



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FINALIZES PRIVATE FLOOD INSURANCE RULE



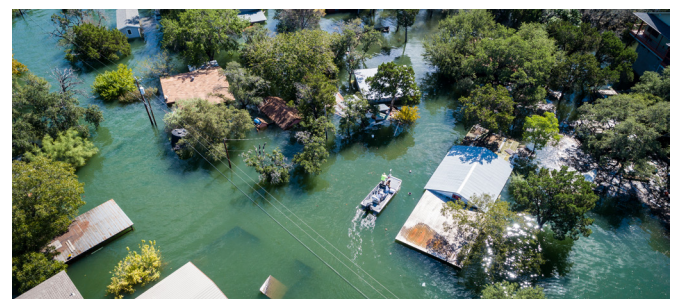
### FHA Private Flood Requirements

FHA has defined a private flood insurance policy as suitable for FHA-insured loans as follows:

- be issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the state of jurisdiction; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, the insurance company must be 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;
- provide flood coverage that is at least as broad as the coverage provided under the standard Flood Insurance policy under the NFIP for the particular type of property, including when considering exclusions and conditions offered by the insurer;
- include deductibles that are no higher than the specified maximum, and include similar non-applicability provisions, as under the standard flood insurance policy under the NFIP;
- include a requirement for the insurer to provide written notice 45 days before cancellation or nonrenewal of Flood Insurance coverage to the borrower and the

On November 21, 2022, the Department of Housing and Urban Development (HUD) finalized rules allowing private flood insurance to be written on Federal Housing Authority (FHA) insured loans. The final rule is effective December 21, 2022. Additionally, FHA issued Mortgagee Letter 2022-18, which is to be incorporated into the HUD Handbook 4000.1, FHA Single Family Housing Policy Handbook.

FHA's new rule follows the joint prudential banking rule (Joint Rule) issued by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the National Credit Union Association on private flood to large extent, but there are differences that must be considered when implementing workflow for compliance. The requirement to accept a private flood policy is statutorily mandated by the Biggert-Waters Act of 2012. However, unlike the Joint Rule, FHA-insured loans may only accept policies that meet FHA requirements for private flood insurance with no discretionary acceptance option. Refer to Table 1 for key differences between conventional, GSE, and FHA-insured mortgages related to requirements of private flood insurance.



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mortgagee. In cases where the mortgagee has assigned the loan to HUD, the insurer must provide notice to HUD and, where applicable, to the borrower;

- include information about the availability of Flood Insurance under the NFIP;
- include a provision requiring the borrower 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
- contain cancellation provisions that are as restrictive as the provisions contained in a Standard Flood Insurance Policy under the NFIP.

## FHA Compliance Aid Statement

FHA's Rule allows for the use of a FHA Compliance Aid Statement similar to the banking Joint Rule but slightly different in language to conform to FHA-insured mortgages. FHA Lenders may accept private flood insurance policies that contain the following FHA Compliance Aid Statement:

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

Note that the FHA Compliance Aid Statement is different than the banking Joint Rule Compliance Aid Statement that reads:

"This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation."

## Other Important Provisions

There are other important provisions within the FHA Rule:

- Properties within a Special Flood Hazard Area of communities that do not participate in the NFIP are not eligible for FHA insurance, even if private flood insurance is



available and bound. For communities that participate that later become non-participating, the loan would be reclassified as a non-designated loan per the mandatory purchase requirement.

- FHA Rule applies to detached structures that provide essential value to the overall property value regardless of whether the detached structure is a residential detached structure. Simply put, there is no detached structure exemption in the FHA Rule when a detached structure on a residential property is deemed non-residential and provides essential value to the overall property value. On the flip side, if the detached structure (residential or non-residential) does not provide essential value to the overall property value, flood insurance is not required under the FHA Rule.
- Lenders of FHA-insured loans are not required to accept private flood insurance policies even when the policy meets the FHA private flood insurance requirements. Lenders should evaluate policies and procedures related to the acceptance of private flood insurance and perform risk assessments to any new procedures being contemplated to reduce the potential of any fair lending/servicing issues.

## Rule Implementation

OSC/SUI is prepared to revise current operating procedures that will allow the acceptance of private flood insurance for FHA-insured loans using the FHA Compliance Aid Statement. However, it's very important that lenders have the ability to specifically identify FHA designated mortgage loans as opposed to conventional and/or Government Sponsored Enterprise (Fannie Mae and Freddie Mac) loans if contemplating special FHA rules.

Please contact your Client Services Manager to discuss any specific implications pertaining to your account.





**Table 1. Private Flood Insurance Requirement Matrix**

	Conventional Mortgage	GSE Mortgage	FHA Mortgage
Requires private flood acceptance mandate if policy meets standards	X	X	
Allows Compliance Aid Statement for private policy acceptance	X		X
Allows for non-residential detached structure exemption for mandatory purchase	X	X	
Allows discretionary acceptance of private flood policy if the policy does not conform to statutory definition of private flood insurance	X		
Treatment of a property located in SFHA of a community not participating in the NFIP	Non-designated loan for flood insurance (flood insurance not required)	Loan not eligible for GSE purchase	Loan not eligible for FHA insurance