

May 9, 2011

TO: Jhun de la Cruz, Branch Chief, Underwriting, Risk Insurance Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency  
From: David Boneno, Louisiana Bankers Association, General Counsel  
Sidney Seymour, Louisiana Office of Financial Institutions  
RE: Questions regarding NFIP flood insurance and the 30 day waiting period waivers

Thank you for taking the time to participate on a conference call with bankers in Louisiana last Friday afternoon to address the exceptions to the 30-day waiting period for the purchases of flood insurance. In following up to our call, I am forwarding to you some questions in writing to obtain written responses from you to help provide clarification on issues involving the NFIP flood insurance program. Given the urgency of the issue, we appreciate your quick response. Those questions are listed below:

1.) If a creditworthy customer/applicant comes to the bank and requests a loan to be secured by property located in a designated flood zone and states that the loan is being requested in order to get flood insurance coverage on the property, should the bank accommodate the customer and provide the loan? If yes, will there be repercussions in the future from FEMA or the FDIC? If no, and the bank denies the loan, would the customer/applicant have recourse against the bank if the property subsequently floods?

Providing a loan to a customer is a business decision for the bank. I don't know of any law that requires the bank to do so. If, however, the bank decides to make the loan and the property is in a Special Flood Hazard Area (SFHA) (A or V Zone), the lender must require the purchase of flood insurance. If the property is outside the SFHA, the bank may require flood insurance if it so chooses, but is not required to do so. We cannot speak to the issue of legal recourse, but if the bank is not required by law to make the loan in the first place, it is difficult to know the basis of any legal recourse. Furthermore, the borrower can buy flood insurance without the need for the bank to do anything. The only reason the customer is asking the bank for the loan is to avoid the 30-day waiting period. Again, the customer could have purchased the insurance at a time when the waiting period would now be over.

2.) If a bank has an existing mortgage on property securing a loan and the property is not located in a designated flood zone and the bank is concerned about possible flooding, can the bank require the customer to get flood insurance (on a "one-off" or individual transaction basis)? If yes, does the 30 day waiting period apply or can the flood policy be written immediately?

If there is no new loan, the waiting period would apply.

3.) If a bank makes a new loan and takes a new mortgage on property that is not located in a designated flood zone and the bank is concerned about possible flooding, can the bank require the customer to get flood insurance (on a “one-off” or individual transaction basis)? If yes, does the 30 day waiting period apply or can the flood policy be written immediately?

The policy will be effective at the time of loan closing, provided that the policy is applied for at or before closing and the application and premium are received by the insurer within 10 days of closing or within 30 days of closing if the premium payment is from the escrow account (lender’s check), title company, or settlement attorney. If received after these time frames then the effective date is the receipt date of the insurer. If the policy is not applied for at or before closing there will be a 30-day wait.

4.) If a customer applies for a loan from our Bank, pledging his/her property as collateral for the loan (this property is NOT in a Special Flood Hazard Area) and informs us that the purpose of the loan is so they can obtain flood insurance on this property without having to wait the 30-day waiting period, can we make this loan without being accused of insurance fraud?

Since the current NFIP rules allow for waiving the waiting period in such situations, there would seem to be no violation of the law, as such. However, the bank is not required to make the loan.

5.) Does the current potential flood threat qualify as a “bonafide emergency” as defined in the FDIC regulations for purposes of waiving the required rescission periods when the property pledged as collateral for a loan is a personal residence?

This is a question for the FDIC to answer.

6.) If a customer not in a SFHA has applied for flood insurance on their own and been told that they are in the 30-day waiting period, then they subsequently come to us for a loan and make application for flood insurance in conjunction with that loan request, what should they do about their initial application for flood insurance? We presume, based on Mr. de la Cruz’s remarks today that we would proceed with the loan and new, INITIAL PURCHASE of flood insurance in conjunction with the loan through closing of the loan and payment of the flood insurance premium. At that point, the customer should go back and cancel their initial application for flood insurance and understand that no premium refund will be forthcoming.

If the first application and premium have been submitted to and accepted by the company, the policy can be cancelled, for duplicate policies, with return premium if it has a later effective date.

7.) Same question as above, but the customer IS in a SFHA. I presume the answer is the same?

Yes

8.) One question I had was the 10 day rule between the application date and closing date as it relates to doing a flood determination on the real estate that you are using for collateral. The regulation says you have to disclose a flood determination of the collateral with your customer in a reasonable amount of time before loan closing (generally speaking 10 days). If we adhere to this rule it's at least 10 days before you can fund the loan?

Our 10-day rule refers to receipt of the application and premium within 10 days of the closing date provided the application is completed on or before closing.

9.) Please confirm the fact that bank is not required to provide letter saying that flood insurance is required -in connection with making, increasing or extending, or renewal of a loan and 30 day waiting period is waived. (Insurance manual GR8).

If the property is not in a Special Flood Hazard Area, the bank is not required to provide such a letter.

10.) Please confirm that bank is not required to issue letter stating that collateral/property is in imminent danger in order to obtain flood insurance.

This is not an NFIP requirement. You can inquire of the lending regulators if their regulations speak to the issue.

11.) Please confirm that if flood insurance is purchased and there is a flood within the first 30days, then the only documentation that the borrower who purchased flood insurance in connection with a new loan thereby waiving the 30 day waiting period would be required to provide is a copy of the loan settlement statement showing the flood insurance paid at closing.

That is correct.

12.) Please confirm that in connection with the lender requirement exception to the 30 day waiting period, if a bank discovers that on an existing loan the mortgaged property is in an SFHA, and flood insurance is subsequently purchased, the only documentation needed to establish the waiver of the 30 day waiting period is the letter from the bank to the borrower advising that they are required to have flood insurance.

That is correct but the letter cannot be issued at a later date to justify a no waiting period.

13.) Please confirm that under the new loan exception that provides for a waiver of the 30 day waiting period, any requirement imposed by the bank to have flood Insurance has no bearing on the applicability of the new loan exception.

That is correct.