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ASFPM Analysis of the Homeowners Flood Insurance Affordability Act

The Homeowners Flood Insurance Affordability Act (HFIAA) is the latest NFIP reform that modifies some of the changes made under the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), which were aimed at putting the NFIP on a more solid financial footing.

Unfortunately, one of the predictable outcomes of BW-12 was flood insurance affordability because it did nothing to address this aspect other than calling for a study on the issue. Since passage of BW-12, one provision in particular has garnered a lot of attention – triggering full actuarial rates upon the sale of a subsidized rated pre-FIRM building in a high-risk area (and/or purchase of a new flood insurance policy), resulting in premium increases from 100 percent to more than 1,000 percent higher.

ASFPM has heard stories from different areas of the country about how the increases were significantly impacting local real estate markets. Floodplain managers from across the country have also been fielding calls from panicked property owners seeking assistance or options. At the same time, it appeared BW-12 was working. The strong signals that were sent to owners about the true flood risk of properties via more actuarially sound flood insurance rates led to an unprecedented interest in mitigation options, including mitigation undertaken by thousands of affected property owners in the aftermath of Hurricane Sandy.

The President signed HFIAA March 21, and 22 of 31 sections focus on insurance changes; six focus on floodplain mapping; and three focus on other provisions. From our analysis, there are two main conclusions that can be drawn from this legislation:

- The core of BW-12 is still there. It should be seen as making additional changes to BW-12 and is not in any way a wholesale repeal of the legislation.
- It makes only small improvements on the issue of flood insurance affordability notwithstanding the elimination of the immediate full-risk rate trigger upon purchase of a pre-FIRM property or new policy. In some cases, the new act will cost property owners *more* for their policies than was the case under BW-12. It calls for several studies and even a framework on affordability but doesn't even authorize a single pilot. Flood insurance affordability will continue to be an issue and ASFPM is disappointed that Congress passed up an opportunity to more broadly address flood insurance affordability through hazard mitigation and other mechanisms.

It is difficult to tell HFIAA's overall impact on NFIP's financial stability. Some provisions create new or ongoing financial liabilities (such as continued grandfathering of existing policies). However, the surcharge collection, while a blatant and overt new NFIP subsidy, may build up the reserve fund faster. This legislation creates new sets of winners and losers. One thing is clear, one of the largest factors currently affecting the financial stability on the NFIP wasn't addressed at all - the \$24 billion debt of the NFIP. Presently that debt is financed at a very low interest rate (approximately .5%) resulting in annual interest payments of around \$110 million. Should interest rates move back to a more typical long term average of 3% - the interest payment alone would exceed \$700 million/year. For a program that only collects \$3.35¹ billion/year in premiums, this cost alone would cause significant impacts. It is important to remember that the reserve fund established under BW-12 is to pay for future catastrophic losses such as the next Katrina or Sandy, not to service the debt the program already has accumulated.

¹ Total earned premium for the NFIP in 2012

If the past is a guide, it will take a while to implement this legislation. FEMA has taken several years to implement previous NFIP revisions. **Also, any analysis, including this one, will ultimately be superseded by FEMA's official analysis and implementation.** In response to questions about implementation during a House Appropriations Committee hearing on March 26th, FEMA Administrator Craig Fugate said that the first priority is to immediately implement removal of the trigger to full actuarial rates at the point of sale of a property. The second priority is to process the refunds for properties sold between enactment of Biggert-Waters on July 6, 2012 and enactment of the new legislation on March 21, 2014. The third priority will be development and publication of new premium rates.

Flood Insurance Changes

- Repeals full-risk rate triggers for pre-FIRM properties in high-risk areas (and Zone D):
 - Not insured when BW-12 was enacted,
 - Buildings purchased after BW-12 was enacted, and
 - Lapsed policy due to the property no longer being required to retain flood coverage.
- Requires FEMA to restore pre-FIRM rates and refund excess premiums to policyholders in cases where, after July 6, 2012, full-risk rates were charged on pre-FIRM properties described above. FEMA guidance indicates that all lapses of policies described above will be restored to Pre-FIRM rates.
- To financially balance the rollback and refund, ALL policyholders will receive an annual surcharge until there are no more subsidized rates: \$25 for primary residences and \$250 for all other. Requires surcharge to be deposited in the reserve fund.
- Annual cap on flood insurance increases in a single rate class for any policy decreases from 20 percent to 15 percent.
- Establishes a maximum cap of 18 percent per year in premium increases on any individual property unless:
 - The property is a non-primary residence, business, severe repetitive loss property, cumulative loss property, or substantially damaged/improved property. Those will still see rate increases of 25 percent per year as required by BW-12.
 - There is a policy lapse on a pre-FIRM rated property that was not the result of the property being required to maintain flood insurance or in the situation in the refusal of an offer to mitigate. In these cases the property will immediately go to full-risk rates.
 - Properties within a community that experience a Community Rating System rating retrograde.
 - Properties that experience an increase in premiums due to a decrease in deductible or increase in coverage.
- Pre-FIRM subsidies will continue to be phased out by not less than 5 percent per year until full-risk rates are achieved, subject to the overall premium caps in the bullet above.
- BW-12 section 207 (the elimination of grandfathering) was repealed. However, it was replaced with a new grandfathering section that establishes a new, slower path to full-risk rate for some properties. For flood insurance policies purchased after March 21, 2014 and newly mapped into SFHAs, grandfathering will not be an option. Rather, the first year premium would be equivalent to a Preferred Risk Policy and then phased into full-risk rates by increasing premiums by at least 5 percent per year and not to exceed the limitations in the two previous bullets. The new law seems to preserve existing grandfathered policies/properties and does not address how other remapping effects when the property is already in a high risk flood A or V zone (e.g., Zone A to Zone V; increase in Base Flood Elevation) might impact the grandfathering status or rates.
- Requires FEMA to designate a Flood Insurance Advocate to educate and assist property owners and policyholders on flood insurance issues, mapping issues including the map amendment process, and mitigation techniques. It is unclear if this will be one person, a person with staff, or regionally set up.
- Requires FEMA to clearly communicate "full flood risk determinations" to property owners regardless of premiums being charged. This indicates that some mechanism will perhaps be created to communicate the full flood risk rate for those receiving subsidies, either through a pre-FIRM designation or grandfathering.

- Increases the residential deductible limits to \$10,000, which was \$5,000.
- Requires FEMA to “strive to minimize” the number of policies with annual premiums that exceed 1 percent of the total coverage provided by the policy and report to Congress any exceptions in meeting this goal. It is important to note that this is not a requirement of the program, just a goal.
- Authorizes FEMA to purchase reinsurance coverage (which was previously authorized in BW-12)
- Clarifies that monthly installment payments of NFIP premiums are an option.
- Removes uninhabited structures that are part of a property, but detached from the primary residence from the mandatory purchase of flood insurance requirement so they would not adversely affect the rating if they were at a lower elevation or higher risk flood zone.
- Requires that NFIP rates account for mitigation activities, including land use measures, floodproofing, flood forecasting, and similar measures. Also requires the rates to account for methods other than elevation for certain residential structures.
- Provides for some exceptions and options to escrow flood insurance premiums during a real estate closing.
- Requires FEMA to make rate tables and underwriting guidelines public.
- Adds the term “reconstruction” to what is to be determined by FEMA as adequate progress on of flood protection systems for flood insurance rating purposes, and allows for consideration of projects using all sources of funding, including local sources.
- Modifies the provision of the law pertaining to the availability of flood insurance in communities restoring discredited flood protection systems by clarifying that it is equally applicable to coastal levees, and that it can apply to projects without regard to federal funding or participation by a federal agency. Previously a limitation existed that such systems had been deemed restorable by a federal agency in consultation with the local project sponsor.
- Studies and reports on flood insurance issues:
 - Amends affordability study authorized under BW-12 to include analysis of higher premium scenarios, including options for mitigation and means-tested assistance, effects of establishing catastrophic savings accounts, options to modifying the per-policy surcharge, and increases the authorized funding for the study to \$2.5 million. Study is due Sept. 21, 2015.
 - Requires FEMA to develop an affordability framework due 18 months after the affordability study authorized in BW-12 is completed. The framework is to address affordability issues, including those raised in the affordability study and include proposals for regulatory and programmatic changes. Unfortunately authorization was not given by Congress to implement any changes.
 - Requires FEMA to conduct a study to assess options, methods and strategies for making voluntary community-based flood insurance policies available through NFIP. Study is due Sept. 21, 2015.
 - Requires FEMA to report to Congress on the exceptions to the goal of premiums representing no more than 1 percent of the total coverage provided.
 - Requires FEMA to report to Congress quarterly on the status of the reserve fund ratio. BW-12 had previously required this annually.
 - Requires FEMA to report to Congress the impact of the rate increases of 25 percent per year (due to pre-FIRM subsidy elimination) and the surcharges required by HFIAA on small businesses, places of worship, and low-value residences. Report is due no later than Sept. 21, 2015. If FEMA determines there is evidence of detrimental impacts on affordability, it is required to make recommendations to improve affordability to Congress no later than three months after such determination is made.
 - Requires FEMA to report to Congress on the feasibility of releasing property-level claims data and establishing guidelines for the release of such data under the federal Privacy Act, including recommendations for protecting personal information. Report is due June 21, 2014.

Floodplain Mapping Changes

- Requires the Technical Mapping Advisory Council to review the National Flood Mapping Program to ensure that the program results in technically credible flood hazard data and produce a report on its findings. Requires FEMA to certify in writing to Congress when such a program has been implemented.
- Allows for the reimbursement of expenses associated with appeals resolved by the Scientific Resolution Panel, eliminates the \$250,000 limitation on implementing the subsection associated with reimbursement of appeals, and specifies that costs can be paid from the National Flood Insurance Fund. The previously existing section of the law required FEMA to promulgate regulations to carry out a program for reimbursing appeals.
- Creates an exemption of flood mapping review and processing fees for flood map changes due to habitat restoration projects, including dam removal, culvert design or installation, or the installation of fish passage structures. The provision seems to limit the exemption to projects involving either state or federal funds only.
- Requires FEMA to work with states, communities, and property owners to identify and map areas protected by non-structural flood mitigation features, and determine the level of protection such features provide. The term "non-structural flood mitigation features" is not defined in the legislation; however, a press release issued in May 2013 by Rep. Cedric Richmond who initially proposed this language said the following: "Currently FEMA only acknowledges levees on flood maps that provide a 100 year level of flood protection. While FEMA is currently drafting rules for how non-accredited (below 100 year protection) levees should be included in flood maps, they don't fully account for non-structural flood mitigation features like forests, marshland and other natural features."
- Requires added coordination activities between FEMA and communities before and during mapping activities, including notification and coordination on the engineering model being used, additional period of time for a community to review interim data, and an opportunity to provide additional data.
- Requires FEMA to provide members of Congress in affected districts advanced information on key dates in the mapping update process (schedule of community meetings, publication dates of notices and the beginning date of the appeals process), and data on numbers and types of properties affected by preliminary maps.

Floodplain Management and Flood Mitigation Changes

- Changes the statutory definition of substantial improvement from 30 percent of fair market value to 50 percent. This was changed to 30 percent under BW-12 for no apparent reason. ASFPM found no champion for the particular issue. It created a disconnect with the substantial damage definition and if not changed back to 50 percent may have necessitated a nationwide floodplain management ordinance update.
- Requires FEMA to continue to extend exceptions and variance for floodproofed basements consistent with 60.3 and 60.6 of 44CFR. It is important to note that these two sections referred to in the legislation are for floodplain management purposes only and not for flood insurance.
- Requires FEMA to establish guidelines for property owners by March 21, 2015 for alternative mitigation methods, other than elevation, for certain residential buildings that cannot be elevated due to their structural characteristics. By calling these "guidelines for property owners" it does not appear that the legislation directs FEMA to develop new types of development standards under 44CFR60.3 that would have to be subsequently adopted by communities.

ASFPM is a national non-profit organization whose mission is to promote education, policies, and activities that mitigate current and future losses, costs, and human suffering caused by flooding, and to protect the natural and beneficial functions of floodplains - all without causing adverse impacts.

ASFPM maintains a webpage dedicated to NFP Reform information and tools. Go to ASFPM's home page at www.floods.org and click the link at the bottom click Information Page for NFIP Reform Act Implementation. ASFPM will continue to conduct webinars on different features of NFIP Reform including both BW-12 and HFIAA. Please visit the ASFPM webinar page [here](#) or click www.floods.org, and the Training and Education tab on the left side of the page then click ASFPM Webinars.