2022 Interagency Flood Insurance Q&As

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Speakers

- **Office of the Comptroller of the Currency**
  - **Rhonda Daniels**, Compliance Specialist, Compliance Risk Policy Division
  - **Heidi Thomas**, Special Counsel, Chief Counsel's Office
- **Federal Deposit Insurance Corporation**
  - **Simin Ho**, Senior Policy Analyst, Division of Depositor and Consumer Protection
  - **Navid Choudhury**, Counsel, Legal Division
- **Federal Reserve Board**
  - **Dan Ericson**, Senior Counsel, Legal Division
  - **Vivian Wong**, Senior Counsel, Division of Consumer and Community Affairs
- **Farm Credit Administration**
  - **Ira Marshall**, Senior Policy Analyst, Office of Regulatory Policy
- **National Credit Union Administration**
  - **Simon Hermann**, Senior Credit Specialist, Office of Examination and Insurance

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Agenda

- Background
- Update of Q&As/Reorganization
- Q&A Highlights
- Questions

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Background

- Initial Interagency Q&As issued in 1997
- Changes in 2009/11 – Q&As comprehensively revised and reorganized
- Biggert-Waters Flood Insurance Reform Act of 2012
- Homeowner Flood Insurance Affordability Act of 2014
- Final Rules issued in 2015 and 2019
- Q&A Proposals issued in 2020 and 2021

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Steps Taken to Update the Flood Q&As

- July 2020 – Initial Proposal of the 118 Flood Q&As issued
- March 2021 – 24 New Proposed Private Flood Q&As issued
- May 2022 – 144 Final Q&As issued
  – Updated proposed Q&As to reflect comments received
  – Revised proposed Q&As to reflect changes from FEMA's Risk Rating 2.0

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Reorganization of the 2022 Flood Q&As

- Provides more logical flow through flood insurance process
- 19 individual categories (full list on next slide)
- Easier to make future revisions or updates
- Revised numbering system
  - e.g., Applicability 1 – Applicability 15; Exemptions 1 – Exemptions 7

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What's New, Revised, or the Same?

Topic	Q&As	New	Revised	No Change
Applicability	15	5	6	4
Exemptions	7	1	6	
Mandatory	9	9		
Discretionary	4	4		
Private Flood Compliance	11	11		
SFHDF	4		1	3
Fees	2			2
Zone	3	1	2	
Notice	7		2	5
Amount	10	1	5	4
Construction	6	1	3	2
Condo and Co-op	10	2		8
Other Security Interests	12	2	2	8
Escrow	7	5	2	
Escrow Small Lender Exception	7	7		
Escrow Loan Exceptions	5	3	2	
Force Placement	16	10	4	2
Servicing	7	5	2	
Penalty	2		1	1
Total	**144**	**67**	**38**	**39**

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Q&A Highlights

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Triggering Event

Applicability 6

- Loan modification or restructuring constitutes a triggering event if it was **not** originally contemplated pursuant to the contract

Applicability 13

- A triggering event occurs when a designated loan is made, increased, extended, or renewed ("MIRE event")

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Loan Closing Date for Flood Insurance

Applicability 15

- Lender should use the “closing date,” which is defined by FEMA as the day the ownership of property transfers, and differs based on state law
- “Wet funding” vs “dry funding” state
- Refinance: use the consummation date as the “closing date”

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Detached Structures

Exemptions 3

- Flood hazard determination must first be conducted without regard to whether there may be detached structures that could be exempt

Exemptions 4

- Lenders are no longer mandated by the Act to require flood insurance on a detached structure that is part of a residential property and does not serve as a residence. A lender may allow a borrower to cancel its policy

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Compliance Aid for Mandatory Acceptance

A lender may determine that policy meets the definition of private flood insurance, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy:

"This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

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Compliance Aid Guidance

Mandatory 4

- Lender may choose to rely on statement **OR** may choose to do its own review
- Cannot reject a private policy solely because no compliance aid statement

Mandatory 5

- If lender relies on compliance aid statement, further review of the policy is not necessary to determine if policy meets definition of "private flood insurance"
- Can still accept compliance aid statement if there are only stylistic differences

Mandatory 9

- Can rely on compliance aid statement even if there is a disclaimer indicating that the insurer is not licensed in the state or jurisdiction in which the property is located, **but see** Q&A Private Flood Compliance 10

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Discretionary Acceptance Factors

Discretionary 4

- Identifies factors a lender may consider when determining whether a flood insurance policy issued by a private insurer or mutual aid plan provides sufficient protection of the loan, consistent with safety and soundness principles
- These factors include whether:
  - (1) policy's deductible is reasonable;
  - (2) insurer provides adequate notice of cancellation;
  - (3) terms and conditions of the policy, with respect to payment per occurrence or per loss and aggregate limits, are adequate to protect interest in collateral;
  - (4) policy complies with applicable state insurance laws; and
  - (5) insurer has the financial solvency, strength, and ability to satisfy claims

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Insurer Evaluation

Discretionary 3

- Addresses how a lender could evaluate concerns related to an insurer's solvency, strength, and ability to pay claims to determine whether policy provides sufficient protection of a loan, consistent with general safety and soundness principles
- Lender may obtain information from state insurance regulator for state in which property securing the loan is located, among other options
- Lender can rely on the licensing or other processes used by the state insurance regulator for such an evaluation

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Maximum Deductible on a Flood Insurance Policy

Private Flood Compliance 1

Mandatory Acceptance	Discretionary Acceptance

• Must be "at least as broad as" the max deductible under SFIP
  • No higher than max deductible under SFIP for coverage amount up to max available under NFIP
  • If coverage amount exceeds max available under NFIP, may have max deductible exceeding max deductible under SFIP, subject to safety and soundness considerations
	• Sufficient protection of the loan, consistent with general safety and soundness principles
	  • Is the deductible reasonable based on the borrower's financial condition?
	  • May be higher than the maximum deductible under SFIP

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Private Flood Policy Review

Private Flood Compliance 11

- Addresses when a lender must review a private flood insurance policy under private flood insurance rule requirements
- Lender must review policy to determine whether it satisfies the regulatory requirements any time borrower presents lender with a new flood private insurer policy
- However, lender may rely on its previous review and related written documentation, provided there are no changes to policy terms that would affect acceptability under regulatory requirements
- REMINDER: if policy does not meet the mandatory acceptance, discretionary acceptance, or mutual aid plan criteria of the private flood insurance rule, lender may not accept policy under the private flood insurance rule

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No Reconciliation of Discrepancies Expected

Zone 1

- Lenders need not reconcile or otherwise be concerned with flood zone discrepancy
- Private insurers may have requirements
- Flood zone determination still needed to determine if property is located in SFHA

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Borrower Dispute of Lender’s Flood Zone Determination

Zone 3

– Parties encouraged to resolve borrower dispute of lender’s flood zone determination

– Contact FEMA regarding appeal

– Unless FEMA determines building is not in an SFHA, sufficient insurance coverage is required as long as lender determines building is in an SFHA

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“Insurable Value”

Amount 2

- Generally same as 100% RCV (replacement cost without depreciation deduction)
- Lender and borrower may choose from a variety of approaches or methods to establish, as long as reasonable and supportable
- Consider the extent of recovery allowed under the NFIP or a private policy for the type of property being insured – *See* Amount 8

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Blanket Flood or Multi-Peril Policy Covering Multiple Buildings

Amount 10:

- Blanket policy with higher deductible than insurable value of any individual building is acceptable
- Can't avoid mandatory purchase requirement with deductible equal to aggregate insurable value
- Determine reasonableness of deductible on case-by-case basis taking risk into account

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Condominiums and Co-ops

Condo and Co-op 9

- NFIP coverage is not available for an individual residential condominium unit or for a non-residential condominium unit located in a non-residential condominium building
- NFIP coverage is not available for a non-residential condominium unit located in a residential condominium building

Condo and Co-op 10

- A co-op unit holder has stock in a corporation but owns no title to the building
- A loan secured by an owner's share in a co-op is not a designated loan, therefore flood insurance is not required

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Other Security Interests

Other Security Interests 7

- Flood insurance is required for the building located in the SFHA and any personal property securing the loan
- Building/contents will be considered to have sufficient coverage if a reasonable amount is allocated to each category

Other Security Interests 9

- Regulation still applies and flood insurance may be required if the real estate and contents are taken as security for the loan even in an abundance of caution

Other Security Interests 10

- Regulation still applies and flood insurance may be required regardless of whether security interest is perfected

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Escrow

Escrow 3

- Clarifies that lender must escrow force-placed flood insurance premiums because there is no exception for force-placed insurance

Escrow 6

- Clarifies that junior lienholder not required to escrow for flood insurance as long as borrower has obtained sufficient flood insurance coverage
- If adequate coverage has not been obtained by first lienholder, flood insurance must be purchased in connection with second loan and junior lienholder would need to escrow

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Force Placement

Force Placement 6

- Clarifies that lender is required to force place flood insurance within 45 days after notice is sent to borrower
- No extension of time period

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Force Placement - Remapping

Force Placement 16

- When the lender or its servicer receives advance notice that property will be remapped into an SFHA, effective date of remapping is date on which lender or servicer must determine whether property is covered by sufficient flood insurance
- As of effective date of remapping, if lender makes determination that coverage is insufficient, lender or its servicer must begin force placement process
- A lender may also send notice prior to the effective date of the map change as a courtesy
- When a lender receives notice of a remapping after the remapping has occurred, the lender or its servicer should follow the requirements outlined in Q&A Force Placement 1, which details the requirements for force placement of flood insurance

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Questions?

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