



FEMA

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September 25, 2023

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

FROM: 
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Federal Insurance Directorate

SUBJECT: Guidance on Potential Lapse in National Flood Insurance Program (NFIP) Authority¹

The Federal Emergency Management Agency's (FEMA's) NFIP is currently not permitted by law to enter into a new flood insurance contract after September 30, 2023. This potential lapse in authority would significantly impact the NFIP's normal operations. This bulletin provides guidance to WYO Companies and the NFIP Direct Servicing Agent (NFIP Direct) in the event such a lapse occurs.

I. Guidance on Calculating Date of Entering into New Flood Insurance Contracts

The date of entering into a new flood insurance contract is the earliest of the following:

- (1) the date in which a WYO Company or the NFIP Direct accepted an application for flood insurance and the applicable premium with fees and surcharge, i.e., the full amount due; or
- (2) for the initial purchase of a flood insurance contract in connection with the making, increasing, extension, or renewal of a loan, the date and time of the loan closing, so long as the WYO Company or NFIP Direct receives the application for flood insurance and the full amount due—
 - (i) within 30 days from the closing, if the premium payment was made from an escrow account (lender's check), title company, or settlement attorney; or

¹ Congress must periodically renew the NFIP's authority, administered by FEMA's Administrator, to sell flood insurance. The NFIP's authority currently expires on September 30, 2023. To continue selling and renewing policies after September 30, 2023, Congress must pass, and the U.S. President must sign, legislation extending the NFIP's authority no later than 11:59 p.m. on September 30, 2023. If Congress does not act by that date, the NFIP cannot sell or renew flood insurance policies.

- (ii) within 10 days from the closing, if the premium payment was not made from an escrow account (lender's check), title company, or settlement attorney; or
- (3) for the initial purchase of a flood insurance contract not in connection with the making, increasing, extension, or renewal of a loan, the date in which any applicable waiting period begins, so long as the WYO Company or NFIP Direct receives the application for flood insurance and the full amount due within 10 days of the date of application; or
- (4) for the renewal of a flood insurance contract, the policy's renewal date, so long as the WYO Company or NFIP Direct receives the applicable renewal premium within 30 days of the renewal date.

II. Suspension of Offering or Renewing Policies

During a lapse in authority, a WYO Company or NFIP Direct may not:

- Issue policies for new business;
- Issue policies for requests to increase or add coverage; or
- Issue renewal notices.

Any quote provided during a lapse is for informational purposes only, is not binding, and is subject to change if the lapse ends and the authority to enter into new flood insurance contracts is restored. Please refer to the implementation guidance located in Section III of this bulletin for more information.

III. Implementation Guidance on Lapse of NFIP Authority

During the lapse in authority, the WYOs and the NFIP Direct should follow the guiding principles outlined above in Sections I and II; however, FEMA understands that you may need more detailed guidance on how to implement business during a lapse. To assist with the implementation of your business during a lapse in authority, FEMA is providing more detailed implementation guidance below and supporting materials which are attached to this bulletin.

Handling of New Policies or Requests to Increase Coverage

- **Standard 30-Day Waiting Period or 1-Day Map Revision or Post-Wildfire Waiting Period**
 - If the application or request to increase coverage is dated after the lapse in authority, the insurer cannot issue the policy.
 - If the application or request to increase coverage is dated on or before the last day of effective authorization, and the insurer receives the application/request and full amount due within the lapse period and within 10 days of the application/request date, the insurer may issue the policy and it will become effective in accordance with the applicable waiting period rules.
 - If the application or request to increase coverage is dated on or before the last day of effective authorization, and the insurer receives the application/request and full

amount due within the lapse period but they are *not* received within 10 days of the application/request date, the insurer cannot issue the policy.

- **Loan Closing No Waiting Period**

- If the application or request to increase coverage is dated after the lapse in authority, the insurer cannot issue the policy.
- For loans closing prior to the first day of lapse in authority, when the application or request to increase coverage is dated on or before closing and the full amount due is not part of the closing (i.e., full amount due is via the applicant or applicant's representative check or credit card) and the insurer receives the application/request and full amount due within 10 days of the closing date, the insurer can issue the policy effective on the closing date.
- For loans closing prior to the first day of lapse in authority, when the application or request to increase coverage is dated on or before closing and the full amount due is not part of the closing (i.e., full amount due is via the applicant or applicant's representative check or credit card) and the insurer receives the application/request and full amount due after 10 days of the closing date, the insurer cannot issue the policy.
- For loans closing prior to the first day of lapse in authority, when the application or request to increase coverage is dated on or before closing and the full amount due is from the escrow account (lender's check), title company, or settlement attorney, and the insurer receives them within 30 days from the closing date, the insurer can issue the policy effective on the closing date.
- For loans closing prior to the first day of lapse in authority, when the application or request to increase coverage is dated on or before closing and the full amount due is from the escrow account (lender's check), title company, or settlement attorney, and the insurer receives them after 30 days from the closing date, the insurer cannot issue the policy.
- For loans closing after the lapse in authority, if the application or request to increase coverage and presentment of full amount due were made prior to the lapse period and the insurer received the application/request and full amount due either:
 - within 10 days (if payment made by policyholder) of the closing date, or
 - within 30 days (if payment made through escrow account, title company, etc.) of the closing date, the insurer may issue the policy effective on the closing date.

Handling of Renewals

- **Renewal Offers**

- Insurers cannot make renewal offers during a lapse in authority.

- **Premiums received within 30-day grace period**

- If the insurer issued the renewal offer prior to the lapse in authority, and the insurer receives the renewal premium before or within the 30-day grace period or extension of time to pay the renewal premium, the insurer may renew the policy.
- This same rule applies on an underpayment notice issued before the lapse in authority.

- **Premiums received after the 30-day grace period**
 - If the insurer issued the renewal offer prior to the lapse in authority, and the insurer receives the renewal premium during the lapse and after the 30-day grace period or extension of time to pay the renewal premium, the insurer cannot renew the policy.
 - This same rule applies to additional premiums received resulting from an underpayment notice issued before the lapse in authority.
- **Renewals received with Increased Coverage Request (if renewal offer issued prior to the lapse and premium received within 30-day renewal grace period)**
 - For renewals received with increased limits within the inflation factor on the billing, process as premiums received within or after the 30-day grace period, whichever applies.
 - For renewals received with requested limits higher than the inflation factor, for the amount of coverage above the expiring coverage amount must be handled based on the guidance for handling New Policies or Requests to Increase Coverage.

Handling of Endorsements

- **Endorsements Increasing/Adding Coverage**
 - Refer to guidance for handling New Policies or Requests to Increase Coverage.
- **Other Endorsements**
 - Process endorsements that do not increase coverage using existing NFIP rules.
- **Assignment of Policies**
 - Existing policies may be assigned during the lapse.

Handling of Cancellations

- Policies can be cancelled during the lapse in authority, in accordance with valid NFIP cancellation reason codes.

Handling of Claims

- Policies that are in force before midnight of the last effective day of authorization will remain in force until their expiration date and claims under those policies are to be processed and paid as usual.
- Claims for covered losses occurring during a lapse, on existing policies and on policies in force after the last effective day of authorization, are to be processed and paid as usual.
- If Congress reauthorizes the NFIP, such reauthorization may include a provision that ratifies any actions that would have occurred during and but for the lapse (see next section on Retroactive Reauthorization). The insurers may investigate claims for policies, which cannot be issued due to the lapse in authority under a reservation-of-rights letter or a non-waiver agreement, up to the point of payment. Under either, the insurers would reserve the right to not

pay the claim if Congress does not reauthorize the NFIP, while continuing the investigation of the claim.

- The NFIP letter of credit is available during the lapse in authority. If the NFIP expires, it would not immediately impact the ability to adjust and pay claims. However, funding available to pay claims would be limited. FEMA would not be able to borrow money from the Treasury and would not be able to collect premiums, fees, and surcharges associated with NFIP policies. FEMA can continue to pay claims for eligible existing policies from money available in the National Flood Insurance Fund and the Reserve Fund. FEMA will closely monitor the status of the expiration of the NFIP and will communicate to NFIP insurers any additional guidance regarding claim handling.

Reauthorization

- **Retroactive Reauthorization**
 - If reauthorization is granted retroactively, the insurers 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 provisions of the Standard Flood Insurance Policy (SFIP)).
- **Reauthorization with a Lapse in Authority**
 - If reauthorization is not retroactive to the first day of the lapse in authority, policies without a waiting period (i.e., loan closings) would become effective on the date the reauthorization is effective.
 - If reauthorization is not retroactive to the first day of the lapse in authority, policies with a 30-day waiting period would become effective 30 days after the date the reauthorization is effective.
 - If reauthorization is not retroactive to the first day of the lapse in authority, policies with a 1-day waiting period would become effective one day after the date the reauthorization is effective.

Handling of Financials

- During the lapse in authority, the NFIP recommends the insurers hold in abeyance the following:
 - Any full amount due for new applications or requests to increase coverage dated on or after the first day of the lapse in authority.
 - Renewal premiums received on or after the first day of the lapse in authority and after the end of the 30-day renewal grace period or extension of time to pay the renewal premium.
 - The NFIP recognizes 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 lapse in authority, we recommend the insurer, 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 a lapse in authority.

Group Flood Insurance Policies

- Follow the implementation guidance provided above for issuing new policies.

FEMA will continue to keep you informed of the status of NFIP reauthorization. If necessary, given the extent of a lapse in authority, FEMA may revise some of the implementation guidance outlined in this bulletin. FEMA requests that the NFIP insurers communicate the status of the program to their company personnel and agents.

Please direct any questions, comments, or concerns regarding the implementation of your business during a lapse in authority to NFIPunderwritingmailbox@fema.dhs.gov.

Attachments:

- Frequently Asked Questions, in support of the Implementation Guidance
- Sample letter, for use by WYOs and the NFIP Direct, to prospective policyholders

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: All Departments

Frequently Asked Questions (FAQs)

Implementation Guidance on Lapse in National Flood Insurance Program (NFIP) Authority



FEMA

- 1. How does the National Flood Insurance Program (NFIP's) lapse in authority to enter into new contracts for flood insurance affect me and how long will it last?**

After the NFIP expires, you will not be able to purchase or renew an NFIP flood policy. In addition, the ability to pay claims on an existing policy would be limited to available funds in the National Flood Insurance Fund and the Reserve Fund. FEMA does not know how long a NFIP lapse will last. Congressional action is required to authorize the NFIP.

- 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 part of a mortgage loan closing that occurs prior to a lapse, will my policy be issued?**

Your insurance company will issue your policy, becoming effective on the date of your loan closing, so long as your insurance company receives your application and full amount due either:

- (1) Within 30 days from the closing, if the premium payment was made from an escrow account (lender's check), title company, or settlement attorney.
- (2) Within 10 days from the closing, if the premium payment was not made from an escrow account (lender's check), title company, or settlement attorney.

- 4. If I purchased flood insurance coverage before a lapse in authority, but not in connection with a mortgage loan closing, will my policy be issued?**

Yes, your insurance company will issue the policy if you applied for coverage prior to a lapse AND your flood insurance company receives application and full amount due within 10 days from the application date.

If your application was in a pending status prior to the lapse and required documents are received during the lapse period, your policy will be issued by the insurance company IF all documents received satisfy FEMA's underwriting requirements and full amount due is received per the required timelines.

- 5. My flood insurance policy is set to expire on the day after the lapse in authority. I received my renewal notice already from my insurance company and sent my payment to my insurance company before the lapse in authority. Will my insurance policy be renewed?**

Yes. As long as your insurance company sent the renewal notice before lapse in authority and the insurance company received your payment before the end of the 30-day renewal grace period or extension of time to pay the renewal premium, the company may renew your policy. However, NFIP insurers may not issue new renewal notices during a lapse in authority.

- 6. I have a loan closing schedule after the lapse in authority and my lender told me to purchase flood insurance before my closing date. Will I be able to purchase a new flood insurance policy?**

Insurance companies may not issue new NFIP insurance policies for loans closing during a lapse of authority, unless the application was made prior to the lapse in authority AND full amount due is received within 10 days (if payment made by policyholder) or 30 days (if payment made through escrow, title company, etc.) of the closing date.

FEMA does not prevent insurance companies from receiving and holding new applications and premium payments during a lapse, but insurance companies may not act upon those new applications during a lapse.

- 7. Will my insurance company pay a claim for a loss that occurs during a lapse in authority?**

A lapse in authority will not affect the handling of a claim made against an NFIP flood insurance policy issued or renewed prior to a lapse. Your insurance company will adjust and pay your claim in accordance with the terms of your insurance policy. However, funding available to pay claims may be limited.

- 8. What happens if my flood insurance company receives the premium for a new policy or an endorsement for added coverage during a lapse of authority and I suffer a flood loss before Congress reauthorizes the NFIP?**

If you make the application for a new policy or endorsement request adding coverage prior to a lapse in authority and your flood insurance company receives the application and full amount due within 10 days of the date of application, the policy or coverage increase will be effective on the applicable date, based on the NFIP waiting period rules.

If you were to experience a claim during the lapse, the insurance company may process your claim based upon the new application or endorsement request received during the lapse as long as payment is received per the timeline noted above.

- 9. My policy is up for renewal days before the lapse in authority. Was my policy renewed?**

If your renewal premium payment was received by your insurance company prior to or within the 30-day renewal grace period or extension of time to pay the renewal premium, your policy should be renewed. Check with your insurance agent or carrier to make certain your policy was renewed.

- 10. 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/Language

Sample letter/language that may be used by the WYOs to help communicate the impacts of the lapse in authority to a prospective policyholder.

Dear prospective policyholder:

We have received your application and premium/renewal premium for a flood insurance policy issued under the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA). At this time, we are unable to issue a new policy or renewal policy because the NFIP's authority from Congress to enter into new flood insurance contracts expired at midnight on [insert expiration date].

Until Congress reauthorizes the NFIP and we are again able to issue policies, the following options are available.

1. We can hold your application and premium/renewal premium pending reauthorization. If Congress reauthorizes the NFIP, we will issue your policy with the earliest effective date consistent with the rules and regulations of the NFIP and the provisions of the reauthorization.

To choose this option, no action on your part is necessary. We will hold your application and premium/renewal premium pending reauthorization. If Congress does not reauthorize the NFIP, we will return your premium.

If you incur a flood loss prior to the reauthorization, we can proceed with investigating your claim up to the point of payment. We 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.

If Congress retroactively reauthorizes the NFIP, then policies may be issued with effective dates as early as [insert day after expiration date]. If Congress does not retroactively reauthorize the NFIP, the earliest effective date for policies will be the date the NFIP is reauthorized.

2. If you want us to return your premium, advise us accordingly. You may send your request to [company contact person] at [company address] or via e-mail to [company e-mail]. However, if you ask for return of your premium, we will be unable to provide coverage retroactively, and any loss suffered may not be covered. 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. An alternative is to seek flood insurance coverage outside of the NFIP.

The NFIP has experienced a lapse in authority before. In most of these cases, Congress reauthorized the Program retroactively. However, until Congress acts, we are unable to provide coverage, and we want to fully inform you of your options during this period.

If you need more information, please contact your flood insurance agent. Thank you for your patience and understanding.