

# RESCINDED

OCC Bulletin 2015-33| July 21, 2015

Transmittal – See OCC 2020-11

## Flood Insurance: Final Rule

### Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Administration (collectively, the agencies) have issued a final rule that implements certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA).

The final rule amends existing regulations to: (1) incorporate a statutory exemption to the general mandatory flood insurance purchase requirement for detached structures; (2) establish requirements for national banks and federal savings associations (collectively, banks) to escrow flood insurance payments on residential improved real estate securing a loan; and (3) incorporate statutory amendments related to the force placement of flood insurance. The final rule also integrates the OCC's flood insurance regulations by adding federal savings associations to 12 CFR 22 and removing 12 CFR 172.

The statutory force-placed insurance provision took effect upon the enactment of the Biggert-Waters Act on July 6, 2012. The statutory detached structure exemption took effect upon enactment of the HFIAA on March 21, 2014. The regulatory changes made by this final rule to incorporate these provisions are effective on October 1, 2015. The statutory and regulatory escrow-related provisions are effective on January 1, 2016, as required by the HFIAA.

This bulletin rescinds OCC Bulletin 2014-56, "Flood Insurance: Notice of Proposed Rulemaking" (Nov. 14, 2014), which announced the proposed rule.

### Note for Community Banks

The escrow requirement for flood insurance premiums does not apply to any bank that has total assets of less than \$1 billion provided that, as of July 6, 2012, the bank: (1) was not required by applicable federal or state law to escrow taxes or insurance for the term of the loan; and (2) did not have a policy to require escrow of taxes and insurance. The final rule provides other exceptions to this escrow requirement for certain types of loans. The provisions regarding detached structures and force placement apply to all banks.

### To

Chief Executive Officers of All National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties

### Highlights

#### Detached Structures Exemption

- The final rule provides that flood insurance is not required for any structure that is part of a residential property if it is detached from the primary residential structure and does not serve as a residence. A bank may choose, however, to require flood insurance on the detached structure to protect the collateral securing the mortgage.

### **Escrow of Flood Insurance Payments**

- The final rule generally requires banks, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed ("a triggering event") on or after January 1, 2016. The final rule excepts certain loans from this requirement and also contains an exception for small lenders applicable to a bank that has total assets of less than \$1 billion and, as of July 6, 2012: (1) was not required by applicable federal or state law to escrow taxes or insurance for the term of the loan and (2) did not have a policy to require escrow of taxes and insurance.
- If a bank no longer qualifies for the small lender exception, it is required to escrow flood insurance premiums and fees for loans that have a triggering event on or after July 1 of the first calendar year of changed status. Moreover, if a bank determines that an exception is no longer applicable to a loan, the bank must begin escrowing flood insurance premiums and fees as soon as reasonably practicable.
- Banks subject to the escrow requirement must offer and make available to borrowers the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. Banks must deliver information to borrowers on this escrow option by June 30, 2016, and implement the escrow as soon as reasonably practicable after receiving a borrower's request to escrow.
- This escrow requirement does not apply to loans that are secured by commercial properties.

### **Force Placement of Flood Insurance**

- The final rule clarifies that banks, or servicers acting on their behalf, have the authority to charge borrowers for the cost of force-placed flood insurance coverage, commencing on the date on which borrower-purchased coverage lapsed or on which the coverage became insufficient.
- The final rule also describes the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower and sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

### **Background**

The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (FDPA), as amended, govern the National Flood Insurance Program (NFIP). Among other things, these statutes require the purchase of flood insurance on certain properties and make available federally subsidized flood insurance 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.

The Biggert-Waters Act significantly amended the FDPA's requirements including by revising the escrow and force placement provisions and by directing regulated lending institutions to accept private flood insurance as defined by the Biggert-Waters Act. On October 30, 2013, the agencies jointly issued a proposed rule to implement these provisions.<sup>1</sup>

On March 21, 2014, President Obama signed into law the HFIAA, which amended the Biggert-Waters Act, including the escrow provisions. The HFIAA also provided a new exemption to the mandatory flood insurance purchase requirements for structures that are part of, but detached from, a primary residential structure and do not serve as a residence. On October 30, 2014, the agencies jointly issued a notice of proposed rulemaking to implement these changes.<sup>2</sup>

This final rule implements the force-placed insurance provisions of the Biggert-Waters Act and the escrow and detached structure provisions of the HFIAA.<sup>3</sup>

## Further Information

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## Related Link

- [Loans in Areas Having Special Flood Hazards \(PDF\)](#)

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<sup>1</sup> 78 Fed. Reg. 65108 (October 30, 2013).

<sup>2</sup> 79 Fed. Reg. 64518 (October 30, 2014).

<sup>3</sup> The agencies plan to address the private flood insurance provisions in the Biggert-Waters Act in a separate rulemaking.