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FDIC Law, Regulations, Related Acts

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6500 - FDIC Consumer Protection

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FLOOD DISASTER PROTECTION ACT OF 1973

AN ACT

To expand the national flood insurance program by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Flood Disaster Protection Act of 1973".

[Codified to 42 U.S.C. 4002 note]

[Source: Section 1 of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 975), effective December 31, 1973]

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

- (1) substantially increase the limits of coverage authorized under the national flood insurance program;
- (2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;
- (3) require State or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and
- (4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

[Codified to 42 U.S.C. 4002]

[Source: Section 2 of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 975), effective December 31, 1973]

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DEFINITIONS

SEC. 3. (a) As used in this Act, unless the context otherwise requires, the term—

- (1) "community" means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;
 - (2) "Federal agency" means any department, agency, corporation, or other entity instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;
 - (3) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;
 - (4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood);
 - (5) "Federal entity for lending regulation" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;
 - (6) "Director" means the Director of the Federal Emergency Management Agency; and
 - (7) "Federal agency lender" means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;
 - (8) the term "improved real estate" means real estate upon which a building is located;
 - (9) "lender" means a regulated lending institution or Federal agency lender;
 - (10) "regulated lending institution" means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and
 - (11) "servicer" means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.
- (b) The Director is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

[Codified to 42 U.S.C. 4003]

[Source: Section 3 of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 976), effective December 31, 1973, as amended by section 703(b) of title VII of the Act of October 12, 1977 (Pub. L. No. 95-128; 91 Stat. 1145), effective October 12, 1977; section 451(e) of title IV of the Act of November 30, 1983 (Pub. L. No. 98-181; 97 Stat. 1229), effective November 30, 1983; section 511(a) of title V of the Act of September 23, 1994 (Pub. L. No. 103-325; 108 Stat. 2255), effective September 23, 1994]

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REQUIREMENT TO PURCHASE FLOOD INSURANCE

SEC. 102. (a) After the expiration of sixty days following the date of enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) REQUIREMENT FOR MORTGAGE LOANS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

(2) FEDERAL AGENCY LENDERS.—A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) GOVERNMENT-SPONSORED ENTERPRISES FOR HOUSING.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is—

(A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

(B) purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

(4) APPLICABILITY.—

(A) EXISTING COVERAGE.—Except as provided in subparagraph (B), paragraph (1) shall apply on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(B) NEW COVERAGE.—Paragraphs (2) and (3) shall apply only with respect to any loan made,

increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994. Paragraph (1) shall apply with respect to any loan made, ~~{{(8-31-00 p.7498.02)}}~~ increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

(C) CONTINUED EFFECT OF REGULATIONS.—Notwithstanding any other provision of this subsection, the regulations to carry out paragraph (1), as in effect immediately before the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of such Act take effect.

(c) EXCEPTIONS TO PURCHASE REQUIREMENTS.—

(1) STATE-OWNED PROPERTY.—Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

(2) SMALL LOANS.—Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having—

(A) an original outstanding principal balance of \$5,000 or less; and

(B) a repayment term of 1 year or less.

(d) ESCROW OF FLOOD INSURANCE PAYMENTS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

(2) FEDERAL AGENCY LENDERS.—Each Federal agency lender shall by regulation require and provide for escrow and payment of any flood insurance premiums and fees relating to residential improved real estate and mobile homes securing loans made by the Federal agency lender under the circumstances and in the manner provided under paragraph (1). Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) APPLICABILITY OF RESPA.—Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.

(4) DEFINITION.—For purposes of this subsection, the term "residential improved real estate" means improved real estate for which the improvement is a residential building.

(5) APPLICABILITY.—This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(e) PLACEMENT OF FLOOD INSURANCE BY LENDER.—

(1) Notification to borrower of lack of coverage.—If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to ~~{{(8-31-00 p.7498.03)}}~~ paragraph (1), (2), or (3) of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

(2) PURCHASE OF COVERAGE ON BEHALF OF BORROWER.—If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

(3) Review of determination regarding required purchase.—

(A) **IN GENERAL.**—The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.

(B) **EFFECT OF DETERMINATION.**—Any person to whom a borrower provides a letter issued by the Director pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) **EFFECT OF FAILURE TO RESPOND.**—If a request under subparagraph (A) is made in connection with the origination of a loan and the Director fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

(4) **APPLICABILITY.**—This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(f) **Civil Monetary Penalties for Failure To Require Flood Insurance or Notify.**—

(1) **Civil monetary penalties against regulated lenders.**—Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).

(2) **LENDER VIOLATIONS.**—The violations referred to in paragraph (1) shall include—

(A) making, increasing, extending, or renewing loans in violation of—

(i) the regulations issued pursuant to subsection (b) of this section;

(ii) the escrow requirements under subsection (d) of this section; or

(iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968; or

(B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

(3) **CIVIL MONETARY PENALTIES AGAINST GSE'S.**—

(A) **IN GENERAL.**—If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

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(B) **DEFINITION.**—For purposes of this subsection, the term "enterprise" means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) **NOTICE AND HEARING.**—A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

(5) **AMOUNT.**—A civil monetary penalty under this subsection may not exceed \$350 for each violation under paragraph (2) or paragraph (3). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed \$100,000.

(6) **LENDER COMPLIANCE.**—Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b).

(7) **EFFECT OF TRANSFER ON LIABILITY.**—Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

(8) **DEPOSIT OF PENALTIES.**—Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 1367 of the National Flood Insurance Act of 1968.

(9) **ADDITIONAL PENALTIES.**—Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

(10) **STATUTE OF LIMITATIONS.**—No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

(g) **OTHER ACTIONS TO REMEDY PATTERN OF NONCOMPLIANCE.**—

(1) **Authority of federal entities for lending regulation.**—A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

(2) **DETERMINATION OF VIOLATIONS.**—A determination under this paragraph shall be a finding that—

(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968; and

(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f).

(h) **FEE FOR DETERMINING LOCATION.**—Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) **BORROWER FEE.**—The borrower under such a loan may be charged the fee, but only if the determination—

(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(B) is made pursuant to a revision or updating under section 1360(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360 that affects the area in which the improved real estate

{{8-31-00 p.7498.05}}or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or

(C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2).

(2) **PURCHASER OR TRANSFEREE FEE.**—The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

[Codified to 42 U.S.C. 4012a]

[Source: Section 102 of title I of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 978), effective December 31, 1973, as amended by section 451(e)(1) of title IV of the Act of November 30, 1983 (Pub. L. No. 98-181; 97 Stat. 1229), effective November 30, 1983; sections 522, 523, 524, 525, 526(b), and 582(c) of title V of the Act of September 23, 1994 (Pub. L. No. 103-325; 108 Stat. 2257, 2258, 2259, 2260, 2262, and 2287, respectively), effective September 23, 1994]

EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM

SEC. 202. (a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) In addition to the requirements of section 1364 of the National Flood Insurance Act of 1968, each Federal entity for lending regulation shall by regulation require the regulated lending institutions described in such section, and each Federal agency lender shall issue regulations requiring the Federal agency lender, described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property.

[Codified to 42 U.S.C. 4106]

[Source: Section 202 of title II of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 982), effective December 31, 1973, as amended by section 303 of title III of the Act of July 2, 1975 (Pub. L. No. 94-50; 89 Stat. 256), effective July 2, 1975; the Act of December 31, 1975 (Pub. L. No. 94-198; 89 Stat. 1116), effective December 31, 1975; section 14(a) of the Act of August 3, 1976 (Pub. L. No. 94-375; 90 Stat. 1075), effective August 3, 1976; section 703(a) of title VII of the Act of October 12, 1977 (Pub. L. No. 95-128; 91 Stat. 1144), effective October 12, 1977; section 451(e)(1) of title IV of the Act of November 30, 1983 (Pub. L. No. 98-181; 97 Stat. 1229), effective November 30, 1983; sections 411(a) and 413(a)(2) of title IV of the Act of September 23, 1994 (Pub. L. No. 103-325; 108 Stat. 2253 and 2254), effective September 23, 1994]

AUTHORITY TO ISSUE REGULATIONS

SEC. 205. (a) The Director is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Director, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

[Codified to 42 U.S.C. 4128]

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[Source: Section 205 of title II of the Act of December 31, 1973 (Pub. L. No. 93-234; 87 Stat. 983), effective December 31, 1973, as amended by section 451(e)(1) of title IV of the Act of November 30, 1983 (Pub. L. No. 98-181; 97 Stat. 1229), effective November 30, 1983]

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