



FEMA

W-11125

December 15, 2011

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the
National Flood Insurance Program (NFIP) Servicing Agent

A handwritten signature in black ink, appearing to read "Dennis Kuhns".

FROM: Dennis Kuhns
Division Director, Risk Insurance
Federal Insurance and Mitigation Administration

SUBJECT: NFIP Reauthorization

The NFIP authority to issue new policies, issue increased coverage on existing policies, or issue renewal policies will expire on midnight December 16, 2011. While we await Congressional reauthorization, the attached guidance is provided in the event the Program experiences a hiatus.

This guidance, while similar to guidance issued on September 15, 2011 (bulletin W-11084), contains some clarifications. Sample text is also provided to assist you in communicating with prospective policyholders impacted during a hiatus.

We will continue to keep you informed of the status of NFIP reauthorization.

Attachments:

- NFIP Reauthorization Information for WYO Companies and Agents, December 17, 2011
- Sample letter

cc: Vendors, IBHS, FIPNC, Government Technical Representative

**NFIP Reauthorization
Information for WYO Companies and Agents
December 17, 2011**

New Policies

Applications and premium payments made on or before December 16, 2011, the last effective day of Program authorization

- New policies for which the application is completed on or before December 16, 2011, and the application and premium payment are received within 10 days of the application date, will be issued for coverage and will become effective on the requested effective date, in accordance with the applicable waiting period rules.
- For loans closing prior to the first day of hiatus, when the application is dated on or before closing and the premium payment is from the escrow account (lender's check), title company, or settlement attorney, and is received within 30 days from the closing date, the policy can be issued effective the date of the closing.
- For loans closing prior to the first day of hiatus, when the application is dated on or before closing and the premium payment is not part of the closing (i.e., the applicant or applicant's representative check or credit card) and the application and premium are received within 10 days of the closing date, the policy can be issued effective the date of the closing.
- For loans closing on or after the first day of hiatus, when the application is dated prior to the hiatus and the application and premium are received within 10 days of the closing date, the policy can be issued effective the date of closing.
- As always, the starting dates of NFIP coverage depend on the applicable flood insurance waiting period.

Claims

- Policies that are in force before midnight of the last effective day of Program authorization will remain in force, and claims under those policies are to be processed and paid as usual afterwards (once hiatus begins).
- Claims for covered losses occurring during a hiatus, on existing policies and on policies issued effective after the last effective day of authorization, are to be processed and paid as usual.
- WYO Companies may investigate claims under a reservation-of-rights letter or a non-waiver agreement, up to the point of payment. Under either, WYO Companies would reserve the right not to pay the claim if Congress does not reauthorize the NFIP, while continuing the investigation of the claim.

- If reauthorization is granted retroactively, WYO Companies can issue policies effective as of the date they receive payments (subject to applicable waiting periods), and claims for covered losses can be processed and paid (subject to the provisions of the SFIP).

Determining Payment Receipt Dates

New Policy Premiums, Renewal Policy Premiums, Added Coverage Endorsements

- The controlling factor in determining payment receipt dates for new policy premiums, renewal policy premiums, or added coverage endorsements is when the insurance company receives payment, not the standard mail postmark.
 - However, proof of mailing receipts or third-party receipts that WYO Companies receive through certified mail or from entities such as Federal Express (FedEx), United Parcel Service (UPS), and courier services do serve as payment receipt dates.

Financials

- During the NFIP hiatus, the NFIP recommends that WYO Companies hold in abeyance the following: (1) any premiums for new applications dated on or after the first day of the hiatus, (2) renewal premiums received on or after the first day of the hiatus and after the end of the 30-day renewal grace period, and (3) added coverage endorsements dated on or after the first day of the hiatus. We recognize that receiving and holding applications and premiums may create the appearance that a contract to provide insurance has been entered into and an insurance policy may have been created. Because the NFIP is prohibited from entering into a contract for flood insurance during a hiatus, we further recommend that WYO Companies, expressly and in writing, advise individuals and entities seeking to procure flood insurance that insurance is unavailable by operation of law pending reauthorization, and of the options available during the hiatus.
- NFIP Letter of Credit is available during the hiatus.

Hiatus Scenarios

Policies without a 30-Day Waiting Period

- If the reauthorization is not retroactive to the first day of the hiatus, policies without a 30-day waiting period would become effective on the date the reauthorization is effective. This rule applies to loan closings occurring on or after the first day of the hiatus.

Policies with a 30-Day Waiting Period

- If the reauthorization is not retroactive to the first day of the hiatus, policies with a 30-day waiting period would become effective 30 days after Congress has reauthorized the NFIP.

Renewals

- If the renewal offer was issued prior to authorization expiration, and the renewal premium is received before or within the 30-day grace period, the policy can be renewed even if the renewal premium was received after authorization expiration. The same rule applies on an underpayment notice issued before authorization expiration.
- WYO Companies are no longer authorized to renew policies if the premium is received on or after the first day of the hiatus and after the end of the 30-day renewal grace period.

Cancellations

Existing policies can be canceled during the hiatus in accordance with valid NFIP cancellation reason codes.

Group Flood Insurance Policies, Mortgage Portfolio Protection Program Policies

Follow the guidelines provided above.

Assignment of Flood Policies

An existing policy can be assigned provided the insured signs and dates the endorsement request.

Action Required by WYO Companies during an NFIP Hiatus

- WYO Companies are to communicate the status of the program to their agents ASAP.
- WYO Companies are no longer authorized to issue renewal offers after the last effective day of authorization.
- New business applications, renewals, and endorsements adding coverage that do not meet the criteria listed above cannot be issued.

Frequently Asked Questions (FAQs) Concerning NFIP Reauthorization

1. How does the “hiatus” in authority for the NFIP affect me and how long will it last?

Most of the 5.6 million flood insurance policyholders nationwide will not be affected. Policies that are in force will remain in force, and claims under those policies can continue to be paid after December 16, 2011. However, during the hiatus there are limits on our ability to issue new policies, issue increased coverage on existing policies, or issue renewal policies. The limited interruption is of concern to property owners who need to renew policies that were not renewed prior to the end of the 30-day grace period, homebuyers who must purchase flood insurance as a condition for obtaining mortgages from federally regulated lenders, and property owners refinancing existing mortgages who must purchase or renew coverage.

The hiatus is expected to be brief. We are doing everything we can to communicate with our insurance and lending industry partners to see that this issue is resolved with as little disruption of insurance operations as possible.

2. Has this lapse in Congressional authority for the NFIP ever happened before? Did Congress make the reauthorization retroactive before?

Yes, there have been several lapses in authority for the NFIP in the past. In most of those cases, Congress reauthorized the NFIP retroactively.

3. If I purchased flood insurance coverage, as required by my federally regulated lender, for a loan closing on or before December 16, 2011, will my policy be issued?

If the application is dated on or before December 16, 2011, and the premium payment was part of the loan closing and made from the escrow account (lender's check), title company, or settlement attorney, and is received by the insurance company within 30 days from the closing, the policy will be issued.

If the premium was not part of the closing, meaning the borrower wrote his/her check and the application is dated on or before December 16, 2011, both the application and premium must be received within 10 days of the closing date in order for the policy to be issued.

4. If I purchased flood insurance coverage on or before December 16, 2011, but was not required to do so by my lender, will my policy be issued?

If the application was made prior to December 17, 2011, and the application and premium payment are received within 10 days from the application date, the policy will be issued.

5. My flood insurance policy is set to expire on December 19, 2011. I received my renewal notice on December 2, 2011, but did not send my payment to my insurance company until December 16, 2011. Will my insurance policy be renewed?

Yes. As long as the renewal notice was issued prior to December 17, 2011, and the payment is received before the end of the 30-day renewal grace period, the company is authorized to renew the policy.

NOTE: Effective December 17, 2011, insurance companies are no longer authorized to issue renewal notices until Congress reauthorizes the program.

6. I have a loan closing on December 19, 2011, and have been told by my lender to purchase flood insurance before settlement. Will I be able to purchase a new flood insurance policy?

Insurance companies cannot issue new flood insurance policies for loans closing on or after December 17, 2011, until the NFIP is reauthorized, unless the application and presentment of premium were made on or before December 16, 2011, and the application and premium payment were received within 10 days of the closing date. If the above requirements are followed, a new policy may be issued.

For applications and premium payments made on or after December 17, 2011, it is recommended that the companies hold new applications and premium payments for processing until the reauthorization is received. If Congress retroactively reauthorizes the program, then these policies may be issued with effective dates as early as December 17, 2011. If Congress does not retroactively reauthorize the program, the earliest effective date for these policies will be the date the NFIP is reauthorized.

7. If I suffer a loss during this hiatus, will my claim be paid?

Claims for existing policies and for new policies issued based on applications and premium payments made prior to the hiatus are not affected, and the claims will be processed. Claims for new policies where the premiums were received and held by the company during the hiatus will not be paid until Congress reauthorizes the NFIP. However, your insurance company can proceed with investigating your claim under a “non-waiver” agreement or reservation of rights letter, up to the point of payment. Under the “non-waiver” agreement or reservation of rights letter, the company would reserve the right not to pay the claim if Congress does not reauthorize the NFIP or if Congress reauthorizes the NFIP only prospectively, and not retroactively.

8. What happens if my premium for a new policy or an endorsement for added coverage is received by the company after December 16, 2011, and I suffer a flood loss before Congress reauthorizes the Program?

If the application for a new policy or endorsement request adding coverage is made on or before December 16, 2011, and the application and premium are received by the company within 10 days of the date of application, the policy or coverage increase will be effective on the

appropriate date, based on the NFIP waiting period rules. Claim payments can be made for these policies for losses occurring during the period that the coverage is in force.

For applications or endorsements and premium payments made on or after December 17, 2011, the NFIP has suggested that the insurance companies hold premium payments for new or increased policies received during the hiatus. Claim payments for losses suffered during that time cannot be made until Congress retroactively extends the NFIP authority. However, your insurance company can proceed with investigating your claim under a “non-waiver” agreement or reservation of rights letter, up to the point of payment. Under the “non-waiver” agreement, the company would reserve the right not to pay the claim if Congress does not reauthorize the NFIP or if Congress reauthorizes the NFIP only prospectively, and not retroactively.

9. I have a mortgage loan closing late December, and the lender has told me I have to have flood insurance at closing. What will happen if my premium and application are not received by my insurance company by December 16, 2011?

If the application is dated on or before December 16, 2011, and the application and premium payment are received by the company within 10 days of the closing date, the policy will be issued.

If the application and premium payment are dated on or after December 17, 2011, it is expected that your premium will be held by your insurance company in order that your policy can go into effect at the earliest possible date. If reauthorization to issue flood insurance policies under the NFIP is granted retroactively, your policy will be issued effective as of the date of the closing of your loan.

10. If my premium for the scenario in question (9) above was in the mail, with a postmark before December 16, 2011, did I meet the deadline?

The controlling factor is receipt of the premium by the insurance company, not the postmark. However, if your premium payment is mailed by certified mail or third-party delivery services such as Federal Express (FedEx), United Parcel Service (UPS), and courier services and the like that provide proof of mailing, the premium receipt date is the postmark date or the third-party receipt date.

11. If I suffer a loss during the hiatus, and I met the December 16, 2011, deadline, will I be covered for the loss?

If, based on the waiting period rules of the NFIP, your coverage was in effect at the time of the date of loss, your claim would be covered. See Question 16 for details about the 30-day waiting period.

12. What happens if my premium payment for a policy renewal was received by the company after December 16, 2011, and I suffer a flood loss before Congress reauthorizes the NFIP? Will I be covered?

If the renewal premium was received prior to the end of the 30-day renewal grace period, the policy will be renewed without a lapse in coverage and coverage will be in effect at the time of the loss. (Note: A 30-day waiting period applies to policies for which premium payments were received after the 30-day renewal grace period.)

For renewal premiums received after the end of the 30-day renewal grace period, the NFIP has suggested that the insurance companies hold in abeyance renewal premium payments received during the hiatus. Claim payments for losses suffered during that time cannot be made until Congress retroactively extends the NFIP authority. However, your insurance company can proceed with investigating your claim under a “non-waiver” agreement, up to the point of payment. Under the “non-waiver” agreement, the company would reserve the right not to pay the claim if Congress does not reauthorize the NFIP or if Congress reauthorizes the NFIP only prospectively, and not retroactively.

13. My policy was up for renewal in late December. Was my policy renewed?

If your renewal premium payment was received by your insurance company on or before December 16, 2011, or received prior to or within the 30-day renewal grace period, your policy was renewed. Check with your insurance agent to make certain your policy was renewed.

If your renewal premium payment was received by your insurance company on or after December 17, 2011, and after the end of the 30-day renewal grace period, your policy will not be renewed until Congress extends the NFIP authority. The effective date of the renewal will depend on the date of the extension of NFIP authority, whether or not the reauthorization is retroactive, and the application of the 30-day waiting period.

14. What happens if Congress does not make reauthorization retroactive to December 16, 2011?

If Congress authorizes only the sale of policies prospectively, policies that do not have a 30-day waiting period would become effective on the date the reauthorization is effective. Policies that are available only with a 30-day waiting period would become effective 30 days after Congress has reauthorized the NFIP.

15. What happens if the hiatus is lengthy?

If authorization is not granted within a reasonable period of time, premium payments will be refunded and the NFIP will not be able to issue the policies that were not effective prior to the lapse of authorization.

16. How will I know when the NFIP has been reauthorized?

FEMA will notify NFIP stakeholders so they can pass the information on to their customers.

SAMPLE LETTER

Dear prospective policyholder:

We have received your application and premium/renewal premium for a Standard Flood Insurance Policy issued under the National Flood Insurance Program (the “NFIP”). The NFIP is a Federal program administered by the Federal Emergency Management Agency (“FEMA”) and authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. §§ 4001 *et seq.* (the “Act”). Pursuant to 42 U.S.C. § 4026, Congress limited FEMA’s authority to enter into new flood insurance contracts, and that authority expired on December 16, 2011. Because our authority to sell flood insurance is subject to the limitations in the Act, and because we received your application and premium/renewal premium after the flood insurance hiatus went into effect, we are unable to enter into a contract to sell you flood insurance at this time.

The NFIP has been in hiatus previously when the authority to issue new policies expired, and in the past, Congress has reauthorized the Program retroactively with limited delay. We expect the current hiatus will end soon and Congress will again authorize the sale of Federal flood insurance, but currently the NFIP is unable to execute new or renewal insurance contracts or put new flood insurance in force. We recognize that the hiatus and inability to enter into contracts for insurance may cause you concern. You have several options available to you, and we want to provide you with the array of available options.

First, we can hold your application and premium/renewal premium in abeyance pending reauthorization. In the past Congress has reauthorized the NFIP retroactively, and we have been able to retroactively put coverage in place. This means that after retroactive reauthorization, we would issue coverage based on the NFIP rules and applicable waiting period back to the time we received your application and premium/renewal premium. Your new policy would go into effect at the earliest date consistent with both the terms of your new or expiring policy and the extension of authority for the NFIP. A flood loss that may have occurred after a policy was retroactively put into effect would then be covered under the terms and conditions of the policy. However, if you were to incur a flood loss during the hiatus, we would ask that you notify us and we would adjust your loss under a “reservation of rights” pending Congressional authorization. Claim payment would then be made after reauthorization and after the policy becomes effective, pursuant to our normal loss payment practices. To be eligible for this option, no action on your part is necessary. We will hold your application and premium/renewal premium pending reauthorization unless you notify us otherwise. If it becomes apparent that Congress will not reauthorize the NFIP and we are unable to sell Federal flood insurance, we will then return your premium.

Second, you can decide that you are no longer interested in NFIP flood insurance and can seek coverage elsewhere, or you can decide that you want to hold your premium and application yourself until the NFIP is reauthorized. If you want us to return your premium, please advise us accordingly. If you ask for return of your premium, we will be unable to implement coverage retroactively, and any loss suffered will not be covered if the NFIP is reauthorized. In addition, if you decide to secure NFIP coverage in the future, we will apply the appropriate waiting period and other requirements based on the future date that we receive your application and premium/renewal premium.

We fully expect that Congress will reauthorize the NFIP and we will be able to provide you with Federal flood insurance coverage. However, until Congress acts, we are unable to provide coverage, and we want to fully inform you of your options during this period.

Thank you for your patience and understanding.

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