

FDIC REGULATIONS

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 revises 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

- 339.1 Authority, purpose, and scope.
- 339.2 Definitions.
- 339.3 Requirement to purchase flood insurance where available.
- 339.4 Exemptions.
- 339.5 Escrow requirement.
- 339.6 Required use of standard flood hazard determination form.
- 339.7 Forced placement of flood insurance.
- 339.8 Determination fees.
- 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
- 339.10 Notice of servicer's identity.

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

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Sec. 339.1 Authority, purpose, and scope.

- (a) Authority. This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.
- (b) Purpose. The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).
- (c) Scope. This part, except for Secs. 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

Sec. 339.2 Definitions.

- (a) Act means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).
- (b) Bank means an insured state nonmember bank and an insured state branch of a foreign bank or any subsidiary of an insured state nonmember bank.
- (c) Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.
- (d) Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.
- (e) Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.
- (f) Director of FEMA means the Director of the Federal Emergency Management Agency.
- (g) Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.
- (h) NFIP means the National Flood Insurance Program authorized under the Act.
- (i) Residential improved real estate means real estate upon which a home or other residential building is located or to be located.
- (j) Servicer means the person responsible for:
 - (1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums and other charges with respect to the property securing the loan; and
 - (2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

- (k) Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.
- (l) Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

Sec. 339.3 Requirement to purchase flood insurance where available.

- (a) In general. A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.
- (b) Table funded loans. A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

Sec. 339.4 Exemptions.

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

- (a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or
- (b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

Sec. 339.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under Sec. 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. 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 Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

Sec. 339.6 Required use of standard flood hazard determination form.

- (a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) 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.
- (b) Retention of form. A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

Sec. 339.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under Sec. 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under Sec. 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

Sec. 339.8 Determination fees.

- (a) General. Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.
- (b) Borrower fee. The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:
 - (1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

- (2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;
 - (3) Reflects the Director of FEMA's publication of a notice or compendium that:
 - (i) Affects the area in which the building or mobile home securing the loan is located; or
 - (ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or
 - (4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under Sec. 339.7.
- (c) Purchaser or transferee fee. The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

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

- (a) Notice requirement. When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.
- (b) Contents of notice. The written notice must include the following information:
 - (1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;
 - (2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));
 - (3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

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

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

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

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

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

Sec. 339.10 Notice of servicer's identity.

- (a) Notice requirement. When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

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