

# Interagency Flood Insurance Regulation Update

## Outlook Live Webinar – October 22, 2015

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## Speakers

- **Board of Governors of the Federal Reserve System**
  - **Lanette Meister**, Supervisory Policy and Outreach
  - **Vivian Wong**, Consumer Laws and Regulations
- **Farm Credit Administration**
  - **Mary Alice Donner**, Office of General Counsel
  - **Paul Gibbs**, Office of Regulatory Policy
- **Federal Deposit Insurance Corporation**
  - **Alex Cheng**, Supervisory Policy
  - **Navid Choudhury**, Legal Division
- **National Credit Union Administration**
  - **Sarah Chung**, Office of General Counsel
  - **Judy Graham**, Office of Examination and Insurance
- **Office of the Comptroller of the Currency**
  - **Rhonda Daniels**, Compliance Policy
  - **Margaret Hesse**, Community and Consumer Law



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## Agenda

- Recent Statutory Changes
  - Biggert-Waters Flood Insurance Reform Act of 2012
  - Homeowner Flood Insurance Affordability Act of 2014
- Regulatory Implementation
  - Final Rule to Implement Detached Structure, Escrow, Force Placement Provisions
- Questions and Answers

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## Recent Statutory Changes

- Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act)
  - Mandatory acceptance of private flood insurance
  - Mandatory escrow for flood insurance for loans secured by a residence
  - Force placement clarification
  - Changes to civil money penalties
    - Maximum penalty per violation increased from \$385 to \$2000
    - Annual cap removed
- Homeowner Flood Insurance Affordability Act of 2014 (HFIAA)
  - Amended Biggert-Waters Act escrow requirements
  - Detached structure provision

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## Regulatory Implementation

- The Agencies issued a proposed rule to implement escrow, force placement and private insurance provisions of the Biggert-Waters Act in 2013 ([78 Fed. Reg. 65108](#), October 30, 2013)
- The Agencies issued a proposed rule to implement the escrow and detached structure provision in HFIAA in 2014 ([79 Fed. Reg. 64518](#), October 30, 2014)
- The Agencies issued a final rule to implement the escrow, detached structure and force placement provisions in 2015 ([80 Fed. Reg. 43216](#), July 21, 2015)
- The private insurance provisions of the October 2013 proposed rule will be addressed in a separate rulemaking

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## Final Rule – Detached Structure Exemption

- Incorporates the exemption from the mandatory purchase requirement for certain detached structures.
- Flood insurance not required for any structure that is:
  - Part of any residential property;
  - Detached from the primary residential structure of such property; and
  - Does not serve as a residence
- Exemption is available in connection with consumer loans as well as loans made for business, commercial or agricultural purposes if the loan is secured by a residence
- Exemption took effect on March 21, 2014, the date of HFIAA's enactment
- Lender can require flood insurance on a detached structure to protect collateral securing the loan

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## Final Rule – Detached Structure Exemption (continued)

### Part of a Residential Property

- A structure that is used primarily for personal, family or household purposes, and not used primarily for agricultural, commercial, industrial or other business purposes

### Detached

- A structure is "detached" from the primary residential structure if it is not joined by any structural connection to the residential structure

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## Final Rule – Detached Structure Exemption (continued)

### Does not Serve as a Residence

- Structure could serve as a residence if it includes sleeping, bathroom or kitchen facilities, but not all three facilities are necessary
- Lender should focus on the structure's intended use
- Lender must make good faith determination as to whether detached structure serves as a residence

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## Final Rule – Escrow Requirement

- A regulated institution, or a servicer acting on its behalf, must require the escrow of all premiums and fees for flood insurance for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended or renewed on or after January 1, 2016

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## Final Rule – Escrow Requirement (continued)

### Small Lender Exception

- The institution has total assets of less than \$1 billion; and
- On or before July 6, 2012, the institution
  1. was not required under Federal or State law to escrow taxes or insurance for the term of any loan; and
  2. did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees or any other charges in an escrow account

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## Final Rule – Escrow Requirement (continued)

### Small Lender Exception

- Institution may qualify for the small lender exception if it had total assets of less than \$1 billion as of December 31 of either of the two prior calendar years
- Examples:
  1. Lender A has assets of \$998 million on December 31, 2014 and \$1.01 billion on December 31, 2015. Lender A may qualify for the exception for 2016
  2. Lender B has assets of \$1.01 billion on December 31, 2015 and \$1.02 billion on December 31, 2016. Lender B does not qualify for the exception for 2017

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## Final Rule – Escrow Requirement (continued)

### Small Lender Exception – Transition Rule

- Institution must escrow flood insurance premiums and fees for any loans made, increased, extended or renewed on or after July 1 of the succeeding calendar year after it has a change in status
- Example:
  1. The institution qualifies for the small lender exemption in 2016, but had assets of \$1 billion or more as of December 31, 2016 and December 31, 2017
  2. Institution will be required to begin escrowing for any loans made, increased, extended or renewed on or after July 1, 2018

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## Final Rule – Escrow Requirement (continued)

### Loan-Related Exceptions

- Extension of credit primarily for business, commercial or agricultural purposes even if secured by residential real estate
- Loan is in a subordinate position to a senior lien secured by same property for which flood insurance is being provided
- Property is covered by a flood insurance policy that is provided by condominium, cooperative or homeowners association
- Home equity line of credit
- Nonperforming loan
- Loan for a term not longer than 12 months

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## Final Rule – Escrow Notice

- The lender or servicer acting on its behalf must provide a notice of the escrow requirement with or in the Notice of Special Flood Hazards
- Revised Sample Form of Notice that includes escrow notice is provided in Appendix A of the regulation

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## Final Rule – Option to Escrow

- A regulated lending institution 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
- Option to escrow notice must be provided by June 30, 2016
- Model clause for notice on option to escrow is provided in Appendix B

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## Final Rule – Option to Escrow (continued)

- A regulated lending institution that no longer qualifies for the small lender exception must provide notice of the option to escrow by September 30 of the first calendar year in which it has a change in status
- Must begin escrowing as soon as reasonably practicable after receiving borrower's request to escrow

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## Final Rule - Force Placement

- May charge borrower for force-placed insurance premiums and fees beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage amount
- Must terminate force-placed insurance within 30 days of confirmation of borrower's purchase of flood insurance and refund premiums and fees paid by the borrower during any overlap period
- Must accept a declarations page as confirmation of borrower's existing flood coverage

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## Mandatory Acceptance of Private Flood Insurance

- The Biggert-Waters Act amended the mandatory purchase requirement to require an institution to accept a private flood insurance policy as satisfaction of the mandatory purchase requirement if the coverage provided by the private policy meets the standards set forth in Biggert-Waters Act
- The mandatory acceptance of private flood insurance provision is not effective until final regulations are issued
- As indicated in the Final Rule issued on July 21, 2015, the Agencies plan to address the private flood insurance provisions in a separate rulemaking

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## Private Flood Insurance

Under current law, an institution may accept a private flood insurance policy under certain circumstances

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## Resources

- The National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, and the National Flood Insurance Reform Act of 1994
- [Biggert Waters Flood Insurance Reform Act of 2012](#)
- [Homeowner Flood Insurance Affordability Act of 2014](#)
- Agencies' flood regulations:
  - [12 CFR Parts 22, 172](#) (OCC)
  - [12 CFR Part 208.25](#) (Federal Reserve)
  - [12 CFR Part 339](#) (FDIC)
  - [12 CFR Part 614](#) (Farm Credit)
  - [12 CFR Part 760](#) (NCUA)

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## Resources - Agency Guidance

- [Interagency Statement on the Impact of the Biggert-Waters Act](#) (2013)
- [Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings](#) (2014)
- Interagency Questions and Answers Regarding Flood Insurance ([74 FR 35914](#) (July 21, 2009)) and ([76 FR 64175](#) (October 17, 2011))
- [FDIC Director's Resource Center Technical Assistance Video Program – Flood Insurance](#)
- Federal Reserve Consumer Compliance Outlook:
  - ["Compliance Spotlight: Congress Passes HFIAA"](#)
  - ["Compliance Spotlight: The Biggert-Waters Act"](#)

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## Resources – FEMA Resources

- [FEMA's NFIP Manual](#)
- [FEMA's NFIP Portal](#)

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## QUESTIONS & ANSWERS

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