Flood Disaster Protection Act

- Mandatory Purchase Requirement
  - “Regulated Lending Institutions” and “federal agency lenders”
  - Must not make, increase, renew, or extend a mortgage loan secured by improved real estate or a mobile home
  - Located in a special flood hazard area in which flood insurance coverage is available through the National Flood Insurance Program
  - Unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.

*Similar Requirement for loans purchased by Fannie Mae/Freddie Mac*
Flood Disaster Protection Act Hot Topics

- **Reauthorization.** What if Congress does not reauthorize the NFIP by July 31st?

  - Must develop contingency plans in advance

  - How will the lender handle loans closing just before the expiration date and after?

  - What will the lender do about policies that are set to expire?

  - How will the lender handle applications during a period of lapse?

  - What will be communicated to borrowers?
Private Flood Insurance. When can a lender accept a private flood insurance policy?

- FDPA requires “flood insurance”
  - Private flood insurance was not generally available when FDPA was enacted
  - FEMA developed six criteria - a private policy containing all six is an acceptable substitute for an NFIP policy
  - Federal banking agencies require banks to evaluate the six criteria when determining whether to accept a private flood insurance policy
Flood Disaster Protection Act Hot Topics

- **Private Flood Insurance continued...**
  - FEMA issued guidance saying the six criteria are not exclusive – if a lender is satisfied with a policy that does not contain all six criteria, “it is within his authority to accept the private policy”
  - Congress amended the FDPA – directs banking agencies to adopt regulations requiring lenders to accept private flood insurance policies that have all six criteria
    - Proposed but not yet adopted
    - Efforts for more amendments

- So... do private policies have to meet the six criteria?
Preparing For and Responding to Natural Disasters

- Lenders must comply with overlapping and changing legal requirements

Examples:

- **Loss Mitigation**
  - Regulation X generally requires a complete loss mitigation application before evaluating a mortgage borrower for a loss mitigation option, such as a loan modification or short sale
  - But servicers may offer: (1) certain short term options; (2) options to borrowers who have not submitted an application; and (3) options that are not based on any evaluation of information submitted by the borrower in connection with a loss mitigation application when the borrower submitted an incomplete application

- **Forbearance and Foreclosure Moratoriums**
  - Depends on investor/insurer... and the judge
Preparing For and Responding to Natural Disasters

• Home Equity Lines of Credit
  ▪ Regulation Z generally limits a creditor’s ability to prohibit draws or reduce the credit limit if borrower is current and has not adversely affected security interest (but there are limited exceptions)

• Credit Reporting
  ▪ Lenders appear to have some discretion in reporting accounts that are “affected by a natural or declared disaster”
    • Special Comment AW (Affected by natural or declared disaster)
    • But investors may require lenders to report in a certain manner – for example, FHA requires lenders to suppress reporting delinquencies if borrower is granted disaster-related payment relief and is otherwise performing as agreed, unless such reporting is required for a loan modification

• Inspecting and securing properties
  ▪ State and local laws; investor requirements