



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #807
December 1997
12 CFR 22

October 27, 1997

Dear []:

This letter responds to your correspondence regarding whether various provisions of the OCC's regulations on flood insurance apply to certain home equity lines of credit. As discussed more fully below, it is our belief that the flood insurance requirements would be triggered by the extension of the term of the home equity lines of credit referenced in your letter.

Background

Your letter states that, in response to restrictions in the Truth in Lending Act¹ and its implementing regulation, Regulation Z,² on the ability of creditors to terminate and accelerate or amend open-end consumer credit plans secured by a consumer's principal dwelling, and to avoid being committed to long-term home equity lines of credit that may not be profitable or prudent in the future, some creditors have begun to offer short-term home equity lines of credit with an automatic renewal or extension feature. To illustrate, you provided a sample clause that may be included in such a credit contract:

TERM: You can obtain advances of credit for one year (the "draw period") from the date you open your account. At the end of the draw period, we may, at our sole discretion, extend the draw period for additional one year terms. You will be notified in writing if at the end of the draw period, or the draw period as previously extended, we elect not to further extend your draw period.

¹ 15 U.S.C. § 1647.

² 12 C.F.R. § 226.5b(f).

After the draw period ends, including all extensions thereof, you will no longer be able to obtain advances (“repayment period”).

Discussion

The Flood Disaster Protection Act (as amended) (the “FDPA”), and the OCC’s implementing regulation, 12 C.F.R. part 22, generally prohibit national banks from making, increasing, extending, or renewing a designated loan³ unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.⁴ NFIA requirements are also triggered whenever a lender “makes, increases, extends or renews” a loan secured by a building or a mobile home. These requirements include:

- Making a determination (using the standard flood hazard determination form (“SFHD form”) developed by the Director of the Federal Emergency Management Agency (“FEMA”)) whether the building or mobile home offered as collateral security for the loan is or will be located in a special flood hazard area in which flood insurance is available under the NFIA;⁵
- If the property is located in a special flood hazard area (“SFHA”), providing written notices to the borrower and loan servicer that (a) informs them that the property is located in a SFHA; (b) describes the flood insurance purchase requirements; (c) states, if applicable, that flood insurance is available under the National Flood Insurance Program or through private insurers; and (d) states whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster;⁶ and
- If flood insurance must be purchased, notifying the Director of FEMA (or the Director’s designee) in writing of the identity of the servicer of the loan.⁷

The NFIA provides that a lender may rely on a previous flood determination whenever a lender increases, extends, or renews a loan if:

³ A “designated loan” is a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the National Flood Insurance Act of 1968 (as amended) (the “NFIA”). 12 C.F.R. § 22.2(e).

⁴ See 42 U.S.C. § 4012a(b)(1); 12 C.F.R. § 22.3(a).

⁵ See 42 U.S.C. § 4104b(c); 12 C.F.R. § 22.6.

⁶ See 42 U.S.C. § 4104a(a); 12 C.F.R. § 22.9.

⁷ See 42 U.S.C. § 4104a(b)(1); 12 C.F.R. § 22.10(a).

- the previous determination was made not more than seven years before the date of the transaction, and
- the basis of the previous determination has been set forth on the SFHD form,

unless:

- map revisions or updates after the previous determination have resulted in the building or mobile home being located in a SFHA, or
- the lender contacts the Director of FEMA and determines that recent map revisions or updates affecting the property have occurred since the date of the previous determination.⁸

This provision helps to reduce the burden on banks (and servicers acting on behalf of the banks) to make new flood determinations when the bank or servicer is merely “extending, increasing or renewing” a pre-existing loan. Note that banks and servicers cannot rely on this provision when they “make” a loan.

The burden of the requirement that the bank notify the Director of FEMA of the identity of the servicer of the loan has also been lessened because the Director of FEMA has designated the insurance provider to receive the notice.⁹ This notice requirement is fulfilled when a flood insurance policy is first written — the insurance provider indicates on the policy application the name of the bank making the loan.¹⁰ Assuming that flood insurance coverage would be written on a year-to-year basis to coincide with the one-year term of the home equity lines of credit, each time the policy is renewed and the bank that is named on the policy remains the servicer, the notice requirement is satisfied. However, if there is a change of servicer of the loan, either because the bank assigns or transfers the loan and/or its servicing, the bank (or a subsequent servicer acting on behalf of the bank) would need to notify the insurance provider of a change in servicer.¹¹

As mentioned before, the NFIA (and part 22) require, if appropriate, a notification to the borrower and servicer whenever the bank “makes, increases, extends, or renews” a loan secured by a building or mobile home located or to be located in a SFHA, regardless of

⁸ See 42 U.S.C. § 4104b(e).

⁹ See 12 C.F.R. § 22.10(a).

¹⁰ See “Mandatory Purchase of Flood Insurance Guidelines,” FEMA 186 (May 1997) at 30. (This publication may be obtained from FEMA by calling 1-800-358-9616 and requesting document 000083.) It is assumed that the bank making the loan is the servicer of the loan.

¹¹ See 42 U.S.C. § 4104a(b)(1); 12 C.F.R. § 22.10(b).

whether flood insurance is available. The statute does not provide for any exceptions to this notice requirement.

The home equity lines of credit that your client lenders offer have a one-year term, during which funds may be drawn. The bank may, at its sole discretion, extend the term of the lines on a yearly basis. It is our opinion that, for purposes of the flood insurance requirements, extending the term of the lines is “extending” a loan. Thus, the flood insurance requirements described above are triggered each year at the time the term of the lines is extended.

I trust this reply is responsive to your letter. If you have further questions, please contact me or Margaret Hesse, an attorney on my staff, at (202) 874-5750.

Sincerely,

/s/

Michael S. Bylsma
Director
Community and Consumer Law Division