



**Banker's Compliance  
Consulting**

# Private Flood Insurance

October 2019

Turning Regulations into  
**PLAIN ENGLISH!**

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*\* Words in Italics are taken directly from the applicable regulations.*

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# Flood Insurance

## I. Private Flood Insurance Final Rule – How did we get Here?

### A. Biggert Waters Flood Insurance Reform Act of 2012 (7/6/12):

The Biggert-Waters Flood Insurance Reform Act of 2012 was a law passed by Congress and signed by the President on July 6, 2012 requiring **significant changes to the National Flood Insurance Program (NFIP)**.

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>

### B. Interagency Flood Insurance Proposal (10/21/13):

*...joint notice of proposed rulemaking to amend their respective regulations regarding loans in special flood hazard areas. The proposed rule would implement certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 regarding **acceptance of private flood insurance**, escrowing flood insurance payments, and force-placement of flood insurance.*

<http://www.fdic.gov/news/news/financial/2013/fil13048.html>

### C. Agencies Issue Flood Insurance Final Rule (6/22/15):

*Five federal regulatory agencies today announced the approval of a joint final rule that modifies regulations that apply to loans secured by properties located in special flood hazard areas. The final rule amends Appendix A, the **Special Flood Hazard Area (SFHA) notice regarding the availability of private flood insurance**.*

<http://www.federalreserve.gov/newsevents/press/bcreg/20150622a.htm>

### D. Interagency Private Flood Insurance Proposal (10/31/16):

*Five federal regulatory agencies are requesting comment on a joint notice of proposed rulemaking to implement provisions of the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act) that require regulated lending institutions to **accept certain private flood insurance policies** in addition to policies made available by the Federal Emergency Management Agency.*

<https://www.federalreserve.gov/newsevents/press/bcreg/20161031a.htm>

### E. Interagency Private Flood Insurance Final Rule (1/24/19):

<https://www.occ.gov/topics/consumer-protection/flood-disaster-protection/occ-private-flood-insurance-final-rule.pdf>

# Flood Insurance

## II. Private Flood Insurance:

The *...rule requires... financial institutions ...to accept policies that meet the... definition of “private flood insurance”... and permits... financial institutions ...to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of “private flood insurance,” subject to certain restrictions.* [Final Rule Summary – January 25, 2019]

Effective Date: July 1, 2019

### A. Standard Flood Insurance Policy (SFIP):

*...means... a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a ...supervised institution.* [§339.2]

### B. Private Flood Insurance Policy (PFIP):

*...means an insurance policy that:*

#### 1. Insurance Company Issued:

*Is issued by an insurance company... meeting either of the following:*

##### a. Business of Insurance:

*Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located...* [§339.2]

##### b. Surplus Lines Insurer:

*Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located...* [§339.2]

## Flood Insurance

### 2. Flood Insurance Coverage:

***Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. [§339.2]***

#### a. Policy Type Comparison:

*...when determining whether coverage is at least as broad as coverage provided under an SFIP... institutions **should compare like policies** (e.g., a policy covering a 1–4 family residence or a single family dwelling unit in a condominium to an SFIP dwelling policy, a policy covering all other buildings except residential condominium buildings to an SFIP general property policy, or a policy covering a residential condominium building to an SFIP Residential Condominium Building Association Policy). [Final Rule Overview – January 25, 2019]*

#### b. Coverage Minimum Requirements:

***To be at least as broad as the coverage provided under an SFIP, the (private) policy must, at a minimum:***

##### i. Define Flood Equal to SFIP:

***Define the term “flood” to include the events defined as a “flood” in an SFIP... [§339.2]***

##### ii. SFIP Equivalent Property Coverage:

*Contain the **coverage specified in an SFIP**, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage; [§339.2]*

##### iii. Deductibles Less than or Equal to SFIP:

***Contain deductibles no higher than the specified maximum (\$10,000 residential/\$50,000 non-residential), and include similar non- applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;***

*For example, a regulated lending institution cannot make a designated loan unless the policy is at least equal to the lesser of the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the NFIP. If a private policy for a commercial structure provided coverage of \$1,000,000, in excess of the NFIP maximum of \$500,000 for that type of structure, then the policy only would need to match the SFIP deductible for the first \$500,000. It would be acceptable for that policy to have deductibles higher than the maximum deductible for a policy available under the NFIP for the coverage over \$500,000. [Final Rule Overview – January 25, 2019]*

## Flood Insurance

iv. Loss and Limited Exclusions:

*Provide coverage for direct physical loss caused by a flood and **may only exclude other causes of loss that are excluded in an SFIP.** Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and* [§339.2]

v. No Extra Conditions:

The private policy **cannot ...contain conditions that narrow the coverage provided in an SFIP...** [§339.2]

3. Policy Inclusions:

**...all of the following:**

a. 45 Day Notice:

*A requirement **for the insurer to give** written notice 45 days **before cancellation or non-renewal of flood insurance coverage to...** the insured (**borrower**) and **lender** (or servicer acting on their behalf). [§339.2]*

b. Availability of NFIP Coverage:

*Information about the **availability of flood insurance coverage under the NFIP...** [§339.2]*

c. Mortgage Interest Clause:

*A mortgage interest **clause similar to the clause contained in an SFIP...** [§339.2] In other words the **borrower and the lender or an association (condominiums)** are listed as **loss payees.***

d. File Suit Provision:

*A provision requiring an insured to file suit **not later than one year after the date of a written denial of all or part of a claim** under the policy... [§339.2]*

4. Cancellation Provisions:

*Contains cancellation provisions **that are as restrictive as the provisions contained in an SFIP.** [§339.2]*

## Flood Insurance

### C. Mandatory Acceptance of Private Flood Insurance:

*An... institution **must** accept private flood insurance... to satisfy ...the flood insurance purchase requirement... **if the policy meets the requirements for coverage...** [§339.3(c)(1)]*

#### 1. The “Compliance Aid” Policy Statement:

*An... institution may determine that a policy meets the definition of private flood insurance... [§339.3(c)(1)] **without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy:** [§339.3(c)(2)]*

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

*The Agencies do not generally regulate insurers and **cannot require an insurance policy to include this compliance aid statement.** However, if insurers choose to include this statement in their policies, it will facilitate the ability of regulated lending institutions, as well as consumers, to recognize policies that meet the definition of “private flood insurance” and promote the consistent acceptance of policies that meet this definition across the market. [Final Rule Overview – January 25, 2019]*

#### 2. Reliance on the “Compliance Aid”:

*...the institution **could choose not to rely on this statement** (“Compliance Aid) and instead make its own determination. [Final Rule Overview – January 25, 2019]*

#### 3. Rejection – No Statement:

*...this provision **does not permit regulated lending institutions to reject policies solely because they are not accompanied by the statement.** [Final Rule Overview – January 25, 2019]*

## Flood Insurance

### D. Discretionary Acceptance of Private Flood Insurance (Does Not Meet PFIP or SFIP Definition):

*An... institution **may accept a flood insurance policy** issued by a private insurer that is not issued under the NFIP and **that does not meet the definition of private flood insurance**... in satisfaction of the flood insurance purchase requirement... **if the policy**: [§339.3(c)(3)]*

#### 1. Coverage Amount:

**The lesser of the outstanding principal balance** of all loans secured by the property; the **overall or “insurable” value** of the property minus the land value; or, the **maximum amount of insurance available** under the principal flood insurance program. [§339.3(a) and §339.3(c)(3)]

#### 2. Licensed, Approved, Recognized, etc. Insurer:

*Is issued by an insurer that is licensed, admitted, or otherwise **approved to engage in the business of insurance** by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, **or not disapproved**, by the insurance regulator of the State or jurisdiction where the property to be insured is located...* [§339.3(c)(3)]

#### 3. Loss Payees:

**Covers both the... borrower(s) and the lender(s) ...as loss payees**, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense... [§339.3(c)(3)]

#### 4. Safety and Soundness Protection Evidence:

**Provides sufficient protection** of the designated loan, **consistent with general safety and soundness principles**, and the... supervised **institution documents its conclusion** regarding sufficiency of the protection of the loan **in writing**... [§339.3(c)(3)]

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### E. Acceptance of Mutual Aid Society Plans:

*...an... institution **may accept a plan issued by a mutual aid society**... in satisfaction of the flood insurance purchase requirement... [§339.3(c)(4)]*

#### 1. Mutual Aid Society:

*an organization whose members:*

##### a. Common Bond:

*...share a common religious, charitable, educational, or fraternal bond... [§339.2]*

##### b. Covers Losses via Common Bond:

*That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond... [§339.2]*

##### c. History of Fulfillment:

*That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. [§339.2]*

#### 2. Acceptance of a Mutual Aid Society Plan:

*...an... institution **may accept a plan** issued by a mutual aid society... in satisfaction of the flood insurance purchase requirement... **if... each of the following are met:***

##### a. Regulator Qualified:

*Your regulator ...has determined that such plans qualify as flood insurance for purposes of the Act... [§339.3(c)(4)]*

##### b. Coverage Amount:

*The plan provides coverage in the amount required (lessor of calculation)... [§339.3(c)(4)]*

##### c. Loss Payees:

*The plan covers both the... borrower(s) and lender(s) ...as loss payees... [§339.3(c)(4)]*

##### d. Safety and Soundness Protection Evidence:

*The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the... supervised institution documents its conclusion regarding sufficiency of the protection of the loan in writing. [§339.3(c)(4)]*

## Flood Insurance

### F. Evidence of Private Flood Insurance:

*The Agencies acknowledge that under existing... requirements, a declarations page is sufficient to evidence a borrower's purchase of flood insurance. However, a declarations page may be insufficient for a regulated lending institution to make a determination that the institution must accept a private flood insurance policy in satisfaction of the flood insurance purchase requirement if the declarations page does not provide enough information for the institution to determine that the policy meets the statutory definition of "private flood insurance." In these circumstances, the regulated lending institution should request additional information about the policy to aid it in making its determination.* [Final Rule Overview – January 25, 2019]

### G. State Law Conflicts:

*The Agencies recognize that there may be conflicts between the definition of "private flood insurance" and State laws, and that the laws of certain States may prevent flood insurance policies issued by companies regulated by these States from meeting the definition of "private flood insurance." In such cases, regulated lending institutions are not required to accept these policies.* [Final Rule Overview – January 25, 2019]

### H. Final Rule Text:

<https://www.occ.gov/topics/consumer-protection/flood-disaster-protection/occ-private-flood-insurance-final-rule.pdf>

# Flood Insurance

## I. Summary:

- A bank **MUST** accept a private flood insurance policy IF it meets the private policy criteria found in §339.2.
  - Licensed insurer or recognized by the insurance regulator;
  - At least as broad as an SFIP for like property:
    - Minimum coverage requirements;
    - Deductibles;
    - Limited exclusions; and
    - Can't contain extra conditions.
  - Include:
    - 45-day notice to the insured and lender;
    - Availability about NFIP coverage;
    - Mortgage Interest Clause; and
    - File Suite Provision.
  - Cancellation provisions similar to SFIP.
  
- A bank **CAN** simply rely upon the Policy Statement (Compliance Aid).
  
- A bank **DOES NOT** have to accept a policy just because it has the Policy Statement. Rather, they could choose to evaluate the policy manually against the private policy criteria (§339.2).
  
- If a policy **DOES NOT** contain the Policy Statement, the bank can't simply deny it for that fact alone. They **MUST** evaluate it manually against the private policy criteria (§339.2).
  
- If it doesn't meet §339.2 criteria it can be denied, or the bank **MAY** accept the policy in accordance with the §339.3(c)(3) discretionary criteria:
  - Coverage equal to the mandatory purchase requirement (lessor of calculation);
  - Licensed insurer or recognized by the insurance regulator;
  - Borrower/Lender listed as loss payees; and
  - The lender documents that policy meets general safety and soundness principles.

## Flood Insurance

### III. SFHA Notice – Private Flood Insurance Clause:

#### A. Model Language:

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

#### B. SFHA Notice (Full) With Private Flood Insurance Clause:

## Flood Insurance

Lender's Name and Address	Borrower's Name and Address	Loan # _____ Date _____ Maturity Date _____ Loan Amount _____
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### Notice Of Special Flood Hazards And Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: \_\_\_\_\_. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

\_\_\_\_\_ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

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

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

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.
- Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

#### Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the

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

### **Escrow Requirement for Residential Loans**

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

\_\_\_\_\_ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

The undersigned realizes that the property securing the loan described above is or will be located in an area identified as a flood hazard area and that the undersigned has received the required notice regarding Federal disaster relief assistance.

Borrower: \_\_\_\_\_ Dated \_\_\_\_\_  
Borrower: \_\_\_\_\_ Dated \_\_\_\_\_

## Flood Insurance

### IV. Penalties for Non-Compliance:

Civil Money Penalties (CMP) of **\$2,000.00 per violation (unlimited)** for:

- A. Failure to require flood insurance;
- B. Failure to provide special flood hazard notice;
- C. Failure to force place required flood insurance; and,
- D. Failure to escrow flood insurance (required escrow accounts).
- E. Not providing a notice to an applicable servicer upon transfer.
- F. **Not accepting a comparable private policy in lieu of an NFIP policy.**