

DEVELOPMENT OF FEDERAL REGULATION

1968

The National Flood Insurance Act of 1968 authorized the National Flood Insurance Program (NFIP), giving property owners the opportunity to purchase federally-backed flood insurance for buildings and their contents.

1973

The purchase of flood insurance was voluntary until the passage of The Flood Disaster Protection Act of 1973, which mandated that federally regulated lenders require life-of-loan flood insurance on any real property collateralizing a loan when that property is located in a Special Flood Hazard Area (SFHA).

1994

The National Flood Insurance Reform Act of 1994 further strengthened this requirement by adding enforceable penalties for lenders who failed to require, track and maintain flood insurance on eligible properties. The Reform Act of 1994 also established rules and guidance for lenders relative to their authority to force place flood coverage. The Reform Act of 1994 required the Department of Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the Joint Agencies) to revise and promulgate flood insurance regulations. In response, the Joint Agencies have issued three versions of a document entitled "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance" (1997, 2008, 2011). These Q&As have been issued "to help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public understanding of the flood insurance regulation [...] finalizing new and revised guidance that address the most frequently asked questions about flood insurance."¹ Comments on proposed revisions have been solicited upon issuance.

2004

The focus of The Flood Insurance Reform Act of 2004 had no bearing on either the requirement to purchase flood insurance or a lender's ability and requirement to force place.

2012

The Biggert-Waters Flood Insurance Act of 2012 (BW-12) established additional responsibilities for lenders and servicers, including mandatory escrow of flood insurance; provisions regarding notification to borrowers about the availability of private flood insurance; guidelines for determining acceptability of private flood insurance; and a maximum deadline for refund of overlapping force-placed flood premiums (30 days). The law also granted permission to charge

borrowers for premiums and fees incurred for coverage beginning as of the borrower's coverage expiration or deficiency date.

2014

On March 21, 2014, the President signed the Homeowners Flood Insurance Affordability Act (HFIAA). Though largely directed at repeal of BW-12 sections that eliminated subsidies or established rate increases, the Act also included a key repeal of the mandatory escrow requirement and deadline established by BW-12. With the repeal came a new requirement for regulatory agencies to draft regulations surrounding the intended escrow requirements and notifications by January 1, 2016. Also included in the Act is an exemption of certain non-residential, appurtenant structures.

Today

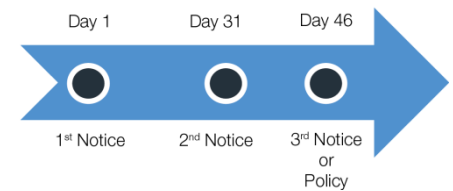
Since the February 4, 2013 repeal of FEMA's "Mandatory Purchase of Flood Insurance Guidelines", which served as the primary reference guide for mandatory purchase requirements, lenders and servicers are encouraged to reference the various Flood Insurance Act(s), the Interagency Questions and Answers and, where appropriate, the FEMA Flood Insurance Manual."²

INSURANCE TRACKING & FORCE PLACEMENT

Key components:

- A lender is required to force place insurance if the following occurs:³
 - If any time during the life of the loan, the property is located in an SFHA;
 - Flood insurance under the Act is available;
 - Flood insurance is inadequate or non-existent;
 - After required notice the borrower fails to provide evidence of flood insurance
- Lender placed purchase of flood coverage is intended for use at any time during the life of the loan and encompasses both uninsured and underinsured scenarios.⁴
- The lender or servicers must actively review and track flood insurance renewals for any property located in an SFHA, providing notice to the borrower if it is determined that valid and adequate coverage is not on file.⁵
- If the borrower has not responded to the initial notification with sufficient evidence of flood coverage within 45 days of notification, force placed insurance shall be purchased on behalf of the borrower (see Figure 1). The lender or servicer may charge the borrower for the cost of premiums and fees incurred by force-placing flood coverage.⁶

Figure 1. Sample Force Placed Flood Notice Cycle



- The required 45 day notice period may not be accelerated by sending notification prior to the expiration of existing coverage.⁷
- Home equity and second mortgage loans are included under the requirement, with the lender or servicer required to coordinate with the first mortgagee to insure adequate coverage is procured.⁸
- The amount of force placed coverage obtained must be the lesser of the:⁹
 - Outstanding principal balance of the loan(s)
 - Insurable value
 - Maximum limit available through the NFIP
- Certain "state owned properties" and "small loans" are exempt.¹⁰
- Lenders or servicers must purchase insurance on the borrower's behalf 45 days after notification. Any delay in force placing after the 45th day should be brief, with a reasonable explanation for the delay available.¹¹
- Lenders may force place flood insurance, and charge the borrower, for any part of the 45-day notice period in which adequate insurance was not otherwise in place if the borrower has given the lender or servicer express authority as a contractual condition of the loan.¹²

CONTACT US

For additional information please visit us at: www.resourceinsurancesvs.com or contact us at: (877) 219-7195 or insurance@resourceinsurancesvs.com.

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¹ Federal Register / Vol. 74, No. 138 / July 21, 2009 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 35914

² <https://www.fema.gov/library/viewRecord.do?id=2954>

³ Federal Register / Vol. 76, No. 200 / October 17, 2011 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 64181

⁴ National Flood Insurance reform Act of 1994, SEC.524 (e)(1)

⁵ National Flood Insurance reform Act of 1994, SEC.524 (e)(1)

⁶ National Flood Insurance reform Act of 1994, SEC.524 (e)(2)

⁷ Federal Register / Vol. 74, No. 138 / July 21, 2009 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 35933

⁸ Federal Register / Vol. 74, No. 138 / July 21, 2009 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 35940-35941

⁹ Federal Register / Vol. 74, No. 138 / July 21, 2009 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 35936

¹⁰ National Flood Insurance Reform Act of 1994, SEC.522 (b)(4)(c)

¹¹ Federal Register / Vol. 76, No. 200 / October 17, 2011 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 64179

¹² Federal Register / Vol. 76, No. 200 / "Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance," 64180-64181