



NY RISING SMALL BUSINESS PROGRAM FLOOD INSURANCE AND COASTAL BARRIER RESOURCE AREA REQUIREMENTS FACT SHEET

FLOOD INSURANCE REQUIREMENTS

How may flood insurance requirements apply to you?

If your business is seeking financial assistance for acquisition and construction purposes for property that is insurable under the National Flood Insurance Program (“NFIP”) and the insurable property is located in a Special Flood Hazard Area (also known as the 100-year floodplain), you will be required to obtain and maintain flood insurance in perpetuity for all such property for which financial assistance is sought.

What is included under acquisition or construction?

Financial assistance for acquisition and construction purposes means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair or improvement of any building, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. In addition, it includes the purchase or subsidization of mortgages or mortgage loans.

What level of flood insurance are you required to obtain and maintain?

The business is required to obtain and maintain flood insurance in an amount at least equal to the development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to that particular type of property under the National Flood Insurance Program.

When do you have to show proof that you have current and sufficient flood insurance?

The applicant will be required to provide proof of current flood insurance prior to executing their grant agreement. Failure to maintain the required flood insurance may result in ineligibility for Federal disaster recovery assistance for future events.

What type of flood insurance is required for different types of activities funded with federal assistance?

Building Coverage (entire property) required^{1,2}:

- Mortgage Assistance
- Fixtures
- Immovable Equipment and/or Machinery Purchases
- Construction/ Rehabilitation of Structure or surrounding area

¹ Applicants required to have Building Coverage must also have a restrictive covenant placed on the property.

² Coverage must be provided for entire property or unit (as applicable), regardless of whether applicant is an owner or lessee.

Contents Coverage (on assisted contents/purchases) required:

- Movable Equipment and/or Machinery
- Furniture

Depending on the activities for which a business receives Program assistance, some applicants may be required to have both building and contents flood insurance coverage. Applicants should consult their flood insurance representative for detailed information about coverage needs.

For additional information, please see:

- https://www.floodsmart.gov/floodsmart/pages/choose_your_policy/whats_covered.jsp
- http://www.fema.gov/media-library-data/1397156803673-3e1447b0401bbe168475dfcc411a6772/03_generalrules_508_june2014.pdf

Flood Insurance Restrictive Covenant

What is a restrictive covenant?

A restrictive covenant is any type of agreement that requires any subsequent buyer to take or abstain from taking a specific action. In real estate transactions, restrictive covenants are binding legal obligations written into the deed of a property by the seller. A restrictive covenant runs with the land in perpetuity.

Is a restrictive covenant required for your property?

If a business receives Program assistance for any activities that require “Building Coverage” as identified by the National Flood Insurance Program, a Flood Insurance Restrictive Covenant is required to be placed on the property.

If you are a tenant seeking Program assistance, does this requirement apply to you?

For tenants who seek Program assistance for activities that require “Building Coverage,” the building owner must be named on the Building Coverage policy and the owner must file a Flood Insurance Restrictive Covenant on the property. The tenant will be responsible for working with the building owner to determine the terms of their agreement to recording a covenant on the property.

For tenants that seek Program assistance for activities that require “Contents Coverage,” the tenant alone may be named on the Contents Coverage policy and a Flood Insurance Restrictive Covenant is NOT required to be placed on the property.

Why is a restrictive covenant being recorded on your property?

Under the NY Rising Program requirements and in the terms that you will or have already agreed to in your grant agreement, if your property is in the 100-year floodplain, you are required to obtain and maintain flood insurance in perpetuity for all real and personal business property for which financial assistance for acquisition or construction purposes is sought.

Furthermore, you are required to notify in writing at the time of the transfer of the property ALL subsequent buyers of the property of the requirement to maintain flood insurance. Placing a Flood Insurance Restrictive Covenant on the property ensures that ALL future property owner(s) are notified of flood insurance requirements and the requirement to keep the property insured by a flood insurance policy.

What does the Flood Insurance Restrictive Covenant say?

If the business property is located in a “flood disaster area” as defined in 42 U.S.C. 5154a (d), the business and/or property owner must obtain and maintain flood insurance in accordance with applicable Federal law and in the event of a sale or transfer of the property, the current owner and all subsequent owners shall, on or before the date of transfer, notify the transferee in writing of the requirements to obtain and maintain flood insurance in accordance with 42 U.S.C. 5154a and all applicable Federal laws. Such written notification must be contained in documents evidencing the transfer of ownership of the property. The covenants, terms, provisions and conditions regarding flood insurance will run with the land, binding all subsequent owners, encumbrances, and tenants of the property.

How is the restrictive covenant applied to my property?

The restrictive covenant must be executed by the property owner(s) in front of a notary and will be filed by the Program with the local municipal authority to become part of the property deed; this is required under the terms of the Grant Agreement and is required by Federal law.

COASTAL BARRIER RESOURCE AREA

If located in a Coastal Barrier Resource Area, (CBRA) an applicant may be limited in their eligibility or may not be eligible for any federal assistance, depending on the nature of the area in which a business is located. There are 3 CBRA classifications:

- 1. Systems Unit.** System units are generally comprised of private lands that were relatively undeveloped at the time of their designation within the Coastal Barrier Resources System (CBRS). The boundaries of these units are generally intended to follow geomorphic, development, or cultural features. The CBRS currently includes 584 System units encompassing approximately 1.3 million acres of land and associated aquatic habitat. ***Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System Units, therefore the program cannot provide assistance for any activities located in a Systems Unit.***
- 2. Otherwise Protected Areas.** OPAs are generally comprised of lands held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. The boundaries of these units are generally intended to coincide with the boundaries of conservation or recreation areas such as state parks and national wildlife refuges. The CBRS currently includes 272 OPAs encompassing approximately 1.9 million acres of land and associated aquatic habitat. ***The Federal spending prohibition within an OPA is limited to the unavailability of Federal flood insurance within an OPA. If a business does not have existing flood insurance or cannot obtain private flood insurance for activities requiring flood insurance as noted above, they will not be eligible for Federal assistance.***
- 3. Buffer Zones.** These are areas that, on a map, may or may not be in the CBRA. If someone is located in the buffer zone, the Program must seek site specific consultation with the U.S. Forestry and Wildlife Service for a determination of whether the business property is “in” or “out” of the Systems Unit or Otherwise Protected Area. The final determination will allow GOSR to make the determination whether a business is eligible to receive federal assistance.

For additional information, please see:

- <http://www.fws.gov/cbra/>