

Biggert-Waters Flood Insurance Reform and Modernization Act of 2012

On July 6, 2012, President Obama signed into law the “Biggert-Waters Flood Insurance Reform Act of 2012,” which reauthorizes and reforms the National Flood Insurance Program (NFIP) for five years through September 30, 2017. A comprehensive overview is provided below.

- **Availability of insurance for multifamily properties**—Allows multifamily residential properties of five or more residences to purchase flood insurance up to the limits for business properties.
- **Premium Rate Structure Reforms**
 - Phases out subsidies for second homes, business properties, severe repetitive loss properties, or substantially improved/damaged properties. Rates for these properties will increase by 25 percent per year until premiums meet the full actuarial cost.
 - Requires that any premiums for a new flood insurance policy for a property not currently covered must be based on actuarial rates.
 - Raises the annual cap on premium rate increases for any property (except those subject to the phase-out) from 10 percent to 20 percent.
 - Requires FEMA to allow policyholders that are not required to have their premiums escrowed every month with their lender to pay their premiums in installments. FEMA currently requires a single annual premium payment.
- **Premium adjustment**—Requires premium rate adjustment on any property located in an NFIP-participating area to accurately reflect current risk of flood to such property. The determination is made after the effective date of any revised or updated flood insurance rate map. Any increase in the risk premium will be phased in over a 5-year period, at a rate of 20 percent. With respect to properties located in areas not previously designated as an area having special flood hazards and becomes designated as such an area, the chargeable risk premium rate will be phased in over 5-year period, at a rate of 20 percent following the effective date of the remapping.
- **Enforcement**—Increases civil penalties for lenders that fail to ensure compliance with flood insurance purchase requirements from \$350 to \$2,000 per violation and removes the limit on annual penalties.
- **Escrow of flood insurance**—Provides for regulated lenders to escrow flood insurance payments for loans made two or more years after enactment of the law.

- **Sets minimum deductibles**—Minimum pre-Flood Insurance Rate Maps (FIRM) property deductibles will be \$1,500 if the property is insured for \$100,000 or less; or \$2,000 if the property has over \$100,000 in coverage. Minimum post-FIRM property deductibles will be \$1,000 for those with \$100,000 of coverage or less; or \$1,250 if the coverage is greater than \$100,000.
- **Considerations in determining chargeable premium rates**—Requires FEMA to use actuarial principles in determining rates, and to consider catastrophic loss years in the calculation of the average historical loss year.
- **Reserve Fund**—Requires FEMA to build up a reserve fund to help meet the expected future obligations of the NFIP in higher-than-average loss years. The Reserve Fund will phase-in a reserve ratio or balance equal to 1% of the sum of the total potential loss exposure of all outstanding flood insurance policies in force during the prior fiscal year. Authorizes FEMA to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected to maintain the reserve ratio and must place in the Fund on an annual basis an amount equal to not less than 7.5% of the reserve ratio until the fund is fully capitalized. After achieving the target reserve, any reduction in the reserve will be replaced through contributions of at least 7.5% of the target amount of the reserve annually. If NFIP is not able to make the minimum contribution it must report that fact to Congress.
- **Repaying Flood Insurance Debt**—Requires FEMA to create a repayment schedule to eliminate the debt and to report on its progress every six months. FEMA is also required to submit a report to Congress on the options available to the agency for eliminating the debt within 10 years.
- **Payment of condominium claims**—Clarifies that condominium owners with flood insurance policies should receive claims payments regardless of the adequacy of flood insurance coverage of the condominium association and other condominium owners.
- **Technical Mapping Advisory Council**—Establishes a Technical Mapping Advisory Council to address map modernization issues. The Council will include representatives from FEMA, the Department of the Interior, the Department of Agriculture, other federal agencies, state and local governments, as well as experts from private stakeholder groups. Requires FEMA to ensure membership is a balance of federal, state, local, tribal and private members as well as geographic diversity, including representation from the states with coastlines or the Gulf of Mexico and other states containing areas at high-risk for floods or special flood hazard areas. Requires annual progress reports by FEMA to Congress, including a list of the Council's recommendations that were deferred or not acted upon, and an explanation.

- **National Flood Mapping Program**—Requires FEMA to establish an ongoing mapping program to review, update and maintain flood insurance rate maps, including all areas within the 100-year and 500-year floodplains and residual risk areas. Requires that the most accurate data be used in mapping and maintenance, and requires that each map include certain elements to ensure consistency and accuracy. Directs FEMA to enhance communication and outreach to states, local communities, and property owners regarding mapping changes and mandatory purchase requirements. Establishes a process for local communities to request a remapping based on the standards recommended by the Technical Mapping Advisory Council. Authorizes \$400 million annually for mapping.
- **Scope of appeals**—Clarifies that appeals of FEMA determinations in the flood maps will be based solely on whether the determination is technically or scientifically correct.
- **Scientific Resolution Panel**—Establishes an independent Scientific Resolution Panel that will address mapping-related concerns from communities that are dissatisfied with the outcome of their appeal to FEMA. Authorizes certain communities that have already been re-mapped to use the new panel to rule on Letters of Map Revision.
- **Removal of limitation on State contributions for updating flood maps**—Removes the restriction that states may only contribute up to 50 percent of the cost of mapping and allows states to invest additional funds for mapping.
- **Coordination**—Requires the various federal agencies to work together to coordinate mapping and risk determination budgeting, and requires the Office of Management and Budget, FEMA, and others to submit a joint report to Congress within 30 days of the budget submission on crosscutting budget issues with respect to mapping.
- **Interagency coordination study**—Requires FEMA to contract with the National Academy of Public Administration to conduct a study on how FEMA can improve interagency coordination on mapping and funding, and how FEMA can establish joint funding mechanisms with federal, state, and local agencies to share the collection and use of data for mapping.
- **Notice of flood insurance availability under the Real Estate Settlements Procedures Act (RESPA)**—Amends RESPA and requires lenders provide a disclosure of the availability of flood insurance under the NFIP and whether or not the property is located in an area having special flood hazards to all purchasers.
- **Participation in State disaster claims mediation programs**—Requires FEMA, at a state's request, to participate in state-sponsored non-binding mediation to resolve insurance claim disputes.

- **Oversight and expense reimbursements of insurance companies**—Requires FEMA to collect accurate and adequate information on Write-Your-Own (WYO) company expenses. FEMA is required to develop a methodology for determining what WYO companies should be reimbursed for their activities under the NFIP. All WYO companies will be required to submit data based on that methodology. Using that data, FEMA will be required to conduct a rulemaking on reimbursement rates to ensure that WYO companies are being reimbursed based on actual expenses, including standard business costs and operating expenses. The Government Accountability Office will report to Congress on the efficacy of the rules.
- **Mitigation**—Reforms and streamlines existing FEMA mitigation programs.
- **Flood protection structure accreditation task force**—Requires FEMA and the Army Corps of Engineers, in cooperation with the National Committee on Levee Safety, to form a task force to better align the data that the Corps collects during levee inspections with the data required under FEMA’s accreditation program.
- **Flood in progress determinations**—Requires FEMA to conduct a study examining, among other things, the process for determining when a flood event has commenced or is in progress for purposes of NFIP flood insurance coverage. Also clarifies the meaning of “eligible coverage” for purposes of 2011 Missouri River flooding.
- **Clarification of residential and commercial coverage limits**—Clarifies current statutory limits on coverage of multi-business commercial structures.
- **Local data requirement**—Requires FEMA to use local data when flood mapping certain New York communities.
- **Eligibility for flood insurance for persons residing in communities that have made adequate progress on the construction, reconstruction, or improvement of a flood protection system**—Requires the Administrator to provide flood insurance at a rate similar to that provided to people that reside behind a completed levee, to people who live behind a levee, or other flood control system, that is undergoing construction, reconstruction, or improvements which the Administrator deems to have met certain requirements regarding the current status of the levee and a timetable for completion of the project. Establishes a system of consultations between the levee owner and the Administrator to determine if the construction, reconstruction, or improvement project has a reasonable likelihood of completion on schedule.

- **Government Accountability Office (GAO) Report on NFIP**—Requires GAO to submit a report to Congress on: (1) the number of flood insurance policyholders currently insured; (2) the increased losses the NFIP would have sustained during the 2004 and 2005 hurricane seasons if the program had insured all policyholders up to \$417,000; (3) the availability in the private marketplace of flood insurance coverage in amounts that exceed the current coverage limits; and (4) the effect of either raising the current limits of coverage amounts or reducing the current limits of coverage on the ability of private insurers to provide sufficient flood insurance coverage to effectively replace the current level of flood insurance being offered under the NFIP.
- **Annual FEMA report on NFIP**—Requires FEMA to submit annual reports to Congress on the financial conditions of the NFIP, including the annual amount paid in premiums, losses, expenses, number of policies, insurance in force, estimate of average loss year and a description and amount of claims paid. The report must be submitted three months following the end of each fiscal year.
- **GAO Report on Pre-FIRM Structures**—Requires GAO to conduct a study and report to Congress on pre-FIRM structures and the options for eliminating the subsidy to such structures.
- **GAO Review of FEMA Contractors**—Requires GAO, in conjunction with the Department of Homeland Security Inspector General's Office, to review the three largest contractors FEMA uses in administering the NFIP.
- **National Academy of Sciences (NAS) Study on Graduated Risk**—Requires the NAS to conduct a study of methods for understanding graduated risk behind levees and the associated land development, insurance, and risk communication dimensions. Requires a report to Congress with recommendations within 12 months of the date of enactment.
- **Reinsurance/Privatization Initiatives**—Requires FEMA and GAO to conduct studies and report to Congress within 18 months on assessing the private reinsurance market's capacity to assume a portion of the NFIP insurance risk and clarifies its authority to purchase reinsurance. Clarifies that FEMA is authorized to secure reinsurance from the private market. It also requires FEMA to include in their annual report to Congress an assessment of NFIP's ability to pay claims, as well as any use of FEMA's authority to secure reinsurance.

- **GAO Study on business interruption and additional living expenses coverage**—Requires a GAO study on expanding coverage to include business interruption and additional living expenses. Requires GAO to conduct a study and report to Congress within one year of enactment on the availability of additional living expense and business insurance coverage in the private marketplace for flood insurance and the feasibility and estimated cost to consumers of allowing the NFIP to offer such coverage at the option of the consumer. The study will also assess the impact such optional coverage will have upon consumer participation and the National Flood Insurance Fund.
- **Policy disclosures**—Requires additional disclosures for policies under the NFIP and provides for fines. Each NFIP insurance policy shall state all the conditions, exclusions, and other limitations on insurance coverage in boldface, double-sized font, and plain English.
- **FEMA Report on inclusion of building codes in floodplain management criteria**—Requires FEMA to conduct a study and report to Congress regarding the impact, effectiveness, and feasibility of include widely used and nationally recognized building codes as part of the floodplain management criteria.
- **FEMA Study of participation and affordability for certain policyholders**—Requires FEMA to conduct a study on possible methods to encourage and maintain participation in the NFIP, as well as making the NFIP more affordable for certain people through targeted assistance. The study also will include an economic analysis provided by the National Academy of Sciences.
- **GAO report concerning the participation of Indian tribes and members of Indian tribes in the NFIP**—Requires the GAO to conduct a study and report to Congress on the factors contributing to the currently low rate of participation of Indian tribes and members of Indian tribes in the NFIP, and methods which can be used to encourage more participation by Indian tribes and their members.
- **Private Insurance**—Clarifies that private flood insurance meets the flood insurance purchase requirement.
- **Levees constructed on certain properties**—Requires repurchase of certain federal lands for levee or dam construction.
- **Insurance coverage for private properties affected by flooding from Federal lands**—Waives 30-day waiting period on flood insurance for properties affected by flooding on Federal land resulting from wildfires.

- **Treatment of Swimming Pool Enclosures Outside of Hurricane Season**—Requires under the NFIP that the presence of an enclosed swimming pool located at ground level or in the space below the lowest flood of a building after November 30, and before June 1 of any year, will have no effect on the terms of coverage or the ability to receive coverage for such building if the pool is enclosed with non-supporting breakaway walls.
- **Community Development Block Grant (CDBG) Eligibility for Flood Insurance Outreach Activities and Community Building Code Administration Grants**—Authorizes the use of CDBG to supplement state and local funding for local building code enforcement departments and flood program outreach.
- **Force-Placed Insurance**—Requires mortgage lenders and servicers to terminate the “force-placed” insurance and refund any premiums or fees paid for the period of coverage overlap within 30 days of receiving confirmation in writing that a property owner has obtained flood insurance coverage.
- **FEMA Authority to Reject Transfer of Policies**—Authorizes FEMA to refuse to accept future transfers of policies to the NFIP Direct policy servicing program.
- **Reimbursement for costs incurred by homeowners obtaining Letters of Map Amendment**—Provides for reimbursement of appeal expenses to communities and homeowners who successfully challenge a scientific mapping error made by FEMA.
- **Federal Office of Insurance (FIO) Report on Catastrophe Insurance**—Requires the Director of the Federal Insurance Office (FIO) to conduct a study on the current state of the market for natural catastrophic insurance in the United States. Requires FIO to submit a report to Congress no later than one year after the enactment of the bill.
- **Flood protection improvements constructed on certain properties**—Requires the repurchase of certain land from the Federal government for the construction of dams or levees.
- **No cause of action**—Stipulates there is no right to sue the U.S. over the bill’s notification requirements.
- **Alternative Loss Allocation or “Consumer Option for an Alternative System to Allocate Losses (COASTAL) Act of 2012.”** Requires FEMA to identify named storms that may constitute a threat to the coastal zone, develop a post-event assessment for such named storm, establish a specified protocol to collect and assemble all requisite data to produce post-event assessments, identify federal and state systems capable of collecting such data, and establish the Coastal Wind and Water Event Database. Directs the Department of Homeland Security to establish a system for allocating losses among certain insurers providing coverage against property losses due to wind and water peril.