



Maximum Flood Insurance Available for Multi-Family Residential Buildings

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The maximum amount of flood insurance available under the National Flood Insurance Program (“NFIP”) for multi-family residential buildings with five or more units will increase from \$250,000 to \$500,000 effective as of June 1, 2014.

This change was made by the Federal Emergency Management Agency (“FEMA”) under the authority of the Biggert-Waters Flood Insurance Reform Act of 2012 (“Biggert-Waters Act”). Currently, the maximum amount of insurance available under the NFIP regular program for a multi-family residential building with five or more units is \$250,000. This is the same amount available for a one-to-four family residential building. The Biggert-Waters Act authorized FEMA to increase the available insurance for larger residential buildings, and FEMA has exercised that authority to raise the amount to \$500,000 as of June 1, 2014. This is the same amount of coverage available for commercial and other non-residential buildings under the NFIP.

There is no change in the maximum flood insurance coverage under the NFIP for contents in multi-family buildings with five or more units – it remains at \$100,000 (which is the same amount for contents in commercial and other non-residential buildings). Also, this change generally does not apply to condominium buildings.

Lenders making, increasing, extending, or renewing a mortgage loan secured by multi-family residential buildings with five or more units on and after June 1, 2014 will need to ensure that the amount of flood insurance obtained by the borrower is in compliance with the new limit. Generally, the amount of insurance must be at least equal to the lesser of the outstanding principal amount of the loan or the maximum limit of coverage available for that type of property under the NFIP (which will be \$500,000 for multi-family properties with five or more units as of June 1, 2014).

One issue for lenders raised by this increase in available insurance is the impact this change will have on existing multi-family loans where the amount of insurance in place is at the current maximum of \$250,000. There is a potential concern that after June 1, 2014 lenders will need to ensure that all existing loans secured by multi-family residential buildings with five or more units have flood insurance coverage up to the new maximum limit, and if a loan does not have the higher coverage, to notify the borrower and ultimately force place the higher amount if the borrower fails to act.

We have spoken to banking regulators about this issue, and they are reviewing the matter and expect to issue guidance at some point in the next few weeks. The hope is that the regulators will state that lenders do not have to take any action on an existing loan (where there is no increase, extension, or renewal of the loan), as the increase in the maximum limit of insurance is the result of statutory and regulatory action, and has not resulted from any action of the lender or borrower, or any change in flood maps.

This issue is in addition to other flood insurance matters currently under review by federal banking regulators. In October of 2013, regulators issued a joint notice of proposed rulemaking to implement certain provisions of the Biggert-Waters Act, including proposals to establish requirements for the escrow of flood insurance payments, the acceptance of private flood insurance coverage, and the force-placement of flood insurance. The comment period on the proposal closed on December 30, 2013, and a final rule on these matters is expected soon.

If you have any questions regarding flood insurance issues, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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