

Consumer Lending Update

JANUARY 2019

NFIP EXTENDED UNTIL MAY 31, 2019

On December 21, 2018, a day before the federal government shutdown, Congress approved and the president signed the National Flood Insurance Program Act (S. 3628), which extended the National Flood Insurance Program (NFIP) until May 31, 2019.

Despite that extension, on December 27, FEMA announced that it would stop issuing new NFIP policies or renewing NFIP policies. According to FEMA, although Congress reauthorized the NFIP, it allowed the NFIP's annual appropriations to lapse. Consequently, FEMA was not certain whether it could pay insurance agents' fees for NFIP sales or renewals during an annual appropriations lapse.

Regulated institutions did not know what their obligations were when the NFIP was unavailable. Back in 2010, all of the banking agencies issued guidance pertaining to NFIP lapses. In short, the 2010 guidance provided lenders these four options during an NFIP lapse: (i) have the borrower submit an NFIP application and pay the premium during the lapse; (ii) postpone closing the designated loan until

Congress reauthorizes the NFIP; (iii) require the borrower to obtain a private flood insurance policy as a condition of closing; or (iv) make the loan without requiring the borrower to apply for NFIP insurance. Refer to Section IV.O of BCG Standard Procedures Manual #8, *Mortgage Lending Compliance*, which thoroughly discusses the 2010 guidance.

As there was no other banking agency guidance on point, one would think that lenders would have those four options when the NFIP was just unavailable. To make that point clear, on December 28, the banking agencies (not including the NCUA) issued a joint press release, informing financial institutions that the 2010 guidance "is generally applicable whenever the NFIP is unavailable." In other words, lenders still have those four options whenever the NFIP is unavailable. (Although the NCUA did not participate in the December 28 press release, we see no reason why credit unions could not rely on the NCUA's 2010 guidance when the NFIP is unavailable.)

Late in the day on December 28, FEMA ended this week-long NFIP rollercoaster by announcing that it had resumed NFIP sales and renewals, and that the NFIP "will be considered operational since December 21, 2018 without interruption."



The Banking & Business Law Firm

www.ablawyers.com 949.474.1944

18500 Von Karman Ave., Suite 300, Irvine, California 92612

Authors: Janet M. Bonnefin, Esq., Robert K. Olsen, Esq. and Stephanie A. Shea, Esq.

In sum, the NFIP is back to its status quo – Congress has temporarily extended the NFIP until May 31, 2019. Who knows what Congress will do with the NFIP by May 31? Here is FEMA's wish list:

NFIP reauthorization is an opportunity for Congress to take bold steps to reduce the complexity of the program and strengthen the NFIP's financial framework so that the program can continue helping individuals and communities take the critical step of securing flood insurance. The level of damage from the 2017 hurricanes makes it clear that FEMA needs a holistic plan to ready the Nation for managing the cost of catastrophic flooding under the NFIP.

For more information about the NFIP or accepting private flood insurance, contact Stephanie Shea at SShea@ABLAWYERS.COM.