



FEDERAL BANKING AGENCIES ISSUE FINAL QUESTIONS AND ANSWERS ON FLOOD INSURANCE



The banking regulatory Agencies jointly issued Questions and Answers Regarding Flood Insurance (Q&As) on federal flood insurance law and the Agencies' implementing regulations. These Q&As replace those originally published by the Agencies in 2009 and 2011 and consolidate Q&As proposed by the Agencies in 2020 and 2021. The revised Q&As reflect significant changes to the flood insurance requirements made by federal law in recent years including escrow of flood insurance premiums, force-placement of flood insurance, the detached structure exemption, private flood insurance, flood zone discrepancies, and commercial condo units.

For ease of reference and considering the increased number of subjects covered, the Agencies reorganized the Q&As to provide a more logical flow of questions through the flood insurance process for lenders, servicers, and policyholders.

In addition, the Agencies have confirmed that the issuance of the Q&As are for a lender's guidance only and would be included in the scope of the [Interagency Statement Clarifying the Role of Supervisory Guidance](#). However, it's important to note that where a Q&A is providing interpretation to statute and/or implementing regulations, lenders should assess any variance in its actual practices from Agencies' interpretations to effect

reduced compliance risks such as the potential citation of violations and, if systemic, mandatory penalties.

Overall, the Agencies have adopted the majority of the Q&As as proposed except for adding three new Q&As (Applicability 13, Amount 10, and Condo and Co-op 9) and clarifying certain other Q&As to better address lender questions. Below are summaries of the three new Q&As and all Force Placed Insurance Q&As. You may refer to actual Q&As at [Interagency Flood Insurance Q&As](#) beginning on page 155.

New Flood Questions and Answers

Applicability 13: This Q&A provides lenders with a quick reference of what constitutes a triggering event under the Regulation. More specifically, a triggering event occurs when a designated loan is made, increased, extended, or renewed. If a triggering event occurs with respect to a designated loan, the lender is required to comply with certain requirements of the Regulation, including the mandatory flood insurance purchase requirement, the requirement to provide the Notice of Special Flood Hazards to the borrower, the requirement to notify the Administrator of FEMA or the Administrator's designee (the insurance provider) in writing of the identity of the servicer of the loan, and the requirement to escrow for a loan secured by residential property, unless either the lender or the loan qualifies for an exception.





Examples of events that are NOT considered triggering events:

- Purchase of a loan from another lender;
- Loan restructuring or modification that does not increase the amount of the loan nor extend or renew the terms of the loan;
- Assumption of the loan by another borrower;
- Remapping of a building securing the loan into a SFHA;
- Acquisition by a lender of an interest in a loan either by participation or syndication;
- Cashless roll;
- Certain automatic extensions of credit; and
- Certain treatments of force placement premiums and fees.

Amount 10: This Q&A addresses the acceptability of a blanket flood insurance policy or blanket multi-peril policy that includes a deductible that may be higher than the insurable value of any individual building covered by the policy. The lender may accept a blanket flood insurance policy or blanket multi-peril policy that includes a per-occurrence deductible, regardless of whether any building covered by the policy has an insurable value lower than the amount of the deductible. The lender may not allow the borrower to use a deductible amount equal to the aggregate insurable value of the property to avoid the mandatory purchase requirement. Agencies also provide that the lender should determine the reasonableness of the deductible on a case-by-case basis, considering the risk that such deductible would pose to the borrower and the lender.

Condo and Co-op 9: Agencies clarify the flood insurance requirements for non-residential condominium units as well as residential condominium units located in a non-residential condominium building. The answer provides that coverage is NOT available under the NFIP for an individual residential condominium unit, or a non-residential condominium unit located in a non-residential condominium building. The Q&A also provides that NFIP coverage is not available for a non-residential condominium unit located in a residential condominium building. Therefore, a loan secured by one of these types of units is NOT a designated loan under the Regulation, and the mandatory flood insurance requirement does NOT apply.

Flood Force Placed Insurance Q&As

The following are summaries of the force placed insurance Q&A.

Force Placement 1: This Q&A states that a lender must begin force placement procedures when it determines that the collateral securing the loan is uninsured or underinsured.



More specifically, the Act and the Regulation provide that if a lender or servicer determines at any time during the term of the designated loan that a building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required by Regulation, the lender or servicer must notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the Regulation. If the borrower does not obtain adequate flood insurance coverage within 45 days of the lender's notification to the borrower, the lender must purchase flood insurance on the borrower's behalf. The Agencies point out that while the amount of flood insurance is not required to be in the force placed notice, they continue to believe this information may be helpful to borrowers to the extent a lender chooses to include it.

Force Placement 2: This Q&A clarifies that a lender must provide a force placement notice to a borrower when the lender makes a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required by Regulation. The Agencies also indicate that if there is a brief delay in providing the notice, they expect the lender or servicer to provide a reasonable explanation for the delay such as using batch processing to send the force placement notice to its borrowers.

Force Placement 3: The Agencies confirmed that a servicer could force-place flood insurance on behalf of a lender.

Force Placement 4: This Q&A discusses whether a lender can satisfy its notice requirement by sending the force placement notice to the borrower prior to expiration of the flood insurance policy. The Agencies have confirmed that force placement notice is satisfied and sent when the lender determines that flood insurance policy has lapsed or is insufficient. Therefore, a lender CANNOT satisfy its



notice requirement by sending the force placement notice to the borrower **prior** to expiration of the flood insurance policy. It's important to note that a force placement notice is not required until a lender or servicer makes a determination that a designated loan is uninsured or underinsured.

Force Placement 5: This Q&A addresses when a lender must have flood insurance in place if the borrower has not obtained adequate insurance within 45 days of notification. Force placement should be in place as soon as possible after the 45-day notice period. Agencies expect the lender to provide a reasonable explanation for the brief delay of force placing insurance following the 45-day notice such as the lender using batch processing to purchase force-placed flood insurance.

Force Placement 6: This Q&A clarifies that once a lender makes a determination that a designated loan has insufficient or no flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after the original notice, the lender must purchase coverage on the borrower's behalf and may not extend the period for obtaining force-placement coverage by sending another force placement notice during that time. Lenders should NOT restart force placement notice when/if the flood insurance exposure type changes during the notice cycle.

Force Placement 7: This Q&A addresses when a force-placed policy should begin to provide coverage after an existing policy expires. The Agencies include an example that provides if a policy expires at 12:01 a.m. on a certain day, the new policy should be effective as of 12:01 a.m. of the same day.

Force Placement 8: The Agencies clarify that when using the outstanding principal balance as the required coverage amount for flood insurance, if the lender capitalizes force placed flood insurance premium and fees into the outstanding principal balance, the force placed insurance should be issued for a sufficient amount to cover the anticipated higher outstanding principal balance, including the force-placed policy premium and fees.

Force Placement 9: This Q&A provides guidance as to when a lender or service charges the borrower for the cost of the force-placed insurance. The Agencies clarify that a borrower may be charged for force-placed insurance from the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. They further clarify that backdating flood insurance coverage to the lapse date or to the date on which flood insurance coverage did not provide sufficient coverage amount is acceptable provided that the force-placed insurance policy coverage provides coverage



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Professor and Director, Econometric Center Economics, Finance & Quantitative Analysis, Kennesaw State University



for the backdated period. The Agencies caution that a lender's frequent need to backdate coverage may, depending on upon the facts and circumstances, indicate that there are weaknesses within the lender's or servicer's compliance management system.

Force Placement 10: The Agencies clarify the treatment of force-placed flood insurance premiums and fees and whether these premium and fees are triggering events requiring additional flood insurance requirements depending on the method the lender chooses for charging the borrower. Various methods that a lender might use to charge a borrower for force-placed flood insurance are: 1) capitalizing the premium and fees into the outstanding principal balance; 2) adding the premium and fees to a separate account; 3) advancing funds from the escrow account; and 4) billing the borrower directly for the premium and fees. The only method that would be considered a triggering event is if the lender capitalizes the premium and fees into the outstanding principal balance when the lender's loan contract with the borrower does NOT include a provision permitting the lender or servicer to advance funds to pay for the flood insurance premiums and fees as additional debt to be secured by the building or mobile home. If, however, the lender's contract with the borrower does provide an explicit provision allowing the advancement of funds for force-placed flood insurance, the additional debt is NOT considered a triggering event. All other aforementioned methods of charging the borrower for force-placed flood insurance premiums and fees are NOT considered triggering events.

Force Placement 11: This Q&A clarifies documentation requirements needed to refund force-placed flood insurance premiums paid by the borrower. Agencies clarify that an insurance policy declaration page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent meets the documentation requirements of the Regulation for refunding force-placed flood insurance premiums. They further opined, that in situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does NOT specify what documentation would be sufficient.

Force Placement 12: This Q&A clarifies that regardless of whether the lender has received a refund from the force-placed flood insurance provider, borrowers must be refunded for any overlap of borrower insurance with force-placed flood insurance within 30 days of receiving an adequate flood insurance policy.

Force Placement 13: Agencies confirm that a lender may rely on force-placed insurance to satisfy the mandatory flood insurance purchase requirement if the borrower does not purchase his or her own policy including when making, increasing, extending, or renewing any designated loan. The regulators indicate that lenders should encourage borrowers to purchase his or her own policy, which may be available for a lower premium amount.

Force Placement 14: This Q&A clarifies that a force-placed flood insurance notice is not required prior to the expiration of force-placed flood insurance. The Agencies indicate that a lender, at its discretion, may notify the borrower that the lender is planning to renew or has renewed the force-placed policy. A force-placed insurance notice is only required when there is a lapse in flood insurance and/or when the flood insurance is insufficient in amount.

Force Placement 15: The Agencies explain that the Act or Regulation does not explicitly require lenders to monitor flood insurance over the life of the loan; however, for purposes of safety and soundness and completing the force placement of flood insurance timely upon lapse of a policy, monitoring helps ensure continuous coverage to protect both the borrower and the lender.

Force Placement 16: This final force-placement Q&A specifies that a lender should begin the notice of force placement when it determines at any time during the term of the designated loan, that a building or mobile home and any personal property securing a loan is uninsured or underinsured. For properties that were once not in a SFHA that are remapped into a SFHA, the loan becomes a designated subject to flood insurance as of the date the map changed. The Agencies further state that if the lender receives advance notice that a property will be remapped into a SFHA, the effective date of the remapping becomes the date on which the lender or its servicer must determine whether the property is covered by sufficient flood insurance. The Agencies further explain that if the lender or its servicer receives notice after a property has been remapped into a SFHA, then the lender or its service must determine whether the property securing the loan is covered by sufficient insurance and begin the force placement process if applicable.

Should you have questions related to any number of the Q&As, please reach out to your Client Services Manager to schedule a call.