

NFIP Reauthorization Legislation 2012

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The National Flood Insurance Program five-year reauthorization has passed the House and Senate and has been signed by the President. There is a great deal in the bill, and we can expect many changes. The following is a brief analysis of what to expect. Please note that it will take FEMA some time to change policies based on the new law, and it is uncertain what flood insurance rates will result.

Flood Insurance

Removes subsidized rates (pre-FIRM rates) for the following classes of structures and allows rates to increase by 25% per year until actuarial rates are achieved:

- Any residential property that is not the primary residence of an individual
- Any property that has incurred flood related damages that cumulatively exceed the fair market value of the property
- Any business property
- Any property that after the date of the Bill has incurred substantial damage or has experienced “substantial improvement exceeding 30 percent of the fair market value of the property.
- Any new policy or lapsed policy, or any policy for a newly purchased property.
- Any severe repetitive loss property
- Any policy for which the owner has refused a FEMA mitigation offer under the Hazard Mitigation Grant Program, or for a repetitive loss property or severe repetitive loss property.
 - Repetitive Loss means two or more claims of over \$1000 over any ten year period.
 - Severe Repetitive Loss means at least four claims of over \$5,000 or at least two claims that cumulatively exceed the market value of the building)

Other insurance related changes include:

- Increased limit of annual rate increases within any risk classification of structures from 10 percent to 20 percent.
- Allows premiums to be paid either annually or in more frequent installments.
- Places limits on a bank’s practice of forced placement of flood insurance. Forced placed insurance would be cancelled and the premiums refunded upon proof of a borrower’s existing flood insurance coverage.
- When flood maps change, a property that has higher rates as a result of a new map shall have the new rates phased in over a five-year period.
- Lender penalties for non-compliance with mandatory flood insurance purchase requirements is increased from \$350 to \$2000 per violation, and the limit of fines for any lending institution over a calendar year is removed. It was \$100,000.

Increases in flood insurance premiums are required with the goal of paying down the program debt and establishing a reserve fund. Rates must be set to cover the average historical loss year, including catastrophic loss years, in accordance with generally accepted actuarial principles. In the past, potentially

catastrophic loss years were not calculated. That would also increase rates since the increase in flood damages has meant that current rates do not cover the historical average loss year.

FEMA is required to develop a ten-year repayment plan for the current insurance fund debt, and to establish a reserve fund of at least one percent of the total potential loss exposure. This fund would be built by 7.5% of the reserve ratio required each year. FEMA is allowed to report to Congress why if such goals cannot be met.

In other areas, the Bill allows private flood insurance to satisfy flood insurance coverage requirements, and establishes a process to allocate tropical storm and hurricane damages between wind and water damage.

Mapping

The bill establishes a Technical Mapping Advisory Council with membership coming from a wide range of professions, including state and local mapping partners. The Council would advise FEMA on flood mapping guidelines. It would also develop recommendations for future conditions mapping, including impacts of sea level rise and future development. FEMA is required to incorporate future risk assessment in accordance with recommendations of the Council, which must make recommendations on mapping future conditions within one year.

There are several requirements for future mapping. New flood maps must show 100-year and 500-year floodplains for all populated areas and areas of possible population growth, as well as areas with residual risk behind levees or below dams. Maps must show the level of protection provided by flood control structures. New flood maps must use the most accurate topography and elevation data available. New ground elevation data must be required when necessary. Flood data must be developed on a watershed basis.

FEMA will be required to notify property owners when their properties are included in, or are removed from an area covered by mandatory insurance purchase requirements.

There is an authorization of \$400,000,000 for flood mapping per year for fiscal years 2013 – 2017. Allocations are still made on an annual basis, but this is the first time that floodplain mapping has been specifically included as a Congressional authorization.

The bill formalizes a Scientific Resolution Panel to arbitrate when a community has received an unsatisfactory ruling with respect to an appeal of a revised flood insurance rate map. Appeals must be based on technical or scientific data.

Limitations on state contributions to updated flood mapping have been removed. Previously, there was a limit of a 50% state contribution to the costs of new flood maps. This has resulted in some states developing mapping data but FEMA being unable to use it to produce new maps.

A study is required on federal interagency coordination of flood mapping, including collection and utilization of data among all governmental users.

The bill requires flood maps for the Town of Hempstead and the Village of Valley Stream in Nassau County, for areas affected by Jamaica Bay, to use analyses “that have been properly calibrated and

validated, and are specific and directly relevant to the geographic area being studied;” and to have ground elevation that match FEMA LiDAR standards. Mapping must be updated in such areas if the above standards are found to have not been met. If new maps result that reduces the risk premium rate for any property, FEMA would be required to reimburse the difference between the rate paid and the rate for the revised map for the period between the effective date of the legislation and the effective date of the revised map. This section only applies to the geographic area noted above.

Mitigation Programs

NFIP funded mitigation programs (Repetitive Insurance Claims, Severe Repetitive Loss Properties, Flood Mitigation Assistance) are consolidated into a single program. The combined National Flood Mitigation Fund is to be funded at \$90 million per year. While the old Flood Mitigation Assistance and pilot severe repetitive loss program were funded at up to \$40 million per year each, the latter program has never been fully utilized in part due to its complexity. The new program simplifies and combines the three previous programs and includes the following:

- Allows the required Flood Mitigation Plan to be part of a community’s multihazard mitigation plan.
- Removes beach nourishment as an allowed mitigation activity.
- Adds elevation, relocation or floodproofing of utilities as allowed mitigation activities.
- Adds demolition and rebuild as an allowed mitigation activity.
- Restructures federal share requirement:
 - Up to 100% for severe repetitive loss structures.
 - Up to 90% for repetitive loss structures.
 - Up to 75% for other approved mitigation activities.

Levees

A Flood Protection Structure Accreditation Task Force is established in cooperation with the Corps of Engineers. The Task Force is charged with better aligning the information collected by the Corps of Engineers’ Inspection of Completed Works Program with FEMA’s flood protection structure accreditation requirements. The Task Force must develop a process that allows data collected for either purpose to be used interchangeably, and to allow data collected by the Corps of Engineers under the Completed Works Program to be used to satisfy the FEMA accreditation requirements. This may not reduce the level of public safety and flood control provided by accredited levees. However the Task Force is charged with considering changes to the information collected by the Corps of Engineers and the FEMA flood protection accreditation requirements. FEMA and the Corps of Engineers must implement the measures developed by the Task Force within one year and complete implementation within two years.

The bill allows flood insurance premiums to reflect premiums in fully protected areas in communities that are deemed to have made adequate progress in the reconstruction or improvement of a flood protection system.

Studies

An assortment of studies is required including:

- Analysis of increasing the maximum coverage limits and the availability in the private marketplace of flood insurance in amounts that exceed current NFIP coverage limits.
- Annual program financial reports, including efforts to purchase substantially damaged properties and detailed analyses of the nature of losses.
- A GAO report on Pre-FIRM structures, including length of ownership, income of owners, comparison of flood losses to those of post-FIRM structures, the cost of subsidies to pre-FIRM structures, and options for eliminating subsidies.
- A GAO report on the three largest contractors FEMA uses to administer the NFIP.
- A study by the National Academy of Sciences on graduated risk behind levees.
- A separate FEMA and GAO study of reinsurance and privatization of the NFIP.
- A GAO study on business interruption and additional living expenses coverage.
- A FEMA study of amending the legislation to use nationally recognized building codes as part of the floodplain management criteria.
- A FEMA – National Academy of Sciences study of encouraging maintenance of flood insurance and methods for establishing an affordability framework for flood insurance, including targeted assistance.
- A Federal Insurance Office study of the current market for natural catastrophe insurance in the United States, including issues of affordability.

Building Code Enforcement

Allows use of Community Development Block Grant funds for increasing staffing and training for local building code enforcement, and to provide flood hazard and flood insurance information to residents.