

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 22, 172**

**[Docket ID OCC-2014-0016]**

**RIN 1557-AD84**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 208**

**[Regulation H, Docket No. R-1498]**

**RIN 7100-AE22**

**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:** Joint notice of proposed rulemaking.

**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 proposing to amend 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 proposal would establish requirements with respect to the escrow of flood insurance payments, consistent with the changes set forth in HFIAA. The proposal also would incorporate an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. The Agencies plan to address in a separate rulemaking other provisions of Biggert-Waters over which the Agencies have jurisdiction that have not been affected by HFIAA.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title “Loans in Areas Having Special Flood Hazards” to facilitate the organization and distribution of comments among the Agencies.

Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Loans in Areas Having Special Flood Hazards” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—“Regulations.gov”: Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID OCC-2014-0016” in the Search Box and click “Search.” Results can be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- Email: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- Hand Delivery/Courier: 400 7<sup>th</sup> Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- Fax: (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2014-0016” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID OCC-2014-0016” in the Search box and click “Search.” Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC. 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 to submit to security screening in order to inspect and photocopy comments.

- Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-1498 or RIN 7100-AE22, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.
- Fax: (202) 452-3819 or (202) 452-3102.
- Mail: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue NW, Washington, D.C. 20551.

All public comments will be made available on the Board's Web site at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20<sup>th</sup> and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.fdic.gov/regulations/laws/federal/>
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street NW, Washington, D.C. 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17<sup>th</sup> Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- Email: [comments@FDIC.gov](mailto:comments@FDIC.gov).

Comments submitted must include “FDIC” and “Loans in Areas Having Special Flood Hazards.”

Comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA’s Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax.

Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- Email: Send us an email at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- Agency Web site: <http://www.fca.gov>. Select “Law & Regulations,” then “FCA Regulations,” then “Public Comments,” and follow the directions for “Submitting a Comment.”

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the Web site, Select “Law & Regulations,” then “FCA Regulations,” then “Public Comments,” and follow the directions for “Reading Submitted Public Comments.” We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

NCUA: You may submit comments, identified by RIN 3133-AE40 by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.
- Email: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include [Your name] Comments on “Loans in Areas Having Special Flood Hazards” in the email subject line.
- Fax: (703) 518-6319. Use the subject line described above for email.

- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

You can view all public comments on NCUA's Web site at

<http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:**

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649-5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649-6350; or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Office of the Chief Counsel.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452-2705; Vivian W. Wong, Counsel (202) 452-3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452-3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Navid Choudhury, Counsel, Consumer Compliance Section, (202) 898-6526, Legal Division; or John Jackwood, Senior Policy Analyst, (202) 898-3991, Division of Depositor and Consumer Protection.

FCA: Paul K. Gibbs, Senior Accountant, Office of Regulatory Policy (703) 883-4203, TTY (703) 883-4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883-4020, TTY (703) 883-4056.

NCUA: Frank Kressman, Associate General Counsel, Office of General Counsel, (703) 518-6540.

## **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<sup>1</sup> (Biggert-Waters) over which the Agencies have jurisdiction (the October 2013 Proposed Rule).<sup>2</sup> Specifically, the October 2013 Proposed Rule would have required regulated lending institutions<sup>3</sup> to escrow flood insurance premiums and fees on residential improved real estate, unless the regulated lending institution meets 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. The October 2013 Proposed Rule also contained provisions to implement the Biggert-Waters changes related to force-placed flood insurance.

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<sup>1</sup> Pub. L. 112-141, 126 Stat. 916 (2012).

<sup>2</sup> 78 FR 65108 (Oct. 30, 2013).

<sup>3</sup> 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).

On March 21, 2014, the President signed into law the Homeowner Flood Insurance Affordability Act of 2014<sup>4</sup> (HFIAA), which amends some of the changes made by Biggert-Waters to the Flood Disaster Protection Act (FDPA).<sup>5</sup> Among these changes are amendments relating to the escrow requirement. HFIAA also includes a new exclusion from the mandatory flood insurance purchase requirement for certain detached structures. The Agencies are issuing this proposal to implement the escrow provisions and incorporate the detached structures provision. The Agencies are requesting comments on these proposed amendments. In connection with the issuance of this proposal, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain provisions of the flood insurance statutes.<sup>6</sup> Because HFIAA leaves untouched the provisions in Biggert-Waters related to private flood insurance and force-placed flood insurance, this proposal does not address those provisions.

As the Agencies stated in the October 2013 Proposed Rule with respect to Biggert-Waters, this proposal would implement only certain provisions of HFIAA over which the Agencies have jurisdiction. Accordingly, 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.

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<sup>4</sup> Pub. L. 113-89; 128 Stat. 1020 (2014).

<sup>5</sup> Pub. L. 93-234, 87 Stat. 975 (1973).

<sup>6</sup> See 42 U.S.C. 4012a(b)(1). The heads of four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

## B. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act)<sup>7</sup> and the FDPA govern the National Flood Insurance Program (NFIP).<sup>8</sup> 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.<sup>9</sup> SFHAs are delineated on maps issued by FEMA for individual communities.<sup>10</sup> 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.<sup>11</sup>

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)<sup>12</sup> to issue regulations governing the lending institutions that they supervised. The regulations also require lenders to

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<sup>7</sup> Pub. L. 90-448, 82 Stat. 572 (1968).

<sup>8</sup> These statutes are codified at 42 U.S.C. 4001-4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

<sup>9</sup> 44 CFR 59.1.

<sup>10</sup> 44 CFR part 65.

<sup>11</sup> 44 CFR part 60.

<sup>12</sup> 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, as to State savings associations, the OCC, as to Federal savings associations, and the Board as to savings and loan holding companies. The transfer took effect on July 21, 2011, and the OTS was abolished 90 days after that date.

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.<sup>13</sup> 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-placed 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 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 Agencies 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.<sup>14</sup>

### C. The Biggert-Waters and HFIAA Amendments

Among other changes,<sup>15</sup> Biggert-Waters significantly amended the NFIP requirements over which the Agencies have jurisdiction. Specifically, Biggert-Waters: (i) increased the

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<sup>13</sup> Pub. L. 103-325, 108 Stat. 2255 (1994) (codified as amended at 42 U.S.C. 4001 *et seq.* (1994)).

<sup>14</sup> 61 FR 45684 (Aug. 29, 1996).

<sup>15</sup> 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. In addition, section 100204 of the Act directs the Administrator of FEMA to make flood insurance available to cover residential properties of five or more residences. The maximum coverage

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;<sup>16</sup> (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;<sup>17</sup> (iii) required the Agencies to 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;<sup>18</sup> 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 flood insurance coverage lapsed or did not provide sufficient coverage and to prescribe the procedures for terminating force-placed insurance.<sup>19</sup>

HFIAA further amends the changes set forth in Biggert-Waters. Among these changes are amendments that tie the escrow requirement to the origination, refinance, increase, extension, or renewal of a loan on or after January 1, 2016 and provide additional exceptions to the escrow

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made available to such residential properties is now equal to the coverage made available to commercial properties. Policies for such properties have been made available by FEMA 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>).

<sup>16</sup> Section 100208 of Biggert-Waters, amending section 102(f)(5) of the FDPA (42 U.S.C. 4012a(f)(5)).

<sup>17</sup> 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 insurance escrow requirement applies only to loans secured by residential improved real estate. *See* Pub. L. 112-281, 125 Stat. 2485 (Jan. 14, 2013).

<sup>18</sup> 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)).

<sup>19</sup> Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

requirement.<sup>20</sup> HFIAA also mandates that regulated lending institutions provide an option to borrowers to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. In addition, HFIAA provides a new exemption to the mandatory flood insurance purchase requirements 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.<sup>21</sup>

As previously discussed in guidance issued by the Agencies,<sup>22</sup> the CMP provisions<sup>23</sup> and the force-placed insurance requirements in Biggert-Waters were effective upon enactment of 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. The compliance date for these provisions will be determined on the issuance of the final rule implementing them, consistent with the statute. The statute provides that the escrow provisions will apply to loans with a triggering event on or after January 1, 2016. The private flood insurance provisions, as well as regulations incorporating the force-placed insurance requirement, will be included in a separate rulemaking.

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<sup>20</sup> Section 25 of HFIAA, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).

<sup>21</sup> 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.

<sup>22</sup> “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).

<sup>23</sup> 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.

## **II. Summary of the Proposal**

The Agencies propose to revise their respective flood insurance regulations to incorporate HFIAA's provisions exempting certain detached structures on residential property from the mandatory flood insurance purchase requirement and to implement the statute's provisions requiring the escrow of flood insurance premiums and fees. In connection with the October 2013 Proposed Rule, the Agencies received numerous comment letters addressing the regulations proposed to implement the escrow provisions set forth in Biggert-Waters. To the extent that there were comments concerning the escrow provisions as proposed in the October 2013 Proposed Rule that have not been otherwise addressed by the amendments in HFIAA, the Agencies have considered such comments in this proposal.

The amendments proposed by this rulemaking are summarized below and more specifically described in **IV. Section-by-Section Analysis** of this **SUPPLEMENTARY INFORMATION**. Although the Agencies' proposals are substantively consistent, the format of the regulatory text varies to conform to each Agency's current regulation. Furthermore, the OCC and the FDIC note that the proposed amendments to 12 CFR part 22 would apply to both national banks and Federal savings associations, and the proposed amendments to 12 CFR part 339 would apply to both State non-member banks and State savings associations. This is consistent with the October 2013 Proposed Rule, which proposed to integrate all of the OCC's and FDIC's respective bank and savings association flood insurance rules. This proposal also includes conforming amendments to the current OCC flood insurance rules for federal savings associations, 12 CFR part 172, that are necessary until the integration included in the October 2013 Proposed Rule is finalized. The FDIC will integrate its flood insurance rules for state

savings associations, 12 CFR part 391 subpart D, into part 339 prior to finalizing this proposed rule by means of a separate, individual agency rulemaking.

Consistent with HFIAA, the Agencies' proposal would include a new exemption to the general mandatory flood insurance requirement. Specifically, the proposed rule would provide that flood insurance is not 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.

In addition, the Agencies' proposal generally would require regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for 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 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 to require escrow of taxes and insurance. The Agencies are proposing to implement this exception with some clarifications. Furthermore, consistent with the Agencies' October 2013 Proposed Rule, the proposed rule would provide transition rules for regulated lending institutions that have a change in status and no longer qualify for this exception.

Moreover, the proposed rule would implement the following additional exceptions from the escrow requirement, as amended by HFIAA: (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 twelve months.

The proposal also would implement the requirement under 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 proposal would implement this provision generally as provided in the statute with additional clarifications to provide more specific guidance to regulated lending institutions in administering this requirement, including a proposal to mail or deliver information to borrowers about the option to escrow by March 31, 2016 and requiring lenders to implement the escrow as soon as reasonably practicable after receiving a borrower's request to escrow. The Agencies are using their authority to implement the escrow provision to propose that regulated lending institutions that no longer qualify for the small lender exception also be required to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans outstanding after they lose the exception.

The Agencies' proposal includes new and revised sample notice forms and clauses. Specifically, the proposal 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 proposal also adds an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B to assist institutions in complying with the proposal's requirement to inform borrowers of outstanding loans about their option to escrow flood insurance premiums and fees.

The Agencies note that the amendments made by section 25 of HFIAA to the FDPA regarding the escrow requirement 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, the day before Biggert-Waters was enacted, will continue to be enforced by the Agencies until December 31, 2015.<sup>24</sup>

### **III. 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 to implement this mandatory flood insurance purchase requirement as it pertains to regulated lending institutions.

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.

Finally, 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

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<sup>24</sup> Each Agency's 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).

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 authorizes 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.

#### **IV. Section-by-Section Analysis**

##### **Exemptions**

Section 13 of HFIAA, which amends section 102(c) of the FDPA (42 U.S.C. 4012a(c)), includes a new exemption to the mandatory flood insurance purchase requirement. Specifically, the statute provides that flood insurance is not required, in the case of any residential property, for 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 Agencies' proposed rule would incorporate this exemption as provided in the statute into the Agencies' regulations.

The exemption would address an area of concern for borrowers and lenders by excluding relatively low-value structures, for example, detached sheds and garages, from mandatory flood

insurance coverage if they secure a designated loan. The Agencies understand, however, that some detached structures might be of relatively high value, such as a detached greenhouse. While the statute does not require flood insurance for such structures, as a matter of safety and soundness, lenders may nevertheless require flood insurance on these detached structures. Requiring flood insurance even when the statute does not mandate it may also be in the borrower's interest. The Agencies note that section 13(b) of HFIAA, which the CFPB is expected to implement, amends section 5(b) of RESPA to require a related disclosure to borrowers informing them that they may still wish to obtain, and mortgage lenders may still require borrowers to maintain, flood insurance even when it is not required by the FDPA.

The Agencies solicit comment on whether this section should be clarified. For instance, there may be some ambiguity as to when such structures serve as a "residence," but may not meet certain State or local definitions of "residence," or when a detached structure that was not initially a residence becomes a residence. Furthermore, the Agencies note that the statute applies the exemption to "residential property." The Agencies specifically request comment on whether or how the Agencies should define "residential property." For example, the term "residential" may refer not only to the type of property securing the loan, but also to the purpose of the loan. Thus, the Agencies could clarify that the exemption is only available if the detached structure does not secure a loan that is an extension of credit for a primarily business, commercial, or agricultural purpose.<sup>25</sup>

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<sup>25</sup> In the October 2013 Proposed Rule, the Agencies proposed a technical amendment in this section to change the reference to the head of FEMA from Director to Administrator, consistent with the change in Biggert-Waters. That issue will be addressed in the final rule that will be published by the Agencies.

## Escrow requirement

### In General

Pursuant to section 102(d) of the FDPA (42 U.S.C. 4012a(d)), as amended by section 25 of HFIAA,<sup>26</sup> the Agencies are proposing to revise their regulations 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.<sup>27</sup> In addition, these premiums and fees must be payable with the same frequency as payments on the loan are made for the duration of the loan.

Consistent with section 25(b) of HFIAA, the proposed provision applies 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. The Agencies note that while section 25(b) of HFIAA applies the escrow requirement to loans “originated, refinanced, increased, extended, or renewed,” the Agencies are proposing regulatory language that applies the requirement to loans “made, increased, extended, or renewed” to be consistent with the way these triggering events

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<sup>26</sup> 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 be enforced by the Agencies until December 31, 2015.

<sup>27</sup> As the Agencies noted in the October 2013 Proposed Rule, the CFPB’s mortgage servicing rule promulgated escrow requirements set forth in section 6 of RESPA, which were enacted in the Dodd-Frank Act. The CFPB’s rule excludes flood insurance that is required under the FDPA from the new escrow requirements. 78 FR 10696, 10880 (Feb. 14, 2013). That is, the CFPB rule exempts from the definition of force-placed insurance, insurance required by the FDPA. *Ibid.* 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. 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.

are referenced elsewhere in the regulation.<sup>28</sup> The Agencies have long understood the term “made” to encompass both a loan origination and a loan refinance.

Section 102(d) of the FDPA, as amended by section 25 of HFIAA, contains several exceptions to the general escrow requirement. These exceptions are in addition to a small lender exception for 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. One of these exceptions is for loans secured by residential improved real estate or a mobile home that is used as collateral for a business purpose. In implementing this exception, the Agencies are proposing that regulated lending institutions need not escrow flood insurance premiums and fees if they have determined that the loan is an extension of credit primarily for a business, commercial, or agricultural purpose. 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, the Agencies are proposing this language to be consistent with similar exceptions in the Real Estate Settlement Procedures Act of 1974 (RESPA)<sup>29</sup> and the Truth in Lending Act (TILA).<sup>30</sup> Moreover, the Agencies believe the proposed language further clarifies that the statutory language referring to business loans includes commercial loans and agricultural loans, which are a subset of business loans.

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

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<sup>28</sup> 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).

<sup>29</sup> See 12 U.S.C. 2606(a).

<sup>30</sup> See 15 U.S.C. 1603(1).

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 are proposing language in their regulations similar to the language in the statute for this exception, with some changes to improve readability and clarity. The Agencies note that this statutory exception and the proposed regulation are broader than a similar exception the Agencies proposed in the October 2013 Proposed Rule, which would have only provided an exception when the lender has determined that the borrower is currently paying premiums and fees into an escrow account that has been established by another lender.

Furthermore, under the amended statute, loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development are also excepted from the escrow requirements provided the property is 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 are proposing to implement this exception substantially as stated in the statute. The Agencies note that the October 2013 Proposed Rule proposed a similar, though differently worded, exception.

It is the Agencies' understanding that this proposed exception would include instances when the property is covered, by, for example, an NFIP Residential Condominium Building Association Policy (RCBAP) that meets the mandatory flood insurance purchase requirement, including coverage for the proper amount. As the Agencies discussed in the October 2013 Proposed Rule, if the amount of the policy purchased by the condominium association,

cooperative, homeowners association, or other applicable group is insufficient to meet the mandatory flood insurance purchase requirement, the borrower would be required to obtain a supplemental policy to cover the deficiency. The Agencies would expect that the regulated lending institution escrow the premiums and fees for the supplemental policy unless the small lender exception applies. For example, if a condominium association purchases an 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 would need to obtain a dwelling policy for supplemental coverage. If the borrower is required to obtain a dwelling policy at the time the loan is made, increased, extended, or renewed, under the proposed rule, the regulated lending institution would be required to escrow the premiums and fees for such policy.

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, which was an exception requested by many commenters to the October 2013 Proposed Rule. The Agencies are including this exception in the proposed rule.

Another exception included in section 102(d) of the FDPA, as amended by section 25 of HFIAA, is for nonperforming loans. The Agencies are proposing to implement this exception with a clarification that the exception is available for a nonperforming loan that is 90 or more days past due. Although there does not appear to be a standard definition for what constitutes a “nonperforming” loan, it is the Agencies’ understanding that lenders generally categorize loans that are 90 or more days past due as nonperforming. Consequently, the Agencies believe the proposed clarification is consistent with many lenders’ current practices and will ensure that all regulated lending institutions use the same standard in determining when a loan is

nonperforming for purposes of this provision. The Agencies solicit comment on whether the Agencies' proposed definition of "nonperforming" loan is appropriate.

Finally, under section 102(d) of the FDPA, as amended by section 25 of HFIAA, a regulated lending institution need not escrow flood insurance payments and fees for a loan that has a term of not longer than 12 months. Several commenters to the October 2013 Proposed Rule requested an exception for loans with short maturities. The Agencies are proposing this exception as provided in the statute.

As mentioned above, section 102(d) of the FDPA, as amended by Biggert-Waters, also contains a small lender exception from the escrow requirement for certain regulated lending institutions that have total assets of less than \$1 billion. The Agencies' proposal for this statutory exception is discussed further below.

#### Notice

In order to ensure that borrowers are informed about the requirement to escrow premiums and fees for mandatory flood insurance, the Agencies are proposing that regulated lending institutions provide borrowers with a written notice. This proposal is similar to the notice requirement proposed in the October 2013 Proposed Rule. As in the October 2013 Proposed Rule, the Agencies propose in this rulemaking to mandate 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.

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 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 and Availability of Federal Disaster Relief Assistance. The Agencies' current rules provide a sample form of this notice as Appendix A. Because the HFIAA amendments tie the escrow requirement to a triggering event (i.e., when a loan is made, increased, extended, or renewed), borrowers already will be receiving the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, which is mandated by the Agencies' regulations, at the same time that the escrow of flood insurance premiums and fees will be required.

As in the October 2013 Proposed Rule, the Agencies are proposing model language for the escrow notice, as discussed in more detail in the **SUPPLEMENTARY INFORMATION** accompanying the discussion on proposed changes to Appendix A. Thus, under the proposed rule, regulated lending institutions would be required to use language substantially similar to model clauses on the escrow requirement in the revised sample notice provided in Appendix A.

HFIAA's application of the escrow requirement to loans upon a triggering event (i.e., when a loan is made, increased, extended, or renewed) addresses comments the Agencies received in connection with the October 2013 Proposed Rule that discussed the timing of the escrow notice for outstanding loans. The Agencies received one comment to the October 2013 Proposed Rule, however, suggesting that electronic delivery of the notice be allowed. The Agencies note that written disclosures always may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001, et seq.).

### 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. As with the October 2013 Proposed Rule, the Agencies are proposing to implement this statutory exception to the escrow requirement substantially as provided in the statute with some clarifications. The statute states that, except as provided by State law, regulated lending institutions that have total assets of less than \$1 billion are excepted from this 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.

Because the statute 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 are proposing 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. This is identical to the proposal the Agencies put forth in the October 2013 Proposed Rule. Consequently, with the statutory effective date of January 1, 2016, 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 contrast, a regulated lending institution with assets of less than \$1 billion as of either December 31, 2014 or December 31, 2015, may qualify for the exception, provided the other conditions for the exception are met.

As the Agencies explained in the October 2013 Proposed Rule, this measurement method is similar to how the OCC, the Board, and the FDIC have measured asset size in relation to the definitions for small entities under the Community Reinvestment Act (CRA).<sup>31</sup> The Agencies believe the asset measurement method these agencies have used with respect to CRA is an appropriate model in this case as it ensures an institution remains over the size threshold for a substantial period before requiring the institution to expend the resources needed to establish a new escrow program.

Commenters to the October 2013 Proposed Rule were generally supportive of the Agencies' proposal on when and how to measure the asset size for purposes of the exception. A couple of commenters requested that the Agencies review other asset threshold exceptions, such as the CFPB escrow rules under Regulation Z for higher-priced mortgage loans,<sup>32</sup> which set the threshold for small creditors at \$2 billion in assets (adjusted by the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers), and the CFPB's mortgage servicing rules under Regulation Z and Regulation X, which define a small servicer by the number of mortgages serviced.<sup>33</sup> The Agencies note that 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 proposing the \$1 billion asset size threshold consistent with the statute.

Moreover, as in the October 2013 Proposed Rule, the Agencies are proposing 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. As discussed in the October 2013 Proposed Rule, the Agencies propose to give regulated lending institutions

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<sup>31</sup> See 12 CFR 25.12(u); 12 CFR 195.12(u); 12 CFR 228.12(u); and 12 CFR 345.12(u).

<sup>32</sup> See 12 CFR 1026.35(b)(2)(iii)(C).

<sup>33</sup> See 12 CFR 1026.41(e)(4).

approximately six months to begin complying with the escrow requirement, which is similar to the Board's Regulation II change in status rules.<sup>34</sup> Therefore, 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.

For example, assume 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. In that case, under the proposal, such regulated lending institution would be required to begin escrowing for any loans made, increased, extended, or renewed on or after July 1, 2018.

As noted above, the statute provides that the small lender exception will be available only 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.

Some commenters to the October 2013 Proposed Rule requested clarification on these conditions. In particular, one consumer group commenter asked whether having a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account meant that a lender must have had this policy for its entire portfolio of residential loans. The Agencies read the statutory condition to provide that if a regulated lending institution had a policy of consistently and uniformly requiring the deposit of taxes,

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<sup>34</sup> See 12 CFR 235.5(a)(3).

insurance premiums, fees, or any other charges in an escrow account for even a portion of its portfolio of residential loans, such a lender would not be eligible for the exception, consistent with the statutory language.

In light of this comment, the Agencies are proposing to clarify the statute by providing the exception is unavailable if either statutory condition applies to any residential loans originated by the lender on or before July 6, 2012. Therefore, 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.

Another individual commenter questioned the logic of tying the conditions to the lender's practice as of July 6, 2012. As noted above, this date is specified in the statute.

#### Option to Escrow

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 that are outstanding as of January 1, 2016. The Agencies are implementing this provision generally as provided in the statute with changes to the language for clarity and organization. In addition, the Agencies believe that for regulated lending institutions that have a change in status and no longer qualify for the small lender exception, the lender should be required to offer borrowers on existing loans the option to escrow because the lenders will now be in a position to escrow flood insurance premiums and fees for new borrowers.

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' proposal 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 borrower of the loan made on March 1, 2016 would now have a lender that has the capability to escrow flood insurance premiums and fees on July 1, 2018. Consequently, the borrower for a loan made by a regulated lending institution with a change in status that no longer qualifies for the small lender exception should be provided with the option to escrow until the loan experiences a triggering event on or after July 1, 2018. Therefore, the Agencies are proposing to use their authority to implement the escrow requirement to mandate that regulated lending institutions that no longer qualify for the small lender exception should be required to 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. The Agencies solicit comment on this approach.

In addition, the Agencies propose additional clarifications to provide more specific guidance to regulated lending institutions in administering this requirement. First, the statute requires that regulated lending institutions "offer and make available" the option to escrow flood insurance premiums and fees. The Agencies are proposing to implement this provision 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 are proposing 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. The

proposed timing of this notice would give regulated lending institutions up to three months to determine which loans are outstanding as of the designated day and to provide the notice for those loans. The Agencies solicit comment on whether the proposed timelines for providing the notice are appropriate. To facilitate compliance, the Agencies are proposing a model clause for this notice in Appendix B, as discussed in more detail below. The Agencies solicit comment on whether this model clause would be an effective way for regulated lending institutions to offer and make available to borrowers the option to escrow flood insurance premiums and fees.

The proposal would not require that the notice be provided in conjunction with any other disclosure or that it be segregated from other information provided to the borrower. As a result, under the proposed rule, regulated lending institutions may choose whether to provide the notice as a separate notice or add it to any other disclosures the lender provides the borrower on or before the proposed deadline, such as a periodic statement.

Second, the Agencies are proposing 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. The requirement is similar to requirements in Regulation E<sup>35</sup> and Regulation Z<sup>36</sup> 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. The Agencies request comment on whether any further guidance on this proposed requirement is needed.

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<sup>35</sup> See 12 CFR 1005.17(f).

<sup>36</sup> See 12 CFR 1026.56(i).

\_\_\_\_. \_\_\_\_ **Required use of standard flood hazard determination form**

In connection with the amendment of section 102(c) of the FDPA by section 13 of HFIAA to exempt from the mandatory flood insurance purchase requirement any structure that is a part of a residential property but is detached from the primary residential structure of such property and does not serve as a residence, the Agencies are proposing an amendment to their regulations on the use of the standard flood hazard determination form. Specifically, the proposed amendment would 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. Because flood insurance is not required on such properties and structures, determination of whether such properties or structures are located in an SFHA is unnecessary, which will, in turn, prevent borrowers being charged unnecessary flood hazard determination fees.

**Appendices A & B**

As discussed in the **SUPPLEMENTARY INFORMATION** accompanying the revisions to \_\_\_\_. \_\_\_\_ Escrow requirement above, the Agencies are proposing that regulated lending institutions 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 are proposing model language that may be included, if applicable, in the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance as set forth in the sample form of notice contained in Appendix A.

Also, as discussed above, the Agencies are proposing that lenders must 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. The Agencies are proposing an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B to facilitate regulated lending institutions in complying with this proposed requirement.

## **V. Regulatory Analysis**

### Regulatory Flexibility Act

OCC: In general, the Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>37</sup> Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would 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. We have concluded that the proposed rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

The OCC currently supervises approximately 1,200 small national banks, Federal savings associations, trust companies, and Federal branches and agencies.<sup>38</sup> If implemented, the draft NPRM would impact approximately 1,149 of these small institutions.<sup>39</sup> Thus, the proposed rule impacts a substantial number of small banks. The OCC classifies the economic impact of total

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<sup>37</sup> See 5 U.S.C. 601 *et seq.*

<sup>38</sup> We base our estimate of the number of active small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, 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 we supervise as a small entity. We use December 31, 2013, 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 U.S. Small Business Administration's *Table of Size Standards*.

<sup>39</sup> To determine the number of banks that may be affected if the NPRM is implemented, we determined the number of banks that self-identified by reporting mortgage servicing assets or other activity associated with 1-4 family residential mortgage loans on the Q1 2014 Call Report or were identified by OCC examiners as a Home Mortgage Disclosure Act (HMDA) filer.

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 proposed rule will have a significant economic impact on two small banks, which is not a substantial number. Therefore, we believe the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

Board: The RFA requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. Statement of the need for, and objectives of, the proposed rule. The Board is proposing revisions to Regulation H to implement certain provisions of HFIAA over which the Agencies, including the Board, have jurisdiction. Consistent with HFIAA, the proposal would exempt 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 proposal would also implement 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 proposal would implement 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 proposal would also extend 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.

2. Small entities affected by the proposed rule. All State member banks that are subject to Regulation H would be subject to the proposed rule. As of October 21, 2014, there were 858 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. Of the 858 State member banks subject to Regulation H, approximately 652 State member banks would be considered small entities by the SBA.

3. Recordkeeping, reporting, and compliance requirements. The proposed rule would provide an exemption from a requirement for certain detached structures, but would also impose new compliance requirements with the proposed escrow provisions. With respect to the proposed rules 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 proposed rule would 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 proposed 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 small 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 escrow provisions of the proposed rule generally would not affect small entities.

4. Other Federal rules. The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

FDIC: The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. 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 August 27, 2014, there were approximately 3,482 small FDIC-supervised banks which include 3,192 State nonmember banks and 241 State-chartered savings banks, and 49 savings associations.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of the small entities, which the FDIC supervises. The FDPA, as amended by the Biggert Waters Act, 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, by law the escrow requirement cannot have a significant economic impact on a substantial number of small entities. For this reason, the FDIC certifies that this proposed 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 proposed 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.<sup>40</sup> For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.<sup>41</sup>

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<sup>40</sup> 5 U.S.C. 603(a).

<sup>41</sup> Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

As of December 31, 2013, there are 4,295 small, federally insured credit unions, and only about 1,970 of these credit unions originate real estate loans. The proposed rule would require 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 proposed rule would implement additional exceptions from the escrow requirement, as amended by HFIAA.

Under this proposed rule, credit unions with total assets less than \$1 billion would generally be excepted from the escrow provisions. Therefore, the escrow provisions of the proposed rule would not affect small credit unions. NCUA finds that this proposed rule would affect 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 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 a rule.

The OCC has estimated that the total cost associated with this NPRM, if implemented, would be approximately \$33 million per year. 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 NPRM, if implemented, is approximately \$24 million.<sup>42</sup>

Accordingly, because the OCC has determined that this proposed 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)<sup>43</sup> have determined that this proposed 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 proposed 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 proposed rule is found in 12 CFR 22.5, 208.25(e), 339.5, and 760.5. In addition, as

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<sup>42</sup> We note that our UMRA cost estimate for the October 2013 Proposed Rule was \$0. We have reevaluated our impact of the escrow provision, as amended, in light of the public comments received in response to that proposal that described the anticipated costs associated with the escrow requirement.

<sup>43</sup> The FCA has determined that the proposed 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).

permitted by the PRA, the Board also proposes to extend 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 NCUA, and the OCC will seek new OMB control numbers.

Biggert-Waters required escrow for all new and outstanding loans in a SFHA, unless certain exceptions applied. HFIAA added several new exceptions, and most notably, ties the escrow requirement to a tripwire 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 tripwire 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.<sup>44</sup>

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

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<sup>44</sup> OCC's and NCUA's burden estimates have been slightly adjusted from the October 2013 Proposed Rule.

reflect the disclosure requirements in this proposed rule. Entities subject to the rule may also need to develop new disclosures to meet the proposed rule's timing requirements.

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 proposed 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 proposed 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 proposed 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: 196,907 hours.

Burden for Existing Disclosure Requirements: 244,208 hours.

Burden for Proposed Rule: 62,000 hours.

Total Burden for Collection: 503,115 hours.

#### Board:

Number of Respondents: 843.

Burden for Existing Recordkeeping Requirements: 14,191 hours.

Burden for Existing Disclosure Requirements: 17,632 hours.

Burden for Proposed Rule: 33,720 hours.

Total Burden for Collection: 65,543 hours.

FDIC:

Number of Respondents: 4,421.

Burden for Existing Recordkeeping Requirements: 61,894 hours.

Burden for Existing Disclosure Requirements: 76,999 hours.

Burden for Proposed Rule: 176,840 hours.

Total Burden for Collection: 315,733 hours.

NCUA:

Number of Respondents: 4,192.

Burden for Existing Recordkeeping Requirements: 57,236.52 hours.

Burden for Existing Disclosure Requirements: 70,981.02 hours.

Burden for Proposed Rule: 167,680 hours.

Total Burden for Collection: 295,897.54 hours.

These collections are available to the public at [www.reginfo.gov](http://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 7<sup>th</sup> 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](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> 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 to 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 enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**Board:** Cynthia Ayouch, Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop 95, 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](mailto:comments@FDIC.gov). Include “Interagency Flood Insurance, 3064-ESCROW” in the subject line of the message.
- Mail: Gary A. Kuiper, Counsel, Attn: Comments, Room NYA-5046, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17<sup>th</sup> 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:** Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, Email: [OCIOPRA@ncua.gov](mailto: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 17<sup>th</sup> Street, NW, Washington, DC 20503; by fax to (202) 395-6974; or by email to [oir\\_submission@omb.eop.gov](mailto:oir_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.

**Office of the Comptroller of the Currency**

**12 CFR CHAPTER I**

**Authority and Issuance**

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

**PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

1. The authority citation for part 22 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Revise § 22.4 to read as follows:

#### **§ 22.4 Exemptions.**

The flood insurance requirement prescribed by § 22.3, with respect to national banks, and § 172.3, with respect to Federal savings associations, 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.

3. Revise § 22.5 to read as follows:

#### **§ 22.5 Escrow requirement.**

(a) In general. (1) Applicability. Except as provided in paragraphs (a)(2) or (c) of this section, a national bank or Federal savings association, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 22.3, with respect to national banks, or § 172.3, with respect to Federal savings associations, 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, payable with the same frequency as payments on the loan are 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 § 22.3, with respect to national banks, or § 172.3, with respect to Federal savings associations;

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

(A) Meets the requirements of § 22.3, with respect to national banks or § 172.3, with respect to Federal savings associations;

(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 that is 90 or more days past due; or

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

(3) Escrow account. The national bank or Federal savings association, 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 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 national bank or Federal savings

association, 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 a national bank or Federal savings association is required to escrow under paragraph (a)(1) or of this section, the national bank or Federal savings association, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 22.9, with respect to national banks, or § 172.9, with respect to Federal savings associations, informing the borrower that the national bank or Federal savings association 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 a national bank or Federal savings association:

(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 a national bank or Federal savings association 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 national bank or Federal savings association must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the succeeding calendar year.

(d) Option to escrow. (1) In general. Except as provided in paragraphs (a)(2) or (c) of this section, a national bank or Federal savings association, 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 § 22.3 of this section, with respect to national banks, or § 172.3 with respect to Federal savings associations, 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 calendar year succeeding the calendar year the national bank or Federal savings association has a change in status pursuant to paragraph (c)(2) of this section until the national bank or Federal savings association is required to escrow pursuant to paragraph (a) of this section.

(2) Notice. For any loan subject to paragraph (d)(1) of this section, the national bank or Federal savings association, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than March 31, 2016, or September 30 of the calendar year succeeding the calendar year the national bank or Federal savings association has 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 clauses in appendix B.

(3) Timing. The national bank or Federal savings association or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the

national bank or Federal savings association or servicer receives the borrower's request to escrow.

4. Revise § 22.6 to read as follows:

**§ 22.6 Required use of standard flood hazard determination form.**

(a) Use of form. Except for properties or structures that are exempt under § 22.4, a national bank or Federal savings association 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. A national bank or Federal savings association may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) Retention of form. A national bank or Federal savings association 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 national bank or Federal savings association owns the loan.

5. Revise Appendix A to Part 22 to read as follows:

**Appendix A to Part 22 —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 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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

6. Add Appendix B to part 22 to read as follows:

**Appendix B to Part 22 –SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS**

**Escrow Option Clause**

You have the option 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 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 your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy upon receipt of a notice from the 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].

[Instructions for Selecting to Escrow]

**PART 172—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

7. The authority citation for part 172 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128 and 5412(b)(2)(B).

8. Revise § 172.4 to read as follows:

**§ 172.4 Exemptions.**

Exemptions to the flood insurance requirement prescribed by § 172.3 are set forth at 12 CFR 22.3.

9. Revise § 172.5 to read as follows:

**§ 172.5 Escrow requirement.**

Requirements for the escrow of all premiums and fees for any flood insurance required under § 172.3 are set forth at 12 CFR 22.5.

10. Revise § 172.6 to read as follows:

**§ 172.6 Required use of standard flood hazard determination form.**

Requirements for the use the standard flood hazard determination form are set forth at 12 CFR 22.6.

11. Section § 172.9 is amended by removing “this part” each time it appears and adding in its place “12 CFR part 22”.

12. Revise Appendix A to Part 172 to read as follows:

**Appendix A to Part 172 —SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE**

The Sample Form of Notice of Special Flood hazards and Availability of Federal Disaster Relief Assistance is set forth in Appendix A to 12 CFR part 22.

## **Federal Reserve System**

### **12 CFR CHAPTER II**

#### **Authority and Issuance**

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

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

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

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

2. Revise § 208.25 as follows:

#### **§ 208.25 Loans in areas having special flood hazards.**

\* \* \* \* \*

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

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

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

(3) 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.

(e) Escrow requirement. (1) In general. (i) Applicability. Except as provided in paragraphs (e)(1)(ii) or (e)(3) of this section, a member bank, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section 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, payable with the same frequency as payments on the loan are made for the duration of the loan.

(ii) Exceptions. Paragraph (e)(1)(i) of this section does not apply if:

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

(B) 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 paragraph (c) of this section;

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

(1) Meets the requirements of paragraph (c) of this section;

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

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

- (D) The loan is a home equity line of credit;
- (E) The loan is a nonperforming loan that is 90 or more days past due; or
- (F) The loan has a term of not longer than 12 months.

(iii) Escrow account. The member bank, 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 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 member bank, 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.

(2) Notice. For any loan for which a member bank is required to escrow under paragraphs (e)(1) or (e)(3)(ii) of this section, the member bank, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under paragraph (i) of this section informing the borrower that the member bank 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.

(3) Small lender exception. (i) Qualification. Except as may be required under applicable State law, paragraphs (e)(1), (2), and (4) of this section do not apply to a member bank:

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

(B) On or before July 6, 2012:

(1) 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

(2) 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.

(ii) Change in status. If a member bank previously qualified for the exception in paragraph (e)(3)(i) 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 member bank must escrow premiums and fees for flood insurance pursuant to paragraph (e)(1) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the succeeding calendar year.

(4) Option to escrow. (i) In general. Except as provided in paragraphs (e)(1)(ii) or (e)(3) of this section, a member bank, 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 paragraph (c) of this section 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 calendar year succeeding the calendar year the member bank has a change in status pursuant to paragraph (e)(3)(ii) of this section until the member bank is required to escrow pursuant to paragraph (e)(1) of this section.

(ii) Notice. For any loan subject to paragraph (e)(4)(i) of this section, the member bank, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than March 31, 2016, or September 30 of the calendar year succeeding the calendar year the member bank has a

change in status pursuant to paragraph (e)(3)(ii) 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 clauses in appendix B.

(iii) Timing. The member bank or servicer must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the member bank or servicer receives the borrower's request to escrow.

(f) Required use of standard flood hazard determination form. (1) Use of form. Except for properties or structures that are exempt under paragraph (d) of this section, a state member bank 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. A state member bank may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

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

\* \* \* \* \*

3. Revise Appendix A to § 208.25, *Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance* to read as follows:

**Appendix A to § 208.25 —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 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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

## [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

4. Add Appendix B to § 208.25 *Sample Clause for Option to Escrow for Outstanding Loans*, to read as follows:

### **Appendix B to § 208.25 –SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS**

#### Escrow Option Clause

You have the option 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 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 your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy upon receipt of a notice from the 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].

[Instructions for Selecting to Escrow]

## **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 proposes to amend part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

#### **PART 339--LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

1. The authority citation for part 339 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 339.4, add paragraph (c) to read as follows:

##### **§ 339.4 Exemptions.**

\*\*\*\*\*

(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.

3. Revise § 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 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 loan are 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 that is 90 or more days past due; or

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

(3) 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 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 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) of this section or paragraph (c)(2) of this section, 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 succeeding calendar year.

(d) Option to escrow. (1) In general. Except as provided in paragraphs (a)(2) or (c) of this section, 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 calendar year succeeding the calendar year the FDIC-supervised institution has a change in status pursuant to paragraph (c)(2) of this section until the FDIC-supervised institution is required to escrow 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 March 31, 2016, or September 30 of the calendar year succeeding the calendar year the FDIC-supervised institution has 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 clauses 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.

4. Revise § 339.6 to read as follows:

**§ 339.6 Required use of standard flood hazard determination form.**

(a) Use of form. Except for properties or structures that are exempt under § 339.4, 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](http://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.

5. 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**

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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

## [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

6. 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 flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. 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 your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy upon receipt of a notice from the 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].

[Instructions for Selecting to Escrow]

**Farm Credit Administration**

**12 CFR CHAPTER VI**

**Authority and Issuance**

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 614--LOAN POLICIES AND OPERATIONS**

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

2. Revise § 614.4930 by adding a new paragraph (c)(3) to read as follows:

§ 614.4930 Requirement to purchase flood insurance where available.

\* \* \* \* \*

(c) Exemptions. \* \* \*

\* \* \* \* \*

(3) 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.

3. Revise §§ 614.4935 and 614.4940 to read as follows:

§ 614.4935 Escrow requirement.

(a) In general.

(1) Applicability. Except as provided in paragraphs (a)(2) or (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930 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, payable with the same frequency as payments on the loan are 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 § 614.4930;

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

(A) Meets the requirements of § 614.4930;

(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 that is 90 or more days past due; or

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

(3) Escrow account. The System 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 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 System 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 a System institution is required to escrow under paragraph (a) of this section or paragraph (c)(2) of this section, the System institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under Appendix A informing the borrower that the System 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 a System 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 a System 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 System 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 succeeding calendar year.

(d) Option to escrow.

(1) In general. Except as provided in paragraphs (a)(2) or (c) of this section, a System 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 § 614.4930 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 calendar year succeeding the calendar year the System institution has a change in status pursuant to paragraph (c)(2) of this section until the System institution is required to escrow pursuant to paragraph (a) of this section.

(2) Notice. For any loan subject to paragraph (d) of this section, the System institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than March 31, 2016, or September 30 of the calendar year succeeding the calendar year the System institution has 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 clauses in Appendix B.

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

§ 614.4940 Required use of standard flood hazard determination form.

(a) Use of form. Except for properties or structures that are exempt under § 614.4930(c), a System 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. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) Retention of form. A System 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 System institution owns the loan.

4. Revise Appendix A to part 614, Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, to read as follows:

APPENDIX A to PART 614—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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

## [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

5. Add Appendix B to part 614, Sample Clause for Option to Escrow for Outstanding Loans, to read as follows:

### APPENDIX B to PART 614—SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS

#### Escrow Option Clause

You have the option 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 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 your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy upon receipt of a notice from the 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].

[Instructions for Selecting to Escrow]

**National Credit Union Administration**

**12 CFR CHAPTER VII**

**Authority and Issuance**

For the reasons set forth in the joint preamble, the NCUA Board proposes to amend part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

**PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

1. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 760.4, add paragraph (c) to read as follows:

**§ 760.4 Exemptions.**

\* \* \* \* \*

(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.

3. Revise § 760.5 to read as follows:

**§ 760.5 Escrow requirement.**

(a) In general. (1) Applicability. Except as provided in paragraphs (a)(2) or (c) of this section, a credit union, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 760.3(a) 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, payable with the same frequency as payments on the loan are 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 § 760.3(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 § 760.3(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 that is 90 or more days past due; or

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

(3) Escrow account. The credit union, 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 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 credit union, 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 a credit union is required to escrow under paragraph (a) of this section or paragraph (c)(2) of this section, the credit union, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under § 760.9 informing the borrower that the credit union 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 a credit union:

(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 a credit union 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 credit union 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 succeeding calendar year.

(d) Option to escrow. (1) In general. Except as provided in paragraphs (a)(2) or (c) of this section, a credit union, 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 § 760.3 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 calendar year succeeding the calendar year the credit union has a change in status pursuant to paragraph (c)(2) of this section until the credit union is required to escrow pursuant to paragraph (a) of this section.

(2) Notice. For any loan subject to paragraph (d) of this section, the credit union, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than March 31, 2016, or September 30 of the calendar year succeeding the calendar year the credit union has 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 clauses in appendix B.

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

4. Revise § 760.6 to read as follows:

**§ 760.6 Required use of standard flood hazard determination form.**

(a) Use of form. Except for properties or structures that are exempt under § 760.4, a credit union 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. A credit union may obtain the standard flood hazard determination form from FEMA's Web site at [www.fema.gov](http://www.fema.gov).

(b) Retention of form. A credit union 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 credit union owns the loan.

5. Revise Appendix A to part 760, *Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance* to read as follows:

**Appendix A to Part 760—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 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.

#### 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 ask an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

#### [Escrow Requirement for Residential Loans

Federal law requires 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. These premiums and fees must be paid to the lender or its servicer with the same frequency as your loan payments for the duration of your loan and will be deposited in an escrow account on your behalf to be paid to the flood insurance provider. Upon receipt of a notice from the flood insurance provider that the premiums are due, the premiums shall be paid from the escrow account to the 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.

6. Add Appendix B to part 760 *Sample Clause for Option to Escrow for Outstanding Loans*, to read as follows:

#### **Appendix B to Part 760—SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS**

Escrow Option Clause

You have the option 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 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 your existing periodic mortgage payment. The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy upon receipt of a notice from the 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].

[Instructions for Selecting to Escrow]

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

Date: October 20, 2014

*Thomas J. Curry [signed]*

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Thomas J. Curry  
Comptroller of the Currency

**[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 Governors of the Federal Reserve System, October 23, 2014.

*Robert deV. Frierson [signed]*

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Robert deV. Frierson,  
Secretary of the Board.

**[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 [signed]*

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Robert E. Feldman  
Executive Secretary

Dated at Washington, D.C., this 21<sup>st</sup> day of October, 2014.

**[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 the Farm Credit Administration.

*Dale L. Aultman [signed]*

Dale L. Aultman  
Secretary

Dated at McLean, VA, this 22<sup>nd</sup> day of October, 2014.

**[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 the National Credit Union Administration.

*Gerard Poliquin [signed]*

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Gerard Poliquin  
Secretary of the Board

Dated at Alexandria, VA, this 23<sup>rd</sup> day of October, 2014.