

THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION IN THE FEDERAL REGISTER WILL DETERMINE THE START OF THE PUBLIC COMMENT PERIOD. PUBLIC COMMENTS WILL NOT BE ACCEPTED IN ADVANCE OF THAT DATE.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201, 203, and 206

[Docket No. FR-6084-P-01]

[RIN 2502-AJ43]

Acceptance of Private Flood Insurance for FHA-Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Federal Housing Administration (FHA) regulations to allow mortgagors the option to purchase private flood insurance on FHA-insured mortgages for properties located in Special Flood Hazard Areas (SFHAs), in satisfaction of the mandatory purchase requirement of the Flood Disaster Protection Act of 1973 (the FDPA). The FDPA, as amended, requires the owner of a property mapped in a SFHA, and located in a community participating in the National Flood Insurance Program, to purchase flood insurance as a condition of receiving a mortgage backed by the GSEs, VA, USDA, or FHA.

DATES: Comment Due Date: **[Insert date 60 days from the date of publication in the Federal Register].**

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9184, Washington, DC 20410-8000; telephone number 202-708-2121. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968 (the 1968 Act) and the FDPA, as amended, govern the National Flood Insurance Program (NFIP).¹ The 1968 Act makes federally backed flood insurance available to owners of improved real estate or manufactured homes located in special flood hazard areas (SFHAs) if their community participates in the NFIP. A SFHA is an area within a floodplain having a one percent or greater chance of flood occurrence in any given year. SFHAs are delineated on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities.² A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage. The NFIP thus combines the concepts of hazard mitigation and insurance protection. By conditioning access to insurance on communities' adoption of floodplain

¹ See Pub. L. No. 90-448 (1968); Pub. L. No. 93-234 (1973). These statutes are codified at 42 U.S.C. 4001 et seq.

² FEMA administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59-77.

management ordinances to mitigate the effects of flooding on new and existing construction, the NFIP incentivizes adoption of floodplain management ordinances.

Until the adoption of the FDPA in 1973, the purchase of flood insurance was voluntary. Section 102 of the FDPA made the purchase of flood insurance mandatory, providing that no federal officer or agency may approve any financial assistance for acquisition or construction³ in any area identified as having SFHAs and in which the sale of flood insurance has been made available under the 1968 Act, unless the building or mobile home and any personal property is covered by flood insurance. Under the FDPA, flood insurance must be in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available under the 1968 Act, whichever is less, and the coverage need not extend beyond the term of the loan.

The National Flood Insurance Reform Act of 1994⁴ (Reform Act) comprehensively amended the Federal flood insurance statutes. The purpose of the Reform Act was to increase compliance with flood insurance requirements and participation in the NFIP 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.⁵ Among other changes, the Reform Act requires that the federal entities for lending regulation⁶ revise their flood insurance

³ Defined at 42 U.S.C. 4003(a)(4).

⁴ Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325 (1994).

⁵ H.R. Conf. Rep. No. 652, 103d Cong. 2d Sess. 195 (1994). (Conference Report).

⁶ The federal financial regulatory agencies are the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, and the Farm Credit Administration.

regulations and brings lenders regulated by the Farm Credit Administration under the 1968 Act. The Reform Act also applies the flood insurance requirements directly to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (or collectively, the government sponsored enterprises or GSEs) and to Federal agency lenders,⁷ including FHA in limited circumstances, that make direct loans secured by real property or mobile homes in a SFHA.⁸ Under the Reform Act, the owner of a property located in a community participating in the NFIP, and mapped in a SFHA, must purchase flood insurance as a condition of receiving a mortgage backed by the GSEs, VA, USDA, or FHA.

The Biggert-Waters Insurance Reform Act of 2012 (Biggert-Waters Act) further amended the Federal flood insurance statutes to encourage private-sector participation. The Biggert-Waters Act requires the Federal entities for lending regulation (the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Farm Credit Administration (FCA))), collectively, Federal regulators) to direct lenders to accept private flood insurance to satisfy the mandatory purchase requirement, instead of NFIP insurance, if the private flood insurance meets the conditions defined further in the statute at 42 U.S.C. 4012a(b)(7). In addition, the Biggert-Waters Act also requires federal agency lenders and government-sponsored enterprises for housing to accept private flood insurance, as defined by

⁷ Defined at 42 U.S.C. 4003(a)(7).

⁸ These include: FHA, the Government National Mortgage Association (GNMA), the Small Business Administration (SBA), and the Department of Veterans Affairs (VA), and to the loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

the statute. The Biggert-Waters Act also mandates that federally regulated lenders, federal agency lenders, and lenders who sell to or service loans on behalf of the GSEs must provide borrowers a notice encouraging them to consider and compare private market flood insurance policies with NFIP policies and must accept such private flood insurance policies that meet the definition of “private flood insurance” in the Biggert Waters Act as satisfaction of mandatory purchase and flood insurance coverage requirements under the FDPA.⁹ Additionally, under the Biggert-Waters Act, the Federal regulators, Federal Housing Finance Agency, Federal agency lenders, and GSEs may require lenders to verify that insurers meet specific independent rating agency criteria relating to the financial solvency, strength, or claims-paying ability that indicate the insurers can satisfy claims.¹⁰ On February 20, 2019 (84 FR 4953), the Federal regulators jointly issued a Final Rule implementing the private flood insurance provisions of the Biggert-Waters Act.

FHA’s currently codified rules regarding the requirement to maintain flood insurance coverage on property located in a SFHA do not permit private flood insurance as an option to satisfy the mandatory purchase requirement under the FDPA. Instead, the FHA requires owners to obtain and maintain NFIP flood insurance during such a time as the mortgage is insured, to the extent that NFIP insurance is available.

II. This Proposed Rule

⁹ See Pub. L. No. 112-141 (2012).

¹⁰ See 42 U.S.C. 4012a(b)(5).

HUD is proposing to amend FHA regulations at 24 CFR parts 201, 203, and 206, to allow owners the option to purchase private flood insurance on FHA-insured mortgages for properties located in SFHAs, consistent with the FDPA and in harmony with private flood insurance requirements under the Biggert-Waters Act. In the event of a lapse in the NFIP, the option of private flood insurance may reduce the likelihood of delays in the processing of new originations. Acceptance of private flood insurance policies would additionally benefit borrowers who want FHA-insured mortgages, by providing them consumer choice, including the opportunity to obtain private flood insurance policies that may be more affordable than NFIP policies.

Overall, this proposed rule would promote consistency with industry standards and reduce the regulatory restrictions on flood insurance for FHA-insured loans. HUD believes that this proposed rule would harmonize FHA policies with the Congressional intent to encourage an expanded private flood insurance market, as expressed in the Biggert-Waters Act. Accordingly, HUD is proposing to revise FHA regulations to permit mortgagors and mortgagees of single-family properties and other insured property to obtain private flood insurance on properties that secure FHA mortgages and are required to have flood insurance under the FDPA, as a private-sector alternative to NFIP flood insurance.

Specifically, HUD is proposing to revise 24 CFR 203.16a to include the definition of “private flood insurance” specified in section 100239 of the Biggert-Waters Act, which added a new section 102(b)(7) to the FDPA. This proposed rule would define “private flood insurance” similar to the statutory definition, to mean an insurance policy that:

1. Is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be

insured is located, by the insurance regulator of the State or jurisdiction; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;

2. Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the NFIP, including when considering deductibles, exclusions, and conditions offered by the insurer;
3. Includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the mortgagee or FHA, in cases where the lender has assigned the loan to FHA in exchange for claim payment.
4. Includes information about the availability of flood insurance coverage under the NFIP;
5. Includes a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the NFIP;
6. Includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under the policy; and
7. Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the NFIP.

This definition would ensure that private insurers can satisfy claims and that private flood insurance coverage is at least as broad as the coverage provided under the NFIP.

HUD welcomes feedback from the public regarding acceptance of private flood insurance policies. Specifically, HUD is seeking public comment regarding whether FHA regulations should state that a Mortgagee may accept a qualifying private flood insurance policy in lieu of an

NFIP policy or that a Mortgagee must accept a qualifying private flood insurance policy in lieu of an NFIP policy. HUD recognizes the value of consistency across the housing market with respect to flood insurance and of allowing FHA borrowers to select their preferred flood insurance policy, where required. However, HUD also recognizes that mortgagees have industry experience with different insurance providers and a responsibility for ensuring adequate insurance coverage is maintained.

A mortgagee may maintain more flood insurance than required by § 203.16a to protect the security interest in the mortgaged property.

HUD is proposing to include a compliance aid provision in § 203.16a to help mortgagees evaluate whether a flood insurance policy meets the definition of “private flood insurance.” This compliance aid will allow a mortgagee to conclude that a policy meets the definition of “private flood insurance” without further review of the policy if the policy, or an endorsement to the policy, states: “This policy meets the definition of private flood insurance contained in 24 CFR 203.16a(e) for FHA-insured mortgages.” This compliance aid will address concerns that a mortgagee, especially small mortgagees with a lack of technical expertise regarding flood insurance policies, could have difficulty evaluating whether a flood insurance policy meets the definition of “private flood insurance.” If a policy includes this statement, the mortgagee may rely on the statement and would not need to review the policy to determine whether it meets the definition of “private flood insurance.” However, the mortgagee could choose not to rely on this statement and instead make its own determination. This provision does not relieve a mortgagee of the requirement to accept a policy that both meets the definition of “private flood insurance” and fulfills the flood insurance coverage requirement, even if the policy does not include the statement. In other words, this provision does not permit mortgagees to reject policies solely

because they are not accompanied by the statement. Mortgagees that are regulated lending institutions may seek additional compliance aids on the policy.

HUD's proposed compliance aid differs from the compliance aid provided by the Federal regulators' Final Rule implementing the private flood insurance provisions of the Biggert-Waters Act published at 84 FR 4953 on February 20, 2019. Because the Federal regulators are bound by the Biggert-Waters Act, their compliance aid explicitly references 42 CFR 4012a(b)(7). Except in limited circumstances when acting as a Federal agency lender, FHA was not included in the Biggert-Waters legislation, and is not governed by the associated regulations; instead, the HUD compliance aid cites the authority under 24 CFR 203.16a(e) for flood insurance requirements for FHA-insured mortgages. In addition to the different governing authorities, HUD's Proposed Rule is not identical to the Federal regulators' Final Rule on private flood insurance acceptance. Specifically, unlike the Federal regulators, HUD will not permit Mortgagees to exercise their discretion to accept flood insurance policies, provided by private insurers or mutual aid societies, that do not meet the definition and requirements for a private flood insurance policy as laid out in this rule. HUD's requirements for FHA-insured mortgages may differ or exceed requirements by the Federal regulators on a number of issues, where appropriate, to best serve FHA borrowers and protect FHA's Mutual Mortgage Insurance Fund. Due to the differences between HUD and the Federal regulators' rules, compliance with the Federal regulators' Final Rule should not be interpreted as compliance with HUD's requirements. A private flood insurance provider can include both the Federal regulators' compliance aid and the HUD/FHA compliance aid on a policy to assert that the policy meets the definition and fulfills the requirements of both the Federal regulators and HUD. This would facilitate Mortgagees' review of a private flood insurance policy, to ensure that it is in compliance with HUD's regulations. HUD welcomes

feedback from the public on this proposed compliance aid. Specifically, HUD is seeking public comment on the language and option for the proposed HUD compliance aid for private flood insurance policies to demonstrate compliance with HUD's definition and requirements for private flood insurance.

Finally, HUD is proposing to amend 24 CFR 201.28(a) (Property Improvement and Manufactured Home Loans), 203.343(b) (Single Family Mortgage Insurance), 206.45(c) (Home Equity Conversion Mortgage Insurance), and 206.134(b) (Home Equity Conversion Mortgage Insurance) to permit borrowers to obtain private flood insurance on certain other types of mortgages that are required to have flood insurance under the FDPA. HUD is proposing to define private flood insurance in these sections by cross-reference to the definition in 203.16a.

III. Findings and Certifications

Executive Order 12866 and Executive Order 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

HUD has examined the economic, budgetary, legal and policy implication of this action and has determined that this proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866 (but not an economically significant action).

Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Initially, supervised mortgagees are among FHA-approved lenders. These mortgagees are supervised by the Federal regulators. Based on the analysis developed by the Federal regulators and published as part of their final rule (see 84 FR 4953), the Federal regulators determined that allowing private flood insurance in mortgage transactions conducted by these mortgagees would not have a significant economic impact on a substantial number of small entities they supervised. This finding is also true for the share of

regulated lending institutions supervised by the Federal regulators that are FHA-approved lenders.

Small entities also include small businesses, small not-for-profit organizations, and small governmental jurisdictions. This rule, however, offers a benefit to all FHA-approved mortgagees regardless of the size of the firm. Allowing private insurers to compete provides business opportunities to those private insurers. The rule would provide a compliance aid which will allow all mortgagees, including small mortgagees that may lack technical expertise regarding flood insurance policies, to conclude that a policy meets the definition of “private flood insurance” without further review of the policy if the policy, or an endorsement to the policy, states: “This policy meets the definition of private flood insurance contained in 24 CFR 203.16a(e) for FHA-insured mortgages.” This proposed rule would also reduce the burden to all mortgagees, including those small entities, by aligning FHA’s regulations with those issued by the Federal regulators.

For flood insurance companies, there is less data. However, existing analysis by Kousky et al. (2018)¹¹ on private insurers that are currently providing flood insurance shows that these private insurance companies are mostly surplus line carriers that operate globally. This finding implies that such carriers cannot be considered as small entities. Taking advantage of the business opportunities is more difficult for small firms because large firms are inherently favored by their ability to spread flood risk. However, as the private flood insurance market expands, it is

¹¹ Kousky, C., H. Kunreuther, B. Lingle, and L. Shabman (2018). The Emerging Private Residential Flood Insurance Market in the United States, Risk Management and Decision Processes Center, Wharton, University of Pennsylvania, July.

expected to become less concentrated, to the benefit of small entities. Overall, HUD believes that this rule will not have a significant impact on a substantial number of small entities, and the impact of the rule on those small entities impacted will be beneficial rather than adverse. Therefore, this proposed rule is not expected to have a significant economic impact on small entities.

Notwithstanding HUD's determination, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on www.regulations.gov.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects:

24 CFR Part 201

Claims; Health facilities; Historic preservation; Home improvement; Loan programs-housing and community development; Manufactured homes; Mortgage insurance; Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives; Home improvement, Indians-lands; Loan programs-housing and community development; Mortgage insurance; Reporting and recordkeeping requirements; Solar energy.

24 CFR Part 206

Aged; Condominiums; Loan programs-housing and community development; Mortgage insurance; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR parts 201, 203, and 206 as follows:

**PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME
LOANS**

1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

2. Revise § 201.28(a), to read as follows:

§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) *Flood insurance.* No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA), unless flood insurance on the property is obtained by the borrower in compliance with section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). Such insurance shall be in the form of the standard policy issued under the National Flood Insurance Program (NFIP) or private flood insurance, as defined in § 203.16a of this chapter. Such insurance shall be obtained at any time during the term of the loan that the lender determines that the secured property is located in a special flood hazard area identified by FEMA and shall be maintained by the borrower for the remaining term of the loan, or until the lender determines that the property is no longer in a special flood hazard area, or until the property is repossessed or foreclosed upon by the lender. The amount of such insurance shall be at least equal to the unpaid balance of the Title I loan, and the lender shall be named as the loss payee for flood insurance benefits.

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PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z-16, 1715u, and 1715z-21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

4. Revise § 203.16a to read as follows:

§ 203.16a Mortgagor and mortgagee requirement for maintaining flood insurance coverage.

(a) *In general.* (1) The requirements of this section apply if a mortgage is to cover property improvements that:

(i) Are located in an area designated by the Federal Emergency Management Agency (FEMA) as a floodplain area having special flood hazards; or

(ii) Are otherwise determined by the Commissioner to be subject to flood hazard.

(2) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property improvements. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

(3) For purposes of this section, property improvement means a dwelling and related structures/equipment essential to the value of the property and subject to flood damage.

(b) The mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and maintain either NFIP flood insurance or private flood insurance coverage on the property improvements.

(c) *Insurance policy.* A mortgagee may accept a flood insurance policy in the form of the standard policy issued under the National Flood Insurance Program (NFIP) or a private flood insurance policy as defined in this section, and the mortgagee shall be named as the loss payee for flood insurance benefits. A mortgagee may determine that a private flood insurance policy meets the definition of private flood insurance in § 203.16a, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: “This

policy meets the definition of private flood insurance contained in 24 CFR 203.16a(e) for FHA-insured mortgages.”

(d) *Duration and amount of coverage.* The flood insurance must be maintained during such time as the mortgage is insured in an amount at least equal to the lowest of the following:

- (1) development or project cost less estimated land cost; or
- (2) The maximum amount of NFIP insurance available with respect to the particular type of property; or
- (3) The outstanding principal balance of the loan.

(e) *Private flood insurance defined.* The term “private flood insurance” means an insurance policy that:

- (1) Is issued by an insurance company that is:
 - (i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or
 - (ii) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the National Flood Insurance Program for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under a standard flood insurance policy under the National Flood Insurance Program, the policy must, at a minimum:

(i) Define the term “flood” to include the events defined as a “flood” in a standard flood insurance policy under the National Flood Insurance Program;

(ii) Contain the coverage specified in a standard flood insurance policy under the National Flood Insurance Program, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under a standard flood insurance policy under the National Flood Insurance Program, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in a standard flood insurance policy under the National Flood Insurance Program. Any exclusions other than those in a standard flood insurance policy under the National Flood Insurance Program may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by a standard flood insurance policy under the National Flood Insurance Program or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in a standard flood insurance policy under the National Flood Insurance Program;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to:

(A) The insured;

(B) The mortgagee, if any; and

(C) FHA, in cases where the mortgagee has assigned the loan to FHA in exchange for claim payment.

(ii) Information about the availability of flood insurance coverage under the National Flood Insurance Program;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the National Flood Insurance Program; and

(iv) A provision requiring an insured to file suit not later than 1 year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the National Flood Insurance Program.

5. Revise § 203.343(b)(3), to read as follows:

§ 203.343 Partial release, addition or substitution of security.

* * * *

(b) * * *

(3) The property to which the dwelling is removed is in an area known to be reasonably free from natural hazards or, if in a flood zone, the mortgagor will insure or reinsure under the National Flood Insurance Program or obtain equivalent private flood insurance coverage as defined in § 203.16a.

* * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

6. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-20; 42 U.S.C. 3535(d)

7. In § 206.45, amend paragraph (c) to read as follows:

§ 206.45 Eligible properties.

* * * * *

(c) Borrower and mortgagee requirement for maintaining flood insurance coverage.

(1) During such time as the mortgage is insured, the borrower and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and to maintain flood insurance coverage under either the National Flood Insurance Program (NFIP) or equivalent private flood insurance coverage as defined in § 203.16a on the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) if the flood insurance is available with respect to the property improvements that:

(i) Are located in an area designated by the Federal Emergency Management Agency (FEMA) as a floodplain area having special flood hazards; or

(ii) Are otherwise determined by the Commissioner to be subject to a flood hazard.

(2) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards, unless the community in which the area is situated is participating in the NFIP and flood insurance is obtained by the borrower. Such flood insurance shall be in the form of the standard policy issued under the National Flood Insurance Program (NFIP) or private flood insurance as defined in § 203.16a. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

* * * * *

§ 206.134 [Amended].

8. In § 206.134, amend paragraph (b)(3) by inserting “or obtain equivalent private flood insurance coverage, as defined in § 203.16a” after “National Flood Insurance Program”.

Dated: 11/6/2020

/s/

Dana T. Wade
Assistant Secretary for Housing
Federal Housing Commissioner

[Billing Code 4210-67]