

SUBJECT: Flood Insurance

INTRODUCTION	1	FEMA Review of Determinations (NFIP § 524(e)(3))	5
EXECUTIVE SUMMARY	1	NOTICE OF SERVICER'S IDENTITY (§ 760.10)	5
"DESIGNATED LOAN" RESTRICTIONS	1	REQUIRED PURCHASE OF FLOOD INSURANCE (§ 760.03)	6
Loans Covered	2	Accepting private flood insurance (§760.3(c))	6
Buildings and Mobile Homes Covered.....	2	Exemptions (§760.4)	8
Special Flood Hazard Areas Covered.....	2	FORCED PLACEMENT OF FLOOD INSURANCE (§ 760.7)	8
NFIP Availability.....	2	Termination of Force-Placed Insurance.....	8
STANDARD FLOOD HAZARD DETERMINATION FORM		MANDATORY ESCROW FOR PREMIUMS (§ 760.5).....	9
(§ 760.6).....	3	Notice.....	9
Reliance on Previous Determination (National Flood Insurance		Loan-related exceptions.....	9
Act (§ 1365(e)).....	3	Small lender exception	9
Fee Permitted for Flood Hazard Determinations (§ 760.8).....	3	Option to escrow	10
Flood Hazard Determinations by Third Parties (NFIA § 1365(d)) .	4	Escrow account compliance	11
Obtaining and Using Maps.....	4	MAP AMENDMENT AND REVISION	11
NOTICE OF SPECIAL FLOOD HAZARD TO BORROWER AND		RECORD RETENTION	11
SERVICER (§ 760.9).....	4	INTERAGENCY QUESTIONS AND ANSWERS REGARDING	
Content.....	4	FLOOD INSURANCE.....	12
Timing & record retention.....	5		

INTRODUCTION

This release applies to all credit unions, state or federal, making improved real estate loans. It also applies to credit unions making mobile home loans when the home is on a permanent foundation.

A permanent foundation includes mobile home parks where a mobile home is connected to utilities. A credit union does not have to obtain a security interest in the underlying real estate in order for the mobile home loan to be covered by the requirements of the national flood insurance program.

Flood insurance requirements also apply to loans where a security interest in improved real property is only taken "out of an abundance of caution," such as in the case of a "tack-on mortgage."

EXECUTIVE SUMMARY

This release describes the requirements of the NCUA flood insurance rule (Part 760). This release addresses:

- Which loans are subject to the rule;
- The Standard Flood Hazard Determination form, including when previous determinations may be relied upon, permitted determination fees, how to use the flood zone maps, and reliance on third parties for determinations;
- The Notice of Special Flood Hazards to be sent to borrowers and servicers when collateral is located in a special flood hazard zone, and FEMA review of flood hazard determinations;
- The Notice of Servicer's Identity and the notification upon transfer of servicing rights;
- The requirement to purchase flood insurance when making, extending, increasing or renewing a loan secured by real estate or a mobile home located in a special flood hazard zone, as well as the amount of insurance, force-placement, and required escrows; and
- Record retention requirements.

"DESIGNATED LOAN" RESTRICTIONS

The cornerstone of the NCUA's flood insurance rules is the requirement to get flood insurance for properties in a special flood hazard area.

The NCUA rules say that a credit union may not make, increase, extend, or renew any "designated loan" unless the building or mobile home and any personal property securing the loan are covered by flood insurance for the term of the loan.

A "designated loan" is a loan secured by a building or mobile home that is located or will be located in a "Special Flood Hazard Area" in which flood insurance is available under the National Flood Insurance Program. To understand what a "designated loan" is, it's helpful to break down the definition into its basic elements:

- What loans are covered?
- What buildings are covered?
- What flood areas are covered?
- Where is National Flood Insurance available?

Loans Covered

"Designated loans" include both residential and commercial real estate loans. Home equity loans and home improvement loans are also included.

The flood insurance rules apply even if the lien is taken solely through an abundance of caution, such as with a "tack-on" mortgage loan.

A credit union is considered to be making a loan subject to the NCUA flood insurance rules when it acquires a loan from a mortgage broker or other third party through table funding. In table funding, the third party closes a loan in its own name, but simultaneously receives funding from, and assigns the loan to, the credit union. The rule also applies to those servicing loans for a credit union.

Exemptions

Section 760.4 of the NCUA flood insurance rules include certain exemptions (explained in detail later this release). For example, the requirement to purchase flood insurance does not apply if the original principal balance of the loan is \$5,000 or less *and* has a repayment term of one year or less. Nor does the rule apply to a structure that is part of a residential property but is detached from the primary residence and does not serve as a residence, such as a detached garage.

Buildings and Mobile Homes Covered

"Building" means a walled and roofed structure that is principally above ground and affixed to a permanent site and a walled land roofed structure while in the course of construction, alteration, or repair. A loan on vacant land in an SFHA is not covered.

A "mobile home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is on a permanent foundation when attached to the required utilities. This means that mobile homes are not subject to this rule unless they are placed on a permanent foundation. A permanent foundation includes mobile home parks where a mobile home is connected to utilities. A credit union does not have to obtain a security interest in the underlying real estate in order for the loan to be covered by the requirements of the National Flood Insurance Program. A recreational vehicle is not a mobile home.

Special Flood Hazard Areas Covered

FEMA publishes maps of flood zones. These Flood Insurance Rate Maps (FIRMs) show the areas in a community that are subject to flooding and the risk associated with these flood hazards.

One of the areas shown on the FIRM is Special Flood Hazard Area (SFHA). An SFHA is land in a flood plain that FEMA has determined to have at least a one percent chance of flooding in any given year.

NFIP Availability

Regular homeowners insurance excludes coverage for flood damage. So, to help protect property in flood zones, FEMA writes most flood insurance policies under the National Flood Insurance Program (NFIP).

Not all communities participate in the NFIP, however. To participate in the NFIP, the community enters into an agreement with FEMA to adopt and enforce ordinances designed to reduce the risk of flood damage to buildings in that community.

Some private insurers offer flood insurance, as well. As explained later in this release, as of July 1, 2019, NCUA rules say that credit unions must accept private flood insurance when flood insurance is required – so long as the insurance meets certain requirements. Credit unions are permitted to make the risk-based decision to accept private flood insurance policies that do not satisfy the requirements for mandatory acceptance, if they at least meet certain minimum standards. Other federal financial institution regulators have the same rules for other lenders, like banks.

If NFIP coverage is not available (in other words, if the community is “non-participating” a credit union can still choose to make a conventional loan on improved real estate in an SFHA. Thus, the mandatory flood insurance purchase requirement does not apply to conventional loans in non-participating communities.

However, credit unions should carefully evaluate the underwriting risk involved in making such loans. In non-participating communities, a credit union may require private flood insurance, if available. Examiners have suggested setting aside special reserves if the credit union has a portfolio of such loans, in case of flooding damage.

The credit union may not be able to pass an uninsured loan onto the secondary market. For example, Fannie Mae and Freddie Mac will not buy a mortgage secured by property in a non-participating community if the property is in an SFHA. They require lenders to monitor, on an ongoing basis, changes in a community’s status under the NFIP.

Government backed loans: Credit unions are *not* permitted to make government-guaranteed or insured loans secured by property located in an SFHA when federal flood insurance is not available. These would include real estate loans guaranteed or insured by the Federal Housing Administration, Veterans Administration, or Small Business Administration.

STANDARD FLOOD HAZARD DETERMINATION FORM (§ 760.6)

Credit unions must use FEMA’s Standard Flood Hazard Determination Form to determine whether the building or mobile home offered as collateral is or will be located in a special flood hazard area. The form requires identification of the property address, NFIP community name, map/community number, community participation status, map revision date, flood zone, and final determination as to whether flood insurance is required.

The special flood hazard determination form may be used in a printed, computerized or electronic format. The printed form is available from the FEMA Distribution Center, with the official instructions printed on the back. Call (800) 480-2520 for single copies, from which photocopies may be made. An electronic image of the form and instructions is also available [online here](#).

A credit union must retain a copy of the completed special flood hazard determination form for the period of time it owns the loan. It may be an electronic or hard copy.

Reliance on Previous Determination (National Flood Insurance Act (§ 1365(e))

A credit union that is increasing, extending, renewing or purchasing an *existing loan* may rely on a previous determination of whether the property is located in a flood hazard, *only if* the previous determination is less than seven years old, the previous determination was recorded on a special flood hazard determination form, and the credit union verifies that no FIRM or FHBM map revision has been issued. If a new map has been issued, the credit union must complete a new special hazard determination form using the new map. (*See Interagency Questions and Answers Regarding Flood Insurance, SFHDF 4.*)

Only under limited circumstances may a credit union rely on a previous determination for a *new loan*. To reuse a previous determination, the credit union must already hold a mortgage loan secured by the same real estate that will serve as security for the new home equity or second mortgage loan, and the borrower must provide evidence that adequate flood insurance coverage is in place for all loans. In such cases, the credit union may rely on the original special flood hazard determination form if no remapping has occurred. (*See Interagency Questions and Answers Regarding Flood Insurance, SFHDF 4.*)

Fee Permitted for Flood Hazard Determinations (§ 760.8)

A credit union may charge a reasonable fee for determining whether a building or mobile home is located in a special flood hazard area, but only if the determination:

- Is triggered by the borrower initiating the making, increasing, extending, or renewing of the loan;
- Is triggered by FEMA’s revision of flood maps; or
- Results in the force-placement of flood insurance by the credit union; or
- Reflects publication of a FEMA notice or compendium affecting the area in which the property is located.

A one-time flood hazard determination fee is not a finance charge under Truth in Lending.

FEMA permits an allowable determination fee to include the cost of life-of-loan monitoring, but that cost is a finance charge under Truth in Lending. If one fee is charged for both the initial determination as well as subsequent monitoring, the portion attributable to monitoring must be included in the finance charge. If the credit union is uncertain what portion of the fee is for life-of-loan monitoring, it may include the entire fee in the finance charge.

Flood Hazard Determinations by Third Parties (NFIA § 1365(d))

The National Flood Insurance Reform Act of 1994 permits lenders to rely on third-party determinations only if the third party guarantees the accuracy of the information provided to the lender. Many vendors offer flood hazard determinations at a reasonable fee. Various options are available, including basic certification, life-of-loan coverage, and portfolio review (*not* required by law).

Obtaining and Using Maps

The credit union or its agent determines whether a parcel of property is located in a special flood hazard area by consulting maps published by FEMA. The maps are inexpensive but require several weeks for delivery. Call FEMA at (800) 358-9616.

Cities and villages are separate communities for flood insurance purposes. Unincorporated areas, such as rural townships, are mapped under the name of the county. For example, the city of Algoma has its own map, while the surrounding Town of Ahnapee is part of the area designated as Kewaunee County—Unincorporated Areas.

To determine whether a community participates in the NFIP, consult the Community Status Book at www.fema.gov/cis/WI.pdf. The same source tells whether a participating community is in the Regular or Emergency Program. It can be ordered by calling (800) 358-9616.

All maps in a community are referenced with a map index sheet. This is a large-scale map that will show which detailed map panel in the set depicts a particular section of the city, village, or county. The most current map panel must be used.

The maps depict special flood hazard areas (100-year flood zone) where flood insurance is required with a dark shaded area. This zone has a label beginning with “A.” A lighter shade of gray indicates a lesser flood hazard (500-year flood zone) which is not regulated for loan purposes. This zone is labeled with “B.” However, lenders are free to require insurance in these areas if they wish. Zone “C” marks areas outside the floodplain. In addition, zone “V” marks special flood hazard areas (100-year flood zone) along coasts with additional hazards associated with storm-induced waves, where flood insurance is required.

The maps do not show all the landmarks, street names, and other details that may be needed to easily locate the property. Using street maps, plat maps, city directories, surveys, or sometimes even visiting the site to measure distances from landmarks may be helpful in pinpointing the property in relation to the flood hazard areas.

Over the life of a 30-year mortgage, a property located in a SFHA (100-year flood zone) has a 26% chance of being flooded.

NOTICE OF SPECIAL FLOOD HAZARD TO BORROWER AND SERVICER (§ 760.9)

When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home in a special flood hazard area, the credit union must mail or deliver a written Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance to the borrower. Notice may be provided electronically, if the borrower consents. See The League’s *ii Release No. 0175* for guidance on obtaining consent under the federal E-SIGN law. This applies in *all* cases, whether or not flood insurance is available. A notice must also be provided to the servicer of the loan; it may consist of a copy of the borrower’s notice.

Content

The written notice must include:

- A warning of the flood hazard;
- A description of the flood insurance purchase requirements;
- A statement, where applicable, that flood insurance is available from private insurers or directly from the NFIP;
- A statement that flood insurance offering the same level of coverage as an NFIP standard flood insurance policy may be available from a private insurance company;

- A statement encouraging the borrower to compare the terms of NFIP insurance against private insurance and to direct question to an insurance agent, and
- A statement whether federal disaster relief may be available in the event of flooding damage caused by a federally declared disaster.

The League's Online Store sells a Notice of Special Flood Hazard form (WCUL #82010) with the required language. Be sure to check the appropriate box in the notice to indicate whether the community participates in the NFIP.

A credit union is considered to have complied with the notice requirement by using language in sample notice in Appendix A to Part 760 of the NCUA rules.

Jan. 1, 2016 revision

As of Jan. 1, 2016, the NCUA's sample notice is revised to include a clause explaining that a lender or servicer *may* be required to escrow premiums and fees for flood insurance. (The escrow requirement is covered in more detail later in this release.) For any loan in which the credit union is required to escrow for flood insurance costs, the credit union must notify the borrower using language substantially similar to the sample language. The League's Notice of Special Flood Hazard form (WCUL #82010) has been updated to comply with this requirement.

In addition, Appendix B to Part 760 of the NCUA rules has a sample clause for the option to escrow notice needed for existing loans (explained later in this release). Credit unions that must provide that notice are required to use language similar to the model clause in Appendix B. This notice is not included in the The League's Notice of Special Flood Hazard form.

Timing & record retention

The credit union must provide the notice to the borrower within a reasonable time before closing the loan transaction (the Federal Reserve Board has told banks that ten days is reasonable). In any case, the notice must be given no later than when the credit union provides similar notices regarding hazard insurance and taxes. As soon as possible after notice is given to the borrower, it must also be given to the servicer.

The credit union must keep a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

FEMA Review of Determinations (NFIP § 524(e)(3))

FEMA accepts requests for reviews of flood hazard determinations. FEMA will only undertake such a review if it receives a joint request from the borrower and the lender. The request must be submitted within 45 days of the credit union's notice that flood insurance is required because a property is in a special flood hazard area. There is a fee for the review. This should not be considered a finance charge under Truth in Lending, since the credit union does not require the review.

The Notice of Special Flood Hazards advises borrowers of their ability to obtain the FEMA review and instructs them to contact the credit union for details. If a review is requested, flood insurance is still required in the interim. It may be cancelled if FEMA determines the property is not in a flood zone.

NOTICE OF SERVICER'S IDENTITY (§ 760.10)

When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located in a special flood hazard area, it must notify the flood insurance provider (as the designee of the Administrator of FEMA), in writing, of the identity of the servicer. This applies even if the credit union itself serves as the servicer.

The credit union must also notify the insurance provider of any later change in the servicer of a loan within 60 days after the effective date.

The delivery of a copy of a RESPA Notice of Transfer or any other form is sufficient notice of a change in servicer if the credit union includes, on or with the notice, the following information:

- Borrower's full name;
- Flood insurance policy number;
- Property address (including city and state);

- Name of servicer making notification;
- Name and address of new servicer; and
- Name and telephone number of contact person at new servicer.

The merger or consolidation of a servicing credit union is treated as a change in servicer if it is not the surviving credit union. If the acquired credit union did not provide the change of servicer notice, the new servicing credit union must do so.

REQUIRED PURCHASE OF FLOOD INSURANCE (§ 760.03)

As described earlier, a credit union may not make, increase, extend or renew any "designated loan" in a special flood hazard area unless the collateral is covered by flood insurance for the term of the loan. However, this requirement does not apply to certain small loans or to detached structures. Thus, the loan or rewrite may not be closed without the insurance being in force.

When insurance is required, the amount must be at least equal to the outstanding principal loan balance, subject to the maximum coverage available. Flood insurance coverage is limited to the value of the secured property, less the value of the land.

FEMA's "Mandatory Purchase of Flood Insurance Guidelines" points out that although the law at a minimum requires the lender's interest to be protected by flood insurance, such a policy may not be enough to protect the full equity amount held in the property by the mortgagor in the event of a loss.

Suppose a credit union determines that, a \$15,000 home equity loan will be secured by property in a 100-year flood zone. Also, assume that the bank holding a first mortgage with a balance of \$40,000 had never required flood insurance. If the credit union requires a policy for only \$15,000, it will be unprotected.

In case of a claim, the \$15,000 would be paid to the first mortgage holder, not the credit union. FEMA suggests that junior lienholders notify senior lienholders of required flood insurance. "At that time, both lenders can request the borrowers to purchase one flood insurance policy for the amount required for both mortgages and list both lenders on the policy."

Lenders are sometimes confronted with a situation where a building is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building. In this situation, the law does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even though the value of the land would provide more than adequate security for the loan, without taking into account the value of the building on the land. If the land has a building on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest. The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required flood insurance coverage is the lesser of the principal balance of the loan(s) or the maximum coverage available under the NFIP.

Accepting private flood insurance (§760.3(c))

As of July 1, 2019, NCUA rules say that credit unions must accept private flood insurance when flood insurance is required – so long as the insurance meets certain standards.

The rules also permit credit unions to make the risk-based decision to accept private flood insurance policies that do not satisfy the standards for mandatory acceptance, if they at least meet certain minimum criteria.

Mandatory acceptance of private flood insurance

To satisfy flood insurance requirements, credit unions (and other lender) must accept "private flood insurance" if the policy meets the NFIP's insurance standards. To meet the definition of "private flood insurance," the policy must satisfy seven standards:

- It is issued by an insurance company or surplus lines insurer that is approved to engage in the business of insurance by the insurance regulator of that state or jurisdiction in which the property to be insured is located;
- It provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, (including consideration for deductibles, exclusions, and conditions offered by the insurer);
- It requires the insurer to provide 45 days advanced written notice before cancellation or non-renewal of flood insurance coverage to the insured and the financial institution, or a servicer acting on the institution's behalf;

- It includes information about the availability of flood insurance coverage under the NFIP;
- It includes a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP;
- It includes a provision requiring the member to file suit within one year after the date of a written denial for all or part of an insurance claim; and
- It contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy.

Credit unions would need to fully review and understand the terms of the private insurance policy to determine if it meets these standards. That would be burdensome, so the rules provide an easier option. A credit union can assume that policy meets all of the listed standards if the following “compliance aid” statement is included within the policy or as an endorsement to the policy: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.” A credit union can simply rely on the statement, without independently assessing the policy.

However, the rule does not require insurance companies to include such a statement in a private policy, and a credit union cannot reject a private policy simply because the statement is not provided.

Discretionary acceptance of private flood insurance

While credit unions are required to accept private flood insurance that meets the standards outlined in the previous section, the NCUA rules include a discretionary acceptance provision. It permits credit unions to make the risk-based decision to accept private flood insurance policies that do not satisfy all of the standards for mandatory acceptance, if the policies at least meet these four minimum criteria:

1. The policy must provide coverage in the amount required by the flood insurance purchase requirement.
2. The policy must be 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.
3. The policy must cover both the mortgagor(s) and the mortgagee(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.
4. The policy must provide “sufficient protection” of the designated loan, consistent with general safety and soundness principles, and the credit union must document its conclusions about the sufficiency of that protection in writing. To determine if a private flood insurance policy provides “sufficient protection” for a loan, credit unions can consider any of the following aspects of the policy:
 - o The extent to which the policy’s deductibles are reasonable based on the borrower’s financial condition;
 - o Whether the insurer provides adequate notice of cancellation of the policy;
 - o The adequacy of policy limits per occurrence or per loss;
 - o The insurer’s financial solvency, strength and ability to satisfy claims; and
 - o Any applicable state insurance laws.

Mutual aid societies

A credit union can accept a plan issued by a mutual aid society – such as Amish Aid Plans – to satisfy the requirement for flood insurance but only if the NCUA has determined that such plans qualify as flood insurance. In addition, a plan must satisfy minimum criteria for discretionary acceptance in the previous subsection of this release (except #2 in that list).

A “mutual aid society” is defined as an organization:

- Whose members share a common religious, charitable, educational, or fraternal 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; and
- That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

Exemptions (§760.4)

Certain types of loans and certain types of collateral are exempt from the requirement to purchase flood insurance.

Small loan exception: If the original principal balance of the loan is \$5,000 or less *and* has a repayment term of one year or less, the loan is not covered. The loan must meet both prongs of this test, so exemptions are uncommon.

Detached structure exception: Flood insurance is not required for “a structure that is part of a residential property” but is “detached” from the primary residence and does not “serve as a residence.” The rules explain what each of the quoted terms means:

- “A structure that is a part of a residential property” means a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes.
- A structure is “detached” from the primary residential structure if it is not joined to it by any structural connection.
- Whether a building “serves as a residence” is based upon the good faith determination of the credit union that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

A credit union may choose to require flood insurance on a detached structure, even though it may not be legally required, to protect the lender’s and borrower’s collateral securing the loan. A relatively low-value detached structure, such as a detached garage, is excluded from the mandatory flood insurance purchase requirement if it secures a designated loan. However, the NCUA has pointed that “there may be some detached structures that are of relatively high value, such as a detached greenhouse. ... Although the statute does not require flood insurance for such structures, as a matter of safety and soundness, lenders may nevertheless require coverage on these detached structures, and that such coverage also may be in the borrower’s best interest.”

State-owned property exemption. If the property securing the loan is state-owned and covered by adequate policies of self-insurance, flood insurance is not required. A list of states with adequate self-insurance programs can be found at [44 CFR §75.14](#) and does not include Wisconsin.

FORCED PLACEMENT OF FLOOD INSURANCE (§ 760.7)

If a credit union determines at any time during the term of the loan that insurance has lapsed or that the covered property is insured for less than the amount required, it must notify the borrowers that they must obtain flood insurance:

- At their own expense;
- In an amount at least equal to that required by law (see *Amount of Insurance* above); and
- For the remaining term of the loan.

If the borrower does not buy the flood insurance within 45 days after notification, the credit union must purchase the required insurance on the borrower’s behalf.

The 45-day period does not override the requirement to have insurance actually in force before making, increasing, extending or renewing any real estate or mobile home.

The credit union/servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance. The credit union has the authority to charge a borrower for the cost of flood insurance coverage beginning on the date on which the borrower’s flood insurance coverage lapsed (i.e., policy cancellation or expiration date) or became insufficient. This lets credit unions ensure continuous coverage on the property.

Termination of Force-Placed Insurance

NCUA Regulations §760.7(b) list the circumstances that require a lender or its servicer to terminate force-placed flood insurance coverage and refund payments to a borrower. Within 30 days of receipt by a credit union (or its servicer) of a confirmation of a borrower's existing flood insurance coverage, the credit union/servicer must:

- Notify the insurance provider to terminate any insurance purchased by the credit union/servicer; and
- Refund to the borrower all premiums paid by the borrower for any insurance purchased by the credit union or its servicer during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the credit union or its servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the credit union or its servicer during such period.

For purposes of confirming a borrower's existing flood insurance coverage, a credit union/servicer must accept from the borrower the insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

MANDATORY ESCROW FOR PREMIUMS (§ 760.5)

Prior to Jan. 1, 2016, the NCUA flood insurance rules said that if the credit union required the escrow of taxes, insurance premiums, or any other charges for residential real estate or mobile home loans, then it also had to require the escrow of all premiums and fees for any required flood insurance.

As of Jan. 1, 2016, the rules have been amended, as described in the remainder of this section.

Unless either 1) the credit union qualifies for a "small lender" exemption or 2) a particular loan is exempt, lenders/servicers must 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 on or after January 1, 2016.

Notice

The credit union/servicer is required to mail or deliver a written notice informing the borrower that it is required to escrow all premiums or fees associated with the required flood insurance. The notice must be provided with the Notice of Special Flood Hazards. See the model clause in Appendix A to the NCUA rules. The League's Notice of Special Flood Hazard form (WCUL #82010) has been updated to include this notice.

Loan-related exceptions

The flood insurance mandatory escrow requirement does not apply to certain types of loans:

- Loans primarily for business, commercial or agricultural purposes;
- Loans secured by junior liens if the borrower has obtained flood insurance;
- Loans for which flood insurance is provided by a condo associations, cooperative, homeowners association or similar group;
- Home equity lines of credit (HELOCs);
- Nonperforming loans; and
- Loans with a term of 12 months or less.

If a credit union determines at any time during the term of the loan that the exception no longer applies, the credit union must require the escrow of all premiums and fees for any flood insurance as soon as reasonably practicable, and if applicable, provide any required RESPA disclosures (such as the initial escrow statement). For information on RESPA notice requirements, see The League's *ii Release No. B014*.

Small lender exception

A credit union is not required to escrow flood insurance premiums if it meets three criteria:

1. The credit union has total assets of less than \$1 billion as of December 31 of either or the two prior calendar years;

2. On or before July 6, 2012, the credit union was not required under Federal or State law to deposit taxes, insurance premiums or fees, or any other changes in an escrow account for the entire term if any loan secured by residential improved real estate or a mobile home; and
3. On or before July 6, 2012, the credit union 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 for any loans secured by residential improved real estate or a mobile home.

HPML escrows & the small lender exception

Federal regulators have confirmed that a credit union can satisfy part 2 of the small lender exception test even if it has been required to establish escrow accounts for certain higher-priced mortgage loans (HPMLs).

As explained in The League's *ii Release No. B068*, federal rules say that with some exceptions (such as for "small creditors" serving primarily rural or underserved areas) lenders cannot make HPMLs secured by a first lien without requiring an escrow account for taxes, homeowners insurance and other insurance the credit union requires. However, the HPML rules allow those escrow accounts to be cancelled in certain circumstance. Specifically:

- Under the original HPML rules, which took effect in 2010, an HPML creditor could allow a consumer to cancel the escrow account no sooner than 12 months after consummation.
- The HPML rules were amended in June 2013 and now say that an HPML escrow may be canceled upon the earlier of either: 1) termination of the mortgage loan; or 2) when the credit union receives a request by the borrower to cancel the escrow account, no earlier than five years after closing.

In either case, HPML escrows are not necessarily required "for the entire term" of the loan, since they can be cancelled. A credit union satisfies part 2 of the NCUA flood insurance escrow rule's "small lender" exception test so long as it wasn't legally required to escrow "for the entire term" of a residential loan on or before July 6, 2012. Therefore, even if a CU has been legally required to escrow for first-lien HPMLs, it could still take advantage of the flood insurance exception – assuming it meets the other two parts of the test – because those HPML escrow accounts can be cancelled as soon as five years after loan closing.

Change in status

If a credit union no longer qualifies for the small lender exception because it had assets of \$1 billion or more for two consecutive calendar year ends, it must escrow premiums and fees for flood insurance for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

Option to escrow

For outstanding loans (as of Jan. 1, 2016) secured by residential improved real estate or a mobile home that require flood insurance, credit unions must offer a borrower the option to escrow flood insurance premiums and fees. They have until June 30, 2016 to mail or deliver information to borrowers about the option to escrow the flood insurance payments.

However, the option to escrow does not apply if:

- The loan qualifies for one of the loan-related exceptions from the general escrow requirement, explained earlier;
- The credit union qualifies for the "small lender" exception from the general escrow requirement, explained earlier;
- The borrower is already escrowing all premiums and fees for flood insurance; or
- The credit union is already required to escrow flood insurance premiums and fees.

If the option to escrow rule applies, the credit union/servicer must mail or deliver to the borrower no later than June 30, 2016, a notice in writing (or electronically if the borrower consents as required by the federal E-SIGN law) informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow. That notice must use language similar to the model clause in Appendix B of Part 760 to the NCUA rules. The League's Notice of Special Flood Hazard form (WCUL #82010) does not include this notice.

Change in status

If a credit union no longer qualifies for the small lender exception (because it had assets of \$1 billion or more as of Dec. 31 of either or the two prior calendar years), then it must provide the option to escrow notices no later than September 30 of the first calendar year in which the credit union has had a change in status.

Escrow account compliance

When escrow is required, the credit union/servicer must deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. RESPA and the CFPB's Reg. X generally limit the amount that may be maintained in escrow accounts for residential real estate loans, and they require special initial and annual escrow account statements to be provided. See *ii Release B014* for details.

Following receipt of a notice that flood insurance premiums are due, the credit union/servicer must pay the amount owed to the insurance provider from the escrow account by the date when the premiums are due.

As pointed out in *ii Release No. B047*, Wisconsin's state-chartered credit unions must generally pay interest (dividends) on required escrow accounts for first mortgage or equivalent lien loans originated prior to April 18, 2018. The rate is determined annually by the Wisconsin Department of Financial Institutions. The mandatory rate applies to escrows for flood insurance. Wis. Stats. § 138.052(5). However, the state escrow payment option provision of the statute does not apply to escrows of flood insurance premiums; it applies only to escrows for the payment of taxes.

MAP AMENDMENT AND REVISION

Because of limitations in flood plain mapping, small areas may be inadvertently shown within an SFHA on a FIRM even though the property is on natural ground and is at or above the elevation of the 1-percent-annual-chance flood. Such cases are referred to as "inadvertent inclusions."

For other small areas, earthen fill may have been placed during construction, elevating a small area so that it is above the flood plain.

FEMA has administrative procedures to change the designation for these properties on the FIRM. These processes are referred to as the Letter of Map Amendment, or LOMA, process and the Letter of Map Revision Based on Fill, or LOMR-F, process. Through these processes, someone who owns, rents, or leases property may submit certain mapping and survey information to FEMA and request that FEMA issue a document that officially removes a property and/or structure from the SFHA.

In most cases, the applicant will need to hire a Licensed Land Surveyor or Registered Professional Engineer to prepare an Elevation Certificate for the property. Upon receiving a complete application forms package, FEMA will normally complete its review and issue its determination in 4 to 6 weeks.

FEMA has prepared guidance documents to help people with their LOMA and LOMR-F applications and submittals:

- The MT-EZ Form is to be used for LOMA requests involving a single residential lot or structure.
- The MT-1 Forms package is to be used for LOMA requests involving multiple residential lots or structures and for all LOMR-F requests.

These documents are available via the FEMA website: www.fema.gov.

The issuance of a LOMA or LOMR-F eliminates the federal flood insurance purchase requirement as a condition of federal or federally backed financing; however, the credit union still can require flood insurance as a condition of providing financing, regardless of the location of a structure. The purchase of a flood insurance policy is wise even if a structure is located outside the SFHA.

RECORD RETENTION

Credit unions must retain the following for the period of time it owns a loan:

- Copies of completed Special Flood Hazard Determination form; (§ 760.6(b)), and
- Records of receipt of Notices of Special Flood Hazards by borrowers and servicers. (§ 760.9(d)).

Records may be kept in the form of electronic or hard copies.

INTERAGENCY QUESTIONS AND ANSWERS REGARDING FLOOD INSURANCE

To help financial institutions meet their responsibilities under flood insurance legislation and to increase public understanding of the flood insurance regulation, the federal regulatory agencies, including the NCUA, have issued Interagency Questions and Answers Regarding Flood Insurance. [Click here for the 2022 updated Q&As.](#)

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

© 2021 Wisconsin Credit Union League