

Good Things Come to Those Who Wait: Interagency Proposed Flood Q&As

The Agencies (OCC, FRB, FDIC, FCA and NCUA) have recently [proposed](#) revisions to the Interagency Questions and Answers Regarding Flood Insurance. The purpose of this proposal is to supplement the [July 2020](#) proposed Q&As which only contained two proposed questions on private flood insurance. These new proposed Q&As are formulated based off questions received by the Agencies regarding private flood insurance rules that went into effect July 1, 2019 and include 24 proposed Q&As on private flood insurance.

In attempts to provide additional clarify on requirements, the proposed Q&As use the term “Act” in reference to the National Flood Insurance Act of 1968 (NFIA) and the Flood Disaster Protection Act of 1973 (FDPA), as well as “Regulation,” to refer to each Agency’s current flood insurance rule.

The new proposed Q&As are divided into three main categories regarding private flood insurance:

1. Mandatory Acceptance (9 proposed Q&As)
2. Discretionary Acceptance (4 proposed Q&As)
3. General Compliance (11 proposed Q&As)

So, what does this mean for financial institutions?

Mandatory Acceptance Key Takeaways

Anytime renewals, or when a borrower presents a new private flood insurance policy regardless of whether a MIRE event occurred (making, increasing, renewing, or extending of a loan), the lender is required to review the policy to determine if it meets the mandatory purchase criteria. If it does not, the lender may still accept the policy if it meets the discretionary acceptance criteria. If a lender has a policy to not originate mortgage loans in nonparticipating communities or coastal barrier regions where NFIP is not available, private flood insurance requirements are not going to require the lender to change its policy.

Lenders are not required to accept private flood insurance policies solely because the policy contains the compliance aid assurance clause when the lender reviews it and determines the policy actually does not meet the mandatory acceptance requirements. But that does not alleviate the lender from reviewing a policy that does not contain the compliance aid assurance clause to determine whether it meets the requirements for private flood insurance before rejecting the policy. The policy must contain the compliance aid assurance clause language in the policy or an addendum before the bank accepts without conducting a review. Even if that is true, the lender must still ensure that the coverage is at least equal to the lesser of the outstanding principal balance of the loan or the maximum amount of the coverage available under the Act for the type of property and that other key aspects of the policy are accurate, like the borrower’s name and address.

Lastly, if a policy lacks the compliance aid assurance clause, the lender is still free to review the policy to determine if it meets the criteria under discretionary acceptance from the Regulation. But it must still determine, even if the policy does not meet the requirement for discretionary acceptance, whether they are still required to accept under mandatory acceptance.

Discretionary Acceptance Key Takeaways

Under the discretionary acceptance test, lenders must evaluate the sufficiency of the insurer's solvency, strength, and ability to satisfy claims under general safety and soundness principles. They may obtain information from a State insurance regulator for the State in which the property is located and rely on licensing and other processes used by the State insurance regulator for such an evaluation.

Additionally, if a lender has previously accepted a private flood insurance policy under the discretionary acceptance requirements and that policy is renewed, the lender still must review the policy to ensure it continues to meet the discretionary acceptance requirements. A conclusion to this fact must be documented in writing.

General Compliance Key Takeaways

There are additional requirements when it comes to mandatory acceptance or discretionary acceptance and deductibles when it comes to coverage amounts exceeding or not exceeding the amount available under the NFIP. Additionally, lenders are not prohibited when using a third party to review private flood insurance policies from charging a fee to the borrower. Disclosure requirements regarding the fee do come into play, however.

If a declarations page provides enough information for the lender to make a determine on mandatory or discretionary acceptance, or if the declarations page contains the compliance aid assurance clause, lenders are free to rely on the declarations page to determine if the policy complies with the Regulation but should request additional information about the policy if not able to make that determination. Lastly, servicers must comply with the Regulation as well when determining whether private flood insurance may be accepted under the mandatory or discretionary acceptance provisions if the lender is supervised by the Agencies.

Comments for these new proposals are due May 17, 2021.

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