

NAR Section by Section Highlights

Biggert-Waters Flood Insurance Reform Act of 2012¹

(The information provided here is intended to be informative only and is not intended to be and does not constitute legal advice or a substitute for specific legal advice or opinions. The reader should not rely on or apply this information or act or refrain from acting in connection with particular transactions or circumstances without consulting legal counsel.)

On July 6, 2012, the President signed into law a 5-year reauthorization of the National Flood Insurance Program (NFIP) as part of the Transportation Bill, H.R. 4348. Reauthorization ends the series of stopgap extensions and shut downs since 2008 that disrupted tens of thousands of real estate transactions nationwide; flood insurance is required for a mortgage in more than 21,000 communities. It also brings certainty to 5.6 million home and business owners who rely on the program for insurance that is not available in the private market and means taxpayers will spend less on federal flood disaster assistance in the long run.

To pass a 5-year extension, the bill also makes significant reforms to eliminate the debt and rate subsidies that have painted a giant “bull’s eye” on the program. While these reforms mean some will see a gradual phase-out of these subsidies, their elimination was necessary to the program’s survival. It also ensured continued comprehensive coverage for all property types so that no property owner would have to take their chances in a virtually non-existent private market for flood insurance. In summary, the bill:

- Reauthorizes the NFIP through September 2017 (sec. 100203);
- Establishes a formula for NFIP and wind insurers to pay where property damage cannot be attributed to wind or water, settling a long-standing dispute and avoiding further lawsuits (sec. 100253);
- Eliminates rate subsidies on severe repetitive loss properties that have made repeated claims on the program (sec. 100205);
- Improves the accuracy of floodplain maps by establishing a technical council of experts to review and set the standards (sec. 100216);
- Establishes an independent appeals board for homeowners and communities to resolve their flood map disputes with FEMA (sec. 100218);
- Reimburses homeowner’s appeal expenses when successfully challenging a flood map (sec. 100246);
- Requires the lender to terminate the flood insurance it “force places” and issue refunds to homeowners who already have their own coverage (sec. 100244);
- Studies expanding coverage to include living and business-interruption expenses (sec. 100233); and
- Studies the availability and affordability of property insurance for natural disasters (in addition to floods), which could justify a broader federal insurance program (sec. 100247).

A full section by section report follows on the next pages.

¹This is based on the House Financial Services Committee’s Section-by-Section Summary of Div. F, Title II of the Transportation Bill (H.R. 4348); the full text of the law is available at Thomas.loc.gov.

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Subtitle A—Flood Insurance Reform and Modernization

Sec. 100201. Short Title.

Sec. 100202. Definitions.

Sec. 100203. Extends the NFIP through September 30, 2017.

Sec. 100204. Clarifies that multi-family property owners with 5 or more units are eligible for up to \$500,000 in structural coverage under the NFIP, the same as a business property. This does not preclude individuals residing in those properties from buying their own NFIP contents coverage.

Sec. 100205. Reforms the Premium Insurance Rate Structure:

- Phases-out rate subsidies over 4 years for certain properties (i.e., second home, business, severe repetitive loss, or substantially improved/damaged) built before the effective date of the first Flood Insurance Rate Map (FIRM) for a community. The rate for these pre-FIRM properties would increase by 25 percent per year until premiums reach the full (actuarial) cost.
- Prohibits extension of subsidies to properties purchased after the law's enactment, not previously insured by the NFIP or with a lapsed flood insurance policy.
- Allows up to a 20-percent annual increase on premium rates for any property (except those subject to the 25-percent subsidy phase-out); before this law, the annual cap was 10 percent.
- Provides for flood insurance payment by installments.

Sec. 100207. Provides that the initial rate for any property newly mapped or updated/revised into a mandatory purchase area would be subsidized (50 percent of actuarial) but then increase by 20 percent per year thereafter, until premiums reach the full (actuarial) cost.

Sec. 100208. Increases civil penalties on lenders that fail to require flood insurance as a condition of a federally-related mortgage.

Sec. 100209. Provides for regulated lenders to escrow flood insurance payments for loans made two or more years after the President signs the bill.

Sec. 100210. Sets minimum deductibles of \$1,000 to \$2000, depending on the age of the property and the amount of coverage.

Sec. 100211. Directs FEMA to include catastrophic loss years when assessing flood risks in order to set annual premium rates.

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Sec. 100212. Establishes a reserve fund to offset claims during catastrophic loss years.

Sec. 100213. Requires the NFIP to create a repayment schedule for funds borrowed from the Treasury in years when the claims to the program exceed its premium revenue.

Sec. 100214. Clarifies that the NFIP may not deny claim payments to condominium owners with flood insurance that is separate and apart from the condominium association's policy.

Sec. 100215. Creates a Technical Mapping Advisory Council made up of federal, state, and local experts to review and recommend flood map standards. Requires progress reports by FEMA to Congress.

Sec. 100216. Creates a National Flood Mapping Program:

- Establishes a process for local communities to request a remapping based on the standards recommended by the Technical Mapping Advisory Council; and
- Requires communication and outreach to affected communities and members of Congress.

Sec. 100217. Clarifies that appeals of FEMA determinations in the flood maps will be based solely on whether the determination is technically or scientifically correct.

Sec. 100218. Establishes an independent appeals board for communities and homeowners to resolve their flood map dispute with FEMA.

Sec. 100219. Permits states to invest unlimited additional funds in flood mapping by deleting the limitation that states may only contribute up to a maximum of 50 percent of the cost of mapping.

Sec. 100220. Requires federal agencies to work together and share data to improve flood mapping.

Sec. 100221. Studies improving interagency and intergovernmental coordination on flood mapping.

Sec. 100222. Requires notification under RESPA that flood insurance is available under the NFIP.

Sec. 100223. Requires FEMA, at state request, to take part in state-sponsored, non-binding mediation programs to resolve insurance claim disputes.

Sec. 100224. Provides oversight and regulation of reimbursement to Write-Your-Own insurers.

Sec. 100225. Combines and streamlines several federal programs which provide grants to states in order to more effectively mitigate repetitive loss properties.

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Sec. 100226. Establishes a federal task force consisting of FEMA and the Army Corps of Engineers on levee accreditation.

Sec. 100227. Reviews Flood in Progress Determinations:

- Requires FEMA to review and develop new procedures for informing policyholders when a Flood in Progress has been declared. Generally, a policy must be in effect before this date for its holder to collect on any damage.
- Clarifies coverage for those purchasing a policy more than 30 days before 2011 Missouri River flood damage.

Sec. 100228. Clarifies that the aggregate coverage limit is \$250,000 for each 1-4 unit multifamily building, and \$500,000 for each business structure and \$500,000 for the contents.

Sec. 100229. Requires FEMA to use local data when flood mapping certain NY communities.

Sec. 100230. Provides for communities making adequate progress on an improvement of their flood protection system to pay the rate they would once the improvement is complete.

Sec. 100231. Studies NFIP budget activities, pre-Flood Insurance Rate Map (FIRM) properties, and FEMA contractors.

Sec. 100232. Requires FEMA to assess the private reinsurance market's capacity to assume a portion of the NFIP insurance risk and clarifies its authority to purchase reinsurance.

Sec. 100233. Studies expanding NFIP coverage to include business interruption and living expenses.

Sec. 100234. Requires that each NFIP insurance policy state all the conditions, exclusions, and other limitations on insurance coverage in boldface, double-sized font, and plain English.

Sec. 100235. Studies adding building code requirements to state floodplain management programs.

Sec. 100236. Studies NFIP participation and affordability post-reform.

Sec. 100237. Studies participation by Native American tribes.

Sec. 100238. Makes technical corrections.

Sec. 100239. Clarifies that private flood insurance meets the flood insurance purchase requirement.

Sec. 100240. Requires repurchase of certain federal lands for levee or dam construction.

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Sec. 100241. Waives 30-day waiting period on flood insurance for properties affected by flooding on Federal land resulting from wildfires.

Sec. 100242. Clarifies that swimming pools do not affect NFIP coverage.

Sec. 100243. Allows use of Community Development Block Grants for flood insurance outreach activities and community building code grants for 2 years.

Sec. 100244. Requires that lenders terminate and issue a refund for any insurance that is “force placed” on a borrower who already has flood insurance.

Sec. 100245. Allows FEMA to refuse to take over management of NFIP policies from an insurer. This was prompted by State Farm’s decision to drop out of the Write-Your-Own program in 2010 and transfer more than 800,000 of its policies to the NFIP Direct program.

Sec. 100246. Provides for reimbursement of appeal expenses to communities and homeowners who successfully challenge a scientific mapping error made by FEMA.

Sec. 100247. Requires that the Federal Insurance Office study and report to Congress on the current state of the private insurance market for as well as approaches to insuring natural disaster risks.

Sec. 100248. Requires repurchase of certain federal lands for levee or dam construction.

Sec. 100249. Stipulates there is no right to sue the U.S. over the bill’s notification requirements.

Subtitle B—Alternative Loss Allocation

Sec. 100251. Short title: “COASTAL Act of 2012.”

Sec. 100252. Requires FEMA to model, assess, and develop a database for named storms.

Sec. 100253. Directs FEMA to establish a system and formula for allocating losses between the NFIP and wind insurers when the property damage cannot be determined as due to wind or water.