



Mandatory Flood Insurance Purchase in Remapped Residual Risk Areas Behind Levees

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Summary

This report examines the amount of flood insurance that must be purchased (and retained) on loans secured by real property located in federally designated special flood hazard areas (SFHAs). It is written in response to three situations: (1) the Federal Emergency Management Agency's remapping efforts that include verifying the status of all levees as providing protection against a 100-year flood, which are currently depicted on Flood Insurance Rate Maps, and widespread concerns among homeowners about new requirements to purchase flood insurance should the levee become decertified; (2) uncertainty as to whether the mandatory amount of flood insurance should be equal to the assessed value of the insured residential structure or the unpaid principal balance (UPB) of the mortgage loan; and (3) concerns that homeowners may be inappropriately asked to purchase an amount of flood insurance that is several times the value of the actual property. This report will be updated as events warrant.

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Introduction

This report examines the federal government's efforts to conduct a nationwide Flood Insurance Study (FIS) to obtain new flood-hazard data, publish more accurate, up-to-date flood-risk assessments and maps, and to require more homeowners to buy flood insurance if they live behind dams or levees. As part of the Federal Emergency Management Agency's (FEMA) map modernization program, the agency has implemented a policy to verify the certification status of all levees currently depicted on flood insurance rate maps (FIRMs). Currently, if FEMA agrees that a levee shown on a government-issued FIRM can withstand a 100-year flood—that is, a flood that has only a 1% chance of happening in any given year—then the homes and businesses protected by the levee are not considered to be in the floodplain.¹ This means homeowners living there do not have to buy federal flood insurance. Homeowners may be affected if FEMA decertifies the levee.

The National Flood Insurance Program

Floods and severe storms are among the most costly kind of weather and climate disaster in the United States. The standard homeowners insurance policy generally excludes losses caused by flood. This gap in coverage is usually filled with the purchase of flood insurance from the National Flood Insurance Program (NFIP) in communities where certain required flood control activities have been undertaken. In 1968, Congress established the NFIP to provide insurance for property damage due to flooding. The NFIP remains the regime in which the federal government provides insurance, maps the floodplains, and oversees the national regulation of the land use ordinances.

Under the NFIP, the federal government makes subsidized flood insurance available to homeowners through a network of private insurance companies (called Write-Your-Own companies) in communities that agree to implement and enforce minimum national standards for regulating new development in floodplains. Land use controls are usually adopted to steer new construction away from high-risk locations and to otherwise mitigate construction in hazardous zones.

In addition, the federal government studies flood hazards and publishes floodplain maps that show the probability of flooding in a particular area within 100 years. This regulatory standard then requires raising of the first floor of new construction above the elevation of the 100-year storm. In the highest-risk zones, where water moves with velocity, there would normally be no construction, and any new construction would not get the subsidized rates but would pay full actuarial rates. Lenders are required to protect the collateral (the structure) with flood insurance if the mortgage is federally guaranteed and the structure is in a high-risk flood zone.

¹ The 100-year concept is a probabilistic standard for an area within a floodplain that has a 1% or greater chance of flood occurrence within a given year. Such an event could actually happen twice in a year, while the average occurrence remains only once in a century.

Flood Insurance, Maps, and Floodplain Management

In the wake of Hurricane Katrina in 2005, three sets of problems have emerged with respect to flood maps, the insurance program, and the increased frequency of extreme weather events across the country, along with increased likelihood of devastating floods, including the Midwest flood in 2008.

- Recent catastrophic flooding revealed that FEMA floodplain maps were sometimes over 20 years old and seriously outdated, based on old evaluations of levees and river conditions.
- Losses from major floods have been compounded by over-reliance on levees and other strategies for taming rivers, which encouraged development in flood-prone areas. Rivers and streams have been increasingly altered by dams, levees, and other structures intended to increase inland navigation and flood control. In some cases, levees built 50 years ago for agricultural purposes are now expected to function as a residential or urban levee. Floods in 1993 and 2008 breached or topped these levees, which were not built to handle such floods of historic proportions.
- Experts generally agree on a need to expand to “residual risk” areas the requirement that lenders require borrowers to purchase flood insurance. These are areas that are subject to flooding by the 0.2%-annual chance flood (500-year flood), areas subject to coastal storm surge floods, and areas that would be subject to flooding but for the presence of flood control structures such as levees, dams, and other man-made structures—the so-called “natural 100-year floodplain.”

The 111th Congress could opt to consider various comprehensive proposals to reform and modernize the NFIP.² A key part of that reevaluation would likely be the costs of floodplain remapping and expanding mandatory flood insurance purchase requirements to 500-year flood zones.

Flood Risk Assessment and Mapping

As part of its administration of the NFIP, FEMA identifies the nation’s flood risks, establishes appropriate risk zone determinations, and reflects these determinations accurately on FIRMs. Flood maps generally delineate both high-risk zones, called special flood hazard areas (SFHAs),³ and low-to-moderate risk zones with a less than 1% annual chance of flooding. FEMA maintains an inventory of roughly 106,000 maps. Accuracy is an essential component of the NFIP, and this requires the updating of maps to reflect natural and human-induced changes in the land surface within the floodplains. Flood maps serve a wide range of uses, including local planning, emergency preparedness and response, and natural resource management. FIRMs are also used by lending institutions and insurance companies to calculate flood insurance rates and establish who is required to comply with mandatory flood insurance purchase requirements.

² See CRS Report R40650, *National Flood Insurance Program: Background, Challenges, and Financial Status*, by Rawle O. King.

³ Special Flood Hazard Areas (SFHAs) are defined as land areas on the FIRMs that are subject to inundation by a flood that has a 1% probability of being equaled or exceeded in any given year.

According to the Government Accountability Office, 50% of the NFIP's roughly 106,000 maps were more than 15 years old in April 2008, and another 8% were 10 to 15 years old.⁴ Outdated flood maps could give homeowners a false sense of security since the maps might not show their property being located in a flood risk zone. Developers could construct properties in flood risk areas not identified on outdated or inaccurate flood maps. Finally, outdated flood maps impair the actuarial soundness of the FEMA's flood insurance program.

In 2003, at the urging of Congress and in collaboration with state and local partners, FEMA launched a five-year public awareness and map modernization program (Map Mod) to convert existing paper FIRMs into more accurate digital flood insurance rate maps (DFIRMs).⁵ In 2005, acting on direction from Congress and feedback from the U.S. Government Accountability Office, the Department of Homeland Security's Inspector General, and other stakeholders, FEMA undertook a mid-course evaluation of its flood map modernization program.⁶ This comprehensive evaluation found that there was a need for greater flexibility in determining flood areas to be mapped, particularly areas behind levees.

A key challenge in Map Mod has been to obtain high-accuracy digital land-surface elevation data. A solution was light detection and ranging (LIDAR) technology, which is based on remote-sensing laser measurements collected from aircraft. Both sets of data—base map imagery and base flood elevation data—are imputed into the National Elevation Dataset that the U.S. Geological Survey (USGS) maintains in support of FEMA's flood map modernization goals.

As part of the Map Mod program, FEMA initiated a nationwide flood insurance study (FIS) to update flood-hazard data and to reflect accurately the flood hazard and risk in "levee-impacted" areas on DFIRM. According to FEMA, the primary goals of the FIS and DFIRM are to (1) incorporate available updated flood hazard information, as well as revisions effected by letters of map revisions (LOMRs) issued by FEMA since the latest FIS reports and FIRMs were published; (2) convert the base flood elevation data from the National Geodetic Vertical Datum of 1929 to the North American Vertical Datum of 1988; and (3) upgrade the FIRMs to a geographic information system (GIS) database format to set the stage for follow-up detailed engineering studies and restudies and to enable support for GIS analyses and other digital applications.

Residual Flood Risk of Levees

As part of FEMA's Map Mod program, FEMA has also implemented a policy to verify the certification status of all levees currently depicted on FIRMs as meeting design, operation, and maintenance standards for protection against the 1%-annual-chance flood.

The regulatory requirements for accrediting levees as providing base flood protection on FIRMs are found in Title 44 of the Code of Federal Regulations (CFR), Section 65.10 (44 CFR 65.10).

⁴ U.S. Government Accountability Office, *Flood Insurance: FEMA's Rate-Setting Process Warrants Attention*, Report GAO-09-12, October 31, 2008, p. 18, located at <http://www.gao.gov/products/GAO-09-12>.

⁵ The three components of the DFIRMs are (1) the base map imagery that provides land surface information such as location of streams, roads, and buildings; (2) base elevation data which is superimposed on top of the land surface information to provide 3-dimensional information; and (3) engineering analysis such as data and models of stream and river flows. Base map imagery is generally obtained from aerial and satellite photographs.

⁶ See Federal Emergency Management Agency, "Flood Map Modernization: Mid-Course Adjustment Executive Overview," March 27, 2006, located at http://www.fema.gov/pdf/fhm/mm_mcaovr.pdf.

These criteria include design criteria (e.g., freeboard, closures, embankment protection, embankment and foundation stability, settlement, interior drainage), operation, and maintenance. FEMA has specified levees to be built to withstand storm surges that rise three feet above the base flood elevation.

On August 22, 2005, FEMA issued Procedure Memorandum No. 34 to clarify that it is the community or levee system owner's responsibility to provide data and documentation to show that a levee system meets 44 CFR Section 65.10 requirements.⁷ A levee accreditation designation allows a community and its structures to be removed from SFHA status. Levee accreditation means a community could be exempt from both flood insurance purchase requirements and local land-use restrictions.

Technical Criteria for Levee Certification

FEMA does not conduct a detailed physical inspection of levees to determine whether and how the flood control project or system will perform in a flood event. Rather, officials from FEMA's regional office typically meet with county and local community officials to put together a levee accreditation plan that outlines a process and time line to submit the levee certification data to FEMA that coincides with FIS and DFIRM schedules for the county.

For a levee system to become accredited, the community or levee owner seeking recognition must provide FEMA with certain data and documentation showing that the levee is (1) designed to withstand forces associated with the 1% annual chance flood (height, stability, and embankment protection); (2) adequate in terms of freeboard (e.g., minimum levee height is 3-4 feet above design flood state); (3) all closure devices function properly; (4) operation and maintenance plans are adequate and in place; and (5) interior drainage systems (pumps and canals) are functioning. The documentation for accreditation is usually prepared by a registered professional engineer who knows FEMA's flood insurance study guidelines or by a federal agency (e.g., the U.S. Army Corps of Engineers (USACE)) with levee design and construction qualifications.

FEMA's accreditation is not a guarantee of performance of the levee. It is only a statement that data and documentation submitted to the agency is accurate and the analysis and design were performed correctly and in accordance with sound engineering practices and FEMA guidelines.⁸ If a levee is not certified, FEMA has the power to designate the area protected by the levee as being in a SFHA, which forces homeowners in the residual risk area to purchase flood insurance as a condition of receiving a federally insured mortgage. Non-accredited levees are shown on flood maps as not providing protection from a base flood.

Provisionally Accredited Levee Systems⁹

FEMA's accreditation criteria are fairly direct. Communities and levee owners either provide all data to support that a given levee system complies with the requirements in 44 CFR 65.10—or they do not.¹⁰

⁷ See <http://www.fema.gov/library/viewRecord.do?id=2367>.

⁸ 44 CFR 65.2(b).

⁹ FEMA's Procedure Memorandums are accessible at http://www.fema.gov/plan/prevent/fhm/lv_fpm.shtm.

¹⁰ Under 44 CFR Part 67, communities may appeal the proposed base flood elevations on a map if they submit (continued...)

To minimize the impact of mapping areas behind levees on the Map Mod goals, FEMA issued on September 25, 2006, Procedure Memorandum No. 43, “Guidelines for Identifying Provisionally Accredited Levees,” to provide guidance on issuing preliminary and final effective DFIRMs, while providing communities/levee system owners with 24 months to compile and submit the data and documentation required to show compliance with 44 CFR Section 65.10. PM No. 43 established the concept of Provisionally Accredited Levee (PAL) systems.¹¹ On March 16, 2007, FEMA issued a revised version of PM No. 43 to clarify the procedures that FEMA and its mapping partners are to follow for federal and non-federal levee projects.

FEMA has essentially given levee owners additional time to submit evidence of the levee’s status. In order for a levee to be provisionally accredited, the community or levee owner must commit to FEMA in writing to submit the full Section 65.10 compliance documentation for the levee within 24 months of the signed agreement. During the 24-month period of PAL, areas behind the levee are mapped as having a moderate flood risk and designated as a PAL. If, however, the area does not meet FEMA’s criteria, the map will show the area as a high-risk zone, or a SFHA.

The 24-month PAL period has now expired for most communities. This situation presents a challenge for many local community residents and local officials, as well as their congressional representatives. Some Members of Congress have considered legislative options to extend the 24-month PAL period. Others have proposed providing explicit federal funding to local communities to fund the cost of securing FEMA accreditation.

On April 24, 2009, FEMA issued Procedural Memorandum 53, “Guidelines for Notifying and Mapping of Expiring Provisional Accredited Levee Designations,” that provides guidelines for notification of communities/levee system owners regarding expiring PAL designations and for mapping of accredited and de-accredited levee-impacted areas after the PAL period expiration.¹² Under the new guidelines, FEMA’s regional offices will send out (during the 24-month PAL period), two letters—90 days and 30 days before expiration—to the chief executive officer of all affected communities, as well as to the state levee safety official, the USACE district office, and the district offices of U.S. senators and representatives in those affected areas. FEMA’s regional offices are authorized to determine if the PAL system will be accredited or de-accredited. FEMA must begin a remapping of the area immediately upon determining that the PAL system is to be accredited or de-accredited. This process must last at least 18 months before a preliminary DFIRM can be issued that reflects either the newly designated accredited or de-accredited levee system.¹³

FEMA will not grant an extension to the 24-month PAL period. However, PM No. 53 outlines procedures that essentially allow communities and levee system owners additional time to provide the 44 CFR Section 65.10 compliance data and documentation submittals to FEMA before the DFIRM is final and becomes effective.

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technical or scientific evidence refuting those elevations.

¹¹ See <http://www.fema.gov/library/viewRecord.do?id=2511>.

¹² See <http://www.fema.gov/library/viewRecord.do?id=3632>.

¹³ Ibid.

Mandatory Purchase Requirements

Under the National Flood Insurance Act of 1968,¹⁴ as amended by the Flood Disaster Protection Act of 1973¹⁵ and the National Flood Insurance Reform Act of 1994¹⁶ regulated lending institutions,¹⁷ federal agencies,¹⁸ and secondary market entities¹⁹ involved in mortgage loan transactions cannot make, increase, extend, or renew any loan secured by improved real estate or a mobile home in any area that has been designated by the Administrator of FEMA as a SFHA unless the building or mobile home or any personal property securing the loan is covered by the required amount of flood insurance.

If the property is not located in an SFHA, but instead in a low-to-moderate flood risk area, federal law does not require flood insurance; however, it is recommended since historically about one in four flood claims have come from these low-to-moderate risk areas. In addition, the mandatory flood insurance purchase requirement does not apply to loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Administrator of FEMA or to loans with an original principal balance of \$5,000 or less, and having an original repayment term of one year or less.

Pursuant to federal flood insurance laws and regulations, the amount of flood insurance that must be purchased depends on several factors, primarily the amount of financial assistance,²⁰ the unpaid principal balance (UPB) on loans secured by real property in an SFHA, and the maximum amount of insurance available through NFIP.²¹ The formula for determining the correct amount of flood insurance is fairly straightforward, but in practice it has generated considerable ambiguity and confusion among financial institutions, particularly as it relates to determining the “insurable value” of the building using the new FEMA guidelines that imposes a claims recovery limit standard of 100% replacement cost value (RCV).²² The old FEMA guidelines are based on appraised value minus the value of the land.

¹⁴ P.L. 90-448, 82 Stat. 476.

¹⁵ P.L. 93-234, 87 Stat. 975.

¹⁶ P.L. 103-325, 108 Stat. 2257-2260.

¹⁷ A *regulated lending institution* is any bank, savings and loan association, credit union, farm credit bank, federal land bank association, production credit association, or similar institutions subject to the supervision of a federal financial regulatory agencies including the Board of Governors of the Federal Reserve system (FED), the Farm Credit Administration (FCA), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

¹⁸ The federal agencies are: Small Business Administration (SBA), Veterans Administration, and Federal Housing Administration (FHA).

¹⁹ Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Government National Mortgage Association (Ginnie Mae) are considered federal agencies for purposes of flood insurance and are often referred to as government-sponsored enterprises (GSEs). These organizations support residential housing ownership by providing liquidity to the residential mortgage market. Congress did not make the Federal Agriculture Mortgage Corporation (Farmer Mac), another GSE, subject to flood insurance requirements.

²⁰ Financial assistance means any form of direct, insured, or guaranteed loan, any form of grant, or any form of direct or indirect assistance extended by a federal agency.

²¹ For single-family and two-to-four family dwellings, the maximum amount of flood insurance available under the NFIP is \$250,000; up to \$500,000 in coverage is available for nonresidential buildings.

²² See Federal Emergency Management Agency, National Flood Insurance Program, *Mandatory Purchase of Flood Insurance Guidelines*, (September 2007), located at http://www.fema.gov/good_guidance/download/10040.

Despite efforts by FEMA to clarify the definition of the mandatory flood insurance purchase requirement, considerable confusion still exists among lenders. FEMA recommends that lenders seek guidance from financial institution regulatory authorities with respect to determining insurable value. The problem is that neither the 1973 and 1994 Acts (see **Appendix A**) nor NFIP's implementing regulations defines the term "insurable value." Consequently, there are inconsistencies in how the insurable value is determined by the various lenders and the amount that a borrower could possibly collect under a General Property Form which is used in insuring non-residential structures.²³ Definitions used by lenders vary; some define the insurable value as "appraised value minus land" while others refer to it as "100% of the full replacement cost value (RCV) including the supporting structure." One may argue that there is a need for one consistently applied standard for determining the insurable value. This issue is being addressed by the new guidance, "Loans in Areas Having Special Flood Hazards: Interagency Questions and Answers Regarding Flood Insurance" (Flood Q&A), published by the federal financial regulatory agencies (see discussion in **Appendix A**).

The September 2007 "Mandatory Purchase of Flood Insurance Guidelines" (FEMA guidelines) were designed to address the ambiguities in determining the appropriate flood insurance purchase obligations.²⁴ However, the new reference in the FEMA guidelines to 100% RCV in the context of NFIP's recovery limits on the NFIP's Standard Flood Insurance Policy (SFIP) has raised questions from lenders on how to determine RCV when calculating the amount of insurance that must be obtained. Although federal law and regulation impose a minimum amount of flood insurance that each loan must have, it does not prevent lenders from requiring that each loan be insured up to the NFIP's recovery limits (100% RCV) subject to the maximum coverage available through the program. Lenders can also require that personal property within a structure located in a SHFA be insured if the property secures all or part of a loan.

Determining the Appropriate Amount of Flood Insurance

The NFIP Guidelines require flood insurance to be purchased in an amount equal to the lesser of

- the maximum amount of coverage available for the type of building,
- the outstanding principal balance of the loan, or
- the full insurable value of the property, which is the same as 100% of the replacement cost value (excluding the appraised value of the land).²⁵

The NFIP pays flood damage losses on the basis of replacement cost value for primary residences where the insured has purchased insurance of up to at least 80% of the replacement cost of the structure.²⁶ This is done to ensure sufficient resources to pay the full cost of repair or replacement

²³ There are three different NFIP coverage forms—the general property form, the residential condominium association policy, and the dwelling form. The general property form covers other residential buildings of five families or more and nonresidential buildings. The residential condominium association policy covers the common elements and all structural items of the condominium units within a building. It also covers contents owned in common. The dwelling form can be used to cover single-family and multi-family dwellings.

²⁴ FEMA's National Flood Insurance Program, *Mandatory Purchase of Flood Insurance Guidelines*, September 2007, located at http://www.fema.gov/good_guidance/download/10040.

²⁵ The statutory basis of FEMA's mandatory flood insurance purchase requirements are found at 42 U.S.C. 4012a(b)(3).

²⁶ In the case of nonresidential property, the recovery limit is calculated on an actual cash value (ACV) basis which (continued...)

without deduction for depreciation. The various federal agencies that oversee lending institutions generally follow FEMA's *Purchase of Flood Insurance Guidelines* (including recovery limits) but are free to develop their own regulations.

For practical purposes, however, given Fannie Mae's traditional role as a major secondary market for residential mortgages, most mortgage lenders usually follow Fannie Mae's guidance when calculating the amount of insurance that must be obtained. According to Fannie Mae, "replacement cost value" refers to the cost of rebuilding a damaged property of the same size with the same amenities as the original structure. Fannie Mae requires that flood insurance for a first mortgage be the lesser of

- the amount required to compensate for any damage or loss on a replacement cost basis (or UPB if replacement cost coverage is not available), or
- the maximum insurance available from the NFIP.²⁷

When UPB is the selected option, the minimum amount of flood insurance must be at least 80% of the RCV of the structure. However, if the UPB is less than 80% of the RCV, the required insurance coverage amount must still be at least 80% of the structure (market) value.

Because the NFIP flood insurance dwelling policy pays 100% of a loss on the basis of replacement cost only when the amount of insurance purchased is at least 80% of the replacement cost of the building, a lender must obtain coverage for at least 80% of replacement cost (the minimum amount required) in order to meet Fannie Mae's standards. This means replacement cost coverage is considered not available when the property is insured for less than 80% of its replacement cost. Coverage in a lesser amount would not meet the standard for replacement cost because it would be subject to the (20%) co-insurance payment.

In light of Fannie Mae's flood insurance standards, lenders typically will insist on flood insurance amounts of at least 80% of the replacement cost of the insurable value of the property—up to the maximum available under the NFIP—rather than the outstanding loan balance amount. Again, if the UPB is less than 80% of the replacement cost, the required insurance coverage amount must be at least 80% of the structure value. This is based on Fannie Mae's interpretation of FEMA's guidance. It is important to point out that the authority of FEMA remains limited to its statutory responsibility of administering the NFIP. In other words, FEMA does not have direct responsibility for enforcement of the mandatory flood insurance purchase requirements. This is the responsibility of the banks and other financial institutions.

As an illustration of Fannie Mae's interpretation of FEMA's regulatory standard, a borrower with a UPB of \$100,000 on property with a replacement value of \$300,000 would be required to purchase minimum flood insurance coverage equal to \$240,000 (80% of \$300,000), and not the outstanding loan value of \$100,000. Thus, the borrower could find himself/herself paying for coverage that is substantially greater than the outstanding loan balance.

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accounts for depreciation in the property.

²⁷ Fannie Mae, *Announcement 06-05, Property Insurance Changes*, May 25, 2006, located at <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2006/06-05.pdf>.

Appendix A. Evolution of Federal Financial Regulatory Agency Regulation

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, which is also known as the National Flood Insurance Reform Act of 1994²⁸ (Reform Act), broadened the definition of “federal regulated lending institution” to include the Farm Credit Administration (FCA), thereby increasing the number of lending institutions subject to the mandatory flood insurance purchase requirement. The 1994 Reform Act applied flood insurance requirements directly to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration (SBA), Federal Housing Administration (FHA) and the Veterans Administration (VA).

Each federal regulatory agency was given the right to issue its own regulations to implement the mandatory flood insurance purchase requirement provisions in the 1973 and 1994 Acts. The six federal financial regulatory agencies exercise their rights by issuing substantially similar joint final regulations on August 29, 1996 (the Regulations)²⁹ and have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC).³⁰ The Regulations establish the mandatory purchase requirements in the following way:

A 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 for the particular type of property under the Act. Flood insurance coverage is limited to the overall value of the property securing the designated loan minus the value of the land on which it is situated.³¹

Fannie Mae and Freddie Mac also established procedures to implement the NFIP’s mandatory flood insurance purchase requirement.³²

Despite the guidance provided by the Regulations, lenders still struggled with the lack of certainty and uniformity with the mandatory flood insurance provisions of the 1994 Reform Act. In 1997, the federal financial regulatory agencies responded to these concerns with the release of

²⁸ P.L. 103-325, 108 Stat. 2255.

²⁹ *Federal Emergency Management Agency*, “Loans in Areas Having Special Flood Hazards: Final Rule,” *Federal Register*: August 29, 1996, vol. 61, No. 169, pp. 45683-45716, located at <http://www.fema.gov/business/nfip/cfr.shtm>. Individual agency rules are codified at 12 CFR Part 22 (OCC), 12 CFR Part 208 (Fed. Res), 12 CFR Part 339 (FDIC), 12 CFR Part 572 (OTS), 12 CFR Part 614 (FCA), and 12 CFR Part 760 (NCUA).

³⁰ The FFIEC was created under the Federal Financial Institutions Examination Council Act of 1978 (Title X of P.L. 95-630) as an interagency body that prescribes uniform principles, standards, and report forms for the federal examination of financial regulatory institutions and makes recommendations to promote uniformity in the supervision of financial institution.

³¹ See, e.g., 12 CFR Part 339.3(a).

³² See *Fannie Mae Form 4335: Property, Liability and Other Insurance Requirements*, May 2000, located at <https://www.efanniemae.com/mf/loandocs/doc/3maxexpress/4335.doc>. See also 12 C.F.R. Part 1773.

the *Loans in Areas Having Special Flood Hazard: Interagency Questions and Answers Regarding Flood Insurance*;³³ however, considerable ambiguity and confusion remained.

On May 25, 2006, Fannie Mae revised its existing mandatory flood insurance coverage requirements applicable to single and multi-family properties to the lowest of (1) the amount required to compensate for any damage or loss on a replacement cost basis (or unpaid principle balance if replacement cost coverage is not available); or (2) the maximum insurance available from the NFIP. This requirement is substantially similar to requirements issued by the NFIP; however, Fannie Mae tends to have stricter requirements for lenders that exceed the NFIP's three options. The Fannie Mae regulation requires that when the unpaid principal balance (UPB) is the selected option, flood insurance purchase amount must be at least 80% of the structure replacement cost. If the UPB is less than 80% of the replacement cost, the required insurance coverage amount must be at least 80% of the structure value.³⁴

On March 21, 2008, in an effort to promote the consistent interpretation, application, and examination of bank regulatory obligations arising from implementation of the 1994 reform, the federal lending regulatory agencies, under the auspices of the FFIEC, proposed major revisions to the interagency questions and answers document.³⁵ The proposed changes were in areas such as second lien mortgages, construction loans and condominiums, the implementation of civil money penalties, loan syndications/participation, the imposition of new guidelines for handling discrepancies between flood zone descriptions in the flood determination form and the flood insurance policy, and a re-organization to make the guidance easier to use. On July 21, 2009, the agencies issued a modified version of the Flood Q&A after considering the comments received. Effective September 21, 2009, the agencies' modified Flood Q&A supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the agencies and FEMA.³⁶

The Federal Housing Finance Agency (FHFA) was created as a new, unified regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks under the Housing and Economic Recovery Act of 2008 (HERA).³⁷ On October 10, 2008, the FHFA requested public comments on the issuance of a proposed flood insurance regulation to codify the authority and responsibility of FHFA to oversee and enforce the statutory requirements affecting the operations of Fannie Mae and Freddie Mac.³⁸ Section 1161(e) of HERA amended section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 by replacing the Office of Federal Housing Enterprise Oversight (OFHEO) in the Department of Housing and Urban Development (HUD) with FHFA as the

³³ FDIC Financial institution letter may be accessed from the FDIC's website located at <https://www.fdic.gov/news/news/financial/2007/index.html>.

³⁴ See Fannie Mae 2007 Single Family Selling Guide, Part V, ch.4, § 403. For the flood insurance requirements currently in effect for Fannie Mae, see Fannie Mae 2009 Single Family Selling Guide, Part B, ch. B7-3-08.

³⁵ Office of the Comptroller of the Currency, Federal Reserve System, Farm Credit Administration, Office of Thrift Supervision, Farm Credit Administration, and National Credit Union Administration, "Loans in Areas Having Special Flood Hazards: Interagency Questions and Answers Regarding Flood Insurance," *Federal Register*, vol. 73, no. 56, March 21, 2008, pp. 15259-15278, located at <http://www.fdic.gov/regulations/laws/federal/2008/08Noticemarch21.pdf>.

³⁶ *Federal Register*, vol. 74, no. 138, July 21, 2009, pp. 35914-35947, located at <http://edocket.access.gpo.gov/2009/pdf/E9-17129.pdf>.

³⁷ P.L. 110-289, 122 Stat. 2654.

³⁸ Federal Housing Finance Agency (FHFA), Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development, "Flood Insurance," *Federal Register*, vol. 73, no. 198, October 10, 2008, pp. 60198-60201, located at <http://www.fhfa.gov/webfiles/385/FloodInsuranceFR11509.pdf>.

agency responsible for determining compliance of Fannie Mae and Freddie Mac's flood insurance responsibilities. The proposed regulation will supersede the OFHEO flood insurance regulations.³⁹

³⁹ 12 CFR Part 1773.

Appendix B. Glossary of Acronyms

Glossary

ACV	Actual Cash Value
CFR	Code of Federal Regulations
DFIRM	Digital Flood Insurance Rate Map
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
GIS	Geographic Information System
GSE	Government Sponsored Enterprise
LIDAR	Light Detection and Ranging technology
LOMR	Letter of Map Revisions
LOMA	Letter of Map Adjustment
NFIP	National Flood Insurance Program
PAL	Provisionally Accredited Levee
RCV	Replacement Cost Value
SFHA	Special Flood Hazard Area
SFIP	Special Flood Insurance Policy
USGS	United States Geological Survey
UPB	Unpaid Principal Balance
USACE	U.S. Army Corp of Engineers

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