DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 22, 172

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FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R-1498]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064-AE27

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AC93

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133-AE40

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; Farm Credit Administration; National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are amending their regulations regarding loans in areas having special flood hazards to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which amends some of the changes to the Flood Disaster Protection Act of 1973 mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). Specifically, the final rule requires the escrow of flood insurance payments on residential improved real estate securing a loan, consistent with the changes set forth in HFIAA. The final rule also incorporates an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. Furthermore, the final rule implements the provisions of Biggert-Waters related to the force placement of flood insurance. Finally, the final rule integrates the OCC's flood insurance regulations for national banks and Federal savings associations. The Agencies plan to address the private flood insurance provisions in Biggert-Waters in a separate rulemaking.

DATES: The effective date of amendatory instructions 1, 3, 4, 5, 7, 9, 10, 12 and 13 is October 1, 2015. The effective date of amendatory instructions 2, 6, 8, 11 and 14 is January 1, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In October 2013, the Agencies jointly issued a proposal to implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012[1] (Biggert-Waters) over which the Agencies have jurisdiction (the October 2013 Proposed Rule).[2] Specifically, the October 2013 Proposed Rule would have required regulated lending institutions[3] to escrow flood insurance premiums and fees on residential improved real estate securing a loan, unless the regulated lending institution met the statutory small institution exception. The October 2013 Proposed Rule also would have required regulated lending institutions to accept private flood insurance coverage, as defined in Biggert-Waters, to satisfy the mandatory flood insurance purchase requirement. Furthermore, the October 2013 Proposed Rule contained provisions to implement the Biggert-Waters changes related to force-placed flood insurance.

In March 2014, the President signed into law the Homeowner Flood Insurance Affordability Act of 2014[4] (HFIAA), which amends some of the changes made by Biggert-Waters to the Flood Disaster Protection Act (FDPA).[5] The Agencies jointly issued a proposal in October 2014 (the October 2014 Proposed Rule) to implement the provisions in HFIAA over which they have jurisdiction.[6] The October 2014 Proposed Rule would have required regulated lending institutions to escrow flood insurance premiums and fees on residential improved real

[1] Pub. L. 112-141, 126 Stat. 916 (2012).
[2] 78 FR 65108 (Oct. 30, 2013).
[3] The National Flood Insurance Reform Act of 1994 defines “regulated lending institution” to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).
[4] Pub. L. 113-89, 128 Stat. 1020 (2014).
[5] Pub. L. 93-234, 87 Stat. 975 (1973).
[6] 79 FR 64518 (Oct. 30, 2014).

estate securing a loan, consistent with HFIAA's amendments to Biggert-Waters, and excluded certain detached structures from the mandatory flood insurance purchase requirement.

The Agencies are issuing this final rule to implement the escrow provisions and the detached structures provision detailed in the October 2014 Proposed Rule. In addition, this final rule incorporates the force-placed flood insurance provisions that the Agencies proposed in the October 2013 Proposed Rule, which were unaffected by HFIAA. The Agencies plan to address the private insurance provisions of the October 2013 Proposed Rule in a separate rulemaking. In connection with the issuance of this final rule, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the flood insurance statutes.[7] Furthermore, the Agencies encourage lenders to consult Biggert-Waters and HFIAA for further information about revisions to the flood insurance statutes that will not be implemented through the Agencies' rulemakings.

B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)[8] and the FDPA, as amended, govern the National Flood Insurance Program (NFIP).[9] 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 the community where the improved real estate or mobile home is located participates in the NFIP. A special flood hazard area (SFHA) is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year.[10] SFHAs are delineated on maps issued by the Federal Emergency Management Agency (FEMA) for

[7] *See* 42 U.S.C. 4012a(b)(1). Four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.
[8] Pub. L. 90-448, 82 Stat. 572 (1968).
[9] These statutes are codified at 42 U.S.C. 4001-4129. The Federal Emergency Management Agency administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.
[10] 44 CFR 59.1.

individual communities.[11] A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.[12]

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. The FDPA made the purchase of flood insurance mandatory in connection with loans made by regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a SFHA in a participating community. The FDPA directed the OCC, Board, FDIC, NCUA, and the former Office of Thrift Supervision (OTS)[13] to issue regulations governing the lending institutions that they supervised. These regulations also require lenders to notify borrowers that the secured property is located in a SFHA and whether Federal disaster assistance is available with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, also known as the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively amended the Federal flood insurance statutes.[14] The Reform Act established new requirements for Federally regulated lending institutions, such as the escrow for flood insurance premiums under certain conditions and mandatory force placement of flood insurance coverage. The Reform Act was intended to increase compliance with the mandatory flood insurance purchase requirements and participation in the NFIP to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the

[11] 44 CFR part 65.
[12] 44 CFR part 60.
[13] Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), (Dodd-Frank Act), transferred the powers, duties, and functions formerly performed by the OTS to the FDIC for State savings associations, the OCC for Federal savings associations, and the Board for savings and loan holding companies. The transfer took effect on July 21, 2011, and the OTS was abolished 90 days after that date.
[14] Pub. L. 103-325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

Federal government, taxpayers, and flood victims. In addition, the Reform Act broadened the mandatory flood insurance purchase requirement to include lenders regulated by the FCA.

The Reform Act required the OCC, Board, FDIC, NCUA, and the former OTS to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The Agencies fulfilled these requirements by issuing a joint final rule in August 1996.[15]

C. The Biggert-Waters and HFIAA Amendments

Among other changes,[16] Biggert-Waters significantly amended the NFIP requirements over which the Agencies have jurisdiction. Specifically, Biggert-Waters: (i) increased the maximum civil money penalty (CMP) that the Agencies may impose per violation when there is a pattern or practice of flood violations and eliminated the limit on the total amount of penalties that the Agencies may assess against a regulated lending institution during any calendar year;[17] (ii) required the Agencies to issue a rule to direct regulated lending institutions to escrow premiums and fees for flood insurance on residential improved real estate, unless the regulated lending institution meets the statutory small institution exception;[18] (iii) required the Agencies to

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[15] 61 FR 45684 (Aug. 29, 1996).

[16] The Agencies note, for example, that section 100222 of Biggert-Waters mandates a revision to the Special Information Booklet required under section 5 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2604(b)) to include a notice to the borrower of the availability of flood insurance under the NFIP or from a private insurance company, whether or not the real estate is located in an area having special flood hazards. The requirement to revise the Special Information Booklet is the responsibility of the Bureau of Consumer Financial Protection (CFPB) under RESPA. *See* 80 FR 17414 (Apr. 1, 2015). In addition, section 100204 of Biggert-Waters directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage made available to such residential properties is now equal to the coverage made available to commercial properties. FEMA made policies for such properties available as of June 1, 2014. *See* "Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings," May 30, 2014 (Board: CA 14-3; OCC: Bulletin 2014-26; FDIC: FIL 28-2014, FCA: Informational Memorandum, May 30, 2014; NCUA: http://www.ncua.gov/Legal/Documents/InteragencyIncreasedCoverageGuidance.pdf).

[17] Section 100208 of Biggert-Waters, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

[18] Section 100209 of Biggert-Waters, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)). Congress further amended section 42 U.S.C. 4012a(d) subsequent to the enactment of Biggert-Waters to clarify that the flood

issue a rule to direct regulated lending institutions to accept private flood insurance, as defined by Biggert-Waters, and to notify borrowers of the availability of private flood insurance;[19] and (iv) amended the force-placed insurance requirement to clarify that regulated lending institutions may charge a borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the borrower's flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.[20]

HFIAA further amended the changes set forth in Biggert-Waters. Among these changes were amendments that tied the escrow requirement to the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016, and provided additional exceptions to the escrow requirement.[21] HFIAA also mandated that the Agencies by regulation direct regulated lending institutions that are not excepted from the escrow requirements to provide an option to borrowers to escrow flood insurance premiums and fees for outstanding loans.[22] In addition, HFIAA provided a new exemption to the mandatory flood insurance purchase requirement for a structure that is part of a residential property but is detached from the primary residential structure and does not serve as a residence.[23]

As previously discussed in guidance issued by the Agencies,[24] the CMP provisions[25] and the force-placed insurance requirements in Biggert-Waters were effective upon enactment of

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insurance escrow requirement applies only to loans secured by residential improved real estate. *See* Pub. L. 112-281, 125 Stat. 2485 (Jan. 14, 2013).

[19] Section 100239 of Biggert-Waters, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

[20] Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

[21] Section 25 of HFIAA, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).

[22] "Outstanding loan" is defined in section 25(b)(1)(B)(i)(II) of HFIAA.

[23] Section 13 of HFIAA, amending section 102(c) of the FDPA (42 U.S.C. 4012a(c)). The Agencies note that Section 13 of HFIAA also amends section 5(b) of RESPA (12 U.S.C. 2604(b)) to require language related to detached structures be included in the required Special Information Booklet. The requirement to revise the Special Information Booklet under RESPA falls under the jurisdiction of the CFPB.

[24] "Interagency Statement on the Impact of Biggert-Waters Act," March 29, 2013 (Board: CA 13-2; OCC: Bulletin 2013-10; FDIC: FIL 14-2013, FCA: Informational Memorandum, March 29, 2013; NCUA: 13-RA-03).

Biggert-Waters. Similarly, the provision in HFIAA excluding certain detached structures from the mandatory flood insurance purchase requirement became effective upon the enactment of HFIAA. In contrast, Biggert-Waters and HFIAA require the Agencies to issue regulations implementing both the escrow and private flood insurance provisions.

II. The Agencies' Proposed Revisions

A. Summary of the October 2013 Proposed Rule

In the October 2013 Proposed Rule, the Agencies proposed to revise their respective flood insurance regulations to implement the Biggert-Waters amendments addressing the escrow of flood insurance payments, private flood insurance, and force-placed insurance. The October 2013 Proposed Rule would have required a regulated lending institution, or servicer acting on its behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that was made or outstanding on or after July 6, 2014, unless the institution qualified for the statutory exception for small institutions.[26]

The October 2013 Proposed Rule also would have amended the provisions concerning the force placement of flood insurance to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. Furthermore, the October 2013 Proposed Rule would have stipulated the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower and the documentary

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[25] Some of the Agencies have revised their regulations to incorporate these increased CMPs. *See* OCC: 77 FR 66529 (Nov. 11, 2012) and 77 FR 76354 (Dec. 28, 2012); Board: 77 FR 68680 (Nov. 16, 2012); FDIC: 77 FR 74573 (Dec. 17, 2012); and FCA: 78 FR 24336 (April 25, 2013). The NCUA is in the process of updating its rule to reflect this CMP change.

[26] However, with HFIAA's enactment in March 2014, the Agencies issued the October 2014 Proposed Rule to modify the proposed escrow provisions in the October 2013 Proposed Rule, consistent with HFIAA's changes to the Biggert-Waters escrow provisions.

evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The October 2013 Proposed Rule included new and revised sample notice forms and clauses that included language concerning the availability of private flood insurance coverage, consistent with Biggert-Waters, and that provided sample language for regulated lending institutions to use to comply with the proposal's escrow notice requirement. The OCC and the FDIC proposed in the October 2013 Proposed Rule to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively.

Finally, consistent with Biggert-Waters, the October 2013 Proposed Rule would have required a regulated lending institutions to accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement and specifically requested comment on various issues related to this requirement.[27]

B. Summary of the October 2014 Proposed Rule

Under the October 2014 Proposed Rule, the Agencies proposed to exempt certain detached structures on residential property from the mandatory flood insurance purchase requirement and to amend the requirement to escrow flood insurance premiums and fees, consistent with the Biggert-Waters escrow provisions as amended by HFIAA. Specifically, the October 2014 Proposed Rule would have provided that flood insurance would not be required for any structure that is part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence, consistent with HFIAA.

[27] As mentioned above, the Agencies will address issues related to private flood insurance in a separate rulemaking.

In addition, the October 2014 Proposed Rule generally would have required regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The Agencies also proposed in the October 2014 Proposed Rule several exceptions to the escrow requirement as set forth in Biggert-Waters and HFIAA, including an exception for certain regulated lending institutions with total assets of less than $1 billion, and exceptions for business, commercial, and agricultural purpose loans, certain subordinate lien loans, certain condominium and similar loans, home equity lines of credit, nonperforming loans, and short-term loans.

The October 2014 Proposed Rule also would have required regulated lending institutions not subject to an escrow exception to offer borrowers the option to escrow loans outstanding as of January 1, 2016. Regulated lending institutions that no longer qualified for the small lender exception of less than $1 billion in assets also would have had to comply with the general escrow requirement and the option to escrow requirement.

C. Overview of Public Comments

The Agencies received 81 written comments on the October 2013 Proposed Rule and 52 written comments on the October 2014 Proposed Rule. Between the two proposed rules, the Agencies received comments from a wide range of commenters, such as: financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, home building and realtor trade associations, and a flood hazard determination trade association); the insurance industry (including insurance companies, trade associations, and brokers); individuals; public interest/consumer advocates; state insurance regulators; and a municipal government. In addition to receiving written comments, the Agencies conferred with several stakeholders in the flood insurance community, including state insurance regulators, the National Association of Insurance Commissioners (NAIC) staff, and FEMA staff.[28]

The Agencies received numerous comments supporting the exemption for certain detached structures from the mandatory flood insurance purchase requirement. Many of these commenters requested clarifications of the terms used in the exemption, including the meanings of the terms "residential property," "detached structure," and "serve as a residence." The Agencies also sought comment on whether the exemption should be restricted to consumer purpose loans. Many commenters opposed the Agencies incorporating such a limitation. Some commenters also wanted the Agencies to expand the exemption to include non-residential property. Commenters also were uniformly opposed to the Agencies stating that regulated lending institutions need not perform a flood hazard determination for any properties or structures that are exempt from the mandatory flood insurance purchase requirement because a flood hazard determination is often needed to determine what types of structures exist on the property.

Many commenters also offered suggestions on the Agencies' proposed escrow provisions. Several commenters recommended that the Agencies apply the general escrow requirement to applications received on or after January 1, 2016. Some commenters suggested clarifications of the language of the escrow notice. Commenters were supportive of the exceptions to the escrow requirement, and some commenters asked for additional exceptions. Most commenters on the proposed escrow provisions requested clarifications on the various exceptions to the escrow requirement. There were also comments questioning whether regulated

[28] The Agencies have placed summaries of these meetings in the public comment file.

lending institutions are expected to monitor the status of excepted loans to ensure they continue to meet the exception from the escrow requirement, especially with respect to excepted subordinate lien loans and nonperforming loans. Furthermore, the Agencies received several comments on the proposed rule to implement the option to escrow requirement. Commenters were supportive of the Agencies' interpretation that the option to escrow requirement does not apply to loans and issuers that are excepted from the general escrow requirement. The Agencies also received comments supporting the proposal that a regulated lending institution must establish an escrow "as soon as reasonably practicable" after a consumer requests the option to escrow, although other commenters requested further clarification.

In addition, the Agencies received many comment letters that addressed force placement issues. Commenters generally supported the proposed provisions on force placement. However, commenters sought clarification on various force placement issues, such as, sufficiency of proof of coverage when a borrower obtains flood insurance after the lender or its servicer has force placed the insurance; the definition of the term "lapsed;" whether force-placed insurance only should be terminated when the borrower provides proof of NFIP-compliant flood insurance coverage; whether a refund for any period of overlapping coverage should be made to the borrower by the lender within 30 days of the borrower obtaining coverage; when a lender should cancel force-placed flood insurance; what constitutes proof of coverage for purposes of determining whether a borrower has obtained alternative flood insurance coverage; and how to resolve force placement issues when a borrower is in default.

Finally, the Agencies received numerous comment letters on the private flood insurance provisions the Agencies proposed in the October 2013 Proposed Rule. As the Agencies have explained above, the Agencies plan to address these issues in a separate rulemaking.

III. Summary of the Final Rule

The amendments finalized by this rulemaking are summarized below and more specifically described in **V. Section-by-Section Analysis** of this preamble. Although the Agencies' final regulations are substantively consistent, the format of the regulatory text varies to conform to each Agency's current regulation.

The final rule sets forth the new exemption in the FDPA, as amended by section 13 of HFIAA, to the mandatory flood insurance purchase requirement for any structure that is a part of a residential property, but is detached from the primary residential structure and does not serve as a residence. Consistent with commenters' suggestions, the final rule includes clarifications of the terms "a structure that is part of a residential property," "detached," and "serve as a residence."

In accordance with the FDPA, as amended by Biggert-Waters and HFIAA, the final rule also requires regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The FDPA, as amended by Biggert-Waters, also provides that, except as may be required under applicable State law, a regulated lending institution would not be required to escrow if it has total assets of less than $1 billion and, as of the date of enactment of Biggert-Waters, July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy of uniformly and consistently escrowing taxes and insurance. The Agencies are implementing this exception in the final rule with some clarifications. Furthermore, the Agencies are adopting transition rules for regulated lending institutions that have a change in status and no longer qualify for this small-lender exception.

Moreover, the final rule implements the following additional exceptions from the escrow requirement, as amended by HFIAA for: (i) loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided; (ii) loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met; (iii) loans that are extensions of credit primarily for a business, commercial, or agricultural purpose; (iv) home equity lines of credit; (v) nonperforming loans; and (vi) loans with terms not longer than 12 months. The Agencies are clarifying in the final rule that, when a regulated lending institution determines that an exception no longer applies, the institution must require the escrow of flood insurance premiums and fees.

The Agencies note that the escrow provisions in the Agencies' rules in effect on July 5, 2012, the day before Biggert-Waters was enacted, remain in effect, and will be enforced by the Agencies, through December 31, 2015, the day before the effective date of the escrow provisions.[29]

The final rule also implements the requirement under HFIAA that regulated lending institutions not excepted from the escrow requirement offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. The final rule is generally consistent with the language the Agencies proposed in the October 2014 Proposed Rule. However, the Agencies are providing additional time, until June 30, 2016, for regulated lending institutions to mail or deliver information to borrowers about the option to escrow, based on some commenters' suggestions. The Agencies' final rule also adopts

[29] Each Agency's current escrow provision provides that a regulated lending institution must escrow all premiums and fees for required flood insurance if the institution requires the escrow of taxes, insurance premiums, fees or other charges. *See* 12 CFR 22.5 and 172.5 (OCC); 12 CFR 208.25(e) (Board); 12 CR 339.5 (FDIC); 12 CFR 614.4935 (FCA); and 12 CFR 760.5 (NCUA).

the proposal to require regulated lending institutions that no longer qualify for the small lender exception to offer and make available to a borrower the option to escrow flood insurance premiums and fees.

The Agencies' final rule includes new and revised sample notice forms and clauses. Specifically, the final rule amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the Agencies' respective regulations, to add language concerning the escrow requirement. The Agencies are adopting minor amendments to the language the Agencies proposed in the October 2014 Proposed Rule regarding the escrow requirement in light of recommendations from commenters. Moreover, the Agencies concur with commenters' suggestions to include language in Appendix A similar to the language HFIAA section 13(b) requires to be included in the Special Information Booklet in connection with the exemption from the mandatory flood insurance purchase requirement for certain detached structures. Appendix A, as amended by the Agencies in this final rule, also contains language proposed in the October 2013 Proposed Rule to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of Biggert-Waters, regarding the availability of private flood insurance coverage and other technical changes.

The final rule also includes an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B, to assist institutions in complying with the requirement to inform borrowers of outstanding loans about their option to escrow flood insurance premiums and fees. The Agencies are making minor language and formatting changes to Appendix B as proposed in the October 2014 Proposed Rule to be consistent with a commenter's recommendations and to improve readability.

Furthermore, consistent with Biggert-Waters, the Agencies' final rule amends the force placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also stipulates the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The Agencies also adopt needed technical corrections proposed in the 2013 Proposed Rule. For example, the Agencies' final rule corrects all references to the head of FEMA from "Director" to "Administrator." [30] In addition, the OCC is finalizing the integration of its flood insurance regulations for national banks and Federal savings associations. The FDIC has integrated its flood insurance regulations for State non-member banks and State savings associations in a separate rulemaking.[31]

The escrow and option to escrow provisions in this final rule, as well as the revisions to Appendix A and new Appendix B, will become effective on January 1, 2016, consistent with HFIAA. Although the amendments to Appendix A include changes unrelated to the escrow provisions, the Agencies are delaying the effective date of all changes to the Appendix in the interest of reducing compliance burden on regulated lending institutions. All other provisions implemented in this final rule will become effective on October 1, 2015.

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[30] 6 U.S.C. 313

[31] 79 FR 75742 (Dec. 19, 2014).

IV. Legal Authority

Section 102(b) of the FDPA (42 U.S.C. 4012a(b)), as amended, provides that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator of FEMA as an area having special flood hazards and in which flood insurance has been made available under the NFIP, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance. Thus, section 102(b) of the FDPA grants the Agencies rulemaking authority and also requires the Agencies to implement this mandatory flood insurance purchase requirement for regulated lending institutions by regulation.

Section 102(c) of the FDPA (42 U.S.C. 4012a(c)) sets forth specific exceptions to the mandatory flood insurance purchase requirement. The Agencies are authorized to implement these exceptions.

Section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 25 of HFIAA, states that the Agencies (after consultation and coordination with the FFIEC) must by regulation require all premiums and fees for flood insurance under the 1968 Act for residential improved real estate or a mobile home be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home with the same frequency as payments on the loan are made for the duration of the loan. The statute requires that such funds be deposited in an escrow account on behalf of the borrower and used to pay the flood insurance provider when premiums are due. Section 25(b) of HFIAA applies these requirements to loans that are originated, refinanced, increased, extended, or renewed on or after January 1, 2016.

Section 102(d) of the FDPA, as amended by HFIAA, also directs the Agencies to implement the seven exceptions to this requirement that are set forth in the statute. Section 25(b) of HFIAA further states that the Agencies (after consultation and coordination with the FFIEC) shall by regulation direct that each regulated lending institution offer and make available to a borrower of an outstanding loan the option to have the borrower's payment of flood insurance premiums and fees escrowed.

V. Section-by-Section Analysis

___.___ Authority, purpose, and scope

As discussed in the October 2013 Proposed Rule, the title of the head of FEMA has changed from "Director" to "Administrator" since the Agencies last revised their flood insurance regulations. The Agencies proposed a technical amendment consistent with that change. No comments were received on the proposed technical amendment to designate correctly the head of FEMA. The Agencies therefore adopt the change in title of the head of FEMA from "Director" to "Administrator" in the scope section as proposed, and in subsequent sections of their regulations.

As part of the OCC's consolidation of its flood insurance rule, the OCC also proposed the insertion of the term "Federal savings association" where necessary throughout its flood insurance rule. No comments were received on this proposed change. The OCC therefore adopts the change as proposed.

___.___ Definitions

As noted above in ___.___ Authority, purpose, and scope, the Agencies proposed technical amendments to change the references to the head of FEMA from "Director" to "Administrator" in the definitions. The Agencies are adopting these changes as proposed.

OCC-only definitions.

The OCC proposed amendments to the definition section for purposes of integrating its national bank and Federal savings association flood insurance rules. First, the proposed rule provided that the term "Federal savings association" means a Federal savings association as defined in 12 U.S.C. 1813(b)(2) and any service corporations thereof. This definition is identical to the definition of "Federal savings association" in 12 CFR part 172, except that part 172 specifically referenced "subsidiaries." Current 12 CFR part 22 does not specifically include a reference to bank operating subsidiaries because such subsidiaries are subject to the rules applicable to the operations of their parent bank pursuant to 12 CFR 5.34. Because Federal savings association operating subsidiaries also are subject to the same rules applicable to the parent savings association, as provided by 12 CFR 159.3(h),[32] the inclusion of "subsidiary" in this definition is unnecessary and its removal will not affect the applicability of 12 CFR part 22 to Federal savings association operating subsidiaries.

Second, the OCC proposed to remove the definition of "bank," which the rule currently defines as meaning a national bank, and replaced "bank" with "national bank" throughout the final rule. The OCC did not receive any comments on these technical changes. However, the final rule adds a definition of "national bank" to include Federal branches and agencies of a foreign bank. Federal branches and agencies are currently subject to the same flood insurance requirements as national banks.[33] The addition of this definition clarifies the scope of the rule and promotes consistency throughout the OCC's rules and regulations.

[32] As of July 1, 2015, 12 CFR 159.3(h) is removed and replaced by 12 CFR 5.38(e)(3). *See* 80 FR 28346 (May 18, 2015).
[33] *See, e.g.,* Comptroller's Handbook, Federal Branches and Agencies Supervision, September 2014, p. 22 ("Federal branches and agencies must ensure appropriate flood insurance coverage when making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located in a special flood hazard area in a community participating in the National Flood Insurance Program.").

___.___ Requirement to purchase flood insurance where available.

The current regulation provides that a regulated lending institution shall not make, increase, extend, or renew any designated loan[34] unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. This provision further provides that flood insurance coverage is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. The October 2013 Proposed Rule would have revised the language relating to the coverage limit to reflect more accurately what is actually covered under Federal flood insurance statutes. Specifically, the Agencies proposed that the language be amended to state that flood insurance coverage is limited to the building or mobile home and any personal property securing the loan and not the land itself. Some commenters indicated the proposed amendment may add confusion because there may be concern that the amendment indicates a change from past practice. One commenter suggested defining the value of the building as either the replacement cost of the structure or the appraised value minus the land value as determined from the appraisal or the insurable value as obtained from the insurance agent writing the policy.

In response to these comments, the Agencies emphasize that the proposed change does not set forth a new requirement, but merely clarifies the long-standing legal interpretation that Federal flood insurance coverage does not apply to land. In proposing this change, the Agencies simply intended to reduce confusion by clarifying the meaning of the term to reflect what is actually covered. In response to the comment that suggests the use of replacement cost or the appraised value of the property minus the land, it is the Agencies' opinion that using other

[34] "*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 [National Flood Insurance] Act." 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(4) (Board); 12 CFR 339.2(d) (FDIC); 12 CFR 614.4925(c) (FCA); and 12 CFR 760.2(e) (NCUA) under current regulations.

insurance terms to clarify the coverage limit would not reflect what is covered under Federal flood insurance legislation as accurately as the proposed language. For these reasons, the Agencies adopt the language as proposed.

___.___ Exemptions

Section 13 of HFIAA, which amends section 102(c) of the FDPA (42 U.S.C. 4012a(c)), adds a new exemption to the mandatory flood insurance purchase requirement. Specifically, HFIAA provides that flood insurance is not required, in the case of any residential property, on any structure that is a part of such property, but is detached from the primary residential structure and does not serve as a residence. The October 2014 Proposed Rule would have incorporated this exemption as provided in HFIAA into the Agencies' regulations. The Agencies solicited comment on whether the final rule should clarify certain terms in the provision, such as "residence" and "residential property." For instance, the Agencies suggested that there may be some ambiguity as to when a structure may serve as a residence even if it may not conform to certain State or local requirements for residential property or when a detached structure should be deemed a residence. Specifically, the Agencies solicited comment on whether the term "residential property" should not only refer to the type of property securing the loan, but also to the loan's purpose. Thus, the Agencies suggested in the October 2014 Proposed Rule that the detached structure exemption could be available only if the residence serving as collateral does not secure a loan made primarily for a business, commercial, or agricultural purpose.

Numerous commenters provided general support for the proposed rule's implementation of the exemption for detached structures. Commenters strongly supported providing lenders with the discretion to exempt low-value non-residential structures from the mandatory purchase obligation. Many commenters requested that the Agencies clarify the meaning of various terms to assist lenders in applying the exemption and to ensure consistent application of the exemption.

Several commenters asserted that the detached structure exemption should be available regardless of whether the loan is made for a business, agricultural, or commercial purpose, contrary to the Agencies' suggestion. These commenters maintained that lenders should be able to exclude non-residential detached structures regardless of the loan's purpose, as long as the loan is secured by residential property. Numerous commenters, including trade associations, financial institutions, and individuals, suggested that the final rule should broaden the exemption to include business, agricultural, and commercial loans and not apply solely to consumer loans. Commenters noted that loan proceeds may be used for different purposes than that of the property that secures those proceeds and that section 13 of HFIAA does not limit the exemption only to consumer loans. Several commenters noted that a borrower who uses a residence to secure a business, commercial, or agricultural purpose loan faces the same affordability challenges when required to insure a low-value detached structure as a borrower who uses the same collateral to secure a consumer loan. One commenter noted that low-value structures are a common issue for both consumer and commercial borrowers and therefore should be treated consistently.

The Agencies acknowledge that, with respect to flood insurance, the purpose of a loan may be immaterial to the borrower when the borrower uses his or her residence to secure the loan. Therefore, the Agencies agree with commenters that the detached structure exemption should be available in connection with consumer loans as well as those made for business, commercial, or agricultural purposes if the loan is secured by a residence.

The Agencies considered the various comments concerning the definition of "residential property." Several commenters, including trade associations and financial institutions, suggested that "residential property" should be defined consistently with "residential improved real estate"[35] as defined in the FDPA. Another commenter suggested "residential property" should be interpreted as a parcel of collateral property containing a 1-4 family building actually used as a residence. Several commenters suggested the Agencies adopt a definition of "residential property" that focuses on the structure's residential use – regardless of its nature or size – consistent with similar definitions in the FDPA. These commenters believed the term should be broadly defined to encompass any residential structure, including single-family dwellings, 1-4 family dwellings, multi-family dwellings, and mixed-use buildings as long as the primary purpose of the building is for a residential purpose. A trade association suggested the Agencies look to the Department of Housing and Urban Development (HUD) lead-based paint regulations for a definition of "residential property." One commenter inquired whether the detached structures exemption excludes all detached structures on a property with a primary residence or only those the lender deems to be part of the residential property. Lastly, two commenters believe the final rule should leave the term undefined, similar to the treatment of the term in other Federal statutes.[36]

As previously explained, the Agencies have determined that the meaning of the term "residential property" should not focus on a loan's purpose. In addition, the Agencies have determined that using the FDPA definition of "residential improved real estate" would render the exemption too expansive for its intended purpose because it could result in exempting all

[35] The FDPA defines "residential improved real estate" as "improved real estate for which the improvement is a residential building." 42 U.S.C. 4012a(d)(4).
[36] *See, e.g.*, Real Estate Settlement Procedures Act, 12 U.S.C. 2602(1)(A); Truth in Lending Act, 15 U.S.C. 1602(w)-(x).

commercial or agricultural structures on a property merely because a residence is also located on the property. The Agencies believe detached structures used for commercial, agricultural, or other business purposes should be protected adequately by flood insurance as collateral given their value to the borrower and lender, and should not be covered by the detached structures exemption.

The Agencies, however, did find the HUD definition of "residential property" to be helpful.[37] The HUD lead-based paint regulation seeks to limit its scope only to properties and structures used solely for residential purposes, and to exclude land used for agricultural, commercial, industrial, or other non-residential purposes. The Agencies have determined that "residential property" in the detached structure exemption should be similar to the HUD regulation's definition in that it should apply only to structures for which there is a residential use and not to structures for which there is a commercial, agricultural, or other business use.

Additionally, the Agencies were guided by Regulation Z, which implements the Truth in Lending Act (TILA), and its well-established interpretations for further clarification on residential purpose because TILA generally covers consumer extensions of credit.[38] In particular, Regulation Z applies to credit "primarily for personal, family, or household purposes."[39] Consistent with Regulation Z, for purposes of the detached structures exemption, the final rule clarifies that the phrase "a structure that is part of a residential property" refers to a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. The Agencies are aware that

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[37] "*Residential property* means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways." 24 CFR 35.110.

[38] *See* 15 U.S.C. 1602(i).

[39] *See* 12 CFR 1026.1(c)(1).

certain structures may be used for both residential and business purposes and therefore have decided to limit the exemption only to structures with a primarily residential purpose. Furthermore, the final rule makes clear that the exemption applies only to structures that the lender deems part of the residential property.

Although the Agencies decline to adopt the FDPA's definition of "residential improved real estate" for "residential property," the Agencies agree with commenters that "residential property" should be interpreted as broadly as "residential improved real estate" as set forth in the Interagency Questions and Answers Regarding Flood Insurance (Q&As). Commenters in particular referenced Q&A 51, which indicates that "residential improved real estate" does not distinguish whether a building is single- or multi-family, or owner- or renter-occupied, and includes single-family dwellings, two- to four-family dwellings, multi-family dwellings containing five or more residential units, and mixed-use buildings, so long as the building is used primarily for residential purposes.[40]

Several commenters also suggested that the Agencies provide further clarification of the term "detached" and how to interpret the statutory phrase "detached from the primary residential structure." One trade association commenter believed "detached" should be defined more precisely than the Agencies did in the October 2014 Proposed Rule and that a structure joined to a residence by a covered walkway or breezeway should be treated as a separate, stand-alone residential structure. Two commenters believed "detached" should be defined as "standing alone; not joined by any structural connection to any structure to which flood insurance is required." Other commenters provided varying definitions of the term as well. The Agencies agree that a clear definition of "detached" would ensure consistent application by lenders in

[40] *See* 74 FR 35914, 35943 (July 21, 2009).

determining which structures qualify for the exemption. Therefore, for purposes of the detached structure exemption, the Agencies have drafted the final rule to clarify that a structure is "detached" from the primary residential structure if it is not joined by any structural connection to the residential structure. That is, a structure is "detached" if it stands alone. This clarification is consistent with the coverage provision of the NFIP's Standard Flood Insurance Policy (SFIP) for additions and extensions to a dwelling unit.

To be exempt from the mandatory flood insurance purchase requirement, the detached structure also may not "serve as a residence." The Agencies received numerous comments on the necessity for additional clarification on this aspect of the exemption. Some commenters suggested it would be helpful to describe the features or facilities that, if present, could indicate that a structure serves as a residence, but ultimately to defer to a lender's good faith determination. Several commenters suggested the Agencies provide a bright line test to facilitate determinations, such as total square footage or assessed value. Some commenters suggested a bright line test of whether a structure is designed for use as a residence, not how the structure is being used either at the time of the triggering event or subsequently. One large trade association suggested that "serve as a residence" be defined to include sleeping, bathroom, and kitchen facilities, while a large bank commenter asserted that a structure lacking one or more of these facilities should be deemed non-residential. Another trade association commenter suggested referring to the definition of "residence" set forth in the Internal Revenue Service (IRS) regulations,[41] while some commenters referenced other Federal regulations for similar

[41] IRS regulations provide that "[w]hether property is a residence shall be determined based on all the facts and circumstances, including the good faith of the taxpayer. A residence generally includes a house, condominium, mobile home, boat, or house trailer, that contains sleeping space and toilet and cooking facilities. A residence does not include personal property, such as furniture or a television, that, in accordance with the applicable local law, is not a fixture." *See* 26 CFR 1.163-10T(p)(3)(ii).

definitions. Lastly, one commenter suggested a structure must be occupied to be considered a residence and that a structure intended only for periodic use or that serves as a home office should not be deemed a residence.

Based on these comments, the Agencies believe it would be beneficial to clarify the meaning of "serve as a residence." However, given the numerous types of detached structures that could serve as a residence, the Agencies find that a single bright line test, for example, square footage or appraised value, to determine whether a structure serves as a residence, is not appropriate. Instead, the Agencies have concluded that a more practical approach to applying this exemption is to rely on the good faith determination of a lender on whether a detached structure serves as a residence. The Agencies believe the lender is in the best position to consider all the facts and circumstances involving a detached structure securing a loan, and this approach is similar to how the IRS evaluates whether property constitutes a "residence."[42] In making this determination, as suggested by several commenters, the lender should focus on a structure's intended use. By focusing on the intended use of the structure, a lender could determine objectively whether a structure could serve as a residence and therefore not qualify for the exemption.

The Agencies note that the IRS definition of "residence" provides that a residence generally contains sleeping, bathroom, and kitchen facilities.[43] The Agencies agree that a structure that serves as a residence would generally have such facilities. Therefore, a lender could examine the structure for the presence of these facilities to make a determination of whether it serves as a residence. However, the Agencies decline to accept certain commenters' suggestions that a structure must contain sleeping, bathroom, and kitchen facilities, and that the

[42] *See* footnote 41.
[43] *See* footnote 41.

lack of at least one of these facilities would render the structure non-residential. Detached structures can vary greatly in terms of size, value, purpose, and facilities. Furthermore, not all three facilities are necessary in order for a structure to serve as an individual's residence. For example, a structure can have sleeping and kitchen facilities, while the resident makes use of a separate structure as a bathroom facility. Similarly, a structure can have sleeping and bathroom facilities but lack kitchen facilities. Because a structure without one or more of these facilities may be intended for use as a residence, the final rule provides that a structure could serve as a residence if it *generally* includes sleeping, bathroom, or kitchen facilities.

Moreover, some commenters suggested that the standard for whether a structure serves as a residence should be its actual use as a residence. The Agencies disagree with employing "actual use" as the sole indicator of a structure serving as a residence. Such a standard would exclude homes under construction, vacant rental units, vacant garage apartments, and numerous other structures from being deemed to serve as a residence. Although the Agencies decline to accept "actual use" as an appropriate indicator of residency by itself, a lender should take reasonable steps to determine if a structure is actually occupied by a resident. Therefore, the Agencies clarify that whether a detached structure in a residential property serves as a residence shall be based upon the regulated lending institution's good faith determination that the structure is intended for use or actually used as a residence.

Additionally, with respect to the "serve as a residence" provision, several commenters, including financial institutions, trade associations, and an individual, requested that the Agencies confirm that there is no duty to monitor residential collateral subsequent to the lender's making, increasing, renewing, or extending a loan to determine whether an exempt detached structure has been repurposed to serve as a residence. The Agencies agree that there is no duty to monitor the status of a detached structure following the lender's initial determination due to the minimal post-closing communications with borrowers or lack of systematic inspections of the property. In response to these commenters, the Agencies clarify that a lender must re-examine the status of a detached structure upon a qualifying triggering event under the FDPA – making, increasing, renewing, or extending a loan. However, consistent with existing obligations under the FDPA, if a lender subsequently determines that a property has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is underinsured, the lender has a duty to inform the borrower of the obligation to increase insurance coverage.[44] If the borrower fails to increase the flood insurance to the appropriate amount, the lender must force place flood insurance, as required by the FDPA.

Moreover, as the Agencies noted in the October 2014 Proposed Rule, although the exemption would address borrowers' and lenders' concerns by excluding relatively low-value detached structures from the mandatory flood insurance purchase requirement if they secure a designated loan, there may be some detached structures that are of relatively high value, such as a detached greenhouse. The Agencies further noted that, although the statute does not require flood insurance for such structures, as a matter of safety and soundness, lenders may nevertheless require coverage on these detached structures, and that such coverage also may be in the borrower's best interest. Furthermore, the Agencies also noted in the October 2014 Proposed Rule that section 13(b) of HFIAA, which the Consumer Financial Protection Bureau (CFPB) has implemented, amends section 5(b) of the Real Estate Settlement Procedures Act of 1974 (RESPA) to require a related disclosure in the Special Information Booklet provided to

[44] 42 U.S.C. 4012a(e).

borrowers informing them that they may still wish to obtain, and mortgage lenders may still require borrowers to maintain, flood insurance even if not required by the FDPA.[45]

Several commenters supported the ability of lenders to require flood insurance for safety and soundness purposes or if it is in the best interest of the borrower, even if not required by statute. The Agencies reaffirm that a lender may require flood insurance on a detached structure, even though the statute does not require it, to protect the lender's and borrower's collateral securing the loan.[46]

In addition, a trade association suggested the Agencies consider adding language in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance (Notice of Special Flood Hazards) on the ability of a lender to waive flood insurance requirements for detached structures because some borrowers might not receive the Special Information Booklet.[47] The Agencies believe that the commenter's suggestion has merit and have determined that it also would be appropriate to amend the notice to include the related disclosure required by section 13(b) of HFIAA. This additional disclosure is intended to ensure that borrowers receive full disclosure on this aspect of flood insurance coverage, as discussed below in the **SUPPLEMENTARY INFORMATION** related to <u>Appendices A & B</u>.

Finally, the Agencies are adopting a change to their regulations in this section to amend the reference to the head of FEMA from "Director" to "Administrator" as discussed above in the **SUPPLEMENTARY INFORMATION** related to **___.___** <u>Authority, purpose, and scope</u>.

[45] *See* 80 FR 17414 (Apr. 1, 2015).
[46] *See* section 13(b) of HFIAA.
[47] The Special Information Booklet is provided only to borrowers who submit a written application for a Federally related mortgage loan. *See* 12 CFR 1024.6(a).

___.___ **Escrow requirement**

In General

The Agencies proposed to revise their regulations in the October 2014 Proposed Rule in accordance with section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 25 of HFIAA,[48] to require a regulated lending institution, or a servicer acting on behalf of a regulated lending institution, to escrow all premiums and fees for flood insurance required for loans secured by residential improved real estate or a mobile home unless the loan or the lending institution qualifies for one of the statutory exceptions. In addition, under the October 2014 Proposed Rule, these premiums and fees would be payable with the same frequency as payments on the loan are made for the duration of the loan. Several commenters, including a municipal government commenter, supported the escrow requirement, although some financial institution commenters opposed the requirement. As escrows are required by the statute, the Agencies are adopting a final rule that will implement the escrow requirement in section 102(d) of the FDPA, as amended.

Consistent with section 25(b) of HFIAA, the Agencies proposed that the escrow requirement would apply to any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. Although section 25(b) of HFIAA applies the escrow requirement to loans "originated, refinanced, increased, extended, or renewed," the Agencies proposed regulatory language in the October

[48] As discussed above, the Agencies note that section 25(b)(3) of HFIAA provides that these new escrow requirements will not supersede the current escrow provisions during the period beginning on July 6, 2012 and ending on December 31, 2015. Therefore, as provided under section 25(b)(3) of HFIAA, the escrow requirements under section 102(d)(1) of the FDPA in effect on July 5, 2012 will continue to remain in effect and be enforced by the Agencies until December 31, 2015. Each Agency's current escrow provision provides that a regulated lending institution must escrow all premiums and fees for required flood insurance if the institution requires the escrow of taxes, insurance premiums, fees or other charges. *See* 12 CFR 22.5 and 172.5 (OCC); 12 CFR 208.25(e) (Board); 12 CFR 339.5 (FDIC); 12 CFR 614.4935 (FCA); and 12 CFR 760.5 (NCUA).

2014 Proposed Rule that applies the requirement to loans "made, increased, extended, or renewed" to be consistent with the way these triggering events are referenced elsewhere in the regulation.[49] Several commenters agreed with the Agencies' proposal, and the Agencies adopt this non-substantive wording change in the final rule.

One financial institution commenter suggested that the Agencies' regulations be amended to reference "designated" loans because that is a defined term for loans that are subject to the mandatory flood insurance purchase requirement. The commenter also recommended that the regulation be amended to state that the escrow payments be payable with the same frequency as payments on the loan are "required to be" made for the duration of the loan because such wording would be technically accurate. The Agencies agree with these suggested changes, and the final rule adopts the changes recommended by the commenter.

Several financial institution and trade association commenters suggested that the Agencies apply the escrow requirement to loan applications received on or after January 1, 2016. These commenters stated that loan applications could be received prior to January 1, 2016, but may not close before January 1, 2016. Thus, these commenters suggested, these loans may initially be designated as non-escrow loans, but if they close on or after January 1, 2016, lenders will have to re-categorize these loans as loans requiring the escrow of flood insurance premiums and fees. The Agencies note that the statute specifically and clearly applies the escrow requirement to loans that experience a triggering event on or after January 1, 2016. Furthermore, the Agencies believe that lenders have the capability to anticipate whether loan applications submitted prior to January 1, 2016 may close on or after January 1, 2016 and thus should

[49] *See, e.g.*, 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

structure those transactions accordingly. Therefore, the Agencies decline to make the change suggested by these commenters.

Another financial institution commenter requested that the Agencies clarify that a flood map change on or after January 1, 2016 that causes a building, which had not previously been located in an SFHA, to be located in an SFHA would not impose a duty on a lender to begin escrowing flood insurance premiums and fees for a loan that is secured by such building. Section 102(d) of the FDPA, as amended, applies to loans that experience a triggering event on or after January 1, 2016. Because a map change is not a triggering event, lenders would not be required to escrow flood insurance premiums and fees based solely on that change.

Finally, some credit union association commenters recommended that the escrow status be detailed on an insurance declarations page and that changes in escrow status should be reported to insurance companies who should, in turn, notify all lienholders and homeowners of changes in escrow. The Agencies note that the FDPA, as amended, does not address how insurance companies compose their declarations pages or when and how they must notify lienholders and homeowners regarding escrow status. Accordingly, the Agencies decline to make that requested change.

Loan-Related Exceptions

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, contains several exceptions to the general escrow requirement. These exceptions include: (i) loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided; (ii) loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met; (iii) loans that are secured by residential improved real estate or a mobile home that is used as collateral for a business purpose; (iv) home equity lines of credit; (v) nonperforming loans; and (vi) loans with terms not longer than 12 months. These exceptions are in addition to the small lender exception applicable to certain regulated lending institutions that have total assets of less than $1 billion set forth in section 102(d) of the FDPA, as amended by section 100209 of Biggert-Waters, discussed below. Numerous commenters supported these exceptions.

Although the Agencies proposed the exceptions largely as provided in HFIAA, the Agencies did propose some clarifications in the October 2014 Proposed Rule. With respect to the exception for loans secured by residential improved real estate or a mobile home that is used as collateral for a business purpose, the Agencies proposed that the exception apply to a loan that is an extension of credit primarily for a business, commercial, or agricultural purpose.

Commenters supported the Agencies' clarification regarding the business purpose loan exception. Some commenters, however, recommended that the Agencies provide further guidance on the exception. Some commenters suggested that the Agencies specifically adopt or refer to the interpretations in Regulation Z, which implements TILA, on the meaning of "primarily for a business, commercial, or agricultural purpose."[50]

The Agencies are adopting the exception on business, commercial, or agricultural purpose loans as proposed. As the Agencies explained in the October 2014 Proposed Rule, this is identical to language the Agencies initially proposed in the October 2013 Proposed Rule, which commenters to the October 2013 Proposed Rule supported. As discussed in the October 2013 Proposed Rule and noted in the October 2014 Proposed Rule, the Agencies specifically

[50] One credit union association commenter inquired whether a loan for residential investment properties would be considered a loan that is "primarily for business, agricultural or commercial purposes." The Agencies note that Regulation Z contains commentary that addresses this question. *See* comments 3 and 4 under 12 CFR 1026.3(a).

proposed this language to be consistent with similar exemptions in RESPA[51] and TILA.[52] There is a long history of established guidance on the meaning of "primarily for a business, commercial, or agricultural purpose," including the interpretations set forth in Regulation Z and associated commentary. Consequently, the Agencies do not believe further interpretations or an explicit referral to Regulation Z is necessary; however, the Agencies intend that those interpretations be used as guidance in connection with this provision.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also includes an exception for a loan in a junior or subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which flood insurance is being provided at the time of the origination of the loan. The Agencies proposed language in the October 2014 Proposed Rule similar to the language in HFIAA for this exception, with some changes to improve readability and clarity. Commenters supported the Agencies' proposed clarifications. Some commenters, however, suggested that the exception be available for subordinate lienholders regardless of whether there is already coverage in place because determining such coverage can be difficult. The Agencies note that HFIAA explicitly provides that the exception is only available for subordinate loans secured by property for which flood insurance is already in place. Furthermore, the Agencies note that, as discussed in the Q&As at Q&A 36, regulated lending institutions are already expected to inquire as to the amount of flood insurance coverage that is in place when they make, increase, extend, or renew a subordinate lien loan.[53] Accordingly, the Agencies are adopting the exception as proposed.

[51] *See* 12 U.S.C. 2606(a).
[52] *See* 15 U.S.C. 1603(1).
[53] *See* 74 FR 35914, 35940-41 (July 21, 2009).

Several commenters also requested that the Agencies clarify whether a lender has a duty to monitor its lien position over the life of the loan to determine whether the loan qualifies for the subordinate lien exception. As discussed further below, the Agencies do not believe there is an ongoing duty to evaluate the applicability of the subordinate lien exception, or any of the other exceptions. However, similar to the force placement provisions relating to the mandatory flood insurance purchase requirement, the Agencies believe that when a lender makes a determination that the subordinate lien exception no longer applies, for example, when it receives notice that the senior lien has been paid off or when it conducts the required inquiry at a triggering event, then the lender must begin escrowing flood insurance premiums and fees. Therefore, lenders should ensure that the loan documents executed in connection with a subordinate loan permit the lender to require an escrow in connection with the loan in the event the loan takes a first lien position and becomes subject to the escrow requirement.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also excepts from the escrow requirement loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development when covered by a flood insurance policy that: (i) meets the mandatory flood insurance purchase requirement; (ii) is provided by the condominium association, cooperative, homeowners association or other applicable group; and (iii) the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense. The Agencies proposed in the October 2014 Proposed Rule to implement this exception substantially as stated in the statute.

As the Agencies discussed in both the October 2013 Proposed Rule and the October 2014 Proposed Rule, if the amount of the policy purchased by the condominium association, cooperative, homeowners association, or other applicable group does not satisfy the mandatory flood insurance purchase requirement, then the borrower would be required to obtain a supplemental policy to cover the deficiency. In those instances, the Agencies expect the regulated lending institution to escrow the premiums and fees for the supplemental policy unless the small lender exception applies. For example, if a condominium association purchases an NFIP Residential Condominium Building Association Policy (RCBAP) or a private flood insurance policy for less than the amount of insurance required by the mandatory purchase requirement under the FDPA, the borrower must obtain a dwelling policy for supplemental coverage.

Commenters were generally supportive of the exception as included in the October 2014 Proposed Rule. One community association commenter suggested that the Agencies require insurance companies to disclose the beneficial owner of a policy. However, the FDPA does not compel insurance companies to disclose the beneficial owner of a policy. The Agencies are adopting the condominium association, cooperative, and homeowners association exception as proposed in the October 2014 Proposed Rule.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, includes an exception from the escrow requirement for home equity lines of credit (HELOCs), which was an exception requested by many commenters on the October 2013 Proposed Rule. The Agencies proposed this exception, consistent with HFIAA, in the October 2014 Proposed Rule. One consumer group commenter suggested that the Agencies exclude fully drawn HELOCs from the exception on the theory that such loans are really closed-end loans disguised as HELOCs to qualify for the exception and evade other mortgage requirements. The Agencies note that the FDPA, as amended by section 25 of HFIAA, does not include any exclusion to the exception. Moreover, the issue of whether credit qualifies as open-end credit is addressed by Regulation Z.[54] Therefore, the Agencies are adopting the exception as proposed.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, also includes an exception from the escrow requirement for nonperforming loans. The Agencies proposed to implement this exception with a clarification that the exception be available for a nonperforming loan that is 90 or more days past due and solicited comment on the clarification. Several commenters supported the Agencies' clarification. Other commenters, however, requested that the Agencies look to the CFPB's foreclosure and servicing rules or the FCA's rules on categorizing assets for accounting and reporting purposes in 12 CFR 621.6. In addition, many commenters suggested that once a designated loan is 90 or more days past due, it should not lose the exception if the borrower makes additional payments.

Based on these comments, the Agencies believe further clarification is required regarding this exception. Although it appears that 90 or more days past due is an appropriate measure of when a loan is nonperforming and is consistent with many lenders' current practices, there is confusion on when a nonperforming loan may become a performing loan that is no longer entitled to the exception. The Agencies generally agree that a borrower making some additional payments would not render a nonperforming loan a performing loan; however, the Agencies believe some guidance is necessary to help lenders determine when a loan is no longer nonperforming. Therefore, the Agencies are adopting language that is adapted from the FCA's regulations on categorizing assets[55] to provide that a nonperforming loan is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the

[54] *See* 12 CFR 1026.2(a)(20) and associated commentary.
[55] *See* 12 CFR 621.6(c).

entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full.

The final exception provided by section 25 of HFIAA is for a loan that has a term of not longer than 12 months, which the Agencies proposed as provided by the statute. Several financial institution commenters suggested that the term of the exception be extended to 15 months or 24 months to include all construction loans. The Agencies note the statute provides an exception only for loans with a term of 12 months or less, and therefore, the exception is adopted as proposed. However, if a loan of 12 months or less is extended or renewed for an additional term of 12 months or less, the Agencies' regulations would permit the exception to apply to the extended or renewed loan because an extension or renewal is a triggering event. Therefore, at the time of the triggering event, the regulated lending institution may apply the exception if the term of the newly extended or renewed loan is for a term of 12 months or less.

Moreover, the Agencies are adding new language to address questions the Agencies received about the duration of an exception to the escrow requirement. These questions were raised particularly with respect to exceptions based on a loan status that could change, such as the subordinate lien and nonperforming loan exceptions. Given the ambiguity in the FDPA, as amended, regarding how the exceptions would apply, the final rule clarifies that if a regulated lending institution, or its servicer, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception does not apply, then the lender or its servicer shall require the escrow of all flood insurance premiums and fees as soon as reasonably practicable. In addition, consistent with section 102(d)(3) of the FDPA, which states that escrow accounts established by section 102(d) of the FDPA shall be subject to section 10 of RESPA, the rule provides that a regulated lending institution must provide any disclosure required by section 10 of RESPA if such loan is otherwise subject to RESPA. The Agencies modeled this language on the force placement provisions for the mandatory flood insurance purchase requirement. As with the force placement provisions, the Agencies do not believe this imposes a duty to monitor the exception. However, if the regulated lending institution becomes aware that the status of the loan has changed, then the Agencies expect that the lender should take action, similar to the Agencies' expectations in the force placement context.

The Agencies also received several requests for additional exceptions from the escrow requirements. Some commenters suggested that the Agencies add an exception for closed-end home equity loans in a senior lien position of $100,000 or less or with a loan-to-value ratio of 60 percent or less. Another commenter suggested adding an exception for any loan with a loan-to-value ratio of 80 percent or less. An additional commenter suggested that the Agencies provide an exception for force-placed loans. Some farm credit commenters also requested that the Agencies provide an exception for loans with nontraditional payment structures such as semi-annual or annual payment schedules. The Agencies note that none of these exceptions are provided for in the FDPA, as amended, and therefore decline to add them.

In addition, a financial institution commenter requested that the Agencies create an exception for reverse mortgages. This commenter stated that it is not possible to align the frequency of escrow payments with loan payments because a borrower makes no payments on a reverse mortgage. The Agencies agree that given the terms of a reverse mortgage, such loans are already excluded based on the plain language of the escrow requirement, which requires lenders to collect flood insurance premiums and fees with the same frequency as payments on the loan are made. As a borrower makes no payments on a reverse mortgage, the lender is not required to escrow flood insurance premiums and fees for such loans.

Notice

The Agencies proposed that a regulated lending institution, or a servicer acting on its behalf, mail or deliver a written notice informing a borrower that it is required to escrow all premiums and fees for required flood insurance on residential improved real estate. As noted in the October 2014 Proposed Rule, this proposal was similar to the notice requirement proposed in the October 2013 Proposed Rule. The purpose of the proposed notice was to ensure that borrowers are informed about the requirement to escrow premiums and fees for mandatory flood insurance.

As the Agencies explained in the October 2014 Proposed Rule, the proposal would require that a regulated lending institution, or a servicer acting on its behalf, provide a notice on the escrow requirement with, or in, a notice the lender is already required to provide: the Notice of Special Flood Hazards. The Agencies proposed this approach in order to minimize the burden to regulated lending institutions of providing this notice and to ensure that borrowers receive the notice at a time when they are considering the purchase of flood insurance. The Agencies' current rules provide a sample form of this notice as Appendix A. Because HFIAA amendments tie the escrow requirement to a triggering event (i.e., when a loan is made, increased, extended, or renewed), borrowers already will receive the Notice of Special Flood Hazards, as required by the Agencies' regulations, at the same time that the escrow of flood insurance premiums and fees will be required. To facilitate compliance, the Agencies proposed model language for the escrow notice to be included in or with the Notice of Special Flood Hazards, as applicable.

One commenter supported the proposed requirement to include the notice with the Notice of Special Flood Hazards. The final rule continues to include the escrow notice with the Notice of Special Flood Hazards.

The Agencies are making one modification to the escrow notice requirement in the October 2014 Proposed Rule. As discussed above with respect to the duration of the exception, the Agencies are clarifying that a regulated lending institution or its servicer must require the escrow of all flood insurance premiums and fees if the lender, or a servicer acting on the lender's behalf, determines at any time during the term of a loan that an exception to the escrow requirement for the loan no longer applies. To alert borrowers to the potential need to escrow in those circumstances, the Agencies also are requiring lenders to provide the escrow notice in connection with any excepted loan that could lose its exception during the term of the loan. Consequently, borrowers of loans that may eventually become subject to the escrow requirement will be informed of that possibility.

The Agencies also received some comments related to the content of the notice. These comments will be addressed below in the **SUPPLEMENTARY INFORMATION** accompanying the discussion on Appendices A & B.

Small Lender Exception

In addition to the exceptions to the escrow requirement discussed above, section 102(d) of the FDPA, as amended by section 100209 of Biggert-Waters, contains an exception for certain small lenders. The FDPA, as amended, states that, except as provided by State law, regulated lending institutions that have total assets of less than $1 billion are excepted from the escrow requirement if, on or before July 6, 2012, the institution: (i) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home. The Agencies proposed to implement this exception to the escrow requirement substantially as provided in the statute with some clarifications.

One of these clarifications addressed the measurement of the asset size to qualify for the exception, which the Agencies proposed in both the October 2013 Proposed Rule and the October 2014 Proposed Rule. Because Biggert-Waters does not specify a point in time to measure the asset size of an institution to determine whether such institution qualifies for the exception, the Agencies proposed that a regulated lending institution may qualify for the exception if it has total assets of less than $1 billion as of December 31 of either of the two prior calendar years. Consequently, regulated lending institutions with assets of $1 billion or more as of both December 31, 2014, and December 31, 2015, would not qualify for the exception in 2016. In contrast, a regulated lending institution with assets of less than $1 billion as of either December 31, 2014, or December 31, 2015, would qualify for the exception in 2016, provided the other conditions for the exception are met. As the Agencies explained in both the October 2013 Proposed Rule and the October 2014 Proposed Rule, the Agencies proposed this method, which is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under their Community Reinvestment Act (CRA) regulations,[56] to ensure an institution remains above the size threshold for a substantial period

[56] *See* 12 CFR 25.12(u) and 195.12(u) (OCC); 12 CFR 228.12(u) (Board); and 12 CFR 345.12(u) (FDIC).

before requiring the institution to expend the resources necessary to establish a new escrow program.

Similar to comments received on the October 2013 Proposed Rule, some financial institution commenters to the October 2014 Proposed Rule suggested that the Agencies set the threshold at $2 billion in assets to be consistent with the CFPB escrow rules under Regulation Z for higher-priced mortgage loans.[57] A credit union association commenter suggested that the Agencies adjust the threshold annually for inflation. As the Agencies noted in the October 2014 Proposed Rule, the $1 billion asset-size threshold for the exception from the escrow requirements is specified in the FDPA, as amended, and the Agencies are therefore adopting the $1 billion asset-size threshold without an annual adjustment, consistent with the FDPA, as amended.

Some commenters also asked whether the assets to be measured applied per institution or whether the assets of all institutions under common ownership must be aggregated. The Agencies' regulations state that the measurement reflects the assets of only the regulated lending institution. As a result, regulated lending institutions need not consolidate the assets of other institutions under common ownership with the regulated lending institution for the measurement of asset size.

The Agencies also proposed transition rules for a change in status of a regulated lending institution that may initially qualify for the exception, but later grows to exceed the $1 billion asset-size threshold. Specifically, the Agencies proposed to give regulated lending institutions approximately six months to begin complying with the escrow requirement, which the Agencies explained in both the October 2013 Proposed Rule and October 2014 Proposed Rule is similar to

[57] *See* 12 CFR 1026.35(b)(2)(iii)(C).

the Board's Regulation II change in status rules.[58] Under the proposal, a regulated lending institution would be required to escrow flood insurance premiums and fees for any loans made, increased, extended, or renewed on or after July 1 of the succeeding calendar year after a regulated lending institution has a change in status. Therefore, under the proposed rule, if a regulated lending institution qualified for the exception in 2016, but had assets of $1 billion or more as of December 31, 2016, and December 31, 2017, such regulated lending institution would be required to begin escrowing for any loans made, increased, extended, or renewed on or after July 1, 2018. The final rule similarly would require regulated lending institutions that have had a change in status to begin escrowing for any loans made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status. The Agencies have clarified the language in the final rule with no intended change in meaning.

Several financial institution trade association commenters suggested that lenders be given 12 months to comply with the escrow requirements after a change in status. The Agencies believe that this would be too long a period for lenders to comply in light of the Agencies' regulations measuring the lender's assets over a period of two years. Thus, a lender who has had assets of $1 billion or more one year and is on track during the second year to have assets of $1 billion or more should begin to prepare escrowing in the following year. In the Agencies' view, requiring such lenders to escrow flood insurance premiums and fees for loans made, increased, extended, or renewed on or after July 1 after the lender has had a change in status should be sufficient time for the lenders to comply.

The Agencies also received questions from commenters on whether an institution that experienced a change in status, which no longer qualifies it for the small lender exception, could

[58] *See* 12 CFR 235.5(a)(3).

regain the small lender exception if the institution's asset size decreased to less than $1 billion in a calendar year. Based on the Agencies' regulation, a regulated lending institution could technically reclaim small lender status in these circumstances. However, given the burden that a regulated lending institution would undertake to establish an escrow program, the Agencies question whether an institution would find it appropriate to abandon a program in which it has invested resources to develop and risk causing confusion to borrowers who have grown accustomed to escrowing flood insurance premiums and fees, especially if the institution could lose the small lender exception again in the future.

The FDPA, as amended, states that the small lender exception is available only if, on or before July 6, 2012, the institution: (i) was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan, in the case of a loan secured by residential improved real estate or a mobile home; and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.

The Agencies proposed clarifications to these conditions in the October 2014 Proposed Rule based on comments received on the October 2013 Proposed Rule. Specifically, the Agencies proposed that if, on or before July 6, 2012, the institution: (i) was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and (ii) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home, the institution may be eligible for the small lender exception provided it meets the size threshold. The Agencies are adopting this language in the final rule.

A farm credit commenter suggested that the conditions should only apply to an institution's consumer loan portfolio. The Agencies note that the statute applies the conditions to any loan secured by residential improved real estate or a mobile home. Therefore, based on the plain language of the FDPA, as amended, and the Agencies' regulations, the institution should include all loans secured by residential improved real estate or a mobile home, regardless of whether the loan is for a consumer purpose. Some commenters, including several farm credit commenters, suggested that instead of adopting the conditions set forth in the FDPA, the Agencies develop a bright line test, for example less than 100 mortgages per year or 200 loans per year or 5 percent of the institution's portfolio, to determine whether or not an institution has a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account. The Agencies do not believe these limits would be consistent with the FDPA and decline to adopt such standards.

The Agencies also received several questions about the conditions, which the Agencies believe can be resolved by looking to the plain language of the FDPA, as adopted and implemented by the Agencies' regulations. A financial institution trade group commenter asked whether a lender who began a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account after July 6, 2012 could still qualify for the small lender exception. Based on the FDPA and the Agencies' regulations, which reference a lender's policy on or before July 6, 2012, an institution could qualify for the exception if the policy of requiring escrow began *after* July 6, 2012, provided the lender meets the size threshold. Commenters also requested clarification on whether the small lender exception is available if the lender maintains escrows only on a borrower's request or if the policy of consistently and uniformly requiring escrow accounts comes at the behest of a third party. Regarding the former situation, the Agencies note that the FDPA and the Agencies' regulations state that the condition is based on a lender having a policy of *requiring* the escrow accounts. Therefore, if the lender is only maintaining escrows based on borrowers' requests, the Agencies do not believe this to be a policy of uniformly or consistently requiring escrow. With respect to the situation involving a third party, the Agencies believe that under the FDPA and the Agencies' regulations, it is irrelevant why the lender is requiring the escrow so long as there is a policy of uniformly or consistently requiring borrowers to escrow.

<u>Option to Escrow</u>

Section 25(b) of HFIAA requires regulated lending institutions to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans secured by residential improved real estate or a mobile home that are outstanding as of January 1, 2016. The Agencies proposed this provision in the October 2014 Proposed Rule generally as provided in the statute with changes to the language for clarity and organization. Consistent with section 25(b) of HFIAA, the proposal also clarified that providing an option to escrow would not apply to loans or lenders that are excepted from the general escrow requirement.

Commenters were generally supportive of the Agencies' proposal on the option to escrow. Some credit union and credit union trade group commenters, however, opposed requiring lenders to offer an option to escrow for loans outstanding on January 1, 2016. The Agencies note that offering an option to escrow is required by section 25(b) of HFIAA. As a result, the Agencies are adopting a requirement to offer an option to escrow, consistent with HFIAA.

Several commenters supported the Agencies' proposal stating that the option to escrow does not apply to loans or lenders that are excepted from the general escrow requirement. Many commenters requested the Agencies to clarify that the status of the loan as of the "outstanding" date should determine whether the lender must send the notice of the option to escrow. For example, if a loan outstanding as of January 1, 2016 is a subordinate lien loan excepted from the escrow requirement, then a lender that is not subject to the small lender exception need not provide the notice of the option to escrow even if the lien status for such loan could subsequently change. The Agencies agree that this is consistent with section 25(b) of HFIAA, which requires a regulated lending institution to offer and make available an option to escrow for loans outstanding *as of* January 1, 2016, and therefore, the status of the loan as of January 1, 2016 should determine whether the requirement to offer and make available an option to escrow applies.

The Agencies also received several comments on providing additional exceptions for the option to escrow requirement. Several commenters suggested that there should be an exception to offering an option to escrow for borrowers that already are escrowing. The Agencies agree section 25(b) of HFIAA provides an exception for certain loans that are already escrowing.[59] Furthermore, the Agencies do not find any reason for a borrower who is already escrowing to receive a notice of the option to escrow. Consequently, the Agencies are adding language to their regulations to clarify that the option to escrow does not apply to an outstanding loan with a related escrow of flood insurance premiums and fees, or to a loan that is already subject to the

[59] Section 25(b)(1)(B) of HFIAA states that the term "outstanding loan" to which the option to escrow requirement applies includes a loan that is not subject to the requirement to escrow premiums and fees for flood insurance under section 102(d)(1) of the FDPA in effect on July 5, 2012. Therefore, if a loan is already escrowing pursuant to section 102(d)(1) of the FDPA in effect on July 5, 2012, it is not an outstanding loan that must be offered an option to escrow.

escrow requirement. Therefore, if a loan is outstanding on January 1, 2016, for example, and subsequently experiences a triggering event on February 1, 2016 so that the lender must begin escrowing flood insurance premiums and fees for such loan, the lender need not provide the option to escrow notice to the borrower.

Commenters also requested that the Agencies exclude loans for which borrowers have previously waived escrow or for which lenders previously offered an option to escrow from having to offer the option to escrow again. The Agencies decline to include such exceptions. Although a borrower may have previously decided to waive escrow or been offered an option to escrow, it is possible that the borrower's circumstances have changed, and if offered another chance to escrow, the borrower may do so. Moreover, including such exceptions would be inconsistent with section 25(b) of HFIAA.

Furthermore, the Agencies proposed in the October 2014 Proposed Rule to use their authority to implement the escrow requirement to mandate that regulated lending institutions that no longer qualify for the small lender exception provide the option to escrow for borrowers of loans outstanding on July 1 of the succeeding calendar year following the lender's change in status. For example, suppose a loan is made on March 1, 2016, by a regulated lending institution that qualifies for the exception for small lenders. If the lender then no longer qualifies for the exception for small lenders as of January 1, 2018, under the Agencies' regulations, the lender would be required to escrow flood insurance premiums and fees for loans made, increased, extended, or renewed on or after July 1, 2018. The lender would have the capability to escrow flood insurance premiums and fees on July 1, 2018, and could provide that service to the borrower of the March 1, 2016 loan. Consequently, under the Agencies' October 2014 Proposed

Rule, the regulated lending institution would be required to offer the borrower of that loan the option to escrow.

A few credit union and farm credit commenters opposed the Agencies' proposal while a consumer group commenter supported the proposal. Several financial institution and financial institution trade association commenters did not oppose applying the option to escrow requirement to institutions that lose the small lender exception, but stated that additional time may be needed for such institutions to comply. The Agencies continue to believe that a regulated lending institution that no longer qualifies for the small lender exception should be required to provide an option to escrow. Because a regulated lending institution that experiences a change in status will be required to establish an escrow program, borrowers on existing loans should benefit from the institution's program and be offered the option to escrow. Therefore, the Agencies are adopting the proposed regulations to require regulated lending institutions that lose the small lender exception to offer the option to escrow to existing borrowers with outstanding loans secured by residential improved real estate or a mobile home as of its compliance date.

In the October 2014 Proposed Rule, the Agencies also proposed additional clarifications to provide more specific guidance to regulated lending institutions in administering this requirement. First, the Agencies proposed to implement the requirement that regulated lending institutions "offer and make available" the option to escrow flood insurance premiums and fees by requiring that for outstanding loans, a lender, or its servicer, mail or deliver, or provide electronically if the borrower agrees, a notice informing borrowers of the option to escrow by March 31, 2016. For lenders that no longer qualify for the small lender exception, the Agencies proposed that the notice informing borrowers of the option to escrow be provided by September 30 of the succeeding calendar year following the lender's change in status.

Several financial institution and trade group commenters stated that requiring notice for outstanding loans by March 31, 2016 provided sufficient time for regulated lending institutions to comply. There were, however, some commenters that suggested the notice be required by January 1, 2017, because certain institutions must manually identify outstanding loans for which the notice on the option to escrow must be provided. The Agencies believe that providing institutions with one year to comply is too long, but that additional time may be warranted. Consequently, the Agencies are amending their proposed rule to require that the option to escrow notice should be provided by June 30, 2016.

Some commenters also requested additional time for providing the option to escrow notice for lenders that lose the small lender exception. The Agencies proposed that the notice be provided by September 30 of the succeeding calendar year following the lender's change in status. Thus, such an institution would have nine months from the time it loses the exception to send the option to escrow notice. The Agencies believe that nine months provides an adequate amount of time for such institutions to identify borrowers of outstanding loans and mail or deliver the notice and are therefore adopting the September 30 compliance date. The Agencies, however, have revised the language of the final rule to clarify that a lender that has had a change in status must provide the notice of the option to escrow by September 30 of the first calendar year in which it has had a change in status.

Second, the Agencies proposed to require a lender or its servicer to begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the lender or servicer receives the borrower's request to escrow. As the Agencies explained in the October 2014 Proposed Rule, this language was derived from similar requirements in Regulation E[60] and

[60] *See* 12 CFR 1005.17(f).

Regulation Z[61] regarding how soon a financial institution or credit card issuer must implement the revocation of an opt-in for overdraft services or an over-the-limit feature of a credit card, respectively.

Several commenters supported the Agencies' proposal, noting that regulated lending institutions have had experience with the "as soon as reasonably practicable" standard under Regulation E and Regulation Z and that no greater specificity in the language is necessary. Some commenters requested further guidance on when lenders must begin escrowing after a borrower's request. Given that the Agencies believe a standard timeline may be difficult to establish for different institutions, and in light of the experience that regulated lending institutions already have with the "as soon as reasonably practicable" concept under Regulation E and Regulation Z, the Agencies are adopting the provision as proposed.

Third, to facilitate compliance, the Agencies proposed a model clause for the notice on the option to escrow in Appendix B. The Agencies' model clause for the option to escrow notice and the comments the Agencies received in connection with this proposal, will be discussed in more detail below in the **SUPPLEMENTARY INFORMATION** to Appendices A & B.

___.___ Required use of standard flood hazard determination form

In connection with the detached structures exemption in section 102(c) of the FDPA, made by section 13 of HFIAA, discussed above, the Agencies proposed in the October 2014 Proposed Rule to amend the Agencies' regulations to clarify that a regulated lending institution need not perform a flood hazard determination for any properties or structures that are exempt from the mandatory flood insurance purchase requirement. The Agencies reasoned that because flood insurance is not required on such properties and structures, determining whether such

[61] *See* 12 CFR 1026.56(i).

structures are located in an SFHA is unnecessary, and that removing this requirement for such properties and structures would eliminate unnecessary fees charged to borrowers.

Several commenters criticized this proposed amendment. They suggested the Agencies clarify that, although a lender need not perform a flood hazard determination for any properties exempt from the mandatory flood insurance purchase requirement, a lender still may need to obtain a flood hazard determination and charge a fee for the determination even if the property or structure qualifies for the exemption. Two commenters noted that lenders generally are not aware of detached structures until the flood hazard determination lists the number of buildings located on a property or until an appraisal or survey, occurring after the lender has ordered a determination, identifies the detached structures.

The Agencies agree with these commenters that conducting a flood hazard determination may be necessary to ascertain the number of buildings located on the property. In addition, the lender otherwise may not be aware that there is a detached structure until after a flood hazard determination is ordered. Therefore, conducting a flood hazard determination remains necessary to ensure compliance with the flood insurance requirements. Accordingly, the final rule does not include the proposed exception to the flood hazard determination requirement for properties and structures exempt from the mandatory flood insurance purchase requirement.

Finally, the October 2013 Proposed Rule proposed technical amendments in this section to change the reference to the head of FEMA from “Director” to “Administrator” and to update how a lending institution may obtain the standard flood hazard insurance form by directing the institution to FEMA’s Web site. No comments were received on this aspect of the proposal. The Agencies therefore adopt the change in title of the head of FEMA from “Director” to “Administrator” and the addition of the Web site reference as proposed.

___.___ Force placement of flood insurance.

Pursuant to section 102(e) of the FDPA, as amended by section 100244 of Biggert-Waters, the Agencies proposed to amend their rules for the force placement of flood insurance.[62] The October 2013 Proposed Rule sought to implement section 100244 of Biggert-Waters by setting forth when a regulated lending institution or its servicer may begin to charge the borrower for force-placed insurance, the circumstances under which a regulated lending institution or its servicer must terminate force-placed insurance and refund payments, and what documentary evidence is sufficient to demonstrate that a borrower has flood insurance coverage.

Notice and purchase of coverage.

Under current regulations, if a regulated lending institution, or a servicer acting on its behalf, determines 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 the FDPA, then the regulated lending institution or its servicer must 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 the mandatory purchase requirement, for the remaining term of the designated loan. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the regulated lending institution or its servicer must purchase flood insurance on behalf of the borrower. The regulated lending institution or servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. Pursuant to section 102(e) of the FDPA, as amended by section 100244 of Biggert-Waters, the Agencies proposed to

[62] The Agencies note that section 1463(a) of the Dodd-Frank Act sets forth requirements relating to the force placement of hazard insurance. The CFPB has excluded flood insurance required under the FDPA from the force placement requirements in its rule implementing this provision. 12 CFR 1024.37(a).

amend their regulations to provide that the regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which the borrower's flood insurance coverage lapsed or did not provide a sufficient coverage amount. The Agencies' understanding is that the date on which the flood insurance coverage lapses is the expiration date provided by the policy. The October 2013 Proposed Rule solicited comment on whether the Agencies' interpretation of the term "lapsed" is consistent with the insurance industry's use of the term and whether further clarification is necessary on when a lender or servicer may begin to charge for force-placed flood insurance.

A number of commenters, including trade associations and lenders, generally supported the proposed amendment allowing regulated lending institutions to charge borrowers for the cost of premiums and fees incurred for coverage beginning on the date of lapse or insufficient coverage. These commenters noted that this amendment would make it clear that force-placed insurance resulting from expired or lapsed policies should be dated to the date of expiration to ensure continuous flood coverage. Some trade association commenters supported the Agencies' approach as consistent with Congressional intent and long-standing industry practice adopted to ensure continuous coverage as required by the FDPA.

A number of commenters agreed with the Agencies' interpretation that the date of lapse is the expiration date provided in the borrower's flood insurance policy and asserted this definition is consistent with industry usage. Other commenters, however, disagreed with the Agencies' interpretation, with one trade association suggesting the regulations should clearly state that a lapse is any period in which flood insurance coverage is not continuously maintained that protects the interest of the named insured. Another commenter objected by noting that the term is an insurance term of art and means more than the date coverage expires. This commenter further stated that the term “lapse” can mean more than just the expiration date of coverage depending on an insurer’s business practices. Lastly, an insurance association commenter suggested defining a “lapse” to occur when a policy has been not renewed for some reason or has been cancelled for non-payment, and therefore it would be more appropriate to use “non-renewed or cancelled” rather than “expiration date” as provided in the October 2013 Proposed Rule.

The Agencies understand that flood insurance policies under the NFIP will often provide policyholders with a “grace period” of typically 30 days following the expiration date to pay the renewal premiums and fees to restore the policy and ensure continuous coverage. However, the Agencies also understand that any flood insurance coverage provided by the NFIP policy during the grace period would cover only the lender’s interest. The borrower’s interest would be covered during the grace period only if the borrower pays the renewal premium within the grace period.[63] Because there may be a lack of continuous flood coverage protecting the borrower’s interest during this “grace period,” the Agencies consider the policy to have lapsed as of the expiration date provided by the policy. The Agencies also consider policies that are cancelled for any reason as having lapsed as of the date of cancellation because the borrower’s interests are no longer covered by the policy. Therefore, the Agencies have amended their interpretation from the original proposal to provide that the date on which the flood insurance coverage lapsed is the expiration date provided by the policy or the date the flood insurance policy is cancelled.

The Agencies also received several comments requesting general clarification on the 45-day notice requirement. Some commenters sought clarification on whether a regulated lending institution, or a servicer acting on its behalf, can send the 45-day notice of force placement to the

[63] National Flood Insurance Program, Flood Insurance Manual at REN 2-3 (Apr. 1, 2015).

borrower prior to the actual expiration of the current policy so that the institution is prepared to renew on the date it expires or whether the institution must wait until policy expiration to send the notice. The Agencies note that, to ensure that adequate flood insurance coverage is maintained throughout the term of the loan and to comply with the Federal flood statutes, a regulated lending institution or its servicer must notify a borrower whenever flood insurance on the collateral has expired or is less than the amount required for the property. The regulated lending institution or its servicer must send this notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. Notice is also required when a regulated lending institution learns that a property requires flood insurance coverage because it is in an SFHA as a result of a flood map change. The FDPA specifically provides that the lender or servicer for a loan must send a notice upon its determination that the collateral property securing the loan is either not covered by flood insurance or is covered by such insurance in an amount less than the amount required.[64] In accordance with this statutory requirement, the final rule clarifies that the required 45-day notice must be sent following the date of lapse or insufficient coverage of the borrower's policy.

The Agencies also received suggestions on alternative force placement notification processes. A few commenters recommended the Agencies add a second 15-day reminder,[65] as required for force-placed hazard insurance under the CFPB's rule, to simplify compliance for loan servicers subject to RESPA's Regulation X. Some commenters, including trade association

[64] *See* 42 U.S.C. 4012a(e).

[65] Under Regulation X, the CFPB requires a servicer to send two written notices before a servicer can assess a force placement charge on a borrower: (1) a notice at least 45 days before assessment of a charge, and (2) a notice at least 30 days after the initial notice and at least 15 days before assessment of a force placement charge. 12 CFR 1024.37(c)-(d).

commenters, recommended the Agencies issue guidance that would authorize a lender to follow a notification process similar to FEMA's Mortgage Portfolio Protection Program (MPPP).[66] The Agencies are aware of these alternative notification processes and appreciate the benefits of additional notices. The Agencies note that a regulated lending institution or its servicer, at its discretion, may send one or more additional notices prior to the expiration date as a courtesy to assist the borrower. However, in order to comply with this section, the regulated lending institution or its servicer still would be required to send the mandated 45-day notice following the lapse of the borrower's policy.

With respect to the notification regarding the renewal of a force-placed flood insurance policy, some industry commenters requested additional guidance. One commenter stated that the Agencies should do more to reduce the need for force-placed flood insurance, and suggested that the Agencies coordinate with the CFPB to mitigate gaps in the regulations pertaining to flood insurance policies. The Agencies may provide guidance in the future regarding notification in connection with the renewal of a force-placed flood insurance policy.

Additionally, several commenters sought clarification on the date on which a regulated lending institution or its servicer may force-place flood insurance. Some commenters inquired as to whether the appropriate date is when the lender or servicer discovers the insufficient coverage or after the expiration of the 45-day notice period. Other commenters also asserted a 45-day waiting period creates liability for the institution and is contrary to the intent of the Federal flood statutes to ensure continuous insurance coverage. The Agencies agree with the commenters who suggested that the regulation provide that lenders or servicers may purchase force-placed

[66] MPPP requires three notification letters to be sent to the borrower: (1) 45 days prior to expiration or upon determination, (2) 30 days following the first notification letter, and (3) after the end of 45 day notification period along with the flood insurance policy declarations page. 44 CFR 62.23.

insurance immediately after the borrower's original policy lapses. Biggert-Waters clarifies that a regulated lending institution or its servicer has the statutory authority to charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. Therefore, Biggert-Waters permits a lender or servicer to force place insurance immediately after the borrower's policy has lapsed or did not provide sufficient coverage. The Agencies' interpretation seeks to ensure that the protections provided by flood coverage for both the borrower and lender will be continuous. Based on the Federal flood statutes, the final rule clarifies that a regulated lending institution, or a servicer acting on its behalf, may force place flood insurance that would provide coverage anytime during the 45-day notice period and would not have to wait 45 days after providing notice to force place.

Some commenters, however, objected to the October 2013 Proposed Rule by asserting that the proposed rule allowing for fees and charges of a force-placed policy beginning on the date the borrower's policy lapsed would be in conflict with Federal law that currently requires a 30-day waiting period on all NFIP policies, except for policies written in connection with new loans, and other, limited circumstances.[67] The Agencies understand that most force-placed policies are private flood insurance policies rather than policies written under the MPPP administered by FEMA. It is also the Agencies understanding that private force-placed flood insurance policies generally do not have a 30-day waiting period and would allow a regulated lending institution, or a servicer acting on its behalf, to force place flood insurance effective immediately.

[67] Section 1306(c) of the NFIA, 42 U.S.C. 4013(c), as amended by the Act. See FEMA WYO Bulletin W-13017, issued March 29, 2013 and effective October 1, 2013.

In addition to requesting clarification on when a regulated lending institution or servicer can force place flood insurance, numerous commenters also sought clarification on the date on which a regulated lending institution or its servicer may charge for force-placed insurance. One commenter asked whether a regulated lending institution can force place flood insurance at the expiration of the current policy, but not charge the customer until the end of the 45-day notice period. The Agencies note that Biggert-Waters and the final regulations provide that a regulated lending institution or its servicer may charge the borrower for the cost of premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage. As discussed above, the Agencies interpret this provision to mean that a regulated lending institution or its servicer can force place flood insurance beginning on the day the borrower's policy lapsed or did not provide sufficient coverage, and also, as of that day, the institution can charge the borrower for the force-placed insurance.[68] However, if the borrower obtains a flood insurance policy that overlaps with the force-placed policy, the lender or servicer must refund any premiums paid by the borrower for this overlap period. For example, if a borrower has not renewed a flood insurance policy that expires on June 30, a lender or servicer must provide the 45-day notice to the borrower and may force place a flood insurance policy as early as July 1. The lender or servicer could bill the borrower upon force placing the policy or could wait to bill the borrower at a later date, for example, when the 45-day notice period expires. If the borrower did not obtain a flood insurance policy and the lender or servicer had not force placed insurance by August 14 (the end of 45-day period), the lender or servicer would be required by regulation to force place flood insurance on August 15. On the other hand, if the lender force placed flood insurance as of July 1 and, if on July 15, the borrower renewed

[68] Under Regulation X, the CFPB requires a servicer to wait 45 days before a servicer can assess a force placement charge on a borrower. 12 CFR 1024.37(c)-(d).

his or her flood insurance policy (effective from July 1) to satisfy the mandatory purchase requirement and provided sufficient evidence to the lender or servicer, then the lender or servicer would be required to refund any premiums paid by the borrower for the force-placed insurance coverage between July 1 and July 15. As a practical matter, lenders or servicers may decide to wait until after the 45-day notice period has expired to collect premiums for coverage dating back to the date the force-placed policy was purchased to avoid the administrative burden of having to refund the borrower's premium for any period of overlapping coverage.

Finally, the Agencies received several comments regarding retroactive billing. One commenter suggested a regulated lending institution or its servicer should not be permitted to charge the borrower for lapsed coverage if the institution or servicer fails to identify a lapse within 60 days. Another commenter asserted it is unreasonable to allow an institution to delay sending notices in order to charge retroactively a borrower for a lengthy period of force-placed flood insurance coverage. Additionally, several commenters requested the Agencies to define clearly the date back to which a lender may charge force-placed flood insurance premiums and suggested this date to be when a lender discovers that flood insurance coverage "did not provide a sufficient coverage amount." The plain language of the statute provides that the lender or servicer may charge for premiums and fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. Further, when the lending institution determines there is a coverage lapse or insufficient coverage, the FDPA requires the institution to send a notice to the borrower. The Agencies also observe that, for purposes of safety and soundness, regulated lending institutions should ensure continuous coverage of flood insurance for the building or mobile home and any personal property securing a designated loan.

Additionally, the Agencies interpret Biggert-Waters to permit a regulated lending institution to force place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure continuous coverage. Such a practice will ensure that institutions complete the force placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution. If an institution, despite its monitoring efforts, discovers a policy with insufficient coverage, for example due to a re-mapping, the institution may charge back to the date of insufficient coverage provided the institution has purchased a policy that covers the property for flood loss and that policy was effective as of the date of insufficient coverage. However, if purchasing a new policy is necessary to force place insurance upon discovery of insufficient coverage, an institution may not charge back to the date of lapse or insufficient coverage because the policy did not provide coverage for the borrower prior to purchase.

Termination of force-placed insurance.

As provided in section 102(e)(3) of the FDPA, which was added by section 100244 of Biggert-Waters, the Agencies proposed that within 30 days of receipt by a regulated lending institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to: (i) notify the insurer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer and (ii) refund to the borrower all premiums paid by the borrower for any insurance purchased by the regulated lending institution or its servicer under this section for any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the regulated lending institution or its servicer were each in effect (overlap period), and any related fees charged to the borrower.

The Agencies realize that, although regulated lending institutions and servicers can request that a force-placed insurance policy be terminated, it is the insurer that actually cancels the policy. The October 2013 Proposed Rule, therefore, clarified that the statutory language in section 102(e)(3) of the FDPA, as amended by section 100244 of Biggert-Waters, requires the institution only to notify the insurer to terminate the force-placed policy. The institution also must fully refund to the borrower the premiums and fees for the overlap period within the 30-day period required by the statute.

Although some commenters generally supported the proposed termination and refund requirements, a few commenters objected. One commenter suggested that the Agencies withdraw this requirement for existing loans and allow a substantial period for compliance prospectively. Another commenter asserted this requirement would mean a lender is "stuck with" a portion of the premium for the force-placed insurance that was purchased only because the borrower did not satisfy an obligation of the mortgage agreement to purchase flood insurance. The Agencies understand lenders' concerns regarding the termination and refund provisions. However, Biggert-Waters specifically requires the refund of force-placed insurance premiums for any overlap period and does not provide an exception to the requirement for outstanding loans.

Other commenters sought further clarifications on the proposed requirements. One commenter, for example, presented a scenario in which an existing policy expires on September 1 and then on September 16, the lender force places coverage retroactive to the date of lapse (September 1) after having previously sent a force placement notice. On September 17, the borrower provides proof of policy purchased that day but which is subject to a 30-day waiting period prior to becoming effective. This commenter inquired whether the lender must terminate a force-placed policy and refund premiums and fees at the expiration of the 30-day waiting period or upon receipt by the lender of confirmation of borrower obtained flood insurance coverage. The Agencies note that Biggert-Waters requires a lender or servicer to terminate any force-placed insurance purchased by the regulated lending institution or its servicer and to refund to the borrower all premiums or fees paid by the borrower for any overlap period. Because the borrower's policy is subject to a 30-day waiting period, it would not be "in effect" until the waiting period has expired. The lender's force-placed policy provides the only flood insurance coverage on the property during that waiting period. Provided the force-placed insurance policy is terminated upon the expiration of the waiting period, the lender would not need to refund premiums and fees for the force-placed coverage because there would not be an overlap period.

Another commenter suggested the Agencies clarify that the lender's refund obligation is subject to the insurer's refund of the premium. The Agencies note that Biggert-Waters does not impose such a condition precedent upon the lender's refund.

A commenter urged the Agencies to adopt a limit on how far back a regulated lending institution may be required to refund overlapping flood insurance to encourage borrowers to be diligent in reviewing notices and prompt in notifying the lender or servicer. The Agencies understand the difficulties in refunding premiums for force-placed insurance for extensive overlap periods due to the borrower not notifying the lender promptly. Nonetheless, the Agencies note that Biggert-Waters makes clear that a lender is required to refund any premiums and fees a borrower has paid for which the borrower provides sufficient documentation of overlapping coverage. Accordingly, Biggert-Waters does not provide a limitation on the time period for which a borrower can submit documentation of overlapping coverage. However, the Agencies believe that a borrower receiving force placement notices and faced with the burden of associated fees and premiums would be motivated to provide prompt notification to the lender of the borrower's own policy rather than be required to pay the additional fees and premiums during any period of overlapping coverage. Based on a review of the comments, the Agencies are adopting the termination and refund provision as proposed.

In addition, the Agencies note that section 102(e)(3) of the FDPA, as amended, and the Agencies' final regulations, do not specify a party from which a regulated lending institution must receive confirmation of a borrower's existing flood insurance coverage. Therefore, regulated lending institutions may receive the confirmation from either the borrower or a third party, such as an insurance agent or insurer with whom the institution has direct contact.

Sufficiency of Demonstration.

Pursuant to section 102(e)(4) of the FDPA, as amended by section 100244 of Biggert-Waters, the October 2013 Proposed Rule provided that, for purposes of confirming a borrower's existing flood insurance coverage, a regulated lending institution or its servicer must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent. A few commenters expressed general support for the proposed regulations as important protections that will simplify the verification process between lenders and flood insurance providers and result in greater transparency. Numerous commenters requested further clarifications while others expressed concerns with implementation of the proposed rules.

Among the clarifications requested, several trade associations asked what constitutes a "sufficient demonstration" for purposes of confirming a borrower's existing flood insurance coverage. Another commenter suggested the Agencies clarify that sufficient evidence of insurance coverage must include items specified in FEMA Bulletin W-13013.[69] This commenter also suggested inclusion of the policy term effective dates, the current flood coverage amount, limitations and exclusions, the mortgagee's identity, and, if the coverage is provided by a private flood policy, some documentation that the policy satisfies either the Biggert-Waters definition of private flood insurance or the mandatory purchase requirement. A large lender commenter requested that the Agencies clarify that, in addition to the minimum required information, the declarations page must contain the correct amount, dates, and other information to fulfill the mandatory purchase requirements. This commenter also recommended that a copy of the policy be provided to the lender or servicer and that the lender or servicer have 45 days to check for compliance with any required private flood insurance criteria as conditions for terminating the force-placed insurance based on a borrower's private policy.

As provided by the October 2013 Proposed Rule, sufficient documentation consists of an insurance policy declarations page that includes the existing flood insurance policy number and the identity of and contact information for the insurance company or its agent. This information is all that is required under Biggert-Waters for an insurance policy declarations page to be considered sufficient evidence of a borrower's flood insurance coverage, and the Agencies decline to require additional information.

[69] FEMA Bulletin W-13013, issued March 19, 2013, reiterates that the NFIP rules and regulations do not allow the use of temporary declarations pages as evidence of insurance. The Bulletin refers to the General Rules section of the Flood Insurance Manual which provides rules regarding acceptable forms of evidence of insurance:

> A copy of the Flood Insurance Application and premium payment, or a copy of the declarations page, is sufficient evidence of proof of purchase for new policies. The NFIP does not recognize binders. However, for informational purposes only, the NFIP recognizes certificates or evidences of flood insurance, and similar forms, provided for renewal policies if the following information is included: the policy form/type, term, and number; insured's name and mailing address; property location; current and rated flood risk zone; grandfathering status; mortgagee name and address; coverage limits; deductibles; and annual premium.

Another area of concern identified by commenters is that the requirement to accept the declarations page as sufficient demonstration may cause lenders to accept a private flood insurance policy based on the declarations page, only to later determine that the policy is unacceptable. As the Agencies discussed in the October 2013 Proposed Rule, a lender is responsible for making all necessary inquiries into the adequacy of the borrower's insurance policy to ensure that the policy complies with the mandatory purchase requirement. If the lender determines the coverage amount or any terms and conditions fail to meet applicable requirements, the lender should notify the borrower and request that the borrower obtain an adequate flood insurance policy.

Several commenters expressed concerns about the premature cancellation of a force-placed policy resulting in its replacement by another force-placed policy when the regulated lending institution determines that adequate insurance was not in place by the borrower. These commenters suggested that the Agencies clarify that a regulated lending institution or servicer is not required to cancel the force-placed policy until it has completed any necessary inquiries and receives valid evidence of compliant flood insurance coverage.

The Agencies understand the commenters' concerns with regard to premature cancellation of a force-placed policy and the administrative burden of terminating such a policy and refunding any paid premiums to the borrower. Consistent with Biggert-Waters, the final rule provides regulated lending institutions and servicers with 30 days from the receipt of the borrower's confirmation of existing flood insurance to conduct all necessary inquiries regarding whether the borrower's flood insurance policy satisfies the minimum mandatory purchase requirement.[70] The Agencies note that any further inquiry regarding the borrower's policy along

[70] *See* 42 U.S.C. 4012(a)(e)(3).

with the termination and refund of premiums for the overlap period must be completed within the 30-day period following receipt of confirmation of a borrower's existing flood insurance coverage.

Finally, several commenters asserted that regulated lending institutions and servicers should have the discretion to accept other documents that may also demonstrate a borrower has adequate flood insurance coverage. The Agencies clarify that although a declarations page is the one option that a lender must accept, there are circumstances in which a lender can, subject to safe and sound banking practices, accept alternative evidence of insurance documents acceptable to the lender in order to cancel force-placed insurance. The Agencies note that the final rule establishes the only information that a lender or servicer may require as sufficient demonstration of flood insurance coverage; however, if other information is submitted, then the institution may accept it. The Agencies, therefore, adopt the provision as proposed in the October 2013 Proposed Rule.

Other Comments

In addition to the solicited comments, the Agencies received comments addressing force-placed insurance in general that are not specific to the October 2013 Proposed Rule. A few consumer associations urged the Agencies to adopt additional provisions to reduce the incidence of force-placed insurance and prevent kickbacks and other practices that unreasonably inflate the cost of force-placed insurance and encourage excessive use. These commenters encouraged the Agencies to require that force-placed insurance be reasonably priced, prohibit the purchase from an insurer affiliated with the servicer, and place limits on how much voluntary flood coverage the lender or servicer may require or force place. The Agencies observe that Biggert-Waters does not address these issues. However, the Agencies remind regulated institutions that their force placement practices should be consistent with all applicable laws, regulations, and safe and sound banking practices.

These consumer associations also requested that the Agencies require regulated lending institutions or servicers to advance insurance premiums rather than letting a borrower's policy lapse for nonpayment. These commenters urged that institutions and servicers must exhaust all options to keep homeowners' existing flood insurance policies in place before force placing insurance. The Agencies note, however, that the Federal flood statutes do not contain provisions similar to those relied upon by the CFPB in its mortgage servicing rule, which require a servicer to advance funds to a borrower's escrow account for the purpose of paying for a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment).[71] Although the final rule does not require a regulated lending institution to advance premiums, the Agencies note that nothing prohibits an institution from doing so to benefit the consumer.

A commenter requested that the Agencies clarify the applicability of the force placement provisions to re-mapping scenarios. The Agencies reiterate that if at any time during the life of the loan, a regulated lending institution or its servicer determines flood insurance is absent or insufficient, including following a map change, the regulated lending institution or its servicer must initiate force placement procedures by notifying the borrower of the mandatory purchase

[71] The CFPB's rule requires a servicer to advance funds to a borrower's escrow account and to disburse such funds in a timely manner to pay the premium charge on a borrower's hazard insurance (unless the servicer has a reasonable basis to believe that a borrower's hazard insurance has been canceled or not renewed for reasons other than nonpayment of premium charges). Thus, even if a borrower were delinquent by more than 31 days, a servicer would be required under the CFPB's rule to advance funds to continue the borrower's hazard insurance policy. In promulgating this rule, the CFPB relied on its authority under section 19(a) of RESPA to prescribe such rules and to make such interpretations as may be necessary to achieve the consumer protection purposes of RESPA. *See* 78 FR 10696, 10714 (Feb. 14, 2013) and 12 CFR 1024.17(k)(5). The Agencies note that the Federal flood statutes do not contain a provision similar to the provision relied upon by the CFPB to require a servicer to advance funds to a borrower's escrow account.

requirement and providing the borrower an opportunity to obtain the necessary amount of coverage. If the borrower fails to purchase the required amount of insurance within 45 days after the lender provides notice, the institution or servicer must force place flood insurance on the borrower's behalf.

Finally, the Agencies received comments from a number of different organizations discussing the escrowing of force-placed insurance premiums and fees. The Agencies addressed these comments above in the **SUPPLEMENTARY INFORMATION** related to

___.___ Escrow requirement.

___.___ Determination fees.

As discussed in the **SUPPLEMENTARY INFORMATION** related to

___.___ Authority, purpose, and scope, the Agencies are adopting the change in title of the head of FEMA from "Director" to "Administrator" as proposed.

___.___ Notice of special flood hazards and availability of Federal disaster relief assistance.

Section 100239 of Biggert-Waters added a new section 102(b)(6) to the FDPA (42 U.S.C. 4012a(b)(6)), which requires regulated lending institutions to disclose to a borrower that: (i) flood insurance is available from private insurance companies that issue SFIPs on behalf of the NFIP or directly from the NFIP; (ii) flood insurance that provides the same level of coverage as an SFIP under the NFIP may be available from a private insurance company that issues policies on behalf of the company; and (iii) the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

Furthermore, section 100239(b) of Biggert-Waters amended section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)) to require that the disclosures in section 102(b)(6) of the FDPA be provided in the Notice of Special Flood Hazards. Therefore, the final rule provides that the disclosures set forth in section 102(b)(6) of the FDPA be included in the Notice of Special Flood Hazards. The Agencies also proposed model language for the disclosure in the sample form of notice contained in Appendix A, as discussed further below.

In order to reduce the compliance burden of amending the Notice of Special Flood Hazards, the Agencies are implementing these changes to the regulation effective January 1, 2016. This effective date coincides with the January 1, 2016 effective date set forth in HFIAA that is applicable to the escrow provisions, which also affect Appendix A.

___.___ Notice of servicer's identity.

As discussed in the **SUPPLEMENTARY INFORMATION** related to ___.___ Authority, purpose, and scope, the Agencies are adopting the change in title of the head of FEMA from "Director" to "Administrator" as proposed.

Appendices A & B

Appendix A

As discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to ___.___ Escrow requirement above, the Agencies proposed in the October 2014 Proposed Rule that regulated lending institutions must mail or deliver a written notice informing borrowers about the requirement to escrow premiums and fees for required flood insurance. To facilitate compliance with the proposed notice requirement, the Agencies proposed model language that could be included, if applicable, in the Notice of Special Flood Hazards as set forth in the sample form of notice contained in Appendix A.

Commenters were supportive of the Agencies proposing model language and that the notice be included in or with the Notice of Special Flood Hazards. However, the Agencies received comments with recommendations for improving the model language, which the Agencies are including in this final rule. In particular, these suggestions are meant to clarify that borrowers "may" be required to escrow flood insurance premiums and fees to take into account instances when the notice might be provided to a borrower of a loan excepted from the escrow requirement.

One municipal government commenter suggested that the Agencies also include an explanation of the term "escrow." The Agencies are concerned that such an explanation could complicate the notice, because the concept of escrow is not unique to flood insurance. Additionally, escrow is already explained in the RESPA Special Information Booklet that is provided to consumers applying for Federally related mortgages.[72] As a result, the Agencies decline to require additional language to explain the term "escrow" in the Notice of Special Flood Hazards.

Furthermore, in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to ___.__ Exemptions above, the Agencies discussed a comment suggesting that the language required by section 13(b) of HFIAA to be contained in the RESPA Special Information Booklet also be included in the Notice of Special Flood Hazards. The commenter noted that some borrowers might not receive the RESPA Special Information Booklet. The Agencies believe that this is a concise disclosure that would be helpful to provide in the Notice of Special Flood Hazards without detracting from all the other disclosures required in the notice. Therefore, the Agencies are amending the Notice of Special Flood Hazards to include the

[72] 12 USC 2604(b)(9).

language that is required to be included in the RESPA Special Information Booklet by section 13(b) of HFIAA.

Moreover, as noted above, the October 2013 Proposed Rule amended the sample form of notice contained in Appendix A to include the disclosures required by section 102(b)(6) of the FDPA, as added by section 100239 of Biggert-Waters, regarding the availability of private flood insurance coverage. The proposed additions to the sample form closely tracked the statutory language. The Agencies also proposed in the October 2013 Proposed Rule to revise the language relating to the coverage limit to more accurately reflect what is actually covered under the Federal flood statutes. Specifically, the October 2013 Proposed Rule amended the language to state that flood insurance coverage is available only on the building or mobile home and any personal property that secures the loan and not the land itself. In addition, the October 2013 Proposed Rule provided other technical amendments to the sample form of notice contained in Appendix A to change the references to the head of FEMA from "Director" to "Administrator." The Agencies are adopting these changes set forth in the October 2013 Proposed Rule with one minor word change from "ask" to "contact" in the sample form language on the availability of private flood insurance coverage.

Finally, the changes to Appendix A are effective on January 1, 2016. Consistent with HFIAA, the provision requiring the escrow notice to be included on or with the Notice of Special Flood Hazards does not take effect until January 1, 2016. Therefore, the Agencies are making all the changes related to Appendix A effective at once, on January 1, 2016, in order to reduce the compliance burden on regulated lending institutions associated with amending the Notice of Special Flood Hazards.

Appendix B

As discussed above in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to ___.__ Escrow requirement, the final rule requires lenders to provide a notice of the option to escrow to borrowers of loans outstanding as of January 1, 2016, or July 1 of the succeeding calendar year after a lender no longer qualifies for the small lender exception, as applicable. In the October 2014 Proposed Rule, the Agencies proposed an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B to facilitate compliance with this proposed requirement.

In the October 2014 Proposed Rule, the Agencies proposed that the notice would not need to be provided in conjunction with any other disclosure or need to be segregated from other information provided to the borrower. A consumer group commenter suggested that the notice be conspicuous and segregated from any other correspondence. Although the Agencies believe that the notice should be readily apparent to the borrower to increase the likelihood of a borrower reading it, the Agencies decline to impose any specific requirement that the notice be conspicuous or segregated from other information. The Agencies believe that, as all of the information contained in the notice may be important to the borrower, no one particular part of the notice should be singled out. Under the final rule, regulated lending institutions may choose whether to provide the notice as a separate notice or add it to another disclosure the lender provides the borrower on or before the proposed deadline, such as a periodic statement.

A financial institution commenter inquired whether a lender may add additional language to the sample clause set forth in Appendix B. The Agencies note that the sample clause provides suggested language and that this would not preclude a regulated lending institution from inserting additional language that it believes would help a borrower better understand his or her options regarding the escrow of flood insurance premiums and fees. The commenter also recommended minor language and format changes to the sample clause, which the Agencies are adopting, among other changes to the language to improve readability.

Consistent with HFIAA, the escrow provisions requiring the option to escrow notice will not be effective until January 1, 2016. Consequently, Appendix B will not be effective until that date.

Appendix C

The Agencies are not adopting the notice proposed as Appendix C in the October 2013 Proposed Rule because the notice is no longer applicable, based on the changes to the escrow requirements enacted in HFIAA.

IV. Regulatory Analysis

Regulatory Flexibility Act

OCC: Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities.[73] Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the *Federal Register* along with its rule. The OCC has concluded that the final rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,106 small entities — 339 Federal savings associations, 748 national banks, and 19 trust companies (collectively, small banks).[74] To

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[73] *See* 5 U.S.C. 601 *et seq*.

[74] We base our estimate of the number of small entities on the Small Business Association's (SBA) size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million,

determine the number of banks that may be affected by the rule, we determined the number of banks that self-identified by reporting mortgage servicing assets or other activity associated with one-to-four family residential mortgage loans in the Q4 2014 Call Report or were identified by OCC examiners as a Home Mortgage Disclosure Act (HMDA) filer or bank that originates mortgage loans. We identified 1,162 such banks of which there are approximately 796 small banks that the rule could impact.[75] Thus, we assume the rule impacts a substantial number of small banks.

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank is approximately $6 thousand in 2015. Using this cost estimate, we believe the final rule will not have a significant economic impact on any small banks. .

Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

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respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank as a small entity. We use December 31, 2014, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the SBA's *Table of Size Standards*.

[75] For purposes of determining if the rule could impact a substantial number of small entities, we assume that all small banks have a policy in place to require the escrow of taxes and insurance.

Board: The RFA requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the need for, and objectives of, the final rule. The Board is adopting revisions to Regulation H to implement certain provisions of Biggert-Waters and HFIAA over which the Agencies, including the Board, have jurisdiction. Consistent with HFIAA, the final rule exempts any structure that is a part of residential property but is detached from the primary residential structure of such property and does not serve as a residence from the mandatory flood insurance purchase requirement.

The final rule also implements the provisions in the FDPA, as amended by the Biggert-Waters Act and HFIAA, requiring a regulated lending institution (or its servicer) to escrow the premiums and fees for required flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for exceptions set forth in the statute, including an exception for certain small lenders with assets less than $1 billion.

Furthermore, the final rule implements the requirement in HFIAA that regulated lending institutions offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. The final rule also extends the requirement to offer and make available an option to escrow to a borrower when a regulated lending institution no longer qualifies for the exception for small lenders.

Finally, the final rule adopts revisions to the force placement provisions consistent with Biggert-Waters to clarify that a regulated lending institution or its servicer may charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also provides that within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage, a regulated lending institution is required to terminate any force-placed insurance purchased by the regulated lending institution, and refund to the borrower all premiums paid by the borrower for lender-place coverage for any period during which the borrower's flood insurance coverage and the lender-placed coverage overlapped.

2. Summary of issues raised by comments in response to the initial regulatory flexibility analysis. The Board did not receive any comments on the initial regulatory flexibility analysis.

3. Small entities affected by the final rule. All State member banks that are subject to Regulation H would be subject to the proposed rule. As of March 31, 2015, there were 850 State member banks. Under regulations issued by the Small Business Administration (SBA), banks and other depository institutions with total assets of $550 million or less are considered small entities. Of the 850 State member banks subject to Regulation H, approximately 632 State member banks would be considered small entities by the SBA.

4. Recordkeeping, reporting, and compliance requirements. The final rule would provide an exemption from a requirement for certain detached structures, but would also impose new compliance requirements with the final escrow provisions. With respect to the final rule exempting certain detached structures from the mandatory flood insurance purchase requirement, the Board believes the rules will not have a significant impact on small entities. First, not all designated loans are secured by detached structures that are eligible for the exemption. The final rule will have no impact with respect to such loans. Second, for designated loans that are secured by detached structures eligible for the exemption, lenders, including small lenders, may

choose to continue requiring flood insurance on such structures as they currently do even though the FDPA does not mandate it, as discussed above in the **SUPPLEMENTARY INFORMATION**. As a result, the final rule would not have any impact in such instances. If a lender does choose to exempt detached structures that secure a designated loan from the mandatory flood insurance purchase requirement, the Board expects that the impact would be minimal because these types of structures typically constitute a smaller portion of the collateral securing designated loans.

Furthermore, as discussed in detail above in the **SUPPLEMENTARY INFORMATION**, regulated lending institutions with total assets less than $1 billion would generally be excepted from the proposed rules implementing the escrow provisions of HFIAA. Therefore, the final escrow provisions generally would not affect small entities.

The Biggert-Waters force placement provisions went into effect upon enactment of Biggert-Waters on July 6, 2012. As a result, the final rules implementing the Biggert-Waters force placement provisions should not have any impact on small entities who already were required to comply with the provisions as of July 6, 2012. Even prior to Biggert-Waters' passage, regulated lending institutions, including those that are considered small entities, should have had mechanisms in place to refund premiums and fees to borrowers for any period of overlap between a force-placed policy and a borrower's policy. Consequently, the force placement provisions, which set forth procedures for terminating force-placed insurance and refunding premiums and fees to the borrower, nevertheless, should have minimal impact on regulated lending institutions.

5. Significant alternatives to the final revisions. The Board has not identified any significant alternatives that would reduce the regulatory burden associated with this final rule on small entities.

FDIC: The FDIC is finalizing revisions to FDIC part 339 to account for certain changes to the Flood Disaster Protection Act (FDPA), as amended by the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, that require lenders to escrow flood insurance premiums and fees to promote continuous flood insurance coverage for property securing designated loans, and to also terminate force-placed insurance and refund premiums and fees paid by a borrower for any period of overlapping insurance coverage.

The RFA requires an agency to prepare an analysis that describes the potential impact of a proposed rule on small entities and include it in a notice of proposed rulemaking, making it available for public comment. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of less than or equal to $550 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

As of June 4, 2015, there were approximately 3,390 small FDIC-supervised banks, which include 3,103 State nonmember banks and 240 State-chartered savings banks, and 47 savings associations. The FDPA, as amended by Biggert-Waters, provides that generally a depository institution with assets of less than $1 billion is not required to comply with the escrow requirement. As a result, due to this statutory exclusion, the escrow requirement cannot have a significant economic impact on a substantial number of small entities.

Additionally, Biggert-Waters includes reimbursement provisions related to force placement of flood insurance. The provisions set out the circumstances under which a regulated lending institution must terminate force placed insurance and refund to the borrower all premiums and fees paid by the borrower for lender-placed coverage for any period during which the borrower's flood insurance coverage and the lender-placed coverage overlapped. Biggert-Waters' force placement provisions already went into effect upon passage of the Act on July 6, 2012. As a result, the final rule incorporating the Biggert-Waters force placement provisions should not have any impact on small entities that were required to comply with the provisions as of July 6, 2012. For these reasons, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities that it supervises.

FCA: Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the RFA.

NCUA: The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[76] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[77] As of December 31, 2014, there are 4,129 small, federally insured credit unions, and only about 1,850 of these credit unions have real estate loans. This final rule implements certain changes to the FDPA, as amended by Biggert-Waters and HFIAA.

[76] 5 U.S.C. 603(a).

[77] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003), as amended by Interpretative Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

The final rule requires a credit union or servicer to escrow the premiums and fees for required flood insurance for any loans secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The final rule also implements additional exceptions from the escrow requirements, as amended by HFIAA. One of these exceptions allows for credit unions with total assets less than $1 billion to be generally excluded from the escrow requirements. Due to this statutory exception, the escrow provisions of the final rule will not significantly affect a substantial number of small credit unions.

In addition, the final rule adopts revisions to the force placement provisions to clarify that a credit union or its servicer may charge a borrower for the cost of flood insurance coverage from the date the borrower's coverage lapsed or became insufficient. The final rule also provides for the termination of force-placed insurance and the refund of premiums and fees paid by a borrower for any period of overlapping insurance coverage. The force placement provisions in the final rule were effective on July 6, 2012, and credit unions have been enforcing force placement provisions since that time. In addition, credit unions currently have the tools to refund premiums and fees whenever a borrower's policy overlaps a force-placed policy, as required in the final rule. Therefore, the final rule's force placement provisions will not have any significant impact on small credit unions that were required to comply with the provisions as of July 6, 2012.

For these reasons, NCUA finds that this final rule affects relatively few federally insured, small credit unions and the associated cost is minimal. Accordingly, NCUA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq*.) requires certain agencies, including the OCC, to prepare a budgetary impact statement before promulgating a rule that includes a 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 UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule.

Overall, we estimate the total costs associated with this final rule will range from approximately $25.1 million to approximately $30.8 million in 2015 and from approximately $13 million to approximately $16 million in 2016. However, pursuant to section 201 of the UMRA, a regulation does not impose a mandate to the extent it incorporates requirements "specifically set forth in the law." Therefore, we exclude from our UMRA estimate costs specifically related to requirements set forth in Biggert-Waters and HFIAA, such as direct costs associated with establishing escrow accounts. Furthermore, under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. Therefore, based on these exclusions, our UMRA cost estimate for the final rule ranges from approximately $24.4 million to approximately $26.3 million.

Accordingly, because the OCC has determined that this final rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more, we have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the PRA Agencies)[78] have determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 et seq.).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as permitted by the PRA, the Board also extends for three years its respective information collection.

The PRA Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The Board's OMB control number is 7100-0280. The FDIC, the OCC, and the NCUA will seek new OMB control numbers.

The OCC, FDIC, and NCUA submitted the information collection requirements to OMB in connection with the proposal. OMB filed a comment pursuant to 5 CFR 1320.11(c) instructing the agencies to examine public comment in response to the proposal and describe in the supporting statement of its next collection (the final rule) any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation and include the draft final rule in its next submission. There were no comments

[78] The FCA has determined that the final rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

received regarding the collection. The agencies have resubmitted the collection to OMB in connection with the final rule.

Biggert-Waters required escrow for all new and outstanding loans in an SFHA, unless certain exceptions applied. HFIAA added several new exceptions, and most notably, ties the escrow requirement to a triggering event (the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016). While a regulated lending institution is not required to escrow until a triggering event occurs, such institution is still required to offer and make available the option to escrow for all outstanding designated loans. This requirement is identical to the prior PRA burden in the October 2013 Proposed Rule, which required an escrow notice for all outstanding designated loans. However, there may be fewer notices because of the additional exceptions under HFIAA. The PRA Agencies believe the paperwork burden estimates remain unchanged from the prior PRA burden estimated in the October 2013 Proposed Rule.[79]

This information collection is required to evidence compliance with the requirements of the Federal flood insurance statutes with respect to lenders and servicers. Because the PRA Agencies do not collect any information, no issue of confidentiality arises. The respondents are for-profit and non-profit financial institutions, including small businesses.

Entities subject to the PRA Agencies' existing flood insurance rules will have to review and revise disclosures that are currently provided to ensure that such disclosures accurately reflect the disclosure requirements in this final rule. Entities subject to the rule may also need to develop new disclosures to meet the rule's timing requirements.

[79] OCC's and NCUA's burden estimates have been slightly adjusted from the October 2013 Proposed Rule.

The total estimated burden represents averages for all respondents regulated by the PRA Agencies. The PRA Agencies expect that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

The PRA Agencies estimate that respondents would take, on average, 40 hours to update their systems in order to comply with the disclosure requirements and the one-time escrow notice under the rule. In an effort to minimize the compliance cost and burden, particularly for small entities that do not meet the requirement for the statutory exception, the rule contains model disclosures in Appendices A and B that may be used to satisfy the requirements.

Burden Estimates

OCC:

Number of Respondents: 1,550.

Burden for Existing Recordkeeping Requirements: 21,700 hours.

Burden for Existing Disclosure Requirements: 23,250 hours.

Burden Added by Final Rule: 62,000 hours.

Total Burden for Collection for Final Rule: 106,950 hours.

Board:

Number of Respondents: 850.

Burden for Existing Recordkeeping Requirements: 14,308 hours.

Burden for Existing Disclosure Requirements: 17,780 hours.

Burden Added by Final Rule: 34,000 hours.

Total Burden for Collection for Final Rule: 66,088 hours.

FDIC:

Number of Respondents: 4,103.

Burden for Existing Recordkeeping Requirements: 57,442 hours.

Burden for Existing Disclosure Requirements: 71,474 hours.

Burden Added by Final Rule: 164,120 hours.

Total Burden for Collection for Final Rule: 293,036 hours.

NCUA:

Number of Respondents: 4,033.

Burden for Existing Recordkeeping Requirements: 47,892 hours.

Burden for Existing Disclosure Requirements: 59,824 hours.

Burden Added by Final Rule: 161,320 hours.

Total Burden for Collection for Final Rule: 269,036 hours.

These collections are available to the public at www.reginfo.gov.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the PRA Agencies' functions; including whether the information has practical utility; (2) the accuracy of the PRA Agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-ESCROW, 400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC

20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: Mark Tokarski, Acting Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop K1-148, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0280), Washington, DC 20503.

FDIC: You may submit comments, which should refer to “Interagency Flood Insurance, 3064-ESCROW” by any of the following methods:

- Agency Web Site: http://www.fdic.gov/regulations/laws/federal/. Follow the instructions for submitting comments on the FDIC Web site.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Email: comments@FDIC.gov. Include “Interagency Flood Insurance, 3064-ESCROW” in the subject line of the message.

- Mail: Gary A. Kuiper, Counsel, or John Popeo, Counsel, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., MB-3007, Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal/ including any personal information provided.

NCUA: Jessica Khouri, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: OCIOPRA@ncua.gov.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the PRA Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by fax to (202) 395-6974; or by email to oira_submission@omb.eop.gov.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 172

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and Recordkeeping requirements.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

7. Effective October 1, 2015, part 339 is revised to read as follows:

PART 339--LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.

339.2 Definitions.

339.3 Requirement to purchase flood insurance where available.

339.4 Exemptions.

339.5 Escrow requirement.

339.6 Required use of standard flood hazard determination form.

339.7 Force placement of flood insurance.

339.8 Determination fees.

339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

339.10 Notice of servicer's identity.

Appendix A to Part 339 – Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

§ 339.1 Authority, purpose, and scope.

(a) Authority. This part is issued pursuant to 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) Purpose. The purpose of this part 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).

(c) Scope. This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

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

(b) Administrator of FEMA means the Administrator of the Federal Emergency Management Agency.

(c) 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.

(d) 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.

(e) 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.

(f) FDIC-supervised institution means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

(g) 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 part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.

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

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

(j) Servicer means the person responsible for:

(1) 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

(2) 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.

(k) 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 Administrator of FEMA.

(l) Table funding means 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.

§ 339.3 Requirement to purchase flood insurance where available.

(a) In general. An FDIC-supervised institution 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. Flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) Table funded loans. An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of states falling within this exemption;

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

(c) Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of this paragraph (c):

(1) “a structure that is a part of a residential property” is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes;

(2) a structure is “detached” from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) “serve as a residence” shall be based upon the good faith determination of the FDIC-supervised institution that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

§ 339.5 Escrow requirement.

If an FDIC-supervised institution 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 on or after October 1, 1996, the FDIC-supervised institution shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), 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, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 339.6 Required use of standard flood hazard determination form.

(a) Use of form. An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA 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. An FDIC-supervised institution may obtain the standard flood hazard determination form from FEMA's website at www.fema.gov.

(b) Retention of form. An FDIC-supervised institution 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 FDIC-supervised institution owns the loan.

§ 339.7 Force placement of flood insurance.

(a) Notice and purchase of coverage. If an FDIC-supervised institution, or a servicer acting on its behalf, determines 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 § 339.3, then the FDIC-supervised institution 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 § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) Termination of force-placed insurance. (1) Termination and refund. Within 30 days of receipt by an FDIC-supervised institution, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the FDIC-supervised institution or its servicer shall:

(A) Notify the insurance provider to terminate any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section; and

(B) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the FDIC-supervised institution or its servicer under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the FDIC-supervised institution or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the FDIC-supervised institution or its servicer during such period.

(2) Sufficiency of demonstration. For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, an FDIC-supervised institution or its servicer shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 339.8 Determination fees.

(a) 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 FDIC-supervised institution, or a servicer acting on its behalf, 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. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) Borrower fee. The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

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

(2) Reflects the Administrator of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

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

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

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) Purchaser or transferee fee. The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) Notice requirement. When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution 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.

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

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

(2) 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));

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

(4) 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.

(c) Timing of notice. The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) Record of receipt. The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the FDIC-supervised institution owns the loan.

(e) Alternate method of notice. Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) Use of sample form of notice. An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 339.10 Notice of servicer's identity.

(a) Notice requirement. When an FDIC-supervised institution 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 FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) Transfer of servicing rights. The FDIC-supervised institution shall notify the Administrator of FEMA (or the Administrator of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator or his or her designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX A TO PART 339—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or 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 a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (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 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. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• 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 balance of the loan; *or*
(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• 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.

8. Effective January 1, 2016, part 339 is amended by:

a. Revising §339.5 to read as follows:

§ 339.5 Escrow requirement.

(a) In general. (1) Applicability. Except as provided in paragraphs (a)(2) or (c) of this section, an FDIC-supervised institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) Exceptions. Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements of § 339.3(a);

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 339.3(a);

(B) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(C) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(iv) The loan is a home equity line of credit;

(v) The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full; or

(vi) The loan has a term of not longer than 12 months.

(3) Duration of exception. If an FDIC-supervised institution, or a servicer acting on its behalf, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the FDIC-supervised institution or its servicer shall require the escrow of all premiums and fees for any flood insurance required under § 339.3(a) as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) Escrow account. The FDIC-supervised institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, 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, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) Notice. For any loan for which an FDIC-supervised institution is required to escrow under paragraph (a) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 339.9 informing the borrower that the FDIC-supervised institution is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A.

(c) Small lender exception. (1) Qualification. Except as may be required under applicable State law, paragraphs (a), (b) and (d) of this section do not apply to an FDIC-supervised institution:

(i) That has total assets of less than $1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

(2) Change in status. If an FDIC-supervised institution previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of $1 billion or more for two consecutive calendar year ends, the FDIC-supervised institution must escrow premiums and fees for flood insurance pursuant to paragraph (a) for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) Option to escrow. (1) In general. An FDIC-supervised institution, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under § 339.3 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the FDIC-supervised institution qualifies for an exception from the escrow requirement under paragraphs (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The FDIC-supervised institution is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) Notice. For any loan subject to paragraph (d) of this section, the FDIC-supervised institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the FDIC-supervised institution has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow, using language similar to the model clause in appendix B.

(3) Timing. The FDIC-supervised institution or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the FDIC-supervised institution or servicer receives the borrower's request to escrow.

b. Revising § 339.9(b) to read as follows:

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

* * * * *

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

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

(2) 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));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may also be available from a private insurance company that issues policies on behalf of the company.

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) 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.

c. Revise Appendix A to Part 339, *Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance* to read as follows:

Appendix A to Part 339—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 or 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 Administrator 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 a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator 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 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. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• At a minimum, flood insurance purchased must cover the lesser of:
  (1) the outstanding principal balance of the loan; or
  (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

• 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.

• Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

Availability of Private Flood Insurance Coverage

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 that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and contact an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.]

___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.

d. Add Appendix B to Part 339 *Sample Clause for Option to Escrow for Outstanding Loans*, to read as follows:

Appendix B to Part 339 – SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS

Escrow Option Clause

You have the option to escrow all premiums and fees for the payment on your flood insurance policy that covers any residential building or mobile home that is located in an area with special flood hazards and that secures your loan. If you choose this option:

- Your payments will be deposited in an escrow account to be paid to the flood insurance provider.
- The escrow amount for flood insurance will be added to the regular mortgage payment that you make to your lender or its servicer.

- The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy when your lender or servicer receives a notice from your flood insurance provider that the flood insurance premium is due.

To choose this option, follow the instructions below. If you have any questions about the option, contact [Insert Name of Lender or Servicer] at [Insert Contact Information].

[Insert Instructions for Selecting to Escrow]

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS"]

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

____

Robert E. Feldman
Executive Secretary

Dated at Washington, D.C., this ___ day of _____________, 2015.

BILLING CODES: 4810-33-P; 6210-01-P; 6714-01-P; 6705-01-P; 7535-01-U