

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with
Loans Secured by Real Estate Located in Flood Hazard Areas
Pursuant to Section 208.25 of Regulation H (FR H-2; OMB No. 7100-0280)**

*Loans in Areas Having Special Flood Hazards
(Docket No. R-1498) (RIN 7100 AE22)*

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H (FR H-2; OMB 7100-0280). In general, the federal flood insurance statutes and Regulation H - Membership of State Banking Institutions in the Federal Reserve System (12 CFR 208) provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the secured property is covered by flood insurance for the term of the loan. With respect to the recordkeeping and disclosure provisions, the regulation requires state member banks to:

- retain a completed copy of the [Standard Flood Hazard Determination Form](#) developed by the Federal Emergency Management Agency (standard FEMA form). The form is used by lenders to document their determination of whether improved property securing a loan is in a special flood hazard area,
- notify a borrower and servicer when loans secured by improved property are determined to be in a special flood hazard area and retain a record of receipt of the notice,
- notify a borrower of a loan secured by residential improved property or a mobile home that the state member bank is required to escrow all premiums and fees for required flood insurance when the bank makes, increases, extends, or renews the loan. For loans secured by residential improved property or a mobile home that were outstanding on January 1, 2016, or July 1 of the first year in which the bank loses its exception from the escrow requirement, the state member bank must mail or deliver information on the option to escrow flood premiums and fees,
- notify a borrower of the borrower's obligation to obtain flood insurance if the lender determines at any time during the term of the loan that the improved property securing the loan is not covered by adequate flood insurance. If the borrower fails to obtain the flood insurance within 45 days of this notification, the state member bank or its servicer must purchase insurance and may charge the borrower for the cost of the premiums. If the state member bank receives confirmation of a borrower's existing flood insurance coverage after it has force placed insurance on behalf of the borrower, the bank or its servicer shall notify the insurance provider to terminate any insurance purchased by the bank or its servicer, and
- notify the Federal Emergency Management Agency (FEMA) of the identity of, and any change in, the servicer of a loan secured by improved property in a special flood hazard area.

The information collection requirements under the flood hazard provisions of Regulation H are triggered by specific events in the lending process.

The Office of the Comptroller of the Currency (OCC), the Board, the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the agencies) have amended their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). Specifically, the final rule¹ requires regulated lending institutions to accept policies that meet the statutory definition of “private flood insurance” in the Biggert-Waters Act and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of “private flood insurance,” subject to certain restrictions. The FR H-2 has been revised to add new recordkeeping requirements for the private flood insurance. The final rule is effective on July 1, 2019.

The estimated total annual burden for the FR H-2 is 30,575 hours. The proposed revisions would result in a net increase in burden of 3,976 hours.²

Background and Justification

Section 208.25 of Regulation H implements provisions of the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA), as amended by the National Flood Insurance Reform Act of 1994 (1994 Reform Act), the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act), and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA).

The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the National Flood Insurance Program (NFIP). A special flood hazard area is an area within a floodplain having a 1 percent or greater chance of flooding in any given year. These areas are delineated on maps FEMA issues for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its special flood hazard areas to eliminate or minimize future flood damage.

The FDPA amended the 1968 Act by requiring each federal agency responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions to issue regulations to implement its provisions. Under these regulations, lenders must require flood insurance on improved real estate or mobile homes serving as collateral for a loan if the property is located in a special flood hazard area in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify

¹ 84 FR 4953, February 20, 2019.

² While FEMA is responsible for accounting for the paperwork burden associated with lenders’ *completion* of the standard FEMA form, the Federal Reserve and other depository institution supervisory agencies account for the paperwork burden associated with the disclosure and recordkeeping requirements.

borrowers when loans are secured by property located in a special flood hazard area and whether federal disaster assistance is available in the event of a flood.

The 1994 Reform Act comprehensively revised the federal flood insurance statutes with the intention of increasing compliance with the flood insurance requirements and increasing participation in the NFIP. The revisions were designed to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the federal government, taxpayers, and flood victims. The 1994 Reform Act specifically required the federal financial regulatory agencies to amend their regulations³ and require lenders to:⁴

- use the standard form created by FEMA to determine whether property securing a loan is in a special flood hazard area,⁵
- notify a borrower of the borrower's obligation to obtain flood insurance if the lender determines at any time during the term of the loan that the improved property securing the loan is not covered by adequate flood insurance. If the borrower fails to obtain the flood insurance within 45 days of this notification, the state member bank or its servicer must purchase insurance and may charge the borrower for the cost of the premiums, and
- notify FEMA of the identity of, and any change in, the servicer of a loan.

Under the Biggert-Waters Act, the federal financial regulatory agencies were required to issue regulations requiring regulated lenders to accept private flood insurance satisfying the definition of "private flood insurance" in the statute.⁶ The agencies also were required to issue regulations providing for escrow of all premiums and fees for required flood insurance, but excepted certain small lenders from the escrow requirement.

The Biggert-Waters Act also directly amended the force placement provisions of the 1994 Reform Act by requiring lenders to terminate any force-placed insurance and refund to the borrower any force-placed insurance premiums and fees that were paid by the borrower while the borrower had their own flood insurance coverage in place within 30 days of receipt by the lender or servicer of confirmation of a borrower's existing flood insurance coverage.

HFIAA provided that the Biggert-Waters Act escrow provisions would apply to any loan that was originated, refinanced, increased, extended, or renewed on or after January 1, 2016.

³ The 1994 Reform Act was implemented through a joint final rule by the Board, OCC, FDIC, Office of Thrift Supervision (OTS), NCUA, and FCA.

⁴ Pursuant to Section 208.25(d) of Regulation H, the flood insurance requirement does not apply to (1) any state-owned property covered under a policy of self-insurance satisfactory to the director of FEMA, who publishes and periodically revises the list of states falling within this exemption, (2) property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less, and (3) any structure that is part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence.

⁵ Section 528 of the 1994 Reform Act directed FEMA to develop a standard form for determining whether a property is located in an area that FEMA has identified as one having special flood hazards and in which flood insurance under 44 CFR 65 is available. Section 528 also requires the Board and other regulatory agencies to require, by regulation, the use of the standard FEMA form. The Board adopted paragraph 208.25(f) of Regulation H to require state member banks to use and retain the standard form developed by FEMA when making their flood hazard area determination.

⁶ The federal financial regulatory agencies issued a proposal to implement the private flood insurance provisions of the Biggert-Waters Act in November 2016, but as of November 2018, a final rule had not yet been issued.

HFIAA also required that the federal financial regulatory agencies by regulation direct lenders to provide borrowers with the option to escrow. Finally, Congress broadened the exemptions to the escrow requirement to include several types of loans.

Description of Information Collection

The information collection requirements under the Regulation H flood insurance are as follows:

Recordkeeping Requirement - Standard flood hazard determination form (Section 208.25(f)(2))

Regulation H requires a state member bank to retain a copy of the completed FEMA standard flood hazard determination form. The records, which may be retained in hard copy or electronic form, must be kept for the entire period of time that the bank owns the loan.

Disclosure Requirement – Escrow requirement (Section 208.25(e))

When a state member bank makes, increases, extends, or renews a loan secured by residential improved real estate or a mobile home located or to be located in a special flood hazard area on or after January 1, 2016, Regulation H requires that the bank, or a servicer acting on its behalf, to escrow all premiums and fees for any required flood insurance, unless the lender or the loan is excepted from the escrow requirement. Except as may be required under applicable state law, a state member bank would not be required to escrow if it has total assets of less than \$1 billion and, as of July 6, 2012, was not required by Federal or State law to escrow taxes or insurance for the term of the loan and did not have a policy of uniformly and consistently escrowing taxes and insurance (the small lender exception). For any loan for which a state member bank is or may be required to escrow during the term of the loan, the state member bank, or its servicer, shall mail or deliver a written notice informing the borrower that the state member bank is required to escrow all premiums and fees for required flood insurance.

State member banks not excepted from the escrow requirement were also required to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that were outstanding as of January 1, 2016. State member banks were required to mail or deliver information to borrowers about the option to escrow by June 30, 2016. Regulation H also requires state member banks that no longer qualify for the small lender exception to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans outstanding on July 1 of the first calendar year in which they lose the exception by September 30 of that year. The option to escrow notice must be provided in writing, or if the borrower agrees, electronically.

Disclosure and Recordkeeping Requirement - Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))

When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, Regulation H

requires that the bank mail or deliver a written notice to the borrower and to the servicer in all cases, indicating whether flood insurance is available under the NFIP for the collateral securing the loan. Specifically, the contents of the notice must include:

- a warning that the building or mobile home is or will be located in a special flood hazard area,
- a description of the flood insurance purchase requirements,
- a statement, where applicable, that flood insurance coverage is available from private insurance companies that issues standard flood insurance policies on behalf of the NFIP or directly from the NFIP,
- a statement that flood insurance that provides the same level of coverage a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company,
- a statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent, and
- a statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower. The state member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

Disclosure Requirement - Notices to FEMA of servicer and change in servicer (Section 208.25(j)(1) and (2))

When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, Regulation H requires the bank to notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The regulation also requires a state member bank to notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan. (The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of servicer's identity.) These notices may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

Disclosure Requirement – Forced placement of flood insurance (Section 208.25(g))

When a state member bank determines, during the term of a loan secured by property located in a special flood hazard area, that the property is not adequately covered by flood insurance, the bank is required to notify the borrower that the borrower should obtain flood insurance at the borrower's expense. If the borrower fails to obtain flood insurance within 45 days after this notification, then the bank must purchase insurance on the borrower's behalf and

may charge the borrower for flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient.

Within 30 days of receipt by a state member bank, or a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the bank or its servicer shall notify the insurance provider to terminate any insurance purchased by the bank or its servicer and refund to the borrower all premiums paid by the borrower for any insurance purchased by the bank or servicer that overlaps with the borrower's insurance coverage.

Adopted Revisions

The agencies have amended their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Act. Specifically, the final rule requires regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of "private flood insurance," subject to certain restrictions. The final rule is effective on July 1, 2019.

Under section 208.25(c)(3)(iii), institutions have the discretion to accept a flood insurance policy issued by a private insurer that does not meet the definition of "private flood insurance" if, among other things, the policy provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Under section 208.25(c)(3)(iv), institutions may accept a private policy issued by a mutual aid society if, among other things, the coverage provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the institution has documented its conclusion regarding sufficiency of the protection of the loan in writing.

Time Schedule for Information Collection

The recordkeeping and disclosure requirements of Regulation H that are imposed on state member banks are triggered by specific events in the lending process. The records are maintained at the state member banks and are not provided to the Federal Reserve.

Legal Status

The FR H-2 is authorized pursuant to section 1364 of the 1968 Act (42 U.S.C. 4104a), section 102 of the FDPA (42 U.S.C. 4012a), as amended by the 1994 Reform Act, and sections 9 and 11 of the Federal Reserve Act (12 U.S.C. 321 and 248(i)). The recordkeeping and disclosure requirements of FR H-2 are mandatory.

Because the Federal Reserve will not collect this information, confidentiality issues would normally not arise. Because the records will be retained at banking organizations, the

Freedom of Information Act (FOIA) will only be implicated if the Board’s examiners retain a copy of the record as part of an examination or supervision of a banking institution. In that case, the records would be exempt from disclosure under exemption 8 to FOIA, which protects examination materials from disclosure (5 U.S.C. 552(b)(8)). Exemption 4 to FOIA, which protects confidential financial information, may also be applicable (5 U.S.C. § 552(b)(4)).

Consultation Outside the Agency

There has been no consultation outside the agency.

Public Comments

On November 7, 2016, the agencies published a joint notice of proposed rulemaking in the *Federal Register* (81 FR 78063) requesting public comment for 60 days on the extension, with revision, of the FR H-2. The comment period for this notice expired on January 6, 2017. The agencies received no comments on the Paperwork Reduction Act (PRA). On February 20, 2019, the agencies published a final rule in the *Federal Register* (84 FR 4953). The final rule is effective on July 1, 2019.

Estimate of Respondent Burden

The amounts in the following table reflect the burden estimated by the Federal Reserve System for the state member banks under its supervision. The estimated total annual burden for the FR H-2 is 30,575 hours. The proposed revisions would result in a net increase in burden of 3,976 hours. These recordkeeping and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

FR H-2	<i>Estimated number of respondents⁷</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Current Recordkeeping				
Retention of standard FEMA form (Section 208.25(f)(2))	794	404	2.5 minutes	13,366
Disclosure				
Notice of special flood hazards and availability of federal disaster relief assistance with escrow notice, as applicable (Sections 208.25(i) and (e), as applicable)	794	81	5 minutes	5,360
Notice to FEMA of servicer (Section 208.25(j)(1))	794	81	5 minutes	5,360

⁷ Of these respondents, 526 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets), www.sba.gov/document/support--table-size-standards.

Notice to FEMA of change of servicer (Section 208.25(j)(2))	794	41	5 minutes	2,713
Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g))	794	16	5 minutes	1,059
Purchase of flood insurance on the borrower's behalf (Section 208.25(g))	794	4	15 minutes	794
Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g))	794	8	5 minutes	529
Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g))	794	4	15 minutes	794
One-time notice for any designated loan outstanding on July 1 of the year SMB no longer qualifies for small lender exception (Section 208.25(e)(4))	15	1	40 hours	<u>600</u>
<i>Total</i>				30,575
Proposed Recordkeeping				
Private flood insurance (Sections 208.25(c)(3)(iii) and (iv)) ⁸	15,904	1	15 minutes	3,976
Retention of standard FEMA form (Section 208.25(f)(2))	794	404	2.5 minutes	13,366
Disclosure				
Notice of special flood hazards and availability of federal disaster relief assistance with escrow notice, as applicable (Sections 208.25(i) and (e), as applicable)	794	81	5 minutes	5,360
Notice to FEMA of servicer (Section 208.25(j)(1))	794	81	5 minutes	5,360
Notice to FEMA of change of servicer (Section 208.25(j)(2))	794	41	5 minutes	2,713
Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g))	794	16	5 minutes	1,059
Purchase of flood insurance on the borrower's behalf	794	4	15 minutes	794

⁸ Of 791 respondents, the Board is estimating 15,904 responses.

(Section 208.25(g)) Notice to borrowers of lapsed mandated flood insurance due to remapping	794	8	5 minutes	529
(Section 208.25(g)) Purchase of flood insurance on the borrower's behalf due to remapping	794	4	15 minutes	794
(Section 208.25(g)) One-time notice for any designated loan outstanding on July 1 of the year SMB no longer qualifies for small lender exception	15	1	40 hours	<u>600</u>
	<i>Total</i>			34,551
			<i>Change</i>	3,976

The estimated total annual cost to the public for this information collection is \$1,761,120 and would increase to 1,990,138 with the proposed revisions.¹⁰

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

⁹ There are 15 respondents with assets between \$90 million and \$1 billion that may potentially no longer qualify for the small lender exception from the escrow requirement within the next three years and would then be required to provide the one-time option to escrow notice required by section 208.25(e)(4).

¹⁰ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2018*, published March 29, 2019, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.