



FEMA

W-08093

December 9, 2008

MEMORANDUM TO: Write Your Own (WYO) Company Principal Coordinators
and the NFIP Servicing Agent

FROM: WYO Clearinghouse
NFIP Bureau and Statistical Agent

SUBJECT: Private Flood Insurance

Accompanying for your information is a copy of a November 25 memo explaining FEMA's neutral position on private flood insurance. Issued by Edward L. Connor, Acting Federal Insurance Administrator, National Flood Insurance Program, the memo was sent to FEMA Regional Mitigation Division Directors to help them respond appropriately to inquiries from lenders and others about private flood insurance companies and the flood coverages they offer.

Please distribute this document within your organization as appropriate.

Attachment

cc: Vendors, IBHS, FIPNC, Government Technical Representative


Suggested Routing: Data Processing, Marketing, Underwriting



FEMA

November 25, 2008

MEMORANDUM TO: FEMA Regional Mitigation Division Directors

FROM: Edward L. Connor 
Acting Federal Insurance Administrator
National Flood Insurance Program

SUBJECT: Private Flood Insurance

This is to provide the Department of Homeland Security, Federal Emergency Management Agency (FEMA) neutral position on private flood insurance, as discussed during the August 26, 2008 conference call with the Regional Insurance Specialists. The private flood insurance companies are regulated by State Departments of Insurance and not by FEMA. However, lending institutions and others may inquire about private flood insurance companies and the flood insurance products they offer. In your response, it should be noted that as a non-user of private flood insurance, FEMA has no relationship or experience with any of the private flood insurance companies or their products, while lending institutions and States do. Therefore, FEMA is not in a position to offer advice regarding the private flood insurance industry.

FEMA recognizes the necessity for an increasingly viable private flood insurance market to coexist with the National Flood Insurance Program (NFIP). In fact, the NFIP would not exist today if a private flood insurance market had been consistently available to meet the needs of consumers and the regulated mortgage lending industry. Section 1304 [42 U.S.C. § 4011] called for appropriate participation between insurance companies and FEMA to the maximum extent practical on other than a risk-sharing basis. It is in the interest of all stakeholders for private flood insurance availability to increase to provide consumers with choices, excess coverage above NFIP limits, and flood insurance where NFIP coverage is not available.

The Mandatory Purchase of Flood Insurance Guidelines booklet contains basic criteria that a lender may use in its investigation as to whether a private flood insurer and/or its flood insurance product may be acceptable. You may want to refer inquirers to these Private Flood Insurance criteria (attached), which are located in Section E, Item 5. on pages 57 and 58 in the guidelines, as appropriate.

If you have questions regarding FEMA's neutral position on private flood insurance, please contact Ms. Tuula Young, Lender Compliance Officer by email: Tuula.Young@dhs.gov or phone: (703) 605-4241.

Attachment

cc: Mitigation Division Directors, Regional Insurance Specialists, FEMA Regions I-X

with the 1994 Reform Act in these types of transactions. However, if any mortgage brokers are involved in the processing and underwriting of the application, the lender should contractually delegate to them the responsibility to comply with the various notice, form, and purchase requirements of the Flood Disaster Protection Act of 1973, thereby eliminating any duplication of flood determinations and borrower notices.

4. Impact on Servicers

The 1994 Reform Act addresses the role of servicers by sanctioning NFIP-related activities conducted on behalf of regulated lenders.

A servicer, as broadly defined in the 1994 Reform Act (42 U.S.C. §4003(a)(11) and §4121(a)(11)) may be a regulated lender or a private entity assisting a lender as an independent contractor. The provisions of the 1994 Reform Act apply to all banking institutions' subsidiaries and service corporations. If a servicer is a subsidiary of a regulated lender, it is included under the purview of the 1994 Reform Act. As discussed in Section C of these guidelines, the activities that apply to servicers include escrow, force placement, and zone determination, as well as the submission and receipt of notices. A servicer is directly involved in NFIP activities as a recipient of notices such as a copy of the borrower's Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance from the lender and the expiration/renewal notice from the insurer.

The regulations that address a servicer's activities treat loan servicers as acting on behalf of regulated lending institutions. Under the regulations, loan servicers are to be held answerable for their actions to the lender by means of contract. A lender thus may fulfill its duties under the 1994 Reform Act by imposing its responsibilities on the servicer under a loan service agreement. Accordingly, lenders should include in their

loan servicing agreements language ensuring that the servicer will fulfill Federal insurance requirements for escrow, force placement, flood hazard determinations, and the various notices, with conditions for recourse. The Federal regulations state that where deficiencies are found in existing loan servicing contracts, lenders should revise these agreements to provide for the loan servicer to fulfill Federal flood insurance requirements. It would also be prudent to monitor the activity of servicing agents.

The mandatory purchase provisions do not apply directly to loan originators that are not banking institutions or to servicers that are not acting on behalf of a banking institution. However, these non-bank originators and servicers must see to it that loans they sell or service for a GSE meet the requirements of the 1994 Reform Act. Non-bank (e.g., mortgage broker), nonconforming loan lenders who do not originate for GSEs do not come under the authority of the 1994 Reform Act.

5. Private Flood Insurance

As part of the notification procedure in making a loan, lenders must inform prospective borrowers of the availability of coverage from private insurers as well as from the NFIP. Federal regulatory entities may require gap/blanket insurance, which is not available from the NFIP, through a private insurer. However, FEMA recognizes the limited availability of flood insurance from the private insurance market.

A lender must consider the suitability of private flood insurance policies only when the mandatory purchase requirement applies. If NFIP coverage is not available in a particular community, or if the risk is otherwise not eligible for NFIP coverage, e.g., in a non-participating community or a Coastal Barrier Resources Act area, private flood insurance may be an alternative. A lender has more discretion in selecting private flood coverage when NFIP coverage is not available.

When private flood coverage is being considered in lieu of an NFIP policy, a lender should understand and comply with FEMA's criteria (described below) for selection of the private insurer and the form of coverage.

A private flood insurance policy that meets all six of the FEMA criteria described in **a.** through **f.** below conforms to the mandatory flood insurance purchase requirements of the 1994 Reform Act. To the extent that the private policy differs from the NFIP Standard Flood Insurance Policy (SFIP), available on the FEMA website at <http://www.fema.gov/business/nfip/sfip.shtm>, the differences should be carefully examined before the policy is accepted as sufficient protection under the law.

a. Licensure

The insurer must be licensed, admitted, or otherwise approved to do business in the jurisdiction where the building is located, by the insurance regulator of that jurisdiction, except as indicated in **b.** below.

**b. Surplus Lines Recognition
(Non-Residential Commercial)**

In the case of non-residential commercial property insurance issued under a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, the insurer should be recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the jurisdiction where the building is located.

**c. Requirement of 45-Day Cancellation/
Non-Renewal Notice**

The private flood insurance policy should include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. The policy should also state that, to be effective, such notice must be mailed to both the insured and the lender or Federal agency lender, and must include information about the avail-

ability of flood insurance coverage under the NFIP. The policy should be as restrictive in its cancellation provisions as the SFIP.

d. Breadth of Policy Coverage

The policy must guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least as broad as the coverage under the SFIP.

e. Strength of Mortgage Interest Clause

Lenders must ensure that a mortgage interest clause similar to that contained in the General Conditions section of the SFIP is contained in the policy.

f. Legal Recourse

The policy must contain a provision that the insured must file suit within 1 year after the date of written denial of all or part of the claim.

6. Regulatory Overview

The 1994 Reform Act expressly incorporates regulatory sanctions into the law and indirectly influences the potential for civil liability. This subsection addresses the regulatory examinations and penalties; the issue of liability under civil law is discussed on page 60.

a. Regulatory Examinations

As part of the 1994 Reform Act, Congress established a task force charged with studying the extent to which the Federal regulatory agencies and the secondary market enforce the statutory requirements. Accordingly, lenders and servicers can continue to expect onsite examination by the regulatory entity primarily responsible for the supervision of the institution as part of their compliance examinations. Similarly, the GSEs will be reviewed by their oversight agency and must conduct a review of their sellers. The examination procedures may include reviewing a sampling of loan files.