

Federal Emergency Management Agency

Washington, D.C. 20472

January 30, 1995

MEMORANDUM FOR: Mitigation Division Directors
All FEMA Regions

Division Directors
Caribbean and Pacific Area Divisions

FROM: Robert F. Shea/ Jr. Director
Program Implementation Division
Mitigation Directorate

SUBJECT: Office of General Counsel Determination
Regarding Section 582 of Public Law 103-225

Attached for your information is a recent determination provided by the Federal Emergency Management Agency's (FEMA) Office of General Counsel (OGC) regarding the timeframe for restrictions applying to Section 582 of Public Law 103-325 (addressing Federal flood disaster assistance) and the location of property affected by Subsection -582(a) of Public Law 103-325. The determination was generated in response to a request from the Response and Recovery Directorate.

In light of all the recent flooding disasters/ this information could prove quite useful in addressing victim concerns and requirements for the purchase and maintenancs of flood insurance on structures. It also provides FEMA with an Agency view which allows us to consistently and uniformly address such issues. If you need further information on this CGC determination, please contact Mike Hirsch on (202) 646-4099.

Attachment

Federal Emergency Management Agency

Washington, D.C. 20472

JAN 20 1995

MEMORANDUM FOR: Richard W. Krimm

Associate Director

FROM: John P. Carey

General Counsel

SUBJECT: Section 582 of P.L. 103-325

You asked the Office of the General Counsel (OGC) to determine whether subsection 582(a) of P.L. 103-325/ which restricts future Federal flood disaster assistance, applies to anyone whose property is damaged by flooding or only applies to disaster victims whose flooded property is located within a Special Flood Hazard Area (SFHA). You also asked about the period during which the restrictions of section 582 apply.

Subsection 582 (a) of P.L. 103-325 states in pertinent part as follows:

. . .no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan...) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance....

This new statutory provision does not itself impose a flood insurance purchase mandate - it merely creates an enforcement mechanism to implement with respect to disaster victims who were required in past floods to purchase flood insurance "under applicable Federal law", who failed to obtain and maintain the requisite flood insurance, and who are subsequently flooded. The only "applicable Federal law" requiring the purchase of flood insurance appears at subsection 102 (a) of P.L. 93-234, the Flood Disaster Protection Act- of 1973. Subsection 102 (a) of P.L. 93-234, as amended by subsection 582(c) of P.L. 103-325, provides in pertinent part as follows:

...no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director as an area having special flood hazards and in which the sale of flood insurance has been made available under (the National Flood Insurance Act of 1968) unless the building or mobile home and any personal property to which such financial assistance • relates is covered by flood insurance in an amount at least equal to its development or project cost. . .or to the maximum limit of coverage made available with respect to the...type of property under (the National Flood Insurance Act of 1968), whichever is less: Provided, That if the financial assistance provided is in the form of a loan... the amount or flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan

The phrase "financial assistance for acquisition or construction purposes" is defined at section 3 (a) (4) of P.L. 93-234 as follows: "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any...building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or

- subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the (Robert T. Stafford) Disaster Relief and Emergency Assistance Act (other than assistance under such Act in connection with a flood)

When they are read together, these statutory provisions indicate that section 582 of P.L. 103-325 only imposes a • restriction on the provision or future flood disaster assistance with respect to disaster victims who are required to obtain flood insurance pursuant to section 102 (a) of • P.L. 93-234. The flood insurance purchase mandate of section 102 (a) only applies to the owners of real or personal property "in any area that has been identified by the Director as an area having special flood hazards". Therefore, it is our opinion that the restrictions of section 582 of P.L. 103-325 only apply to flood victims whose property is located within a SFHA".

You also asked about the length of time that flood victims who are subject to the restrictions of section 552 must maintain flood insurance. Your incoming request points out that section 522 of P.L. 103-325 amended section 102(b) of the Flood Disaster Protection Act of 1973 to require Federally-regulated lenders, as well as Federal agency lenders, not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home in a SFHA unless the building or mobile home is covered by flood insurance " for the term of the loan." This statutory provision clearly indicates that the flood insurance purchase mandate which is triggered by the provision of a loan from" a Federally-regulated lender or from a Federal lending institution: only applies during the term of the loan.