

Davis, P.O. Box 2020, Merrifield VA 22116-2020.

For Louisiana and locations west of the Mississippi River: Determination Review Coordinator, c/o Michael Baker Jr., Inc., 3601 Eisenhower Avenue, Alexandria VA 22304-6439.

We received comments from 25 organizations and individuals, as follows: 12 lenders, 9 associations, 3 third party determinators, and 1 consultant. The greatest number of comments related to who pays the requested fee (12 comments). Others commented on whether FEMA will accept individual requests (9 comments), whether and when borrowers are required to purchase flood insurance (6 comments). We also received 6 comments stating that FEMA should not require copies of NFIP maps to be submitted because it should already have them on file. Summarized below are the comments we received and our responses to them.

Fees

The \$60.00 fee for FEMA's review of determinations, contained in the proposed rule, has been increased to \$80.00, based on FEMA's anticipated costs to process reviews of determinations. The \$80.00 fee does not completely cover FEMA's costs, and contains some subsidy to the requestor. The costs for this service will be monitored and revised at the beginning of FY 1997, if necessary.

Determination of fee. Two responders asked how the fee was determined.

Response. The amount of time required to handle, record, document, and respond to these requests was estimated based on our experience with high volumes of similar types of requests. Using current \$40 per hour fee rates for the existing Letter of Map Revision (LOMR) review process, we estimated the \$80 fee based on the anticipated steps and time required to review a determination and process the request.

Fee is excessive. Five responders felt that the fee is excessive and more than commercial third party determinators charge for the same service.

Response. The vast majority of flood determinations made by third party determinators are for structures well away from the SFHA. These determinations can be done very quickly using automated processes at very low cost. For example, a third party determinator may determine that the only area of a community having SFHAs has a specific zip code. Any time that a third party determinator gets a request for a determination in that community it first checks the zip code. If it is any

zip code other than the one having SFHAs, a determination of "Not in SFHA" can be made quickly. This determination takes only minutes and costs are minimal. Only when a request for a determination is for a property with the zip code containing SFHAs is more effort required. Most of these determinations are for structures well away from the boundary of the SFHA and are clearly shown in or out of the SFHA.

Determinations where a structure is located near the edge of a mapped SFHA are the most complex because additional review is often required to locate the structure accurately on the NFIP map. While these latter determinations cost the determinator more, the inexpensive determinations comprise the vast majority of determinations made. We expect that FEMA's determination reviews will cost more because we anticipate receiving primarily requests for structures near the boundary of mapped flood hazards, where a review of the technical data used in making the determination and comparing it to the printed map will be required in order to issue a response.

Multiple structures. One commenter asked how the fee would apply to multiple structures.

Response. One fee will apply to each Standard Flood Hazard Determination Form (SFHDF) submitted. Generally, an SFHDF is prepared for a single structure used as loan collateral. If a request for a determination review includes multiple buildings, the fee will be based on the number of SFHDFs included in the request.

Authority. Two responders requested that FEMA cite the specific authority for imposing a fee.

Response. The authority for FEMA to charge a fee is at 31 U.S.C. 9701, which allows Federal agencies to recover costs associated with providing something of value to a customer.

Responsibility and Disclosure. Almost half of the responders asked who would pay the fee. Two responders asked how the fee for a determination review related to the Real Estate Settlement Procedures Act, if this fee was considered a finance charge, and if the fee needed to be disclosed.

Response. These issues were sent to the Federal Financial Institutions Examination Council for the Council's review and advice. We understand that they will be considered by the Council during the comment period (October 18-December 18, 1995) following the publication of the proposed rule for loans in areas having special flood hazards (60 FR 53962, October 18, 1995).

Notification. One commenter indicated that FEMA should not rely on the Federal Register for notification of the initial fee or subsequent increases or decreases in the amount, and suggested that all interested parties be notified directly regarding fee changes.

Response. Publication in the Federal Register is a legally acceptable method to notify the public of rule changes. Notifying individual parties is not FEMA's role, and cannot be provided within the constraints of FEMA's budget and staff. We expect that organizations and trade associations that serve the banking industry will provide such notification to their constituents.

Payment Method. The proposed rule included an option of payment by credit card. On further investigation this option will not be available because of the expense that would be incurred by FEMA to process credit card payments. Payment for requests for review must be made by check or by money order, in U.S. funds, payable to the National Flood Insurance Program.

Insurance Purchase Requirements

Forced placement. Five responders questioned how the request for review of lender determinations impacts the 45-day clock for forced placement of flood insurance. One responder asked whether a lender could force place insurance during the 90-day window (45 days to submit, 45 days to review) without liability or penalty, and whether new extensions of credit should be postponed pending FEMA's Response.

Response. Section 524 of the NFIRA states that if the request is made in connection with the origination of a loan and if FEMA fails to respond before the later of the expiration of the 45-day period after receiving the request or closing of the loan, then flood insurance is not required until such a letter is provided. Thus, section 524 only temporarily delays the flood insurance purchase requirement. If the closing of the loan occurs prior to 45 days after FEMA receives a request, then the flood insurance purchase requirement is not waived under section 524 because FEMA has not failed to respond within the 45-day period. If loan closing occurs after FEMA's 45-day response period, then the mandatory flood insurance purchase requirement is waived only if FEMA's response is not issued by loan closing. We plan to respond to requests within 45 days.

However, if we do not respond within 45 days and the mandatory purchase requirement is delayed until we do respond, it is nevertheless a prudent business practice to require the