

# Biggert-Waters Flood Insurance Reform Act of 2012

The bill extends for five years the National Flood Insurance Program (NFIP) include capping FEMA rates at 20 percent annually, as compared to 10 percent under the current program.

Effective July 1, it also mandates that rates for second homes and properties with repetitive flood claims and commercial properties will go up 20 percent over the next five years. The bill reiterates FEMA's authority to buy private reinsurance to back the program and reduce the chance of a deficit and the need to borrow.

More highlights:

- Policyholders will be allowed to pay in installments instead of one lump sum.
- Full actuarial insurance rates for newly mapped properties starting at 20 percent in their first year and increasing by 20 percent each year thereafter.
- Communities making adequate progress in the construction of their flood protection systems can qualify for the lowest possible chargeable risk premiums for up to five years, meaning that the rates they pay during construction will be set at the level they would be paying once their dams and levee projects were complete. Certain communities close to achieving that adequate progress standard may qualify for two additional years of the lowest possible rates.
- Phases in risk-based rates for commercial properties, severe repetitive loss properties, and properties with flood-related damage exceeding their fair market value.
- Prohibits subsidies for new or lapsed insurance policies. This is on top of the new rates for second homes and vacation homes. This will generate a \$2.7 billion increase in net income to the program over the next 10 years.
- Creates the Technical Mapping Advisory Council to review flood hazard risk mapping. Allows communities to request remapping based on new standards.
- Emphasizes greater private sector participation in providing flood insurance coverage.

# Section-by-Section

## **Sec. 100201. Short Title**

Biggert-Waters Flood Insurance Reform Act of 2012

## **Sec. 100202. Definitions**

Definitions: 100-Year floodplain, 500-Year floodplain, Administrator of the National Flood Insurance Program (NFIP), the National Flood Insurance Program, and “Write Your Own” (WYO) companies.

## **Sec. 100203. Extension of National Flood Insurance Program**

Extends the NFIP through September 30, 2017.

## **Sec. 100204. Availability of Insurance For Multifamily Properties**

Multifamily structures with 5 or more units will be eligible for flood insurance under NFIP.

## **Sec. 100205. Reform of Premium Rate Structure**

Immediately phases-in actuarial rates for other subsidized properties including: second properties, severe repetitive loss properties, properties that have incurred flood-related damage that exceeds the fair market value of the property, and commercial properties. Also prohibits subsidies for new or lapsed policies, increases the annual cap on premium rate increases to 20 percent (from 10 percent). Allows premium payments in installments.

## **Sec. 100206. Areas of Residual Risk**

Struck.

## **Sec. 100207. Premium Adjustment**

Initial rates will be set at a 50 percent discount from the new risk-based rates. Rates will be increased by 20 percent each year for any property newly mapped

### **Sec. 100208. Enforcement**

Fines against lending institutions that fail to require flood insurance will be increased from \$350 to \$2,000 per violation.

### **Sec. 100209. Escrow of Flood Insurance Payments**

Regulated lending institutions to escrow flood insurance payments for many loans. Exceptions for smaller lenders (i.e. credit unions).

### **Sec. 100210. Minimum Deductibles For Claims Under the National Flood Insurance Program**

Minimum deductible for subsidized properties will be \$1,500 for structures valued at \$100,000 or less and \$2,000 for structures valued at greater than \$100,000. Minimum deductibles for non-subsidized properties will be \$1,000 for structures valued at \$100,000 or less and \$1,250 for structures valued at greater than \$100,000.

### **Sec. 100211. Considerations In Determining Chargeable Premium Rates**

Allows historical loss data, including catastrophic loss years, in determining premium rates.

### **Sec. 100212. Reserve Fund**

Requires FEMA to establish a reserve fund to meet expected future claims or other NFIP obligations.

### **Sec. 100213. Repayment Plan For Borrowing Authority**

Requires FEMA to create a repayment schedule to eliminate the debt and. FEMA 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.

### **Sec. 100214. Payment of Condominium Claims**

Flood insurance claim payments may not be denied to condo owners who purchase flood insurance policies separate from the policies purchased by the condo association in which the policyholder resides.

### **Sec. 100215. Technical Mapping Advisory Council**

Creates the Technical Mapping Advisory Council (TMAC) to review current flood hazard risk mapping standards and recommend new standards to FEMA based. The council will consist of federal, state, and local experts. FEMA is also required to report to Congress every year on its progress.

### **Sec. 100216. National Flood Mapping Program**

Creates a process for communities to request a remapping. Requests will be based on recommendations by the TMAC and adopted by FEMA. Also requires an outreach plan to local communities and the (federal) elected officials for each congressional district affected by new maps. Allows communities affected by the adoption TMAC recommendations to request an update of its rate maps.

### **Sec. 100217. Scope of Appeals**

Appeals of FEMA's determinations of flood elevations or designations of SFHA will be based solely on whether such determination or designation was technically or scientifically incorrect.

### **Sec. 100218. Scientific Resolution Panel**

Creates an independent Scientific Resolution Panel consisting of at least 5 members to address mapping-related concerns from communities that are dissatisfied with the outcome of their appeal to FEMA. Authorizes some remapped communities to use the new panel to rule on Letters of Map Revision.

### **Sec. 100219. Removal Of Limitations On State Contributions For Updating Flood Maps**

Allows states to invest unlimited funds in mapping by removing previous funding limitations (previously, states could only contribute up to a maximum of 50 percent of the mapping cost).

### **Sec. 100220. Coordination**

Requires various federal departments to coordinate mapping and risk determination budgeting. Also requires the Office of Management and Budget (OMB), FEMA and other federal agencies to submit a joint report to Congress within 30 days of the budget submission on budget issues with respect to mapping.

**Sec. 100221. Interagency Coordination Study**

Provides for FEMA to contract with the National Academy of Public Administration for a study on improving coordination on flood mapping.

**Sec. 100222. Notice of Flood Insurance Availability Under RESPA**

Requires notification to homeowners at a real estate closing explaining flood insurance and the availability of flood insurance.

**Sec. 100223. Participation In State Disaster Claims Mediation Programs**

Should a state insurance commissioner request, this requires FEMA to take part in state-sponsored, non-binding mediation to resolve insurance claim disputes.

**Sec. 100224. Oversight And Expense Reimbursements Of Insurance Companies**

Requires FEMA to collect data on WYO company expenses. Also requires FEMA to develop a methodology for determining what WYO companies should be reimbursed for their activities under the program. Based on the data submissions, FEMA would be required to implement regulations on reimbursement rates.

**Sec. 100225. Mitigation**

Reauthorizes the Flood Mitigation Assistance Program, the Repetitive Flood Claims Program and the Severe Repetitive Loss Program. In doing so, this allows federal funds to be used for mitigation of repetitive- or severe-repetitive loss structures to improve their effectiveness and efficiency. Requires FEMA to consider the demolition and rebuilding of property as eligible activities under the Flood Mitigation Assistance Program.

**Sec. 100226. Flood Protection Structure Accreditation Task Force**

Requires FEMA and the Army Corps of Engineers to work with the National Committee on Levee Safety, to form a Flood Protection Structure Accreditation Task Force. Task Force will better align data that the Corps collects during levee inspections with the data required under FEMA's accreditation program.

#### **Sec. 100227. Flood In Progress Determinations**

Provides NFIP coverage for individuals with structures that were damaged in the Missouri River flooding (2011) who purchased their flood insurance more than 30 days before experiencing any flood damage. Also requires FEMA to report on its use of Flood in Progress determinations and to develop new procedures for informing NFIP policyholders when a Flood in Progress has been declared.

#### **Sec. 100228. Clarification Of Residential And Commercial Coverage Limits**

The aggregate coverage limit available for one to four family residential buildings is \$250,000, and that the aggregate coverage limit available for non-residential buildings is \$500,000 for each structure and \$500,000 for contents.

#### **Sec. 100229. Local Data Requirement**

Requires FEMA to use local data when mapping certain communities that are impacted by the Jamaica Bay, NY flooding source. Specific communities affected: ID #360467 and #360495. If re-mapping is needed, this requires FEMA to do so within one year of enactment.

#### **Sec. 100330. Eligibility For Flood Insurance For Persons Residing In Communities That Have Made Adequate Progress On The Reconstruction Or Improvement Of A Flood Protection System**

Communities that are making progress on the improvement of their flood protection systems to protect against a 100-year flood can qualify for the lowest possible chargeable risk premiums for up to five years. The rates the communities pay during construction will be set at the level they would pay once improvement projects are complete. In some cases, certain communities

may be eligible for two additional years of the lowest possible chargeable risk premium.

**Sec. 100231. Studies and reports**

Mandates FEMA and Government Accountability Office (GAO) studies and reports on a series of topics including NFIP budget and pre-FIRM properties.

**Sec. 100232. Reinsurance**

Requires FEMA to study the private reinsurance market's capacity to assume a portion of the NFIP insurance risk. In addition, FEMA would be required to include in its annual report to Congress an assessment of NFIP's ability to pay claims and a description of any use of FEMA's authority to secure reinsurance.

**Sec. 100233. GAO study on business interruption and additional living expenses coverages** – Requires the GAO to study the possibility of the NFIP offering business interruption and/or additional living expenses coverage.

**Sec. 100234. Policy disclosures**

Requires each policy under the NFIP to state all conditions, exclusions, and other limitations pertaining to coverage, regardless of the underlying insurance product, in "plain English," in boldface font, and in a font size that is twice the size of the text of the body of the policy.

**Sec. 100235. Report on inclusion of building codes in floodplain management criteria**

Requires a FEMA study on the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of the floodplain management.

**Sec. 100236. Study of participation and affordability for certain policyholders**

Requires a FEMA study on the methods to encourage, maintain participation, and educate consumers about the NFIP. The National Academy of Sciences shall also conduct an economic analysis.

**Sec. 100237. Study and report concerning the participation of Indian tribes and members of Indian tribes in the National Flood Insurance Program**

Requires a GAO study on why very few American tribes participate in the NFIP.

**Sec. 100238. Technical corrections**

Replaces “Director” with “Administrator” in the Flood Disaster Protection Act of 1973, National Flood Insurance Act of 1968, and Federal Flood Insurance Act of 1956.

**Sec. 100239. Use of private insurance to satisfy mandatory purchase requirement**

Permits federal agency lenders to accept private flood insurance in satisfaction of flood insurance coverage requirements. The private flood insurance must meet coverage requirements.

**Sec. 100240. Levees constructed on certain properties**

Requires repurchase of certain land from the Federal government for the construction of dams or levees (North Dakota).

**Sec. 100241. Insurance coverage for private properties affected by flooding from Federal lands**

Will waive the 30 day waiting period for flood policies to become effective should the property be affected by flooding on Federal land that is the result of post-wildfire conditions.

**Sec. 100242. Permissible land use under Federal flood insurance plan**

Prevents enclosed swimming pools from having an effect on the NFIP coverage (or the ability to receive coverage).

**Sec. 100243. CDBG eligibility for flood insurance outreach activities and community building code administration grants**



Community Development Block Grant Program (CDBG) funds to now include flood insurance outreach activities and community building code administration grants. Sunsets in two years.

**Sec. 100244. Termination of force-placed insurance**

Lenders or servicers shall terminate any force-placed insurance and refund all force-placed insurance premiums (and fees) to the borrower during any period of coverage overlap within 30 days of confirmation of a borrower's existing flood insurance coverage.

**Sec. 100245. FEMA authority on transfer of policies**

Allows FEMA to refuse to accept the transfer of the administration of policies for coverage under the NFIP that are written and administered by any insurance company or other insurer, or any insurance agent or broker.

**Sec. 100246. Reimbursement of certain expenses**

Allows individuals to be reimbursed for some of the costs associated with a successful challenge to a scientific mapping error made by FEMA. Implementation costs shall not exceed \$250,000.

**Sec. 100247. FIO study on risks, hazards, and insurance**

The Director of the Federal Insurance Office (FIO) shall conduct a study on the current state of the market for natural catastrophic insurance in the United States.

**Sec. 100248. Flood protection improvements constructed on certain properties**

Requires the repurchase of certain land from the Federal government for the construction of dams or levees (Ohio).

**Sec. 100249. No cause of action**

No cause of action shall exist and no claim may be brought against the United States for violation of any notification requirement imposed upon the United States by this subtitle.

## **Subtitle B—Alternative Loss Allocation**

### **Sec. 100251. Short title**

“Consumer Option for an Alternative System to Allocate Losses Act of 2012” or the “COASTAL Act of 2012.”

### **Sec. 100252. Assessing and modeling named storms over coastal States**

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.

### **Sec. 100253. Alternative loss allocation system for indeterminate claims**

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.

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