



Compliance News...

Reliance On A Previous Flood Determination?

Can a financial institution rely on a previous Standard Flood Hazard Determination Form? There has been great confusion surrounding this question since the Flood Insurance Act was revised in 1996. The confusion stems from a poorly worded Federal Emergency Management Association (FEMA) publication that has ultimately been misconstrued.

Let us first address the language in the Act. Section 528 of the 1994 National Flood Insurance Reform Act states (emphasis added):

*"Any person **increasing, extending, renewing, or purchasing a loan** secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless map revisions or updates pursuant to section 1360(f) after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or the person contacts the Director to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination."*¹ (Talk about a run on sentence!)

If we just use the language in the Act, we can determine so far that a financial institution can rely on a previous flood determination for any "pre-existing" loan that is increased, extended or renewed and any loan purchased. But what about a second lien loan that is made by the same institution? Technically, this isn't an increase, extension or renewal of a pre-existing loan.

The August 29, 1996, Federal Register provided the following in the release of the final rules (emphasis added):

*"Two commenters pointed out that pursuant to section 1365 of the 1968 Act, a lender cannot rely on a previous determination set forth on a SFHD form when it makes a loan, only when it increases, extends, renews or purchases a loan. The agencies agree with this interpretation of section 1365 of the 1968 Act but note that **subsequent transactions by the same lender with respect to the same property will be treated as renewals and will require no new determination.**"*²

Now we know a previous flood determination can be used for subsequent loans (home equity and secondary mortgages) regardless of whether it is a new loan.

In addition to the Act and Final Rule, an Interagency Question and Answer (Q&A) was published on July 31, 1997. Section V, question #4, supports this information further by stating (emphasis added):

Question: *"Section 528 of the Act permits a lender to rely on a previous determination using the SFHDF when it is increasing, extending, renewing or purchasing a loan secured by a building or a mobile home. The Act omits the "making" of a loan as a permissible event to rely on a previous determination. **May a lender rely on a previous determination for a refinancing or assumption of a loan?**"*

Answer: *It depends. **If a subsequent loan involving a refinancing or assumption is made on the same property by the same lender who obtained the original determination, and the other requirements contained in Section 528 are met, the lender may rely on the previous determination.***

Section 528 of the Act requires that a lender may rely on a previous determination only if the original determination was recorded on the SFHDF within the previous seven years and there were no map revisions or updates affecting the security property since the original determination was made. However, a loan refinancing or assumption made by a lender other than the lender who obtained the original determination would constitute “making” a new loan, thereby requiring a new determination.”³

This all seems quite clear. So where’s the confusion? It’s in the Mandatory Purchase of Flood Insurance Guidelines, dated September 1999 (the “yellow book”). On page 33 of the Guidelines it states (emphasis added):

“A previous determination may not be reused when making a new loan. If the loan is not new, i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan, the determination can be reused if:

- *It is less than 7 years old.*
- *No new or revised FIRM or FHBM has been issued in the interim.*
- *It was initially recorded on the SFHDF that became effective January 2, 1996.”⁴*

This seems to indicate you cannot use a previous determination when “making” a new loan. It also appears to contradict the 1994 Act, the 1996 Final Rules (as printed in the Federal Register) and the Interagency Q&A’s. But if you continue to read the Guidelines (still on page 33) we find:

“If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a secondary lien position, and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred.”⁵

This guideline is no different from the 1996 Final Rule clarification regarding subsequent transactions. Why would the Guidelines indicate we cannot use a previous determination when making a new loan, but if the new loan is a home equity or second lien, then a lender can rely upon a previous determination? Good question. Honestly, we don’t have an answer. But we know the Guidelines are inaccurate.

The guidelines are just that, guidelines. They cannot contradict the Act, regulation or what Congress has stated in the Federal Register. Their purpose is to add clarity to the rules; however, in this case, they seem to cause confusion. Therefore, there must be a misstatement. Keeping that in mind, we must overlook the contradiction, as supported by the legal and regulatory sources.

In conclusion, can a financial institution rely on a previous Standard Flood Hazard Determination Form? Yes, provided the previous determination was:

- Completed by the same financial institution;
- Is less than seven years old;
- The map information is still accurate (no map revision); and,
- It was completed on a Standard Flood Hazard Determination Form.

In other words, if you already have a Standard Flood Hazard Determination Form and it’s still accurate and it’s less than seven years old, you don’t need to prepare another one.

¹ <http://www.fema.gov/pdf/nfip/riegle.pdf>

² <http://www.fema.gov/business/nfip/cfr.shtm>

³ <http://www.fdic.gov/news/news/financial/1997/fil9777.html>

⁴ <http://www.fema.gov/pdf/nfip/mandpur1.pdf> – page 33, left column, first full paragraph.

⁵ <http://www.fema.gov/pdf/nfip/mandpur1.pdf> – page 33, left column, last paragraph.

Revised CHARM Booklet Released

The Federal Reserve Bank has updated their Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet required to be given with applications for adjustable rate mortgage loans. Due to the popularity of non-traditional mortgage products, specifically “interest only” and “payment option” mortgage products, the regulatory agencies felt it necessary to revise the booklet and include detailed information on the features of these products. Financial institutions may continue to use the existing CHARM booklet until October 1, 2007, when mandatory compliance is required, or begin using the new booklet now. A printable version of the revised CHARM booklet can be obtained at http://www.federalreserve.gov/pubs/arms/arms_english.htm.

If you prefer to order the booklets, you can obtain up to 100 copies of the brochure, free of charge, from: Publications, Mail Stop 127, Federal Reserve Board, 20th and C Streets, N.W., Washington, DC 20551; 202-452-3245.

Suspicious Activity Report (SAR) Form Revised

In an effort to eliminate joint filings on a single suspicious transaction, FinCEN and the regulatory agencies have released a new Suspicious Activity Report –Deposit Institutions form (SAR-DI). The new form is designed to allow financial institutions that have registered with FinCEN under the 314(b) Sharing Information rule to be able to file one joint Suspicious Activity Report. This is in hopes of eliminating duplicate filings on the same suspicious activity detected by multiple institutions. One exception to the joint filing provision is suspicious activity involving an insider.

Many changes have been made to the form, including a much longer narrative section. Instructions have been greatly expanded and are now three pages long. Many user questions have been addressed, such as completing items when there is missing information, multiple suspects, dollar amounts and joint filing.

The new form, including filing instructions, can now be downloaded or printed from <http://www.federalreserve.gov/boarddocs/press/bcreg/2006/20061221/attachment.pdf>. Institutions cannot use the new form until June 1, 2007. Mandatory use of the new SAR will be implemented January 1, 2008.

2007 CRA Updates

Asset thresholds set

The following asset thresholds have been set for determining bank size, as of December 31 of the previous two years, for CRA examinations:

Small Bank	Up to \$258 million
Small to Intermediate Banks	\$258 million to \$1.033 billion
Large Bank	\$1.033 billion and above

(Source: <http://www.fdic.gov/news/news/financial/2007/fil07002.html>)

Loan to deposit ratios

All banks classified as a small or intermediate small bank for the Community Reinvestment Act (CRA) are required to have the loan-to-deposit ratios for all four quarters of 2006 included in the CRA public file no later than March 1, 2007.

2006 HMDA & CRA Data Due March 1, 2007

If your bank is required to collect and submit data under the Home Mortgage Disclosure Act (HMDA) or the Community Reinvestment Act (CRA), the data your bank collected in 2006 must be submitted no later than March 1, 2007. So if you haven't thought about “scrubbing” your 2006 data yet, don't wait too much longer. There are only 28 days in February to get a “scrub” finished on the 2006 data and the data reported.

Only large banks are required to submit CRA data (assets over \$1.033 billion as of December 31 of the prior two calendar years).

Don't miss these upcoming events

Advertising Webinar

Join David Dickinson as he presents an **Advertising Webinar** in conjunction with Bankers Online on **February 14, 2007**. This 2-hour webinar will help keep the rules straight and will provide useful checklists and other compliance tools to make your job easier, whether you are a compliance professional, an auditor, or a designer of ads in a marketing department.

We'll look at virtually every regulation affecting your advertising, including your web site. What you can say, what you cannot say, what you must say, and what you must not, will all be discussed. Confusing? Not after you hear the rules in plain English.

For more information or to register for this webinar:

<http://calendar.bollearningconnect.com/main.php?view=event&eventid=1137162885718>.

Bank Secrecy Act /Anti-Money Laundering Seminar

Topics Covered:

- Revised Examination Procedures and How They Impact Your Institution
- 5 Requirements of a BSA/AML Program
- The Risk Assessment Link
- Independent Audit Requirements
- BSA/AML Officer Responsibilities
- Training Expectations
- Policies, Procedures & Processes
- Suspicious Activity Reporting Systems
- Reporting to the Board and Board Responsibilities
- Management Information Systems
- Transactional Testing
- Understanding "Real" Risk
- Why "Low Risk MSB" is not an oxymoron
- Examiner Expectations
- What We've Learned from the Revised Manual

½ DAY TRAINING SESSION

12:30 p.m. TO 4:30 p.m.

Mar 6	Grand Island, NE	I-80 Holiday Inn	I-80, Exit 312 South	(308) 384-7770
Mar 7	Omaha, NE	Embassy Suites	555 S 10 th Street	(402) 346-9000
Mar 8	Sioux Falls, SD	Sioux Falls Convention Center	1211 N W Ave	(605) 331-0100

This seminar will give you the latest information and guidance to help your bank meet BSA compliance requirements. This program will thoroughly examine the BSA rules and provide you with sound industry practices, policies and procedures to assist you in developing and implementing your bank's BSA compliance program.

This training seminar is designed specifically for those personnel responsible for their financial institution's Bank Secrecy Act (BSA) / Anti-Money Laundering (AML) Program. BSA officers, auditors and senior management will gain the tools necessary for complying with the Bank Secrecy Act in accordance with the Federal Financial Institution's Examination Council BSA/AML Examination Manual. They will gain the confidence they need to be prepared for their next BSA/AML examination.

For complete information or to register, click [here](#).

Compliance Management Seminar

Program Topics:

- Challenges of a Compliance Officer
- Policy vs. Procedures
- Supporting the Compliance Officer
- The Role of the Board of Directors
- Allocating Resources

- Risk Management
- Internal Audits
- Training
- Exam Management
- Compliance Officer Tips

½ DAY SESSION
12:30 p.m. TO 4:30 p.m.

April 10	Grand Island, NE	I-80 Holiday Inn	I-80, Exit 312 South	(308) 384-7770
April 11	Sioux Falls	Sioux Falls Convention Center	1211 N W Avenue	(605) 331-0100
April 12	Omaha, NE	Embassy Suites	555 S 10th Street	(402) 346-9000

This training seminar is designed specifically for compliance officers, presidents, senior management and the board of directors. When it comes to your financial institution's compliance management program, the behavior of these key people can greatly influence the assessment of the institution by the bank examiners. Examiners are looking for a healthy flow of information between management and directors. To ensure an effective approach to compliance, the board and senior management must make compliance a priority. The participation of senior management in the development and maintenance of a compliance program is essential. This seminar will help your board of directors understand the complexity of a compliance officer's duties and will enable them to support you with the necessary resources. Please share this flyer with your board of directors.

For complete information or to register, click [here](#).