



THE SUFFOLK LAWYER

THE OFFICIAL PUBLICATION OF THE SUFFOLK COUNTY BAR ASSOCIATION

DEDICATED TO LEGAL EXCELLENCE SINCE 1908

website: www.scba.org

Vol. 29 No. 11
May 2014

Homeowners Flood Insurance Affordability Act of 2014

By Andrew Lieb

On March 21 2014, Public Law No: 113-89 was enacted after passing both Houses of Congress and being signed into law by the President. The law, known as the Homeowners Flood Insurance Affordability Act of 2014, amends the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters).

Biggert-Waters was a reauthorization measure for the National Flood Insurance Program (NFIP) through 2017. The NFIP, established in 1968, is the only reason that property owners are often able to purchase flood insurance in the first place. This is because before NFIP existed, insurers specifically excluded flood damage from their policies as a result of the seismic actuarial risks of floods occurring in floodplains and the resulting costs on insurers. However, NFIP went too far in making flood insurance available. Specifically, NFIP did not charge policy premiums necessary to account for actuarial risk. It also did not require existing homeowners to rebuild their structures in order to comply with the protective community requirements enacted in their local laws, which laws were required by NFIP, but instead grandfathered existing structures into NFIP so long as the community enacted the law. So, the NFIP system was flawed because available insurance was plentiful, too plentiful, without requiring homeowners to both pay for the

risk that their properties actually posed of being damaged by floods or to take measures to mitigate that risk.

Therefore, in conjunction with reauthorization, Biggert-Waters reformed NFIP to achieve financial stability by way of changes that moved rates to more accurately reflect the actual risk of flooding in flood areas. Biggert-Waters also phased out subsidies for non-primary residences, businesses, 1-to-4 family residences with repetitive loss and those properties where claim payments exceeded the fair market value of the property. Additionally, subsidies were eliminated for any lapse in policy and upon each property sale.

Nonetheless, from the moment of its implementation Biggert-Waters has been attacked with calls for reform dotting the blogosphere. Real estate brokers, mortgage lenders, the insurance industry and even politicians called the law dangerous and sought its delay in implementation. Senators, who supported the bill at first, began to call it short-sited. However, NFIP had approximately \$24 billion in debt owed to the US Treasury at the time Biggert-Waters became law, so it could not survive without reform. Consequently, instead of repealing Biggert-Waters, the Homeowners Flood Insurance Affordability Act of 2014 seeks to repair it by way of the following.



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Top 10 Changes to Biggert-Waters by Homeowners Flood Insurance Affordability Act of 2014:

- Premiums under NFIP can increase no more than 18 percent per property annually;
- Home purchasers to be covered under seller's prior NFIP subsidized premium rate, rather than the higher rate reflecting true flooding risk at point of purchase;
- Provides retroactive refunds for people who have had large flood insurance rate increases due to the sale or purchase of a home;
- Requires FEMA to notify communities and members of Congress of remapping as well as models used in the mapping process;
- Repeals the provision in Biggert-Waters that required pre-FIRM (Flood Insurance Rate Map) property owners to pay the full-risk rate if they voluntarily purchase a new policy;
- Repeals the provision in Biggert-Waters that would have terminated grandfathering. If this occurred, property owners mapped into higher risk would have to either elevate their structure or have higher rates phased in over five years;
- Requires FEMA to refund policyholders for overpaid premiums;
- Establishes a Flood Insurance

Advocate within FEMA to answer current and prospective policyholder questions about the flood mapping process and flood insurance rates;

- Requires FEMA to establish guidelines on alternative mitigation methods for urban structures where traditional mitigation efforts such as elevation are impractical (i.e. row houses in Hoboken); and
- Requires FEMA, at least 6 months prior to implementation of rate increases as a result of this Act to make publicly available the rate tables and underwriting guidelines that provide the basis for the change, providing consumers with greater transparency.

Lastly, the Act provides until November 21, 2014 for the Federal Emergency Management Agency (Administrator of the Act), to issue final guidance and rate tables necessary to implement this new law. So, any rebates will likely not be available until at least November of this year. Yet, they are coming and hopefully this new law can put NFIP on the right track to financial stability while easing the financial burden faced by property owners in the short-term.

Note: Andrew M. Lieb is Managing Attorney of Lieb at Law. P.C. and a frequent contributor to this publication.