

\$9B For Sandy Claims Finalized, But Battles To Follow

By **Bibeka Shrestha**

Law360, New York (January 07, 2013, 1:46 PM ET) -- President Barack Obama on Sunday approved a multibillion-dollar boost in funds for flood insurance claims from Sandy, setting the stage for heated debate on reforming the government's troubled flood insurance program, attorneys said.

The president and Congress have greenlighted a temporary increase in the National Flood Insurance Program's borrowing authority from \$20.7 billion to \$30.4 billion.

Lawmakers in the U.S. House of Representatives quickly moved to approve the bill after earlier inaction on a \$60 billion Sandy aid package raised the ire of prominent New York and New Jersey politicians from both sides of the aisle. The Federal Emergency Management Agency had also stepped up pressure, warning Congress that the program would run out of money to pay flood claims by the week of Jan. 7 if it didn't receive additional borrowing authority.

Barry Weissman, a partner at Edwards Wildman Palmer LLP who counsels insurers on regulatory matters, said the bill that passed Friday and the reforms included in a five-year reauthorization of the National Flood Insurance Program last year are just band-aids and more changes will be needed.

"It's a drop in the bucket, and it's just a first step," Weissman said. "They need to do a lot more."

The NFIP was self-sustaining at one point but has been in the red since 2005, in the wake of Hurricane Katrina and more severe weather in recent years, according to John Nevius, an Anderson Kill & Olick PC shareholder who represents policyholders.

"Superstorm Sandy didn't make it any better," Nevius said. "It's important that the program be set up so that it realistically evaluates the risks. It really should pay for itself."

Critics of the NFIP say it encourages people to build in coastal areas that face a high risk of floods. Nevius said it'll be crucial for the government to update its floodplain maps, consider the potential impacts of climate change, and ensure that premiums that come in match up with payments the NFIP makes.

Rep. Jeb Hensarling, R-Texas, the incoming chairman of the House Financial Services Committee, stressed on Friday that taxpayer bailouts of the NFIP need to end, especially when the program is already in debt by more than \$20 billion.

"Our committee will take up legislation to transition to a private, innovative, competitive, sustainable flood insurance market," Hensarling said in a statement. "For more than four decades, this experiment in government-provided flood insurance has proven to be ineffective, inefficient and indisputably costly to hardworking American taxpayers."

But experts said it's unlikely that private insurers will jump at the chance to provide flood insurance, which they've historically shied away from because they couldn't spread out flood risk among a large number of policyholders.

"That's a laudable goal but as a practical matter, it's not clear that private insurance companies will pick up the slack," Nevius said. "Unfortunately, the costs of the disaster are likely to be picked up by the federal government, one way or the other."

It's possible, though, that the U.S. government will subsidize or underwrite only a proportion of flood risks in the future, according to Nevius.

Weissman agreed that elements of flood insurance could be privatized, but he's doubtful that the coverage will be provided entirely by private insurers.

So far, the NFIP has received nearly 140,000 Sandy claims and paid out \$1.7 billion to victims of the crippling storm. If the House had stalled on approving an increase in borrowing authority, payments for about 115,000 claims would have been delayed, according to FEMA.

The agency said in November that it expected NFIP to take a \$6 billion to \$12 billion hit from Sandy. The program was already saddled with about \$17 billion in debt after Hurricane Katrina, one of the reasons it has been propped up with 17 short-term extensions and allowed to lapse on four occasions since 2008.

Lawmakers had failed to reach an agreement on an overhaul to the program for years, but passed some reforms last summer.

Sue Stead, chairwoman of the insurance regulation practice group at Nelson Levine de Luca & Hamilton LLC, said that last year's law calls for studies on how to better handle flood insurance in preparation for storms like Sandy.

"The flood program becomes a subject of interest periodically, often after a major catastrophe," Stead said. "The good news is that legislation created a forum for having those discussions,"

The law, which Obama signed in July, ended decades-old subsidies for flood insurance, raised the annual cap on premium rate increases from 10 percent to 20 percent and required FEMA to incorporate historical flood loss obligations into calculations for setting premiums.

On Friday, Hensarling said these reforms were "modest." Free-market think tank The R Street Institute echoed the Congressman's calls to privatize flood insurance.

"For decades, the NFIP has been offering below-market rates that have subsidized construction in risky and environmentally sensitive regions across the country," R Street senior fellow R.J. Lehmann said. "The catastrophes we saw in 2012 should be a wake-up call that we simply can no longer afford to encourage people to live in harm's way."

For now, officials in areas hit hard by Sandy are focusing their efforts on securing more financial aid for victims.

Republicans and Democrats alike in storm-struck states had lashed out at House Speaker John Boehner, R-Ohio, for letting a \$60 billion Sandy disaster relief package die with the last session of Congress, after it had already been approved by the Senate. The delay meant the newly sworn-in Senate would have to readdress the disaster relief bill.

Boehner later promised to bring the NFIP portion of the package to a vote Friday, and tackle the rest of it on Jan. 15.

--Editing by John Quinn.

All Content © 2003-2013, Portfolio Media, Inc.