

# Summary of Contents **Biggert-Waters Flood Insurance Reform Act of 2012**

H.R. 4348 Conference Report Title III (Pages 521-576)

Signed by the President July 6, 2012

(compiled by ASFPM Vice Chair Bill Nechamen and Merrie Inderfurth, Washington Liaison – using Congressional committee Section-by-Section) in addition to bill language.

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The authority of the National Flood Insurance Program (NFIP) is extended for 5 years until September 30, 2017. The bill contains many reforms and changes, many of which are already generating questions as to intent, interpretation and implementation. While a summary is helpful, reading the actual bill text is recommended.

## **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: The effective date is July 1, 2012.

- Any residential property that is not the primary residence of an individual
- Any severe repetitive loss property
- 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 policy for which the owner has refused a FEMA mitigation offer under HMGP, or for a repetitive loss property or severe repetitive loss property.
  - Severe Repetitive Loss means four or more claims payments of over \$5,000 or two claims that exceed the value of the property.

Increases the limit for annual rate increases within any risk classification of structures from 10 percent to 20 percent. Effective date is July 1, 2012.

Defines Severe Repetitive Loss properties for single family residences as 4 or more claims, each for more than \$5,000 and cumulatively more than \$20,000. For multi-family residences, the Director may provide a definition by regulation.

Allows for premium payments either annually or in more frequent installments.

Places limits on a bank’s force 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 at 20% per year. Premium rate adjustments due to map changes take effect on the effective date of the new map.

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.

Minimum annual deductibles on claims are changed to \$1500 for coverage up to \$100,000 and \$2000 for coverage over \$100,000 for pre-FIRM properties, and \$1,000 and \$1,250 for below and above \$100,000 coverage for post-FIRM properties.

Rates must be set to cover the average historical loss year, including catastrophic loss years, in accordance with generally accepted actuarial principles. (That would also increase rates since the increase in flood damages has meant that rates do not cover the historical average loss year.)

Requires FEMA to establish a National Flood Insurance 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. Allows FEMA to report to Congress if such goals cannot be met and to explain the reasons.

Requires a ten-year repayment plan for the current insurance fund debt and also requires a report and repayment plan whenever FEMA has to borrow funds to pay NFIP claims..

Clarifies that private flood insurance may satisfy flood insurance coverage requirements if it meets certain standards..

Allows state sponsored nonbinding mediation of flood insurance claims disputes, and would require NFIP representatives to participate.

Amends the Real Estate Settlement Procedures Act (RESPA) to require explanation of the availability of flood insurance under the NFIP or through private insurance for properties both in and out of Standard Flood Hazard Areas (SFHAs).

Establishes reporting requirements associated with reimbursement of expenses for Write Your Own (WYO) insurance companies. Directs the FEMA Administrator to develop a methodology for calculating expense reimbursement within 180 days and to issue a rule within 12 months.

Establishes a process involving the National Oceanographic and Atmospheric Administration (NOAA) to allocate tropical storm and hurricane damages between wind and water damage. (This is Subtitle B of Title III and is entitled "Alternative Loss Allocation". This is derived from previously introduced legislation known as "The Coastal Act". It's provisions are found on pages 576-585.)

## **Mapping**

Establishes a Technical Mapping Advisory Council with membership coming from a wide range of professions, including federal agencies and state and local mapping partners. The Council would advise

FEMA on improving accuracy, on standards that should be adopted for flood maps, data and map maintenance and on funding needs and strategy. . It would also develop recommendations within 1 year for future conditions mapping, including impacts of sea level rise and future development on flood risk. FEMA is required to incorporate such recommendations into the ongoing review and updating of flood maps.

Establishes an on-going National Flood Mapping Program. Requires that flood maps 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. Also requires mapping of the level of protection provided by flood control structures. Requires that new flood maps use the most accurate topography and elevation data available. Also requires acquisition of new ground elevation data when necessary. Requires development of flood data on a watershed basis.

Requires FEMA to notify property owners when their properties are included in, or are removed from an area covered by mandatory insurance purchase requirements. Also requires notification of Senators and House Members whose States or Districts are affected by map changes.

There is an authorization of \$400,000,000 for flood mapping per year for fiscal years 2013 – 2017. (This is an authorization level – not to be confused with actual annual appropriations.)

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.

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

Requires a study on federal interagency coordination of flood mapping, including collection and utilization of data among all governmental users.

## **Mitigation Programs**

Consolidates NFIP funded mitigation programs (Repetitive Flood Claims, Severe Repetitive Loss Properties, Flood Mitigation Assistance) 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 and the Repetitive Flood Claims program at up to \$10 million, the SRL 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 multi-hazard 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.

Specifically notes the capacity for “direct” grants if the Administrator, after consulting with the State and community, determines that neither has the capacity to manage the mitigation grant.

Caps the use of mitigation grant funds for state mitigation plan development at \$50,000 and at \$25,000 for a community.

Provides for denial of grant funds if not obligated (paid out) in 5 years. (This is due to Congressional concern about unobligated balances.) Specifically restates 2004 Reform bill provision prohibiting offsetting collections to fund these mitigation programs.

Restructures federal share requirement:

Up to 100% for severe repetitive loss structures. (4+ Claims of over \$5000 or 2+ claims exceeding value of structure)

Up to 90% for repetitive loss structures. (2 claims over 10 years averaging at least 25% of value of structure)

Up to 75% for other approved mitigation activities.

## **Levees**

Establishes a Flood Protection Structure Accreditation Task Force 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 is not meant to 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.

Allows for 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.

## **Flood In Progress Determinations**

FEMA is required to develop a process for determining when a flood event has commenced for the purpose of flood insurance coverage. (Generally a new policy becomes active in 30 days unless purchased as part of a real estate closing. Due to recent long lasting floods, particularly in the Mississippi and Missouri basins, where flooding can begin upstream more than a month before downstream areas

flood, there has been confusion as to the meaning of “flood in progress” as related to coverage under newly purchased flood insurance policies.)

### **Studies.**

An assortment of studies are required including:

- Analysis of increasing the maximum residential and commercial structures, including 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 national 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.