

Flood Insurance Update

When it comes to complying with the mandatory purchase of flood insurance requirements, federally regulated lending institutions rely mostly on the flood insurance regulations, the Interagency Questions and Answers Regarding Flood Insurance (Q&As) and FEMA's National Flood Insurance Program Mandatory Purchase of Flood Insurance Guidelines (Guidelines). Unfortunately, none of these resources have been revised yet to reflect changes made by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) or the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). In fact, because the Guidelines were out of date, FEMA rescinded the Guidelines.

In October 2013, the Agencies (FRB, FDIC, OCC and NCUA as well as the Farm Credit Administration) issued a proposed rule to implement some of the provisions of Biggert-Waters. 78 FR 65107. After the Agencies issued the October 2013 Proposal, Congress passed HFIAA, which amended some of the Biggert-Waters provisions and made other changes to the Flood Disaster Protection Act. Despite these additional changes and the need for regulations to implement certain Biggert-Waters provisions, the Agencies have yet to issue a final rule, or even a new proposed rule to address HFIAA's changes.

Because of this uncertainty, the American Bankers Association (ABA) asked the Agencies for guidance as to how to comply with the flood insurance requirements post-Biggert Waters and HFIAA. Refer to ABA's letter dated April 15, 2014, which can be accessed at www.aba.com/Advocacy/commentletters/Documents/clABAHomeownerFloodInsuranceAAComment2014.pdf.

On June 30, 2014, the Agencies responded to the ABA's letter. The highlights of this response are as follows:

- No ETA for Final or Proposed Rules. The Agencies did not provide an estimate as to when they will issue a final rule. Furthermore, the Agencies did not state whether they intend to issue a second proposed rule to incorporate the changes HFIAA made. Instead, they stated that “[a]t this time, the Agencies are considering the comments received during the public comment period and are carefully analyzing the HFIAA to determine what additional regulatory changes will be needed to implement the relevant provisions.”

- New Detached Structure Exemption is Effective. HFIAA added a new exemption for any non-residential structure that is detached from the primary residential structure. Specifically, HFIAA provides that “flood insurance shall not be required, in the case of any residential property, for any structure that is part of such property but is detached from the primary residential structure of such property and does not serve as a residence.” This is generally thought to refer to detached garages and other detached structures. Prior to the Agencies’ response, it was not clear as to when this new exemption became effective. However, in this response, the Agencies made clear that the exemption became effective upon enactment of HFIAA, which was March 21, 2014.
- Q&As Will be Revised. Also in this response, the Agencies stated that they plan on revising the Q&As once they have issued final regulations to implement Biggert-Waters and HFIAA.
- Unable to Update Guidelines. The Agencies “are unable” to update the Guidelines. Their rationale is that “much of the information contained in the [Guidelines] pertained to flood insurance matters outside of the Agencies’ authority.” Presumably, the Agencies were referring to the fact that FEMA, not the Agencies, issued the Guidelines.

If it provides any comfort to financial institutions, the Agencies assured the ABA that they “have and will continue to provide information to our regulated lending institutions to assist them in complying with federal flood insurance requirements.” The Agencies’ response can be accessed at www.aba.com/Advocacy/commentletters/Documents/Ltr-InteragencyResponse-Flood2014.pdf.

Clients are encouraged to contact Robert K. Olsen or Stephanie A. Shea with Aldrich Bonnefin & Moore at 949-474-1944 for specific advice regarding compliance with the Agencies’ flood insurance regulations, Biggert-Waters or HFIAA.