

provide the notice to the borrower. Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

73. *Is use of the sample form of notice mandatory?*

Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

## XVII. Mandatory Civil Money Penalties

74. *What violations of the Act can result in a mandatory civil money penalty?*

Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulations triggers a mandatory civil money penalty:

- (i) Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- (ii) Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- (iii) Forced placement of flood insurance (42 U.S.C. 4012a(e));
- (iv) Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- (v) Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations "shall be assessed a civil penalty" by its Federal supervisor in an amount not to exceed \$350 per violation, with a ceiling per institution of \$100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). This limit has since been raised to \$385 per violation, and the annual ceiling to \$125,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note. Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

75. *What constitutes a "pattern or practice" of violations for which civil*

*money penalties must be imposed under the Act?*

Answer: The Act does not define "pattern or practice." The Agencies make a determination of whether one exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

- Whether the conduct resulted from a common cause or source within the financial institution's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);
- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed

deficiencies in its flood insurance compliance; and

- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

End of text of the Interagency Questions and Answers Regarding Flood Insurance.

Dated: March 5, 2008.

**John C. Dugan,**  
*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, March 12, 2008.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

Dated at Washington, DC, this 14th day of March, 2008. Federal Deposit Insurance Corporation.

**Valerie J. Best,**  
*Assistant Executive Secretary.*

Dated: February 5, 2008.

By the Office of Thrift Supervision.

**John M. Reich,**  
*Director.*

Dated: March 13, 2008.

**Roland E Smith,**  
*Secretary, Farm Credit Administration Board.*

By the National Credit Union Administration Board, on March 13, 2008.

**Mary F. Rupp,**  
*Secretary of the Board.*

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BILLING CODES 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P; 6705-01-P; 7535-01-P

## UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

### Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for Fort Field Diversion Dam Reconstruction, Utah County, UT

**AGENCY:** Utah Reclamation Mitigation and Conservation Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission),

Central Utah Water Conservancy District (District) and U.S. Department of the Interior (Department), jointly prepared an Environmental Assessment (EA) to determine the effects of reconstructing the Fort Field Diversion on the Provo River in Utah County, to provide unimpaired fish passage during low flow conditions and to meet diversion requirements for canal companies and legal water users.

The Proposed Action selected from the EA for implementation entails the Mitigation Commission, District and Department cooperating to reconstruct the Fort Field Diversion structure, consisting of a cobble bar, a concrete sluiceway, with gates, tree removal and replacement or lining of a section of pipeline.

The Fort Field Diversion often functions as a dry dam: it diverts the entire stream flow of Provo River, with the exception of small quantities of water that leak through the diversion structure. It is also the lowest diversion on the Provo River and the first diversion encountered by June sucker as they ascend the Provo River to spawn. The June sucker is an endangered fish species found only in Utah Lake, which swims from Utah Lake up into the Provo River to spawn.

The Fort Field Diversion restricts June sucker spawning to only the lowest 3.8 miles of Provo River, and compromises the quality of spawning habitat in that lower reach; the upper 1.1 miles of the 4.9 mile reach designated as critical habitat for June sucker, is often inaccessible during May and June, when June sucker spawn.

The decision to select the Proposed Action from the EA will allow reconstruction of the Fort Field diversion structure resulting in fish passage and access to the additional 1.1 miles of June sucker's critical habitat. It will also allow accurate and real-time bypass and measurement of instream flows, maintaining the ability to meet diversion requirements for canal companies and legal water users who divert water at the Fort Field Diversion structure.

Based on information contained in the EA, a Finding of No Significant Impact (FONSI) was made, thus the Proposed Action does not require preparation of an Environmental Impact Statement (EIS) (it will not have a significant effect on the human environment; negative environmental impacts that could occur are negligible and can be generally eliminated with mitigation; there are no unmitigated adverse impacts on public health or safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region; no highly uncertain or controversial impacts, unique or unknown risks, cumulative effects, or elements of precedence were identified that have not been mitigated; and, implementation of the action will not violate any federal, state, or local environmental protection law.)

**ADDRESSES:** Copies of the Final Environmental Assessment and Finding of No Significant Impact can be obtained at the Utah Reclamation Mitigation and Conservation Commission, 230 South 500 East, Suite 230, Salt Lake City, Utah, 84102. They may also be viewed on the internet at: <http://www.mitigationcommission.gov/news.html>.

**FOR FURTHER INFORMATION CONTACT:** Maureen Wilson, Project Coordinator, (801) 524-3166.

Dated: March 13, 2008.

**Michael C. Weland,**  
*Executive Director.*

[FR Doc. E8-5743 Filed 3-20-08; 8:45 am]

**BILLING CODE 4310-05-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Enhanced-Use Lease of VA Property for the Development and Operation of a Senior Housing Facility for Low Income Veterans at the Department of Veterans Affairs Medical Center, Dayton, OH

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of intent to enter into an enhanced-use lease.

**SUMMARY:** The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 6 acres of underutilized land at the VA Medical Center in Dayton, Ohio. The selected lessee will finance, design, develop, construct, operate, maintain and manage a facility to provide senior housing for low income veterans. The facility will include a single 3-story, newly constructed masonry building, with not less than 61 one-bedroom and 6 two-bedroom units and associated vehicular parking spaces. The lessee also will be required to provide VA with agreed-upon ground rent payments and in-kind consideration consisting of priority placement and a discount rental rate that eligible veterans will pay to reside in the facility.

**FOR FURTHER INFORMATION CONTACT:** Edward Bradley, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7778 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: March 17, 2008.

**James B. Peak,**

*Secretary of Veterans Affairs.*

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