Flood Disaster Protection Compliance

FMS NY-NJ

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Flash Flooding
River and Coastal Flooding
Biblical Flooding
Reliability - Service - Knowledge

THE Flood Disaster

HURRICANE SANDY
Satellite data courtesy of NASA
Flood Disaster Protection Act

• Amended the National Flood Insurance Act
  – Established the National Flood Insurance Program (NFIP)
  – Offer insurance to property owners in participating communities
  – **Insurance claim payouts to be funded by premium payments of participants**
  – Foundation of Standard Flood Hazard Areas (SFHA)
  – Foundation of Flood Insurance Rate Maps (FIRM)

• FDPA
  – Established “process” for compliance
  – Established mandatory flood insurance requirements
    • Zones A and Zones V
Biggert-Waters

- NFIP is currently around $24 Billion in debt
- Overhaul and repair of Flood Program
  - Improve solvency of the FEMA Flood Program
  - Remapping of Flood Zones
    - [http://project.wnyc.org/100yr-zones-prelim/embed.html](http://project.wnyc.org/100yr-zones-prelim/embed.html)
  - Abolished grandfathering
    - Pre-Firm construction
- Increased rates based on REAL flood risk
Biggert-Waters

IF IT CAN'T BE FIXED WITH DUCT TAPE

THEN YOU'RE NOT USING ENOUGH DUCT TAPE
Biggert-Waters
Recent Reversal

• Insurance premium rates returned to “normal”
  – Administrative fee charged instead
• Grandfathered rates for pre-FIRM returned to “normal”
  – Can continue to be passed on during a sale
• Possible rebates to home purchasers
  – If rates were higher than they should have been
NFIP Program
Compliance Changes

• Biggert Waters procedural impacts
  – Flood insurance notice change
    • Must include language about availability of Private insurance
  – Private flood insurance is now as good as NFIP insurance
    • Bank’s would have to accept Private insurance that conforms to compliance requirements
  – Mandatory escrow of flood insurance premiums
    • Residential property only

• REGULATIONS NOT IN EFFECT... Yet
  – Expected to be effective July 2014
Compliance Violation Changes

• Per violation penalty increased
  – Was $385 per violation
  – Now $2,000 per violation

• Annual aggregate penalty limits removed
  – Was capped at $100,000 annually
  – Now NO CAP
Non-Compliance Issues

• Flood violations
  – Determination
    • Not received
    • Not accurate
  – Disclosure
    • Providing of
    • Timing of
  – Documentation
    • Of insurance coverage
  – On-going/Force Place
    • Coverage lapse
    • Map change
    • Coverage gap
Flood Determination Compliance

• Standard Flood Hazard Determination (SFHD)
  – Required when Making, Increasing, Renewing, Extending (MIRE) credit
    • Good for 7 years
    • Most are Life of Loan
    • RESPA and Regulation Z disclosures impacted by the fee
  – Must have a date
  – Must indicate the Flood panels and correct property address
  – Must indicate a “flood” zone
  – Indicate that it is for the Bank

• *Bank’s SFHD is Gospel*
SFHD Compliance Problems

• Not getting one when it is needed
• Missing date
• Incorrect address
  – Address of borrower not property
• Ignoring the flood zone listed
• Not treating it like Gospel
  – Borrowers insurance company disputes Bank’s SFHD
  – Bank accepts borrower’s SFHD instead
Disclosure Compliance

• Notice to borrower in a Flood Zone
  – Must be provided timely
  – Should be dated
  – Should include date of determination
  – Must be in writing
  – Must be signed and acknowledged
    • Very least must be evidence of the disclosure being provided
  – Required in all instances of MIRE regardless of new SFHD
Disclosure Compliance Issues

• Not being provided timely
  – Not less than 10 days prior to closing
    • Some exceptions
• Not putting the date on it
• Not including the date of determination
• Not signed and acknowledged in every instance of MIRE
Documentation Compliance

• Evidence of adequate flood coverage required prior to closing
  – Declaration page
  – Application and paid invoice

• Insurance must be for the proper amount, the lesser of:
  – Max $250,000 on Residential
  – Max $500,000 on Commercial (plus contents if taken)
  – The outstanding loan amount

• Insurance must be for the right zone... A for A, V for V

• Evidence of adequate flood coverage required at all times in the file
  – Annual renewals
  – “Unbroken” string of evidence

• Bank must be listed as mortgagee or loss payee
  – Insurance is for the Bank not the borrower

• Escrow when escrowing for other reasons
Documentation Compliance Issues

• Not having evidence of adequate coverage prior to closing
  – **#1 Cardinal sin in all of Flood compliance!!!**
• Insurance is for the wrong zone
  – Slipping an X
• Insurance is not adequate during the life of the loan
  – Map change
  – Coverage reduction
  – Non-renewal
• Creates a “broken” line of evidence
• Bank not listed as mortgagee or loss payee
• Not escrowing for flood insurance
• Commercial Loan with “abundance of caution” on inventory or other structures
Flood Compliance
Force Placement Compliance

• Bank required to provide notice immediately when inadequate coverage is uncovered
  – Gives borrower 45 days from the time inadequate coverage is discovered
    • Policy non renewal
    • Map change
    • Coverage reduction
    • Coverage elimination

• Bank cannot charge borrower during this time, even if Bank obtains insurance
  – Biggert Waters has a provision for this

• Force placement renewals follow the same requirements of “regular” flood insurance renewals
  – 45 days from date of expiration of the policy
  – Except if Bank uses a MPPP... Then its 45 days prior to the expiration of the policy period

• Force placement should take effect within 1 day of the expiration of the 45 day period
Force Placement Compliance Issues

• Not providing the 45 day letter immediately after discovering inadequate coverage
  – Waiting a few days is a violation

• Not enforcing a flood policy immediately after the expiration of the 45 day letter
  – Waiting a few days is a violation

• Not providing a notice at the renewal of a force placement insurance policy
  – Each “renewal” requires a new disclosure
Compounding Compliance Issues

• Multiple violations can occur in one file
  – SFHD not obtained in a MIRE scenario
  – Notice of Flood Hazard not sent timely
  – Notice not signed or evidenced of being sent
  – Force placement letter not sent timely
  – Force place insurance not enforced timely
  – Force placement renewal not disclosed properly

• Multiple violations can reflect significant or systemic control failures
  – Increasing the likelihood of... CMPs
Examiner Emphasis

• Previously
  – New Loans in focus
    • SFHD
    • Timely disclosures
    • Adequate coverage at closing
  – Emphasizing a good start to Flood compliance
Examiner Emphasis

• Currently

  – Old Loans in focus aka “Zombie files”
    • Unbroken evidence of adequate coverage
    • Renewal process
    • Force placement process

  – Usually done many years ago
    • Previous compliance culture
    • Previously “examined”
    • Previously “audited”
Compliance Take Away
Compliance Take Away

• Bank SFHD is Gospel
• Mail disclosures immediately
• No flood insurance, no loan
  – New loans (MIRE)
• No flood insurance, mail force place letter
  – Annual renewal process
• Map change, mail force place letter
  – SFHD Life of Loan process
• Force place clock expires, force place insurance
  – Don’t wait!
• Tracking your flood loans is important
  – Software systems, Excel, etc.
Questions?

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