and carries no implication about the nature or extent of the collateral that a lender otherwise requires as a matter of prudent underwriting.

[13] *See also* section 573 of the CDRI Act, increasing the maximum flood insurance coverage limits.

[14] In addition to the dollar limits in the 1968 Act, flood insurance coverage under the NFIP is limited to the overall value of the property less the value of the land.

[15] OTS has historically taken a different position on this question than the OCC and the Board. Section 102(b) of the 1973 Act (42 U.S.C. 4012a(b)) provides that regulated lending institutions may not "make" any loan secured by improved real estate or a mobile home located in a SFHA unless the security property is covered by an adequate policy of flood insurance. The OTS's predecessor, the Federal Home Loan Bank Board, considered the word "make" to be broad enough to include loan purchases. Otherwise, savings institutions could evade flood insurance requirements by the simple expedient of purchasing, rather than originating, loans. *See* 34 FR 5749 (Feb. 15, 1974). Accordingly, the OTS's regulations implementing the 1973 Act construe the phrase "make a loan" as including purchased loans, *see* 12 CFR 563.48(b).

[16] Section 522 of the CDRI Act.

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inconsistent) requirements on the seller and the purchaser of a residential mortgage loan sold in the secondary market.

As noted previously, the FDIC has not previously had an opportunity to express an opinion on the question of whether the purchase of a loan is equivalent to the making of a loan for purposes of Federal flood insurance laws. The FDIC now proposes, in the interest of regulatory consistency, to formally adopt the position adhered to by the OCC and the Board that a loan purchase is not an event that triggers the obligation to make a flood hazard determination.

Given the Reform Act's extension of the flood insurance requirements to Fannie Mae and Freddie Mac, the OTS believes that coverage of loan purchases may no longer be necessary, especially if the agencies issue guidance on loan purchases, as discussed below. Therefore, the OTS, in an effort to promote consistent treatment for all regulated lending institutions, proposes to remove loan purchases from its flood insurance regulations. The OTS requests comment on this proposal.

Prior to the Reform Act, the NCUA took the position that if flood insurance would have been required for a Federal credit union to grant the loan, flood insurance would be necessary for the credit union to purchase the loan. This position is based upon the requirements of 12 CFR 701.23(b)(1) of the NCUA regulations, which state that a Federal credit union may only purchase a loan if it could have granted that loan or if the loan is restructured within 60 days after purchase so that it is a loan the Federal credit union could grant. The NCUA invites comment on whether it should maintain this position.

All of the agencies are considering whether, as a supervisory matter, to provide guidance on the flood insurance policies that institutions should follow when they purchase loans, including nonconforming home loans, loans secured by commercial property, portfolios of loans, and loan participations. Loans in these categories may be subject to underwriting standards that differ significantly from those established by Fannie Mae, Freddie Mac, or other government-sponsored enterprises for housing. Institutions with portfolios that include purchased loans may need to develop procedures to ensure that such purchases do not result in concentrations of loans secured by property subject to flood hazards for which insurance is not available or has not been obtained. The agencies invite comment on the need for this type of guidance and on what it should include.

Loan Acquisitions Involving Table Funding Arrangements.

The agencies also invite comment regarding whether lenders who provide table funding to close loans originated by mortgage brokers or mobile home dealers should be deemed to be "making" or "purchasing" loans for purposes of the flood insurance requirements. In the typical table funding situation, the party providing the funding ordinarily reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding for the mortgage loan "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. Technically, however, the party providing the funding is purchasing rather than originating the loan.

The Financial Accounting Standards Board (FASB) [17] provides guidance on the issue whether the party providing the funding should account for a table funding arrangement as a loan purchase or loan origination, and what criteria should be used to evaluate whether a table funding arrangement constitutes a loan purchase or a loan origination. A mortgage loan acquired by the party providing the funding in a table funding arrangement should be accounted for as a purchase of the loan by the acquirer if the loan is legally structured as an origination by the broker or dealer and if the broker or dealer is independent of the provider of funds. In making these determinations, the broker or dealer must satisfy each of five criteria. Those criteria are:

1. The broker or dealer is registered and licensed to originate and sell loans under the applicable laws of the states or other jurisdictions in which it conducts business;
2. The broker or dealer originated, processed, and closed the loan in its own name and is the first titled owner of the loan, with the mortgage banking enterprise becoming a holder in due course;
3. The broker or dealer is an independent third party and not an affiliate of the mortgage banking company. As a nonaffiliate, the correspondent must bear all of the costs of its place of business, including the costs of its origination operations;
4. The broker or dealer must sell loans to more than one mortgage banking enterprise and not have an exclusive relationship with the acquirer; and
5. The broker or dealer is not directly or indirectly indemnified by the mortgage banking enterprise for market or credit risks on loans originated by the broker or dealer. However, a commitment by the mortgage banking enterprise for the purchase of loans from the broker or dealer is not considered to be an indemnification for purposes of this requirement.

If any of the criteria is not met, then the loan should be accounted for as an originated loan by the provider of the funds.

Under the Real Estate Settlement Procedures Act of 1974, as amended, (12 U.S.C. 2601–2617) (RESPA), table funding is defined as a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.[18] A table-funded transaction is not a "secondary market transaction." 24 CFR 3500.2. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA or Regulation X, with certain exceptions. 24 CFR 3500.5(b)(7). The regulation provides that in determining what constitutes a bona fide transfer of a loan obligation in the secondary market, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not "secondary market transactions." Neither the creation of a dealer loan nor the first assignment of such loan to a lender is a "secondary market transaction."

In the agencies' view, a table-funded transaction is more like a loan origination by the provider of funds than a purchase of a loan in the secondary market by that entity. Thus, lenders who provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be making a loan for purposes of the flood insurance requirements. The agencies request comment on this position and whether the FASB or RESPA standard is a more appropriate guideline.

Applicability of Federal Flood Insurance Requirements to Subsidiaries

The question whether Federal flood insurance legislation applies to mortgage banking subsidiaries of regulated lending institutions is mooted

[17] *See* Financial Accounting Standards Board, EITF Abstracts, Emerging Issues Task Force Issue No. 92–10, "Loan Acquisitions Involving Table Funding Arrangements," 1993.

[18] Regulations issued by the Department of Housing and Urban Development (HUD) under RESPA appear in 24 CFR part 3500 (Regulation X).

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to some extent by the previously noted Reform Act amendment requiring Fannie Mae and Freddie Mac to ensure that any improved real estate or mobile home located in a SFHA that secures a mortgage loan these entities purchase is covered by the legally required amount of flood insurance. Since mortgage bankers generally securitize their mortgage loans and then sell them in the secondary market, any such loan that is sold to either Fannie Mae or Freddie Mac must comply with their requirements and therefore must be covered by flood insurance.

Fannie Mae and Freddie Mac primarily purchase residential mortgage loans, however, and then usually for 1- to 4-family residential unit dwellings. As a result, most mortgage loans secured by commercial property or by residential property with more than 4 units are not subject to Fannie Mae or Freddie Mac requirements. Each agency's discussion with respect to the applicability of Federal flood insurance requirements to the subsidiaries of the institutions it regulates is set forth below.

OCC and Board. National banks' operating subsidiaries are subject to the rules applicable to the operations of their parent banks as provided under 12 CFR 5.34. Similarly, state member banks' operating subsidiaries are subject to the rules applicable to the operations of their parent banks.

FDIC. The FDIC is responsible for the federal supervision of state chartered banks which are not members of the Federal Reserve System. The FDIC has been given specific legal authority to fulfill that function through the prescription of such rules and regulations as the Board of Directors of the FDIC may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (FDI Act) or any other law which the FDIC has the responsibility of administering or enforcing including Federal flood insurance legislation. *See* section 9(a)(Tenth) of the FDI Act (12 U.S.C. 1819(a)(Tenth)). The authority of the FDIC to regulate insured nonmember banks extends to activities that such institutions may conduct through subsidiaries. The FDIC therefore proposes to require by regulation that a subsidiary of an insured nonmember bank that engages in lending secured by real estate must comply with Federal flood insurance requirements. The FDIC invites comment from all interested parties on this proposed interpretation. The FDIC proposes to make subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term "bank" to include a subsidiary of such an institution. The FDIC invites comments on this proposed method.

OTS. Operating subsidiaries of Federal savings associations are subject to the rules, including flood insurance regulations, applicable to their parent savings associations. 12 CFR 545.81(e). However, the current OTS regulations implementing the 1973 Act do not apply to a service corporation. 12 CFR 563.48(a); discussed in 39 FR 5749 (Feb. 15, 1974). Because the Reform Act defines the term regulated lending institution to include, among other things, any bank, savings and loan association, or similar institution subject to the supervision of a Federal entity for lending regulation, the OTS is proposing to apply its flood insurance regulations to service corporations that engage in mortgage lending. The OTS believes this position is consistent with the statutory language and Congressional intent, and ensures uniform and consistent treatment for regulated financial institutions. The OTS requests comment on this proposal.

FCA. Service corporations organized under the Farm Credit Act (12 U.S.C. 2001–2279bb-6) are System institutions subject to the regulations applicable to the operations of their parent banks. 12 U.S.C. 2213. Since System service corporations have no authority to extend credit, the applicability of these proposed flood insurance requirements to such organizations should not be in question. 12 U.S.C. 2211.

NCUA. A credit union, by itself, with other credit unions and/or with non-credit union parties, may invest in or loan money to a corporation or limited partnership, called a credit union service organization (CUSO), which provides services to its credit union investors. 12 CFR 701.27(d). CUSOs are not directly regulated by the NCUA; rather, NCUA establishes the conditions for Federal credit union investments in and loans to such organizations. 12 CFR 701.27(a). Since NCUA does not exercise direct regulatory or supervisory jurisdiction over them, NCUA believes that CUSOs are not regulated lending institutions subject to the Reform Act. However, CUSOs that originate mortgage loans generally do not warehouse those loans. Their loans are either sold directly to the secondary market or sold to the credit union. Therefore, as a practical matter, CUSOs must adhere to the Federal flood insurance requirements when making loans since, as described herein, loans purchased by credit unions or sold to Fannie Mae or Freddie Mac must conform with these requirements.

Exemptions

Before its amendment by the Reform Act, the 1973 Act provided an exemption to the basic flood insurance requirement for State-owned property covered under a policy for self-insurance satisfactory to the Director of FEMA. 42 U.S.C. 4012a. The proposal retains this exemption and adds the Reform Act's new exemption for loans with an original principal balance of $5,000 or less and a repayment term of one year or less.

Escrow of Flood Insurance Payments

The Reform Act requires the agencies to adopt rules providing that a regulated lending institution must require the escrow of flood insurance premiums for loans secured by residential properties if the lender requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for other types of insurance, and fees. The proposal implements this new requirement. Where appropriate, servicing agreements between a lender and loan servicer also should require a loan servicer to escrow flood insurance premiums.

Escrow of flood insurance premiums is not required if the regulated lending institution does not require escrow of taxes, insurance premiums, or other payments. Thus, if a regulated lending institution terminates a loan escrow account, the lender is no longer required to escrow flood insurance premiums.

Under section 523 of the CDRI Act (42 U.S.C. 4012a(d)), escrow accounts for flood insurance premiums are subject to the applicable provisions of section 10 of RESPA, 12 U.S.C. 2609. Section 10 generally limits the amount that may be maintained in an escrow account and requires certain escrow account statements.[19] The regulations implementing section 10 appear at 24 CFR 3500.17 (1995). *See also* 60 FR 8812 (Feb. 15, 1995) and 60 FR 24734 (May 9, 1995) (revising § 3500.17). The requirement to escrow flood insurance premiums will take effect when the new

[19] Certain loans are exempt from RESPA, however, including a loan for any purpose on property of 25 acres or more, or an extension of credit primarily for a business, commercial, or agricultural purpose. *See* 12 U.S.C. 2606; 24 CFR 3500.5. Thus RESPA is narrower in scope than the Federal flood insurance legislation. The agencies are of the opinion that section 10 of RESPA applies to flood insurance escrow accounts only if the underlying loan is covered by RESPA. For example, a lender that originates a loan in a special flood hazard area primarily for a business, commercial or agricultural purpose must escrow flood insurance premiums if it escrows other types of payments (such as payments for insurance or taxes) but the escrow account established for that loan need not comply with the requirements of section 10 of RESPA.

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rules implementing the Reform Act are final.

Forced Placement of Flood Insurance

The Reform Act requires a regulated lending institution or servicer acting on its behalf to purchase—or "force place"—flood insurance for the borrower if the regulated lending institution or servicer determines that adequate coverage is lacking. The statute does not prescribe how or when the regulated lending institution or servicer should make this determination. The Reform Act does say, however, that the determination may occur at the time of origination or at any time during the term of the loan. The forced placement provision applies to all loans outstanding on or after September 23, 1994.[20]

The agencies note that the Reform Act contains provisions designed to make it easier for lenders and servicers to obtain actual notice of remappings or of the expiration of coverage of flood insurance. FEMA must publish notice of all remappings; and FEMA must provide advance notice of the expiration of insurance coverage to property owners, loan servicers, and (if known to FEMA) the owners of the loans.

Portfolio Review

The Reform Act and the proposed rules do not require regulated lending institutions or servicers to undertake a review of all loans in portfolio as of September 23, 1994, that is, a retroactive portfolio review. First, the Reform Act does not revise the list of events that trigger a determination, that is, the making, increasing, renewing, or extension of a loan. Second, the Reform Act imposes no requirement for retroactive portfolio review. Finally, a requirement for retroactive portfolio review would impose a burden on regulated lending institutions that is both costly and unnecessary in light of the system of specific tripwires that the Reform Act establishes.

Similarly, the agencies do not believe that the Reform Act requires regulated lending institutions or servicers to conduct portfolio reviews on a prospective basis. The 1968 and 1973 Acts as amended by the Reform Act do not prescribe portfolio review, or any other method, as the means that lenders or servicers should use to determine whether security property is adequately covered by flood insurance, nor does it require that determinations be made at any particular time.

Because the Reform Act does not mandate review of loan portfolios, the agencies do not propose to establish such a requirement by regulation. Regulated lending institutions and their servicers will nonetheless need to develop policies and procedures to ensure that, where a determination has been made that property securing a loan is located in a SFHA, they are in compliance with the Reform Act's forced placement provision.

In addition, it may be appropriate as a matter of safety and soundness for the agencies to ensure that institutions that are significantly exposed to the risks for which flood insurance is designed to compensate determine the adequacy of flood insurance coverage by (1) periodic reviews, or (2) reviews triggered by remapping of areas represented in a regulated lending institution's loan portfolio.

The agencies solicit comment on the advisability of issuing guidance in this area and on how the guidance should differentiate among regulated lending institutions based on their levels of exposure to flood risk. In particular, the agencies invite comment describing the methods that regulated lending institutions already use or are considering for determining the adequacy of flood insurance coverage; the cost (or other burden) associated with portfolio reviews; and on whether the additional loans for which flood insurance would be required as a result of portfolio reviews would be significant in relation to a regulated lending institution's or servicer's portfolio.

Penalties

The penalty provisions of the Reform Act are self-executing. They do not require the agencies to develop regulations to implement them, and the agencies are not proposing to do so.

Determination Fees

The Reform Act authorizes a lender or servicer acting on behalf of a lender to charge a reasonable fee for making a flood hazard determination, notwithstanding any other Federal or State law. This fee may be charged to the borrower under certain circumstances specified in the statute: if the borrower initiates the transaction (the making, increasing, extending, or renewing of a loan) that triggers a flood hazard determination; if the determination reflects FEMA's revision of map areas subject to flooding; or if the determination results in the purchase of flood insurance under the forced placement provision. In the case of a sale or transfer of the loan, the fee may be charged to the purchaser or transferee. The proposal includes the same authorization to charge reasonable determination fees as the Reform Act.

Section 526 of the CDRI Act (42 U.S.C. 4012a(h)) constitutes an authorization to charge fees in certain circumstances, notwithstanding the provisions of any other Federal or State law. It does not limit the ability of a lender to provide for determination fees in other circumstances under its lending contract, provided that such fees are not in conflict with other Federal or State laws.

Notice Requirements

The proposal revises the current regulation to reflect the provisions added by the Reform Act that prescribe the minimum contents of a regulated lending institution's notice concerning special flood hazards to borrowers and loan servicers.

The 1968 Act (42 U.S.C. 4104a) requires regulated lending institutions to notify the "purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee)" of special flood hazards. In this context, the terms "purchaser" and "lessee" refer to the person who will occupy a property. The Reform Act did not amend this statutory language. The current regulation states that the regulated lending institution must notify the borrower of special flood hazards and states that in lieu of such notification, a regulated lending institution may obtain satisfactory written assurance that the seller or lessor has so notified the borrower prior to the execution of the sale or lease agreement. Each of the agencies has used the word "borrower" in place of the "purchaser" or "lessee" designation contained in the statute, primarily to provide greater clarity. The proposal does not change this terminology.

The agencies invite comment on the advisability of retaining this language.

The notification to the borrower and servicer must include a warning that the building on the improved real estate or the mobile home is or will be located in an area having special flood hazards, a description of the flood insurance purchase requirements under section 102(b) of the 1973 Act (42 U.S.C. 4012a(b)), a statement that insurance may be purchased under the NFIP and is also available from private insurers, and any other information that the Director of FEMA considers necessary to carry out the purposes of the NFIP. The proposal follows the statute and

[20] With regard to the timing of the applicability of this requirement to System institutions, *see* discussion under "Dates of applicability," *supra*.

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requires that these items be included in the notice.[21]

The current regulatory provision requiring lenders to provide notice to borrowers of the availability of Federal disaster relief assistance in the event of flooding implements a portion of the 1973 Act (42 U.S.C. 4106(b)) that has not been amended substantively and, therefore, remains unchanged.

The 1968 Act requires the lender to provide notice of special flood hazards within a reasonable period of time in advance of the signing of the documents involved in the transaction. The proposal reflects the Reform Act amendment that added the loan servicer to the entities that must be notified. However, in the agencies' view, it may not be possible in all cases for a lender to provide such advance notice to a loan servicer. The agencies request comment on the appropriate timing of the notification to the loan servicer.

The current regulations require that the borrower, prior to closing, furnish the lender with a written acknowledgment of the receipt of the notices. The Reform Act mandates that the agencies' regulations require lenders to retain a record of the receipt of the notices by the borrower and the loan servicer. The proposed regulation reflects this change and deletes the acknowledgment provision.

The agencies request comment on whether the final regulations should require the lender to retain a copy of each notice in its files.

The substance of the "safe harbor" provision in the current regulations permitting lenders to rely on the language presented in sample notices that currently appear either in the body of the regulations or in an appendix to the regulations remains unchanged. The language in the sample notices is revised to reflect amendments to the 1968 Act (42 U.S.C. 4104a(a)(3)) made by section 527 of the CDRI Act.

The proposal also implements the new requirement that regulated lending institutions notify the Director of FEMA (or the Director's designee) of the identity of the loan servicer and of any change in the servicer with respect to any loan secured by improved real estate or a mobile home located in a SFHA. The agencies understand that the Director of FEMA intends to designate the insurance agent that writes the flood insurance to receive the notice.

The agencies request comment on whether the final regulations should require the lender to retain a copy of the notice of the identity of the servicer in its files.

Use of Standard Flood Hazard Determination Form

As mentioned in the *Background* section of this proposal, each agency has issued a final rule requiring the institutions they supervise to use the standard flood hazard determination form developed by FEMA when they determine whether improved real estate or a mobile home offered as collateral for a loan is located in a SFHA. For the convenience of the reader, the sections of the regulatory text established by those final rules are included in this proposal. The regulatory text contains nonsubstantive revisions made to reflect abbreviations and minor word changes to fit the format of the proposed regulations.

The Reform Act permits lenders to rely on third-party determinations but only if the third party guarantees the accuracy of the information provided to the lender. Moreover, the Reform Act permits a lender to rely on a previous determination whether the security property is located in a special flood hazard area and exempts the lender from liability for errors in the previous determination, if the previous determination is not more than seven years old and the basis for it was recorded on the standard flood hazard determination form that FEMA has developed.

There are two clearly defined exceptions to relying on a previous determination. A lender may not rely on a previous determination if FEMA's map revisions or updates have caused the security property to be located in a SFHA, or if the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

Recordkeeping Requirements

The rules of the five agencies that currently have flood insurance regulations include a requirement that an institution keep records sufficient to show how it has determined whether loans fall within the coverage of the NFIP and the implementing regulations. The proposal removes this provision because the proposed provisions on recordkeeping appear in the substantive sections to which they pertain, including the required use of the standard flood hazard determination form and the notification sections.

Agricultural Lending Considerations

System lending institutions have raised preliminary questions regarding the operation of the NFIP, particularly with respect to the cost of insuring agricultural structures that secure loans. The FCA notes that questions regarding the operation and cost structure of the NFIP should be directed to FEMA as administrator of the NFIP. However, the FCA recognizes that System institutions are entering the NFIP for the first time and are concerned about their new administrative responsibilities under the NFIP as well as the costs of flood insurance to borrowers. The FCA is not in the position to respond fully to some of the concerns that have been raised regarding the NFIP, but FEMA officials indicate that the NFIP does differentiate between non-residential agricultural buildings and other types of non-residential buildings for purposes of pricing flood insurance. Thus a barn, storage shed or other type of agricultural structure at a given elevation in a SFHA might cost less to insure against flood loss than another type of commercial structure more susceptible to flood damage. Where required, borrowers may insure their non-residential buildings using one policy with a schedule separately listing the buildings[22] or on a separate policy for each building. Each building must be covered by flood insurance.

Concern has also been expressed regarding treatment under the NFIP of improved property securing an agricultural loan that is located within a SFHA but on high ground making flooding unlikely. FEMA officials indicate that a borrower in such circumstances could apply to FEMA for a Letter of Map Amendment, which, if granted would exclude the building from the SFHA and eliminate the requirement for flood insurance on the structure. *See* 44 CFR part 70. As previously noted, questions regarding the operation of the NFIP generally should be directed to FEMA and NFIP officials.

III. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not

[21] Readers should be aware that section 1364 of the 1968 Act as amended by section 527 of the CDRI Act requires that the notice of special flood hazards also list any other information that the Director of the FEMA considers necessary to carry out the purposes of the NFIP. The agencies have been informed by FEMA staff that at the present time there are no plans to require that any other information be listed on the notice.

[22] FEMA also permits use of schedules to list multiple structures for purposes of the standard flood hazard determination form. *See* 60 FR 35276, 35280 (July 6, 1995); 44 CFR part 65, App. A.

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have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the **Federal Register** along with its general notice of proposed rulemaking.

Pursuant to section 605(b) of the RFA, the OCC, Board, FDIC, OTS, and NCUA hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this proposal will not: (1) Have significant secondary or incidental effects on a substantial number of small entities, or (2) create any additional burden on small entities. Moreover, this proposal is required by the Reform Act. Accordingly, a regulatory flexibility analysis is not required.

As a general matter, the proposed rule does not impose standards that are in excess of industry standards with respect to flood insurance, as those standards are reflected in the underwriting standards for Fannie Mae and Freddie Mac. Further, for those lenders already covered by existing flood insurance requirements, the proposed rule does not represent a significant increase over the burden imposed under the current rules. For such lenders, the proposed rules would increase burden above that imposed under the current rules in the following respects: (1) Where the lender escrows other tax and insurance payments, premiums for required flood insurance must be escrowed as well; (2) the content of the notices currently provided to borrowers is modified; and (3) notice to FEMA of the servicer of the loan on property in a special flood hazard area is required.[23] Each of these additions to the current rules is required by the Reform Act.

IV. Paperwork Reduction Act of 1995

The OCC, FDIC, OTS, and NCUA invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 22.6, 22.7, 22.9, and 22.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (national banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a special flood hazard area). The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated number of respondents and/or recordkeepers: 3,000.
Estimated total annual reporting and recordkeeping burden: 78,000 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; *see also* 5 CFR 1320 Appendix A Item 1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0280), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation will be included in 12 CFR 208.23. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (state chartered member banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a special flood hazard area). The respondents/recordkeepers are for-profit financial institutions, including small businesses.

Respondent/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control number is 7100–0280.

It is estimated that there will be 975 respondent/recordkeepers and a total of 25,977 hours of annual hour paperwork burden. The estimated annual hour paperwork burden per respondent/recordkeeper is 26.6 hours, 1 hour for recordkeeping and, when the property is located in a special flood hazard area, a total of 25.6 hours for: (a) Notifying the borrower and the servicer; (b) notifying the Director of the initial servicer; (c) if necessary, notifying the Director when the loan servicer has changed; and (d) if necessary, notifying the borrower regarding forced placement. Banks likely will add the required records to their existing usual and customary loan documentation. Thus there is estimated to be no significant annual cost burden over the annual hour burden. Additionally, the Board estimates that there is no associated capital or start up cost. Based on an hourly cost of $20, the annual cost to the public is estimated to be $519,540.

Because the records would be maintained at state member banks and the notices are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (b) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the

[23] The provision concerning forced placement of flood insurance is self-implementing and is included in the proposed rules only to ensure that lenders are aware of the authority and requirements of that provision. Including the provision in the proposed rule does not impose any additional burden on lenders.

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Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collections of information requirements in this proposed regulation are found in 12 CFR 339.6, 339.7, 339.9, and 339.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (state chartered nonmember banks) and borrowers (anyone who applies for a loan secured by improved real estate or a mobile home which may be located in a special flood hazard area).

The likely respondents/recordkeepers are insured nonmember banks and their subsidiaries.

Estimated number of respondents/recordkeepers: 6,250.
Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 162,500 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

OTS: The reporting requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping requirements in this notice of proposed rulemaking are found in 12 CFR 572.6, 572.7, 572.9, and 572.10. The recordkeeping requirements set forth in this notice of proposed rulemaking are needed by the OTS in order to supervise savings associations and develop regulatory policy. The likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,500.
Estimated average annual burden hours per recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 39,000 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

NCUA: The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the collection of information should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Attn: Milo Sunderhauf. NCUA will publish a notice in the **Federal Register** once OMB action is taken on the submitted request.

The collection of information requirements in this proposed regulation are found in 12 CFR 760.6, 760.7, 760.9 and 760.10. This information is required to evidence compliance with the requirements of the National Flood Insurance Program with respect to lenders (Federally insured credit unions) and borrowers (members that apply for a loan secured by improved real estate or a mobile home which may be located in a special flood hazard area). The likely recordkeepers are Federally insured credit unions.

Estimated number of respondents and/or recordkeepers: 700.
Estimated average annual burden hours per respondent/recordkeeper: 26 hours.
Estimated total annual reporting and recordkeeping burden: 16,325 hours.
Start-up costs to respondents: None.
Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

V. Executive Order 12866

OCC and OTS: The OCC and the OTS have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866.

VI. Executive Order 12612

NCUA: This proposed rule, like the current 12 CFR part 760 it would replace, will apply to all Federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that this proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Further, this proposed rule will not preempt provisions of State law or regulations.

VII. Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act), requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the proposed rule revises current OCC and OTS flood insurance regulations as prescribed by Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, Title V, 108 Stat. 2160 (1994) (Reform Act). The Reform Act specifically requires six agencies, including the OCC and OTS, to implement certain of the Reform Act's amendments through regulations. Therefore, to the extent that the proposed rules impose new Federal requirements, such requirements are statutorily mandated by the Reform Act. Nevertheless, the OCC and OTS have determined that the proposed rules will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 208.8 [Amended]

2. In § 208.8, paragraph (e) is removed and reserved, and appendix A—Sample Notices is removed.

3. A new § 208.23 is added at the end of subpart A to read as follows:

§ 208.23 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* (1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director.

(c) *Requirement to purchase flood insurance where available.* A state member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a state member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed after [effective date of final regulation], then the state member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The state member bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. Depending upon the type of loan, such escrow account may be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts. Upon receipt of a notice from the Director or other provider of flood insurance that premiums are due, the state member bank or its servicer shall pay the amount owed to the insurance provider from the escrow account.

(f) *Required use of standard flood hazard determination form*—(1) *Use of form.* A state member bank shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65)

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when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A state member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a state member bank, or a servicer acting on behalf of the bank, determines, at the time of origination or at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the state member bank or its servicer shall purchase insurance on the borrower's behalf. The state member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any state member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area.

(2) *Borrower fee.* The determination fee may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director's revision or updating of floodplain areas or flood-risk zones;

(iii) Reflects the Director's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The fee may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance*—(1) *Notice requirement.* When a state member bank makes, increases, extends, or renews a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(2) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Director, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(3) *Timing of notice.* The state member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower and the servicer within a reasonable time before the completion of the transaction.

(4) *Record of receipt.* The state member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(5) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a state member bank may obtain satisfactory written assurance from the seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has notified the borrower that the building or mobile home is or will be located in a special flood hazard area. The state member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(6) *Use of prescribed form of notice.* A state member bank may comply with the notice requirements of this paragraph (i) by providing written notice to a borrower and to the servicer containing the language presented in appendix A to this section not less than ten days before the completion of the transaction (or not later than the bank's commitment if the period between the commitment and the completion of the transaction is less than ten days).

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director (or the Director's designee) in writing of the identity of the servicer of the loan.

(2) *Transfer of servicing rights.* The state member bank shall notify the Director (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.23—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

_____The building securing the loan for which you have applied is or will be located in an area with special flood hazards.

_____The mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community:_____. This area has at least a one percent (1%) chance of being flooded in any given year. The risk grows each year. For example, during the life of a 30-year mortgage loan, the risk of a flood in a special flood hazard area is at least 26%.

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located

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participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal amount of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Governors of the Federal Reserve System, October 3, 1995.

William W. Wiles,

Secretary of the Board.

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