Biggert Waters Flood Insurance Reform Act of 2012

Impact of National Flood Insurance Program (NFIP) Changes

Note: This Fact Sheet deals specifically with Sections 205 and 207 of the Act.

In 2012, the U.S. Congress passed the Biggert Waters Flood Insurance Reform Act of 2012 which calls on the Federal Emergency Management Agency (FEMA) and other agencies to make a number of changes to the way the NFIP is run. Some of these changes have already been put in place, and others will be implemented in the coming months. Key provisions of the legislation will require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. The changes will mean premium rate increases for some – but not all -- policyholders over time.

Background:

In 1968, Congress created the National Flood Insurance Program (NFIP). Since most homeowners' insurance policies did not cover flood, property owners who experienced a flood often found themselves financially devastated and unable to rebuild. The NFIP was formed to fill that gap and was designed to incorporate community adoption of minimum standards for new construction and development to minimize future risk of flood damage. Pre-existing homes and businesses, however, could remain as they were. Owners of many of these older properties were eligible to obtain insurance at lower, subsidized rates that did not reflect the property's true flood risk.

In addition, as the initial flood risk identified by the NFIP has been updated, many homes and businesses that had been built in compliance with existing standards have received discounted rates in areas where the risk of flood was revised. This "Grandfathering" approach prevented rate increases for existing properties when the flood risk in their area increased.

After 45 years, flood risks continue and the costs and consequences of flooding are increasing dramatically. In 2012, Congress passed legislation to make the NFIP more sustainable and financially sound over the long term.

What this means:

The new law eliminates some artificially low rates and discounts which are no longer sustainable. Most flood insurance rates will now move to reflect full risk, and flood insurance rates will rise on some policies.

Actions such as buying a property, allowing a policy to lapse, or purchasing a new policy can trigger rate changes. You should talk to your insurance agent about how changes may affect your property and flood insurance policy. There are investments you and your community can make to reduce the impact of rate changes. And FEMA can help communities lower flood risk and flood insurance premiums.

What is Changing Now?

Most rates for most properties will more accurately reflect risk. Subsidized rates for non-primary/secondary residences are being phased out now. Subsidized rates for certain other classes of properties will be eliminated over time, beginning in late 2013. There are several actions which can trigger a rate change, and not everyone will be affected. It's important to know the distinctions and actions to avoid, or to take, to lessen the impacts.

Not everyone will be affected immediately by the new law – **only 20 percent of NFIP policies receive subsidies**. Talk to your agent about how rate changes could affect your policy. Your agent can help you understand if your policy is impacted by the changes.

- Owners of **non-primary/secondary** residences in a Special Flood Hazard Area (SFHA) will see 25 percent increase annually until rates reflect true risk – began January 1, 2013.
- Owners of **property that has experienced severe or repeated flooding** will see 25 percent rate increase annually until rates reflect true risk – beginning October 1, 2013.
- Owners of **business properties in a Special Flood Hazard Area** will see 25 percent rate increase annually until rates reflect true flood risk -- beginning October 1, 2013.
  (Each property's risk is different. Some policyholders may reach their true risk rate after a couple years of increases, while other policyholder increases may go beyond five years to get to the full risk rate required by the new law. Rate tables on true risk will not be available until June 2013.)

Primary residences in SFHAs **will be able to keep their subsidized rates** unless or until:

- The property is sold;
- The policy lapses;
- You suffer severe, repeated, flood losses; or
- A new policy is purchased.

Grandfathering Changes Expected in 2014

The Act calls for a phase-out grandfathered rates and a move to risk-based rates for most properties when the community adopts a new Flood Insurance Rate Map. If you live in a community that adopts a new, updated Flood Insurance Rate Map (FIRM), grandfathered rates will be phased out. This will happen gradually, with new rates increasing by 20% per year for five years. Implementation is anticipated in late 2014.

What Can Be Done to Lower Costs?

For home owners and business owners:

- Talk to your insurance agent about your insurance options.
- You will probably need an Elevation Certificate to determine your correct rate.
- Higher deductibles might lower your premium.
- Consider incorporating flood mitigation into your remodeling or rebuilding.
  - Building or rebuilding higher will lower your risk and could reduce your premium.
  - Consider adding vents to your foundation or using breakaway walls.
- Talk with local officials about community-wide mitigation steps.

For community officials:

- Consider joining the Community Rating System (CRS) or increasing your CRS activities to lower premiums for residents.
- Talk to your state about grants. FEMA issues grants to states, which can then distribute the funds to communities to help with mitigation and rebuilding.

Key Dates and Triggers

Date of Implementation	Who Is Affected	What Will Happen	Why Is It Changing
January 1, 2013	• **Homeowners** with subsidized insurance rates on non-primary residences • *Properties receiving subsidized insurance rates are those structures built prior to the first Flood Insurance Rate Map (**pre-FIRM properties) that have not been substantially damaged or improved**.*	• **25 percent increase in premium rates each year** until premiums reflect full risk rates	• BW 12 calls for the phase-out of subsidies and grandfathered rates on flood insurance premiums. • This premium increase is outlined in **Section 100205** • The phase out of subsidies affecting non-primary residences was also mandated by earlier 2012 legislation**, HR 5740.**
October 1, 2013	• **Owners of business properties** with subsidized premiums • Owners of **severe repetitive loss** properties, which are defined as **any property that has incurred flood-related damage** in which the cumulative amounts of NFIP claims payments exceeded the fair market value of the property	• **25 percent increase in premium rates each year** until premiums reflect full risk rates	• BW 12 calls for the phase-out of subsidies on flood insurance premiums. • These premium increases are outlined in **Section 100205.**
October 1, 2013 continued	• **Owners of property**: 1. not insured as of the date of enactment of BW 12 (7/6/2013); 2. with a **lapsed NFIP policy**; or 3. purchased after the date of enactment of BW 12.	• Full-risk rates **will apply to these policies.**	• BW 12 calls for the phase-out of subsidies on flood insurance premiums. • These premium increases are outlined in **Section 100205.**

When	Who Is Affected	What Will Happen	Why Is It Changing
October 1, 2013 continued	• **Owners of properties insured by the Prefered Risk Policy (PRP) Eligibility Extension,** which has allowed structures mapped into a high risk area to remain insured at lower PRP rates. These are properties mapped into the Special Flood Hazard Areas (SFHAs) on or after October 1, 2008.	• Full risk rates will be phased in annually with average annual increases of 20 percent until premiums reach full risk rates.	• BW 12 calls for the phase-out of subsidies and grandfathered rates on flood insurance premiums. • The phase-out is a policy decision to align all subsidies with the BW 12 changes and maintain the PRP for low risk properties outside the SFHA.
October 1, 2013	• **All policyholders except Preferred Risk Policies (PRPs), Group Flood Insurance Policies, and policyholders losing their subsidies.**	• A 5 percent premium increase will go towards building a reserve fund for the NFIP.	• BW 12 calls for the establishment of a reserve fund to meet the expected future obligations of the NFIP. • The reserve fund is outlined in Section 1310A.
Late 2014	• **Other property owners, including non-subsidized policyholders,** affected by map changes	• Full-risk rates **will be phased in** over five years at a rate of 20 percent per year to reach full risk rates. • The NFIP will not retroactively collect premiums for map changes occurring after the date of enactment (7/6/2012).	• BW 12 calls for the phase-out of grandfathered rates on flood insurance premiums. • This premium increase is outlined in **Section 100207.**

Overview

On March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 into law.

This law repeals and modifies certain provisions of the Biggert-Waters Flood Insurance Reform Act, which was enacted in 2012, and makes additional program changes to other aspects of the program not covered by that Act. Many provisions of the Biggert-Waters Flood Insurance Reform Act remain and are still being implemented.

While FEMA actively works to implement the new law, we encourage policyholders to maintain and keep current flood insurance policies. FEMA does NOT recommend cancelling a flood insurance policy. Cancelling flood insurance policies now will leave policyholders unprotected during spring flooding and may cause policyholders to lose important discounts on their rate if they reinstate in the future.

- The new law lowers the recent rate increases on some policies, prevents some future rate increases, and implements a surcharge on all policyholders. The Act also repeals certain rate increases that have already gone into effect and provides for refunds to those policyholders. The Act also authorizes additional resources for the National Academy of Sciences (NAS) to complete the affordability study.

- FEMA looks forward to working with Congress, the private Write Your Own insurance companies, and other stakeholders to implement these Congressionally mandated reforms and to working toward our shared goals of helping families maintain affordable flood insurance, ensuring the financial stability of the NFIP, and reducing the risks and consequences of flooding nationwide. FEMA will also continue to identify and publish special flood hazards and flood risk zones as authorized and required by Congress.

- FEMA has actively begun analyzing and prioritizing implementation of the new law. We will be working with the private Write Your Own insurance companies in the next few weeks to seek their input and expertise prior to issuing business practice bulletins.

- It is not possible for changes to happen immediately. While the new law does require some changes to be made retroactively, applying to certain policies written after July 6, 2012, other changes require establishment of new programs, processes and procedures.

- FEMA's initial priority is assessing potential changes to the NFIP's business processes to stop policy increases for certain subsidized policyholders as outlined in the Act.

- FEMA also plans to issue guidance in the months ahead for the Write Your Own insurance companies to begin issuing refunds as outlined in the law for some policyholders who were previously impacted by subsidy phase outs.

- More information on the new law and its impacts on the NFIP will be forthcoming.

REFUNDS

- For certain flood insurance policies affected by the Pre-Flood Insurance Rate Map(Pre-FIRM) subsidy elimination required by BW-12, the new law mandates refunds of the excess premiums that those policyholders were charged pursuant to the requirements of BW-12. Refunds will not affect all subsidized policyholders who received rate increases as directed by Congress in BW-12, only policyholders for whom the rate increases under BW-12 were revoked by the new law. Refunds will affect only a small percentage of the overall NFIP policy base.
  - Prior to restoring and refunding premiums, FEMA is required by the Homeowner Flood Insurance Affordability Act to consult with its partner insurers (Write-Your-Own insurance companies or WYOs) to develop guidance and rate tables.
  - In accordance with the new law, FEMA will work to develop and finalize its guidance and rate tables within eight months.
  - The law provides WYO insurance companies between six and eight months to implement the changes and update systems to implement the guidance.
- FEMA is working closely with the WYO insurance companies to develop a timetable for processing refunds expediently.
- REFUNDS APPLY TO:
  - Policyholders in high-risk areas who were required to pay their full-risk rate after purchasing a new flood insurance policy on or after July 6, 2012.
- REFUNDS MAY APPLY TO:
  - Policyholders who renewed their policy after the Homeowner Flood Insurance Affordability Act was enacted on March 21, 2014 and whose premium increased more than 18 percent .
- REFUNDS DO NOT APPLY TO:
  - Policyholders paying the 25 percent annual rate increases, as required by Congress in BW-12, for a Pre-FIRM subsidized non-primary residence, business, Severe Repetitive Loss property, or building that was substantially damaged or improved.
  - Policyholders whose full-risk premium is less than the Pre-FIRM subsidized premium, or who were not overcharged according to any retroactive revisions to the Pre-FIRM subsidized rates required by the new law.
- Policyholders who saw usual, annual rate increases in 2013 or 2014, or policyholders who paid the 5 percent fee, as required by BW-12, for the NFIP Reserve Fund, will only see a refund if their premium renewal was after March 21, 2014 and their total premium, including the reserve fund, exceeded 18 percent.

PREMIUM RATES FOR SUBSIDIZED POLICIES

- The new law requires gradual rate increases to properties now receiving artificially low (or subsidized) rates instead of immediate increases to full-risk rates required in certain cases under BW-12.
- FEMA is required to increase premiums for most subsidized properties by no less than 5 percent annually until the class premium reaches its full-risk rate. It is important to note that close to 80 percent of NFIP policyholders paid a full-risk rate prior to either BW-12 or HFIAA, and are minimally impacted by either law.
- With limited exceptions flood insurance premiums cannot increase more than 18 percent annually.
  - There are some exceptions to these general rules and limitations, The most important of these exceptions is that policies for the following properties will continue to see up to a 25 percent

annual increases as required by BW-12 until they reach their full-risk rate: Older business properties insured with subsidized rates;
    - Older non-primary residences insured with subsidized rates;
    - Severe Repetitive Loss Properties insured with subsidized rates;
    - and buildings that have been substantially damaged or improved built before the local adoption of a Flood Insurance Rate Map (known as Pre-FIRM properties).

- In order to enable new purchasers of property to retain Pre-FIRM rates while FEMA is developing its guidelines, a new purchaser will be allowed to assume the prior owner's flood insurance policy and retain the same rates until the guidance is finalized. Also, lapsed policies receiving Pre-FIRM subsidized rates may be reinstated with Pre-FIRM subsidized rates pending FEMA's implementation of the rate increases required by the Homeowner Flood Insurance Affordability Act.

NEW SURCHARGE ON ALL POLICIES

- A new surcharge will be added to all policies to offset the subsidized policies and achieve the financial sustainability goals of BW-12. A policy for a primary residence will include a $25 surcharge. All other policies will include a $250 surcharge. The fee will be included on all policies, including full-risk rated policies, until all Pre-FIRM subsidies are eliminated.

GRANDFATHERING

- The new law repeals a provision of BW-12 that required FEMA, upon the effective date of a new or updated Flood Insurance Rate Map, to phase in premium increases over five years by 20 percent a year to reflect the current risk of flood to a property, effectively eliminating FEMA's ability to grandfather properties into lower risk classes.
- Also for newly mapped in properties, the new law sets first year premiums at the same rate offered to properties located outside the Special Flood Hazard Area (preferred risk policy rates).
- With limited exceptions, flood insurance premiums cannot increase more than 18 percent annually.

FLOOD INSURANCE ADVOCATE

- The new law requires FEMA to designate a Flood Insurance Advocate to advocate for the fair treatment of NFIP policy holders.
- The Advocate will:
    - Educate property owners and policyholders on individual flood risks; flood mitigation; measures to reduce flood insurance rates through effective mitigation; the flood insurance rate map review and amendment process; and any changes in the flood insurance program as a result of any newly enacted laws;
    - Assist policy holders and property owners to understand the procedural requirements related to appealing preliminary flood insurance rate maps and implementing measures to mitigate evolving flood risks;
    - Assist in the development of regional capacity to respond to individual constituent concerns about flood insurance rate map amendments and revisions;
    - Coordinate outreach and education with local officials and community leaders in areas impacted by proposed flood insurance rate map amendments and revisions; and

  - Aid potential policy holders in obtaining and verifying accurate and reliable flood insurance rate information when purchasing or renewing a flood insurance policy.

OTHER PROVISIONS

- The new law permits FEMA to account for property specific flood mitigation that is not part of the insured structure in determining a full-risk rate.
- The law requires that residential basement floodproofing be considered when developing full-risk rates after a map changes increasing the Base Flood Elevation in an area where residential basement floodproofing is permitted.
- The law mandates that FEMA develop an installment plan for non-escrowed flood insurance premiums, which will require changes to regulations and the Standard Flood Insurance Policy contract.
- The law increases maximum deductibles.
- The law encourages FEMA to minimize the number of policies where premiums exceed 1-percent of the coverage amount, and requires FEMA to report such premiums to Congress.

DRAFT AFFORDABILITY FRAMEWORK

- The new law requires FEMA to prepare a draft affordability framework, which is due to Congress 18 months after completion of the affordability study required by BW-12. The Affordability Study required by BW-12 is underway and is being conducted by the National Academies of Sciences, as specified in the BW-12 law.
- In developing the affordability framework, FEMA must consider:
  - accurate communication to customers of the flood risk,
  - targeted assistance based on financial ability to pay,
  - individual and community actions to mitigate flood risk or lower cost of flood insurance,
  - the impact of increases in premium rates on participation in NFIP,
  - and the impact of mapping update on affordability of flood insurance.
- The affordability framework will include proposals and proposed regulations for ensuring flood insurance affordability among low-income populations.

MAPPING

- The Homeowner Flood Insurance Affordability Act requires the Technical Mapping Advisory Council (TMAC) to review the new national flood mapping program authorized under the 2012 and 2014 flood insurance reform laws. The law requires the Administrator to certify in writing to Congress that FEMA is utilizing "technically credible" data and mapping approaches. The law also requires FEMA to submit the TMAC review report to Congress.

- FEMA will be looking to the TMAC for recommendations on how best to meet the legislatively mandated mapping requirements for the new mapping program including the identification of residual risk areas, coastal flooding information, land subsidence, erosion, expected changes in flood hazards with time, and others.

- As the new national flood mapping program is being established, FEMA expects there will be opportunities to make incremental improvements to current procedures as it provides flood hazard data and information under the National Flood Insurance Program (NFIP). FEMA will make those improvements where necessary to ensure all ongoing changes to flood hazards continue to be effectively communicated, mitigated, and properly insured against.
- The law lifts the $250,000 limit on the amount that FEMA can spend to reimburse homeowners for successful map appeals based on a scientific or technical error. Federal rulemaking is required in order to implement this provision.
- FEMA is authorized to account for reconstruction or improvements of flood protection, not just new construction. It authorizes FEMA to consider the existing present value of a levee when assessing adequate progress for the reconstruction of an existing flood protection system. The law extends certain provisions related to NFIP requirements in areas restoring disaccredited flood protection systems to coastal levees and clarifies that the levee needs to be considered without regard to the level of federal funding for the original construction or the restoration.
- The law exempts mapping fees for flood map changes due to habitat restoration projects, dam removal, culvert re-design or installation, or the installation of fish passages.
- The law requires FEMA to consider the effects of non-structural flood control features, such as dunes, and beach and wetland restoration when it maps the special flood hazard area.
- The law requires FEMA to enhance coordination with communities before and during mapping activities and requires FEMA to report certain information to members of Congress for each State and congressional district affected by preliminary maps.

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