

Action Training

Sandbags to Strengthen Your Flood Insurance Program

by Patti Blenden

The Agencies' July 2015 final rule implements and clarifies three important provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) and the Biggert-Waters Flood

Insurance Reform Act of 2012 (BW-12). Institutions remain prohibited from **M**aking, **I**ncreasing, **R**enewing, or **E**xtending (MIRE) any designated loan unless the building or permanently attached mobile home and any

personal property collateral is covered by sufficient flood insurance for the loan term. These triggering events (MIRE) activate critical bank and servicer responsibilities.

Exempt Detached Nonresidential Structures Effective March 21, 2014 (HFIAA)

Exemption Option	In addition to existing mandatory purchase exemptions, the final rule clarified this flood insurance purchase exemption is only for a completely detached "structure that is part of a residential property" and is not currently used or intended to be used as a residence. Lenders or servicers are not forced to exclude detached structures, but are given the choice.
Covered Loans: Consumer and Business	This discretionary exclusion applies to both consumer and business purpose loans secured by a primarily residential property. The Agencies acknowledge that the purpose of a loan may be immaterial to the borrower when using his or her residence to secure a loan.
Clarification	No requirement to monitor for changes in residential use in between MIRE events.

Flood Insurance Force-Placement Effective July 6, 2012 (BW-12)

Designated Loans	Loans secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available.
Clarification	The lender or servicer may charge borrowers for force-placement insurance coverage from the date the borrower's policy lapsed or was insufficient. The full premium cannot be collected from the borrower until after 45-day notice period expiration.
Borrower's Proof of Coverage	Lender or servicer must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and identity of, and contact information for the insurance company or its agent.

Mandatory Escrow of Certain Designated Loans Effective January 1, 2016 (HFIAA)

New Loans	Beginning 1/1/16, a MIRE event triggers the requirement to escrow flood insurance premiums and fees secured by residential improved real estate or mobile homes, unless an exemption based on lender's asset size or loan type applies.
Existing Loans	For existing designated loans as of 1/1/16, banks must notify the borrowers of his or her right to request optional escrow of the loan's flood insurance premiums by 6/30/16.
Small Lender/Servicer Exemption	Lenders with assets less than \$1 billion as of December 31 of either of the 2 prior calendar years are exempt from mandatory escrow if the bank was not required to escrow on or before 7/6/12, and didn't regularly require escrow as a general policy. If the bank's asset size crosses the threshold, the regulation allows six months to begin mandatory escrow.
Mandatory Escrow Loan Exemptions	Loans primarily for business, commercial or agricultural purposes: The Agencies stated they rely on TILA's Regulation Z (§1026.3(a)) to determine consumer purpose.
	Loans secured by subordinate liens if the borrower has flood insurance: HFIAA explicitly states this is only available for subordinate loans secured by flood-insured property. As noted in Q&A 36, lenders must ensure sufficient flood insurance coverage for the combined transactions when they MIRE a subordinate lien loan. Monitor for change in lien position and begin escrow when this lien becomes a first lien.
	Loans for which flood insurance is collectively provided by a condo associations, cooperative, homeowners association or similar group: The policy for a collateral property must be sufficient in amount for the transaction and the premium paid by the group as a common expense. If not, a separate policy may be required to cover the deficiency for your loan's individual condo unit.
	Home equity lines of credit (HELOC): Refer to Reg Z for open-end credit definitions.
	Nonperforming loans: The Agencies clarified that a nonperforming loan is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire past due amount is collected or otherwise discharged in full.
	Loans with a repayment term of 12 months or less: The regs permit the exception to apply to extended or renewed loan if the extended or renewed term is 12 months or less.