

# SPECIAL REPORT

## THE NFIP'S FUNDING AUTHORIZATION EXPIRES SEPTEMBER 30



The NFIP's funding authorization is expected to expire Saturday, September 30, 2023 at midnight. The risk of the potential for a lapse in funding the NFIP is elevated due to the current political landscape around budget negotiations among lawmakers in Washington.

The U.S. House is negotiating and holding talks about a final deal to fund the government, but such a deal is facing significant challenges. Lenders should be prepared for a potential temporary lapse of the NFIP. The American Bankers Association has released a staff analysis for member banks should the NFIP lapse, which is very similar to the article "[How to Prepare for Lapse in the NFIP](#)". An excerpt of the article is below:

### **What to do before a lapse**

*Lenders should be prepared and have a plan to avoid the potential disruption to loans scheduled to close during a lapse. Loans that require flood insurance can still close during a lapse in the NFIP, either by following certain NFIP and regulatory guidelines and ensuring that a system is in place to obtain policies as soon as the NFIP is reauthorized, or by obtaining private flood insurance.*

*The prudential regulators—the [FDIC](#), [OCC](#) and [Federal Reserve](#)—have each released guidance on what to do if the NFIP lapses. This*

*guidance was originally issued in 2010, but remains applicable in the event of any lapse. It is well worth the time to review the appropriate guidance and consult with counsel to apply it to the bank's specific business operations. Additionally, FEMA usually releases guidance after a lapse, which can be found [here](#). (Banks, 2018)*

### **FEMA Issued Guidance on Potential Lapse in the NFIP**

On September 25, FEMA issued [Memorandum W-23012](#) providing guidance on the potential lapse in National Flood Insurance Program Authority. More specifically, FEMA provided ten Frequently Asked Questions that are useful for lenders and borrowers:

- 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 the 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.

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**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 received 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; or,
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 the application and full amount due within 10 days of 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 the 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 the 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 the 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* the full amount due is received within 10 days (if payment is made by the policyholder) or 30 days (if payment is 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.



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

If you make the application for a new policy or make an 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.



OSC/SUI remains committed to implementing risk management program practices that have been vetted and adopted by our lending clients during any NFIP lapse, including the acceptance of private flood insurance in the interim to meet lenders' mandatory purchase requirements. In the interim, OSC/SUI will continue normal operations with regards to tracking and the

placement of lender-placed insurance in accordance with federal law.

As indicated in bank supervisory guidance, lenders should consider safety and soundness risk management obligations when deciding on any immediate loan closing/funding secured by properties in a special flood hazard area and where the borrower has not secured flood insurance due to the lapse of the NFIP. This would especially be true if loan funding volume during the lapse is considerable to a lender's overall capital level. Delay in closing and/or alternative measures for flood insurance, such as through the private flood market, would be necessary to mitigate such risk.

Historically, lapses of the NFIP have been rare and short term. A re-authorization is usually retroactive to the lapse, but should a re-authorization not be retroactive to the NFIP lapse date, borrowers may have a gap in flood coverage for any renewal after such re-authorization and/or when new loans were funded during the lapse where flood coverage was not available. Lenders should communicate to potential borrowers of these risks when funding loans during a lapse of the NFIP.

We are hoping for a quick resolution to the government funding as Congress works towards a compromise. In the interim, please contact your Client Services Manager with any special risk management requests.

We will keep you posted for any changes in status.

