




FEMA

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December 15, 2017

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

FROM: 
David I. Maurstad
Assistant Administrator for Federal Insurance
Federal Insurance and Mitigation Administration

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

Under current law, the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP) may not enter into a new flood insurance contract after a lapse in authority. Such lapse in authority would significantly impact the NFIP's normal operations. We are providing guidance to Write Your Own (WYO) Companies in the event such a lapse occurs.

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

For the purposes of enforcing a lapse in authority, the date of entering into a new flood insurance contract is the earlier of either:

- (1) the date in which a WYO Company actually accepted an application for flood insurance and the applicable premium; 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 receives the application for flood insurance and the applicable premium—
 - (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
 - (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.
- (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 receives the application for flood insurance and the applicable premium within 10 days of the date of application.
- (4) for the renewal of a flood insurance contract, the policy's renewal date, so long as the WYO Company 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 may not issue policies for new business or requests to increase/add coverage that are requested during the lapse. In addition, WYO Companies cannot issue renewal notices during the lapse.

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 should follow the guiding principles outlined above in Sections I and II; however, FEMA understands that you 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 or 1-Day Map Revision Waiting Period**

- If the application or request to increase coverage is dated after the lapse in authority, the policy/request cannot be issued.
- If the application date or request to increase coverage is on or before the last day of effective authorization, and the insurer receives the application/request and premium payment within the lapse period and within 10 days of the application/request date, the insurer may issue the policy and it will become effective on the requested effective date, 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 application/request and premium payment are received within the lapse period but are *not* received within 10 days of the application/request date, the policy cannot be issued.

- **Loan Closing No Waiting Period**

- If the application or request to increase coverage is dated after the lapse in authority, the policy cannot be issued.
- 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 premium payment is not part of the closing (i.e., premium payment is via the applicant or applicant's representative check or credit card) and the application/request and premium are received within 10 days of the closing date, the policy may be issued effective the date of the closing.
- 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 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 closing.

- For loans closing after the lapse in authority, if the application or request to increase coverage and presentment of premium were made prior to the lapse period and the application/request and premium payment were received 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 policy may be issued effective the date of the closing.

Handling of Renewals

- **Renewal Offers**
 - Renewal offers cannot be made by insurers during a lapse in authority.
- **Premiums received within 30-day grace period**
 - If the renewal offer was issued, by the insurer, prior to the lapse in authority and the renewal premium is received before or within the 30-day grace period, the policy may be renewed. The same rule applies on an underpayment notice issued before the lapse in authority.
- **Premiums received after the 30-day grace period**
 - If the renewal offer was issued, by the insurer, prior to the lapse in authority and the renewal premium is received during the lapse and after the 30-day grace period, the policy cannot be renewed. The 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 or the next higher Preferred Risk Property (PRP) or newly mapped limit, 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 or next higher PRP or newly mapped limits, 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.
- 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.

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 premiums 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.
 - 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 the 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 the lapse in authority.

Group Flood Insurance Policies and Mortgage Portfolio Protection Program 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 WYO Companies 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 Kelly Bronowicz at Kelly.Bronowicz@fema.dhs.gov.

Attachments:

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

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: All Departments

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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 for the affect me and how long will it last?

The NFIP may not issue new contracts for flood insurance during a lapse in authority unless Congress passes legislation reauthorizing the NFIP. If such a lapse in authority occurs, the NFIP will have limited ability to issue:

- New policies
 - Including those obtaining mortgages from federally regulated lenders
- Increased coverage on existing policies
 - Including property owners refinancing existing mortgages
- Renewal policies

A lapse in authority will not affect most of the 5 million flood insurance policyholders nationwide. Policies that are in force will remain in force, and NFIP insurers will continue to pay claims under those policies during a lapse.

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 premium payment 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 premium payment within 10 days from the application date.

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FEMA

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 premium 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, 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 settlement dates. 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 premium payment 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 a 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.

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 premium 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.

Frequently Asked Questions (FAQs)

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



FEMA

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 received prior to or within the 30-day renewal grace period, 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.

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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 your 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 < >. 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.