

Arkansas Bankers Associations  
2023 Lending Conference

# Flood Compliance Overview

Presenter: Kelly Owsley, Virtual Compliance Officer



Holding Company of Compliance Alliance  
and Review Alliance

*Presented by Compliance Alliance*



# Agenda

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Scope

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Determination

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Minimum Amount of Flood Insurance

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Force Placement

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NFIP Reauthorization

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Private Flood Insurance

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Enforcement

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## Acronym Cheat Sheet

FDPA = Flood Disaster Protection Act of 1973

FEMA = Federal Emergency Management Agency

FIRM = Flood Insurance Rate Map

MIRE = Make, Increase, Renew, Extend

NFIP = The National Flood Insurance Program

RCBAP = Residential Condominium Building  
Association Policy

SFHA = Special Flood Hazard Areas

SFIP = Standard Flood Insurance Policy

SFHDF = Special Flood Hazard  
Determination Form

WYO = Write Your Own Program

# Identifying Responsibility



# What Is ... a Flood?

NFIP definition of a “flood”: *A flood is a general and temporary condition where two or more acres of normally dry land or two or more properties are inundated by water or mudflow.*

Anywhere it rains it can flood! So, every property is subject to some flood risk.



# Why is Flood Important?

Protection of the  
bank's collateral

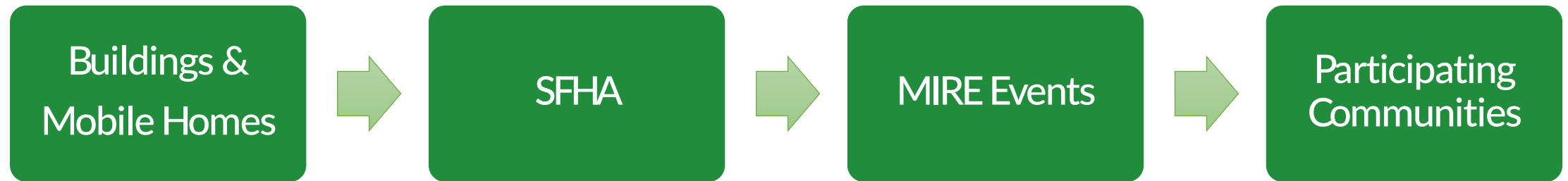
Massive property  
losses

Civil money penalties

Safety and Soundness  
considerations

Regulators are serious  
about enforcing flood  
requirements!

# Scope of Flood Compliance



# Buildings & Mobile Homes

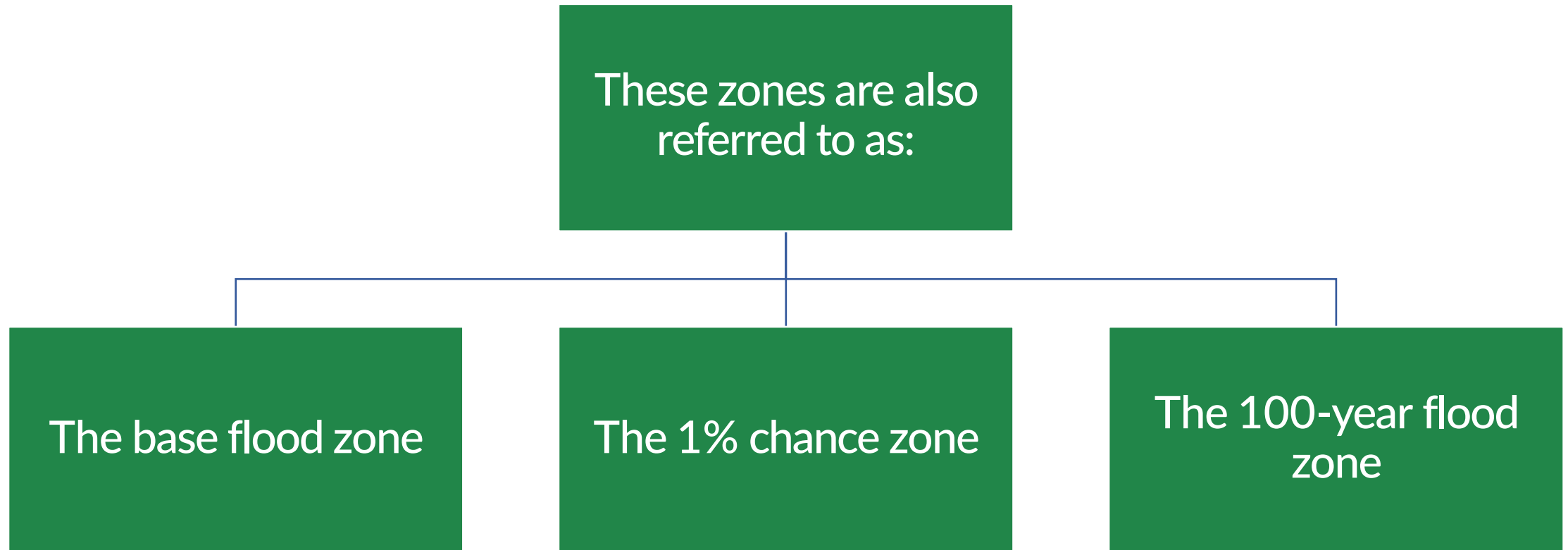
- Walled, roofed and above ground
- Under Construction
- Condominiums
- Co-operatives
- Mobile homes affixed to a permanent foundation, including dealer's inventory



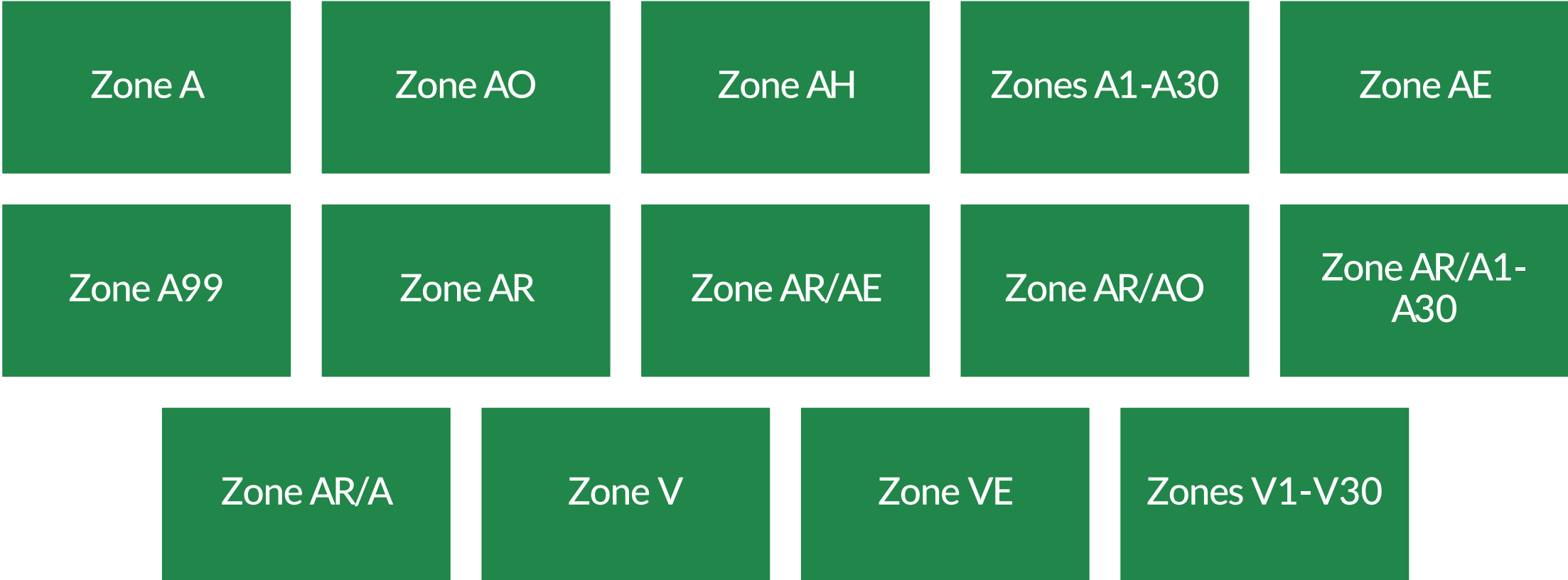
# Flood Zones

- Flood hazard areas identified on the FEMA Flood Maps are identified as a Special Flood Hazard Area (SFHA) and often called “high risk” areas.
- SFHA are defined as *the area that will be inundated by the flood event having a 1-percent chance (base flood or 100-year flood) of being equaled or exceeded in any given year. (Zones A, AE, V, VE)*
- Over a 30-year period, there is at least a 26% chance of a building in this zone flooding.

# High Risk Flood Zones



# Flood Zones: SFHA



# Flood Zones

Moderate flood hazard areas: Labeled Zone B or Zone X (shaded) are also shown on the FIRM and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood.

Minimal flood hazard areas: The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded).

# Flood Zones

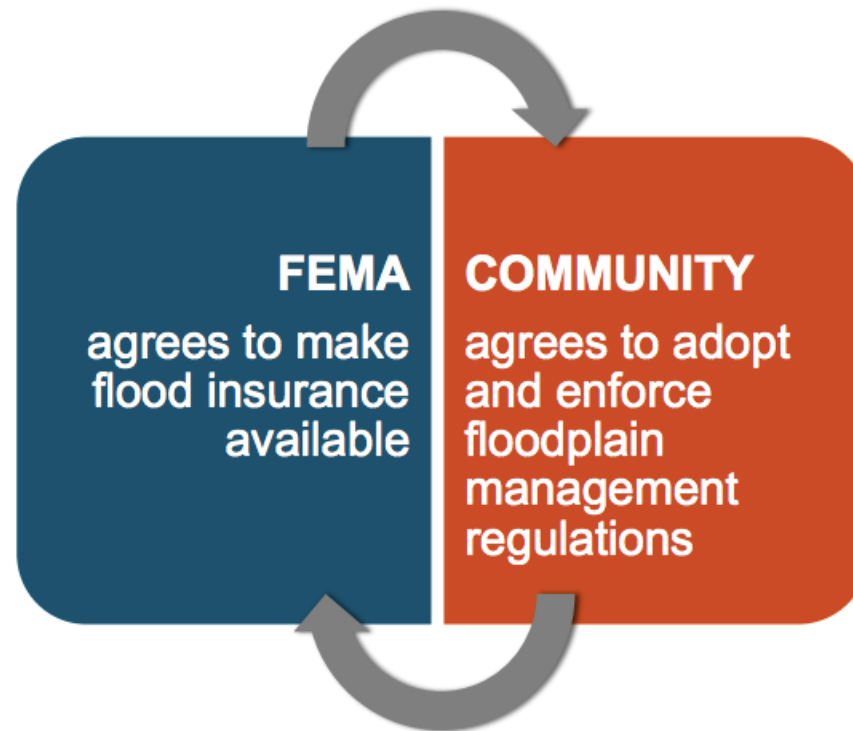
Zone D: Undetermined risk area

Areas with possible but undetermined flood hazards.

No flood hazard analysis has been conducted.

Flood insurance rates are commensurate with the uncertainty of the flood risk.

# Participating Communities



# Non-Participating Communities

- Although a lender may make, increase, extend, or renew a loan in a nonparticipating community, it is still required to determine whether the security property is located in an SFHA and if so, to notify the borrower.
- The lender must also notify the borrower that flood insurance coverage under the NFIP is not available because the community does not participate in the NFIP.
- Because of the lack of NFIP flood insurance coverage and limited federal disaster assistance, lenders should carefully evaluate the risk involved in making such a loan.
- A lender may want to require the purchase of private flood insurance, if available.


# Determination

A folder icon with a dark green cover and a light green tab containing the text "SFHDF".

SFHDF

A folder icon with a dark green cover and a light green tab containing the text "Reuse".

Reuse

A folder icon with a dark green cover and a light green tab containing the text "Disputes".

Disputes

A folder icon with a dark green cover and a light green tab containing the text "Discrepancies".

Discrepancies



# Detached Structures



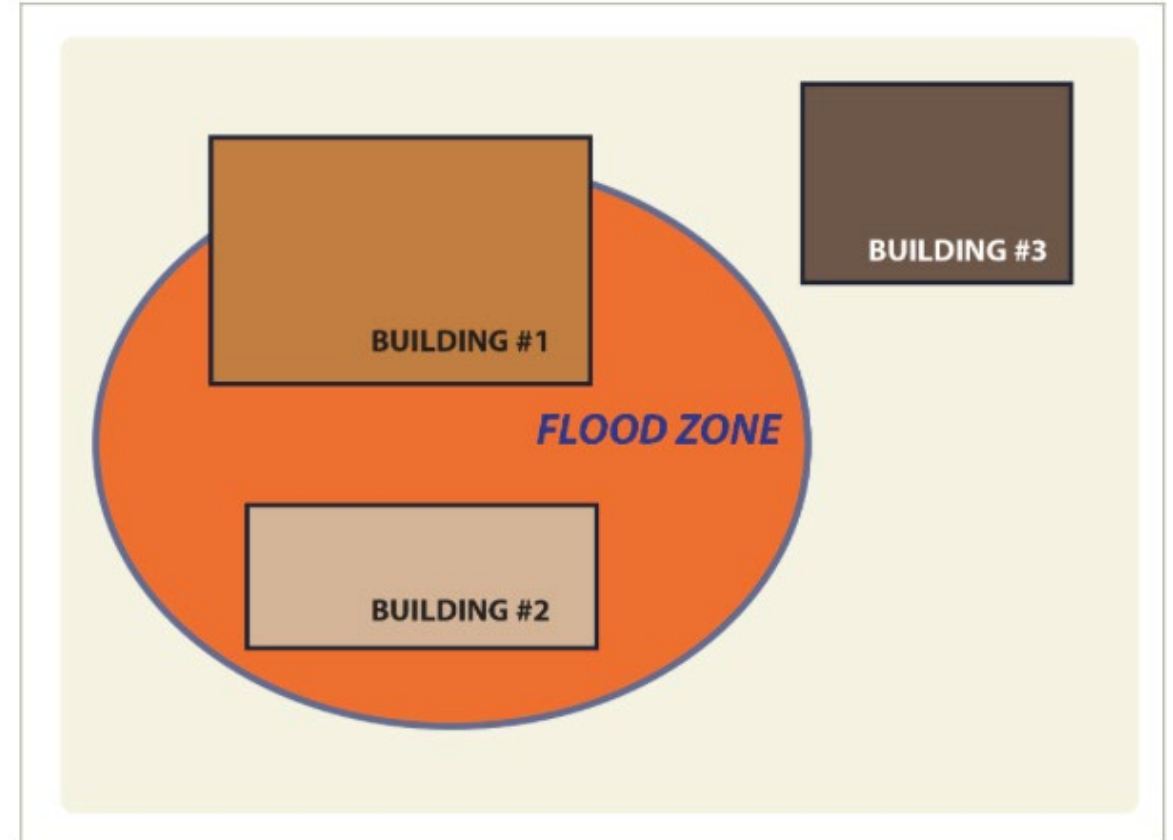
Residential Property



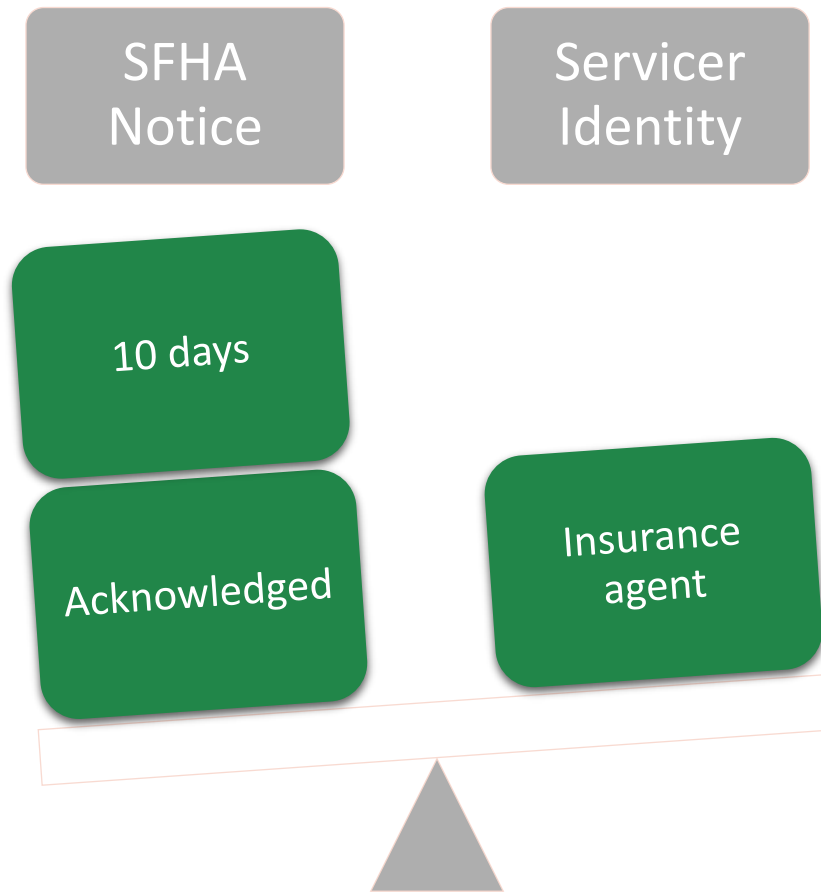
Not a Residence

# One-Brick Rule

- In this situation, building #1 and #2 are in a flood zone, but building #3 is not.
- So, even though building #3 secures the loan, you don't need flood insurance on that building.



# Notices



# Minimum Amount of Insurance

PRINCIPAL LOAN BALANCE

NFIP MAXIMUM

INSURABLE VALUE

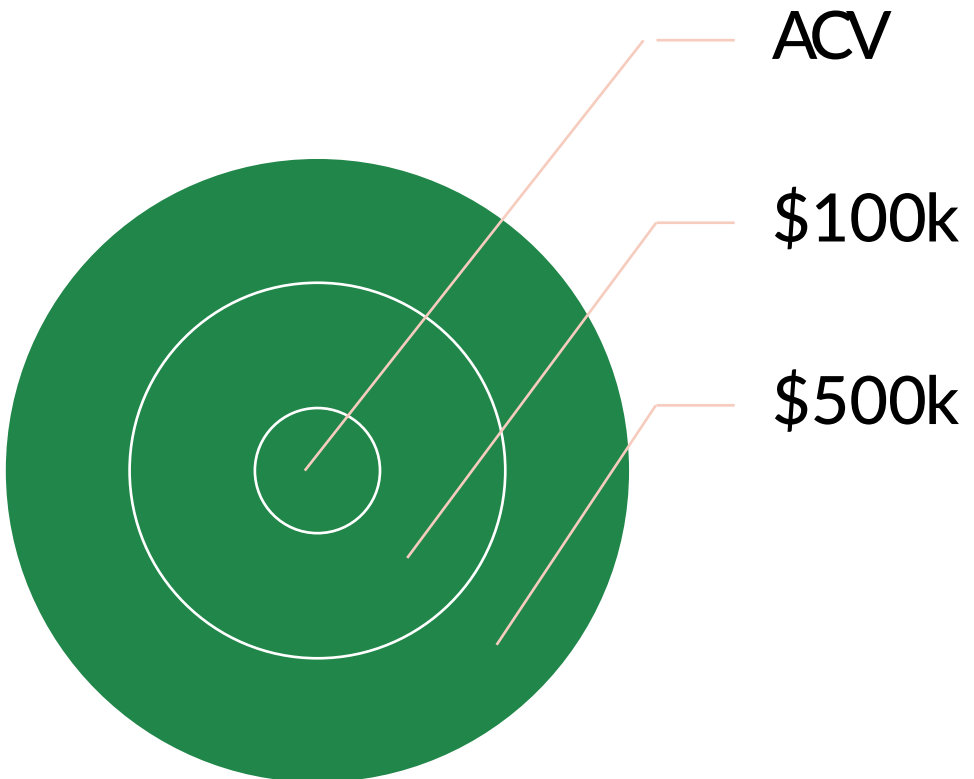
# Minimum Amount of Insurance

Compare three values: 1. Maximum amount of insurance available under the NFIP, 2. the insurable value of the property, and 3. the principal loan amount(s) outstanding. The lesser of the three is the minimum required amount of coverage.

Property Type	NFIP Limits
Residential	\$250,000
Residential – Multi-Family	\$500,000
Commercial	\$500,000
Personal Contents	\$100,000
Residential – Multi-Family Commercial Contents	\$500,000

	Example 1	Example 2
Loan Amount	\$150,000	\$250,000
Insurable Value (RCV)	\$200,000	\$200,000
Maximum Available Insurance	\$250,000	\$250,000
<b>Minimum Required Flood Insurance Coverage</b>	<b>\$150,000</b>	<b>\$200,000</b>

# Contents Coverage – Located in Special Flood Hazard Area



# The Requirements: Evidence of Insurance

A copy of the Flood Insurance Application and premium payment

Copy of the declarations page

No binders!

Special rule of renewals:

- Certificates or evidences of flood insurance, and similar forms, are allowed to be provided for renewal policies if all the required information is included.

# Condominiums

RCBAP

\$250,000 x units

\$500,000 building



# Example of RCBAP Coverage

Lender makes a loan in the principal amount of \$300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of \$15 million and insured by an RCBAP with \$12.5 million of coverage.

RCBAP - \$12,500,000 (50 units) = \$250,000 per unit	
Loan Amount	\$300,000
Insurable Value (100% of buildings RCV - \$15,000,000/50 units = \$300,000)	\$300,000
Maximum Available Insurance per unit	\$250,000
<b>Minimum Required Flood Insurance Coverage</b>	<b>\$250,000</b>

No additional insurance is required since the RCBAP covers \$250,000 per unit.

# Waiting Periods

- Waiting Period: The time between the date of application and the policy effective date.
- NFIP policies that are not issued in conjunction with the making, increasing, extending or renewing of a loan have a 30-day waiting period.

NOTE: If a flood that is already in progress began before the effective date of the policy, even if the actual damage occurs after the policy effective date, the loss is not covered.

# Second Liens / Home Equities

- Flood insurance requirements generally apply regardless of lien priority.
- Because only one NFIP policy can be issued on a building, you should not request a new policy if one already exists.
- Instead, you should have the borrower contact the insurance agent:
  - To inform the agent of the intention to obtain a loan involving a subordinate lien
  - To obtain verification of the existence of a flood insurance policy, and
  - To check whether the amount of insurance covers all loan amounts.

# Second Liens / Home Equities

- After obtaining this information, the insurance agent should increase the amount of NFIP coverage if necessary and issue an endorsement that will reflect the institution as a lien holder.
- Alternatively, the borrower may also consider obtaining a private flood insurance policy in the proper amount.

Note: Negligence by Primary Lienholder requires Secondary Lienholder to obtain ENTIRE outstanding loan balance.

# Construction Loans

If structure is or will be built in a SFHA

Flood Insurance **MAY** be purchased

- Option 1: At time loan is made
- Option 2: When actual construction begins

# Land Loans

Land only, raw land, vacant land

General rule: No building or improved real property → No flood insurance required

But watch for:

- Unknown buildings
- Subsequent developments

# Forced Placed Insurance

Required if insurance is inadequate or does not exist

Procedures should begin immediate upon discovery

Not limited to renewals, extensions, etc.

Knowledge – determines that required flood insurance is deficient

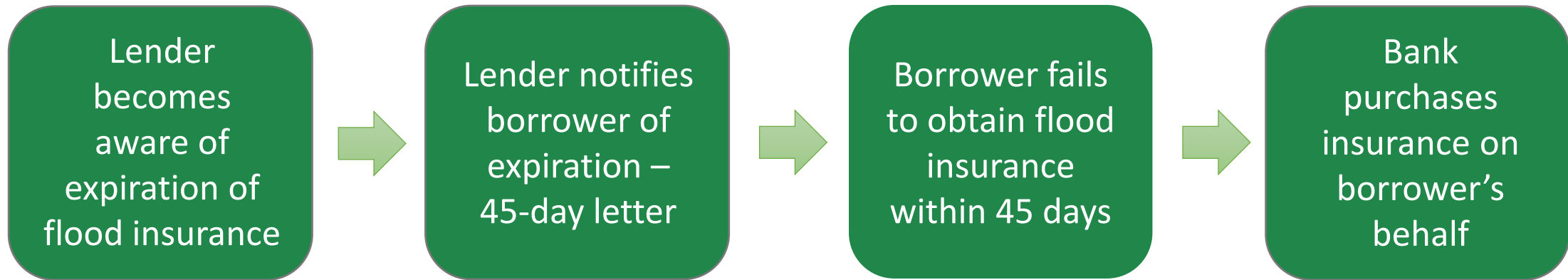
- Not required to monitor for map changes

45 Day Notice – must notify the borrower must obtain the insurance

- Determination that the borrower allowed the flood insurance coverage to lapse
- Required to purchase the insurance on the borrower's behalf.

# Forced Placed Insurance

Timeline of Force-Placed Requirements:



The bank may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage.



# Escrow

## Consumer Purpose

Residential property

MIRE Events

## Exemption

Business purpose

Subordinate liens

HOA/RCBAP

HELOCS

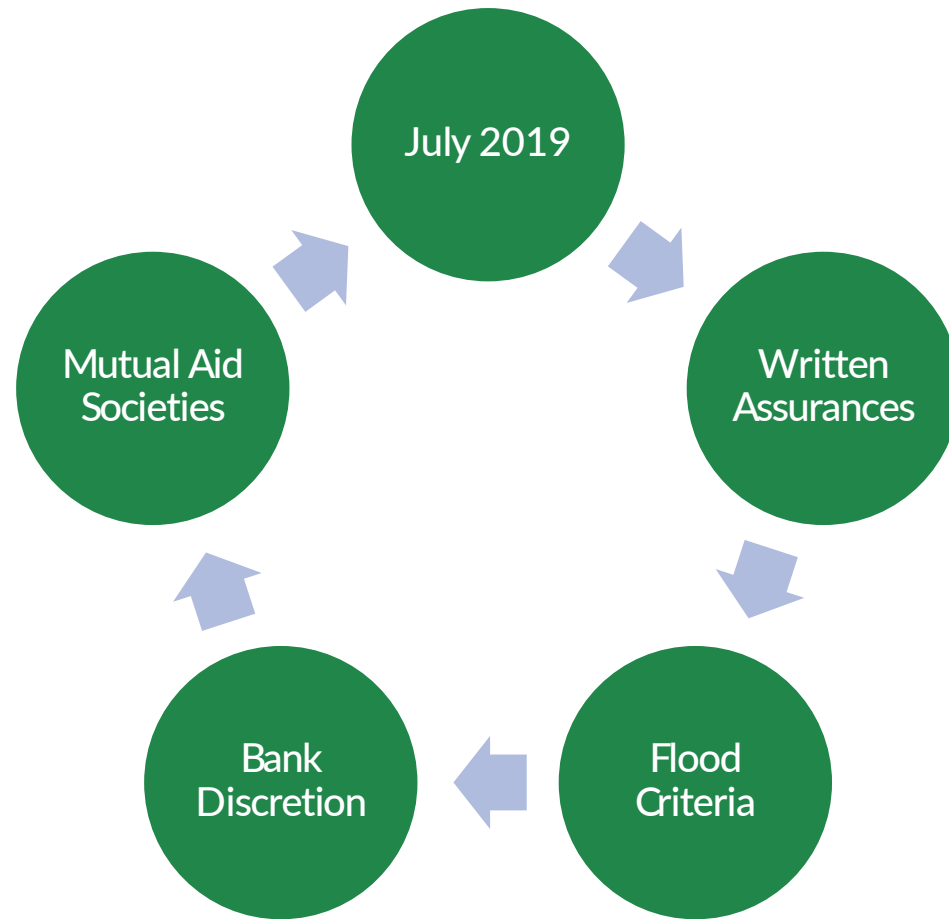
Non-Performing

12 months or less

# NFIP Reauthorization



# Private Flood Insurance



# Record-Keeping Requirements

The record-keeping requirements include retention of:

- Copies of completed SFHD forms, in either hard copy or electronic form, for as long as the bank owns the loan; and
- Records of receipt of notices to the borrower and the servicer for as long as the bank owns the loan.

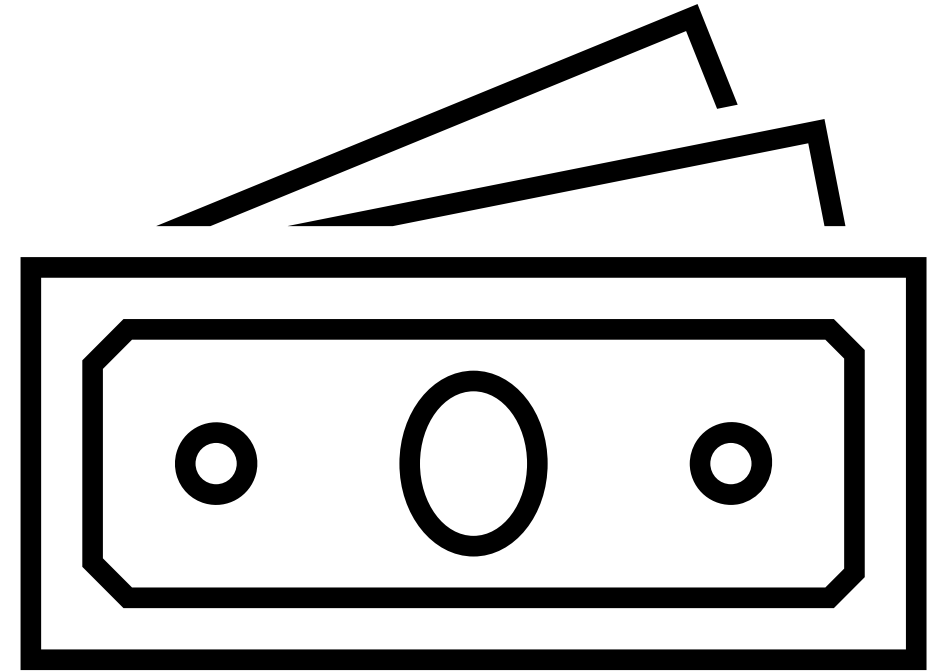
# Enforcement

The maximum civil penalty for a flood violation is \$2,000 per violation. There is no annual cap of the amount of a penalty that can be assessed.

A history or continued practice of violations will trigger a mandatory civil money penalty. Those practices relate to:

- Escrow Requirements
- Notice Requirements
- Force-placement requirements

Safety and Soundness of the bank's collateral



# Penalties & Liability

What is a “pattern or practice”?

Was the violation a result of the lender’s policies or procedures?

Was the violation within the lender’s control?

Was this a systematic failure over time?

How many violations relative to all covered transactions?

# Interagency Flood Q&A Published in 2021

- Since 1997, the Interagency Q&A have provided banks with guidance on a variety of technical flood insurance-related compliance issues.
- In 2009, the Agencies comprehensively revised and reorganized the initial 1997 Interagency Q&A, and in 2011, the Agencies further finalized two additional Q&A that were proposed in 2009, and re-proposed three Q&As that were never finalized.
- Considering the significant changes in the laws, the Agencies proposed new and revised Interagency Q&A in July 2020 and published them in March 2021.

# Interagency Flood Q&A

- The Agencies consolidated previous questions and answers into one set of Interagency Q&A consisting of 144 questions and answers.
- The Interagency Q&A contains 19 sections.
- Type of Updates
  - Reorganization
  - Revisions
  - Additions



# The New Interagency Flood Q&A - Key Topics

- Escrow of flood insurance premiums;
- The detached structure exemption;
- Force placement procedures; and
- Acceptance of flood insurance policies issued by private insurers.

## Questions and Answers with presenter: Kelly Owsley



Thank you for your participation!  
We hope you found today's presentation valuable.

If you have any additional questions,  
please contact Compliance Alliance.  
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