

Financial Insurance Intelligence

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Debt Protection Clarified in Montana

The 2011 Montana Legislature passed House Bill 432 which provides an exemption from insurance activities for banks and credits unions offering debt cancellation or suspension programs. The program must be approved by the Department of Administration. The bill directs the Department to adopt rules that are substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by national banks and federal credit unions.

Many lenders offer GAP waivers which are a form of debt cancellation. The bill impacts these products by requiring refundable waivers to be offered as well as periodic payment plans as opposed to requiring borrowers to pay a lump sum up front.

This bill is takes effect October 1, 2011.

Securian Acquires American Modern Home

Securian Financial Group is acquiring American Modern Life Insurance Company (AMLIC) and its subsidiary, Southern Pioneer Life Insurance Company (SPLIC), from American Modern Insurance Group, Cincinnati, OH. The transaction is expected to close by the end of the year following regulatory approval.

The acquisition will increase the scale of Securian's credit protection business by 25 percent. Securian will integrate the acquired business into its St. Paul operations in 2012. American Modern will provide transition services until integration is complete.

AMLIC and SPLIC's products are similar to those offered by Securian, including credit life and disability insurance and debt protection programs provided to customers of financial institutions.

With more than 50 years of experience in the financial institution market, Securian is the third largest underwriter of credit life and disability insurance in the United States measured in direct written premium according to the Consumer Credit Industry Association (CCIA).

This acquisition gives Securian a stronger foothold in the bank market whereas they have previously been heavily skewed towards credit unions.

In July, Securian announced its acquisition of Balboa Life Insurance Company and Balboa Life Insurance Company of New York.

IN THIS ISSUE

Securian Acquires
American Modern Home

NFIP Reform Slowly
Moves Through Congress

Appeals Court Strikes
Down CUNA Mutual's
Credit Disability Policy

Flood Insurance
Requirements and Best
Practices



NFIP Reform Slowly Moves Through Congress

On September 8th, the Senate Committee on Banking and Urban Affairs passed its version of a bill to reauthorize and reform the financing of the National Flood Insurance Program (NFIP). The NFIP is set to expire at the end of the month unless Congress acts.

The legislation — called the Flood Insurance Reform and Modernization Act — would reform parts of the NFIP and extend it for five years. The bill now goes to the full Senate for consideration.

The House passed its version of NFIP reform, H.R. 1309, the ‘Flood Insurance Reform Act of 2011,’ before the August recess.

Both measures would move the program toward sounder financial operations and require that premiums be raised to levels actuaries say reflect the true risk of flooding. Many homeowners now pay subsidized rates.

The Senate proposal would reauthorize the NFIP through 2016 and forgive its \$18 billion debt, most of which stems from Hurricane Katrina losses. It would also permit rates to rise by 15 percent a year in order to reach their actuarially-indicated levels that reflect the true risk of flooding. Currently, rates can’t go up more than 10 percent a year. The program would be required to build up and maintain a reserve fund.

It also provides for greater enforcement of the mandatory purchase requirement and requires that any new flood insurance policy for a property not covered by a flood insurance policy as of the date of passage must have actuarial rates. If this provision makes it into the final legislation, lenders would be wise to help educate their borrowers and encourage them to secure their flood insurance before the established deadline.

The House version similarly tries to get to actuarially sound rates but would let rates go up as much as 20 percent a year. It does not, however, forgive the NFIP’s debt as the Senate proposal would do.

Once the Senate passes its legislation the House and the Senate will have to come to a compromise soon to renew the program by the end of the month. The program has been renewed for short-term periods for several years.

Appeals Court Strikes Down CUNA Mutual’s Credit Disability Policy

A federal appeals court in May upheld a lower court ruling that CUNA Mutual Group was wrong when it discontinued payment on a credit disability insurance policy because it found the credit union member no longer met its definition of “total disability.”

In the case of Meyer v. CUNA Mutual, The crux of the plaintiff’s case is that the definition of “Total Disability” in the defendant’s disability insurance policies is ambiguous on its face. Specifically, the plaintiff points to the language used to describe the second period of disability (the period after the first twelve consecutive months of disability has passed) as problematic. The policy contained a definition of “Total Disability” that provided: “during the first 12 consecutive months of disability means that a member is not able to perform substantially all of the duties of his occupation on the date his disability commenced because of a medically determined sickness or accidental bodily injury. After the first 12 consecutive months of disability, the definition changes and requires the member to be unable to perform any of the duties of his occupation or any occupation for which he is reasonably qualified by education, training or experience.”



Appeals Court Strikes Down CUNA Mutual's Credit Disability Policy continued.



Despite the plaintiff's claim that the staffer who drafted the language was unqualified, the language in question is not unique. The certificate's original definition of disability is commonly referred to as "own occ." The insured must be unable to perform the duties of their own occupation. The certificate's definition changes at twelve months to "any occ." The insured must be unable to perform the duties of any occupation for which he is reasonably qualified.

The language itself is not the problem, but rather, it is the fact that the definition changes. This is a credit insurance certificate, not an individually underwritten disability insurance policy. It is sold at a loan desk in a matter of a few minutes with very little review of the language. It's unrealistic to think many borrowers scrutinize the definition of disability. It's simply an afterthought as they are focused on closing their loan. Even if the insured reads the certificate at home, he would need a trained insurance agent to inform him of

the significance of the definition of disability.

Unfortunately, this may cause CUNA Mutual and other insurers with similar policy language to make changes to their certificates and file rate increases or reduce agent commissions.

Flood Insurance Requirements and Best Practices

By Rick Vaught, SVP of Operations, The Minter Group

The following has been gleaned from various information provided by regulatory bodies and is designed to be a guide to assist our current and prospective flood accounts. Please note this is my understanding and perception of requirements according to information that is currently available. Further, there may be additional requirements/guidelines that are not addressed herein. My recommendation is for lenders to have their legal/compliance departments review/approve any changes thought necessary.

Where applicable, references are made to 12 CFR 339 (Code of Federal Regulations, Title 12, Banks and Banking, Part 339 – Loans in Areas Having Special Flood Hazard).

1. At loan closing, a property in a Special Flood Hazard Area (SFHA) must have flood insurance equal to the lesser of the outstanding principal balance, the insurable value, or the maximum amount of insurance available [§33.3(a)]
2. Minimum and maximum deductibles are outlined in the Flood Insurance Manual. Residential properties have a minimum of \$1,000 and a maximum of \$5,000. Non-residential properties have a minimum of \$1,000 and a maximum of \$50,000.
3. For multiple buildings (same loan), the lender must ensure that a separate flood insurance policy is provided for each building requiring coverage.
4. The Flood Insurance Manual allows a Scheduled Building Policy to provide coverage for two (2) to ten (10) buildings. Each building must have a specific amount of coverage assigned and all buildings must be at the same location. The properties on which the buildings are located must be contiguous.



Flood Insurance Requirements and Best Practices continued.

5. If lenders place a lien on a property (or properties) other than the primary property for which the loan is made (referred to as “Abundance of Caution” collateral), and the Abundance of Caution property is located in a SFHA, then flood insurance is required.
6. Any property in a SFHA that is used to secure a subsequent lien or HELOC must have flood coverage in place to cover both the first and second liens. Lenders are instructed to make arrangements to add themselves to the first flood policy and to ensure that there is adequate coverage to cover all liens.
7. If personal property/contents are used, in addition to a building, to secure a loan, then flood insurance must be placed on the personal property/contents. Amounts of insurance would be as designated by the lender not to exceed the total amount allowed by FEMA (\$250,000/\$500,000). Base rates are the same for both.



If the lender has a secured interest in personal property (normally commercial contents and/or equipment) only, then coverage may be placed on the contents up to the amount of the coverage that would be provided for the building (\$250,000 or \$500,000). If, however, the loan balance is greater than the flood limits allowed, the borrower should provide a written statement of the items to be covered, and their relative value, that equals the limits of insurance placed.

8. A lender may use a private insurance policy as an adequate substitute for NFIP if the private insurance meets the criteria set forth by FEMA.
9. Condominiums located in SFHA, including multi-storied complexes, require flood insurance in the same amounts as other properties - lesser of loan balance, insurable value or maximum amount of insurance available under NFIP. Master policies (RCBAP – Residential Condominium Building Association Policy) must (1) indicate on the Declarations Page the replacement cost of the condominium building and the number of units in the building, and (2) provide coverage equal to the lesser of the stipulated replacement cost or the number of units times \$250,000. Lenders may not be named on the RCBAP and cannot force place coverage on the entire building.

In the event of no, or inadequate, RCBAP coverage, including failure by the Condo Association to increase coverage, borrowers must provide either a dwelling policy that provides (or enhances) flood coverage, or their own flood insurance policy. Coverage under both policies must be coordinated to ensure that the lender is not at risk. If inadequate (or no) coverage is provided, then the borrower must be issued lender placed insurance.



Flood Insurance Requirements and Best Practices continued.

10. Lender placement is authorized when borrower selected insurance (in the amount required) is not provided. However, the following applies:
 - a. Borrowers must be advised in writing of the need for flood insurance and that the lender has no current proof of such coverage. This letter may not be sent to the borrower prior to the expiration of prior coverage
 - b. If no response is received, a second letter must be sent to the borrower no earlier than thirty (30) days later again reminding the borrower of this obligation
 - c. No earlier than fifteen (15) days after the second letter, a final letter must be sent advising the borrower that lender placed insurance has been provided and include a document verifying such coverage
 - d. Lenders may charge borrowers a fee for placing insurance (optional)
 - e. The borrower must be advised of the current flood zone determination and given the opportunity, with the process outlined, to appeal the current flood zone rating
 - f. Borrowers must be reminded that they may contact their local agent or a Write Your Own company to obtain flood insurance
 - g. The amount of insurance required must be in the letters
 - h. Any coverage limitations must be outlined in the initial letter (and the letter accompanying the certificate or notice of insurance); and
 - i. The final letter accompanying the certificate or notice of insurance must remind the borrower that he can still purchase flood insurance at a lower cost and that, upon request, the lender will purchase a NFIP policy on his behalf.

11. The following is quoted verbatim from the Publication which references Interagency FAQ # 71: A lender should only be concerned about a discrepancy on the Standard Flood Hazard Determination Form (SFHDF) and the one on the flood insurance policy if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D or X According to the guidelines provided by FEMA Memorandum W-08021, dated 4/16/08, in the event of a discrepancy (of concern) between the SFHDF and the flood insurance document, any lender placed coverage must be at the higher rated flood zone. No changes to that rating may be made unless and until the policyholder (with the lower rated insurance document) disputes the high-risk flood zone determination and pursues an appeal which would include the Letter of Determination Review (LODR) and the Letter of Map Amendment (LOMA).

Note that lenders do not have the authority to change the flood zone rating that is found on the SFHDF. Even if the borrower has documentation from attorneys, engineers, surveyors and his next door neighbor that indicate a lesser flood zone rating, only FEMA has the authority to change the SFHDF rating.