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.

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 installations.

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 my 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.

FACT SHEET

NATIONAL FLOOD INSURANCE PROGRAM

Preferred Risk Policy Eligibility Extension

A Low-Cost Flood Insurance Option for Your Community

The National Flood Insurance Program (NFIP) offers the Preferred Risk Policy (PRP) Eligibility Extension, a cost-saving flood insurance coverage option for property owners whose buildings are newly mapped into a high-risk flood area.

FLOOD MAPS CHANGE – FLOOD RISKS CHANGE

Since 2003, FEMA has led a major effort to update the nation's flood maps to reflect current flood risks. FEMA is continuing to provide new maps through a program known as Risk MAP (Risk Mapping, Assessment & Planning). The new maps are digital, easily accessible, and represent the most accurate flood risk data available.

As new maps have been issued, many property owners have learned that their risk of flooding has changed. And for some, the change has meant new flood insurance requirements. If a building in a moderate- to low-risk flood zone is mapped into a high-risk Special Flood Hazard Area (SFHA), most lenders will require flood insurance.

Before January 2011, a property owner could buy a lower-cost Preferred Risk Policy (PRP) before the new flood maps became effective, but the policy converted to a more expensive standard-rated policy at subsequent renewals. On January 1, 2011, FEMA extended PRP eligibility, allowing the lower-cost PRP to be written for two years after a revised flood map's effective date.

Beginning January 1, 2013, FEMA continues to make the PRP available for properties that were newly mapped into an SFHA since October 1, 2008, even after the two-year extension ends. The PRP option will continue until FEMA completes its analysis and implementation of premium rate revisions put in place by the Biggert-Waters Flood Insurance Reform Act of 2012.

ELIGIBILITY FOR THE PRP EXTENSION

To be eligible for the PRP, the building must meet certain loss-history requirements. If there have been two disaster relief payments, or claims for flood losses of $1,000 or more, or three losses of any amount, the structure is ineligible for a Preferred Risk Policy.

Owners of buildings that meet the loss history requirements and were newly mapped into a high-risk flood zone (shown on a flood map as a zone beginning with the letter "A" or "V") since October 1, 2008, are eligible for a PRP. Property owners should contact their insurance agent to obtain or renew their insurance using this low-cost option.

Insurance agents will be required to provide documentation to their insurance company showing that the building is eligible for the PRP extension, including the current and prior map information. Both historic and current flood maps can be found on FEMA's mapping website (http://msc.fema.gov). The community's floodplain manager also should have the maps on file.

STAY PROTECTED AND SAVE

Property owners need to understand that they still are at a high risk for flooding. This extension provides them additional time to save and prepare for paying for the full risk premium when it is implemented. The extension also provides more time for the community to upgrade or mitigate flood control structures to meet FEMA standards and reduce the flood risk.

For additional information about flood insurance and the PRP Extension, visit www.FloodSmart.gov and www.FloodSmart.gov/PRPExtension or call the NFIP Help Center at 1-800-427-4661.

FAQs-Community

Preferred Risk Policy Eligibility Extension

Frequently Asked Questions

Since January 1, 2011, the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP) has offered a flood insurance rating option, the Preferred Risk Policy (PRP) Eligibility Extension, for property owners whose buildings are newly mapped into a high-risk flood area. The following are answers to some frequently asked questions.

1. What is a Preferred Risk flood insurance policy?

The NFIP's Preferred Risk Policy, or PRP, provides low-cost flood insurance to owners and tenants of eligible residential and commercial buildings located in moderate- to low-risk areas.

2. What types of coverage does a PRP offer?

A PRP offers considerable premium savings to property owners in moderate- to low-risk areas (shown as Zones B, C, and X on flood maps) with no difference in coverage from a standard-rated policy.

Under the low-cost PRP, there are two types of coverage combinations: building and contents together, and contents-only.

A PRP premium for a residential building without a basement or enclosure and contents ranges from *as low as $129 – for $20,000 in building and $8,000 in contents coverage – to $412 – for the maximum $250,000 building and $100,000 contents coverage.* Under the PRP, a residential tenant can get coverage for *as low as $55 for $8,000 in contents coverage* **(all rates as of October 1, 2012).**

3. What are the changes to PRP that could affect me?

Effective January 1, 2011, FEMA extended availability of the PRP for two years to buildings newly mapped from moderate- to low-risk areas into high-risk Special Flood Hazard Areas (SFHAs). (SFHAs are shown as zones beginning with the letter "A" or "V" on flood maps.) The extension applies in areas remapped on or after October 1, 2008.

Effective January 1, 2013, FEMA continues to make the PRP available for properties newly mapped into an SFHA since October 1, 2008, until the Agency implements the premium revisions put in place by the Biggert-Waters Flood Insurance Reform Act of 2012.

Buildings meeting the above requirements must also meet the PRP loss history requirements. If there are two claims or disaster relief payments for floods of $1,000 or more, or three losses of any amount, the structure is ineligible for the PRP.

4. Why did the NFIP extend PRP eligibility? What led to this decision?

Since 2003, FEMA has been leading a major effort to update the nation's flood maps to reflect current flood risks. Many of the older maps were based on now-outdated studies, and drainage patterns and flood risks have changed. For more details about FEMA's Risk Mapping, Assessment and Planning (Risk MAP) visit: www.fema.gov/rm-main.

As new maps have been issued, many property owners have found that their risk of flooding has changed. And for some, the change means new flood insurance requirements. If a building in a moderate- to low-risk flood zone is mapped into a high-risk Special Flood Hazard Area (SFHA), most mortgage lenders will require flood insurance. FEMA extended the eligible time period for low-cost PRPs.

5. What benefits does the PRP eligibility extension provide?

The reduced cost allows time to save and prepare for paying the premium based on standard NFIP rates. The extension also provides more time for communities to upgrade and/or mitigate flood control structures to meet FEMA standards — reducing the future financial impact on residents and businesses. More families and business will also be able to better afford flood insurance coverage and for longer — meaning greater community resiliency and faster recovery after a flooding event.

6. What is the "end date" to the PRP eligibility extension?

PRPs issued on properties located in an SFHA are being continued beyond the previously designated two-year period until FEMA develops and implements a revised premium structure consistent with the Biggert-Waters Flood Insurance Reform Act of 2012. The new law requires that policies move to full-risk rates.

7. For property owners covered under a PRP, will there be any rate changes in 2013?

Effective January 1, 2013, PRP policyholders will see an average 13 percent increase as they renew their policies. This increase reflects the increased flood risk from expanding the PRP class to include policies that are now known to be in an SFHA. Upon implementation of the Biggert-Waters Flood Insurance Reform Act, some PRP holders in an SFHA will begin to see additional premium increases as full-risk rates begin to be phased in.

8. Does this eligibility extension also affect those property owners with buildings already in high-risk areas (e.g., Zone A or V) that are newly mapped into higher risk flood zones or in areas with new or higher Base Flood Elevations (BFEs)?

No. The PRP eligibility extension is distinct from existing grandfathering rules and does not apply to properties that were already located in SFHAs prior to the map change. Existing grandfathering rules already provide relief to property owners with buildings already in SFHAs that are newly mapped into higher risk flood zones (e.g., from Zone AE to VE) or in areas with higher BFEs.

9. If property ownership changes hands, is the new owner granted the PRP eligibility extension?

Yes, a new owner is granted the PRP eligibility extension if property ownership changes hands following the effective date of a map revision.

10. If there is lapse in coverage, will coverage be reinstated under the PRP?

As long as the property continues to meet the PRP loss history requirements, the policy may be reinstated as a PRP until FEMA implements a revised premium structure that will move policies to full-risk rates consistent with the Biggert-Waters Flood Insurance Reform Act of 2012.

11. Why aren't policyholders, with properties mapped into SFHAs before October 1, 2008, eligible for the extension?

NATIONAL FLOOD INSURANCE PROGRAM

Preferred Risk Policy Eligibility Extension

Frequently Asked Questions

This eligibility extension was developed as a response to the large number of map changes occurring around that time due to the federally mandated map modernization, and the increasing difference in premiums that evolved over time between the standard-rated policy and the PRP, which made it more difficult for property owners to transition to the higher premium standard-rated policy.

12. What is needed to convert a policy back to a PRP?

An insurance agent will have to submit documentation to show the building is eligible for the PRP extension. Acceptable forms of documentation for the current and prior map information include:

- A Letter of Map Amendment (LOMA)
- A Letter of Map Revision (LOMR)
- A Letter of Determination Review (LODR)
- A copy of flood map marked to show the location and flood zone of the building
- A signed and dated letter from a local community official indicating the address, flood zone, map panel and map effective date
- An Elevation Certificate (EC), indicating the address and flood zone of the building, that is signed and dated by a surveyor, engineer, architect, or local community official
- A flood zone determination certification that guarantees the accuracy of the information

13. If after a map change, the building was not written as a PRP and the building was later found to be eligible for the PRP extension, can the policy be re-rated and the insured receive a refund?

If an agent is unable to obtain the proper information in time for a renewal or later determines an insured building is eligible for the PRP extension, the policy can be re-rated and the insured receive back any difference in premium.

Talking Points: Preferred Risk Policy Eligibility Extension

The Preferred Risk Policy (PRP) Eligibility Extension is for owners of properties newly mapped into high-risk Special Flood Hazard Areas (SFHAs). The talking points below will help you in discussing this cost-saving policy option with property owners in your community. For additional information, visit FloodSmart.gov/PRPExtension.

What led to the current extension?

- Since 2003, FEMA has led a major effort to update the nation's flood maps to reflect current flood risks. FEMA is continuing to provide new maps through a program known as Risk MAP (Risk Mapping, Assessment & Planning).
- As new maps have been issued, many property owners have learned that their risk of flooding has changed and that they are now in a high-risk Special Flood Hazard Area.
- The change can mean new flood insurance requirements since most lenders require flood insurance for buildings in high-risk areas.
- FEMA is temporarily allowing policies to be written at lower PRP rates.
- Beginning January 1, 2011, FEMA allowed these rates to be in place for two years after a building was mapped into a high-risk area.
- As of January 1, 2013, PRPs issued on properties located in a high-risk area may continue beyond the previously designated two-year period until FEMA completes analysis and implements a revised premium structure put in place with the Biggert-Waters Flood Insurance Reform Act of 2012.

What does the current extension mean?

- If a building you own was formerly in a moderate- to low-risk flood zone and has been mapped into a high-risk flood zone, your flood risk has increased.
- If you have a mortgage on the building, most lenders will require that flood insurance be purchased to secure the balance outstanding on the loan.
- The NFIP offers flood insurance for up to $250,000 in building and $100,000 in contents for residential buildings and $500,000 in building and $500,000 in contents for commercial buildings.
- Buildings newly mapped into a high-risk area due to a map revision effective on or after October 1, 2008, but before January 1, 2011, became eligible for the lower-cost PRP rates beginning January 1, 2011, assuming all eligibility requirements were met.
- Buildings mapped into a high-risk area because of a map revision on or after January 1, 2011, are eligible to receive the low-cost PRP, assuming all eligibility requirements are met.
- A PRP premium for a residential building and contents ranges from a low of $129 for $20,000 in building and $8,000 in contents coverage to a high of $412 (without basement or enclosure) for the maximum $250,000 building and $100,000 contents coverage. A residential tenant can get coverage for as low as $55 for $8,000 in contents coverage (all premium calculations as of October 1, 2012).
- In order to receive reduced premiums, the property must meet PRP eligibility requirements related to claims and disaster aid. If there have been two disaster relief payments, or claims for flood losses of $1,000 or more, or three losses of any amount, the structure is ineligible for a Preferred Risk Policy.

Talking Points: Preferred Risk Policy Eligibility Extension

What are the benefits?

- The reduced cost provides additional time to save and prepare for paying standard rates for high-risk areas once premium rate revisions from the Act are implemented.
- This extension provides more time for communities to upgrade or mitigate flood control structures to meet FEMA standards and reduce the flood risk. This will reduce the financial impact on residents and businesses in the long term while making their community a safer place to live and work.

What to do

- You will need to provide previous and current flood zone documentation to validate PRP extension eligibility. For example, you may use a copy of the previous flood map and current flood map showing where the building is located, or obtain a signed and dated letter from a community official indicating the address, flood zone, map panel and map effective date.
- If a building does not qualify for a PRP due to claims or disaster aid history, there are additional rating options your insurance agent may be able to offer which may result in additional savings (e.g., grandfathering, elevation rating, and higher deductibles).
- For further information about the PRP Eligibility Extension, contact your insurance agent or visit FloodSmart.gov/PRPExtension.
- For more information about flood insurance or to find an agent, visit FloodSmart.gov.