National Flood Insurance Program
Biggert-Waters Flood Insurance Reform Act of 2012

Analysis of Expected Changes to the Flood Insurance Program
NYS Department of Environmental Conservation
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On July 6, 2012, President Obama signed the Biggert-Waters Flood Insurance Reform Act of 2012 (Flood Insurance Reform Act) extending the National Flood Insurance Program's authority through September 30, 2017. This bill will effect changes to the flood insurance program once the Federal Emergency Management Agency (FEMA) implements new policies based on the new law.

This fact sheet provides a brief analysis of expected changes that will affect New York State based on the new legislation.

Flood Insurance Rates

Many existing structures were built prior to publication of a community's first Flood Insurance Rate Map (FIRM). These structures are known as "pre-FIRM" and receive subsidized flood insurance rates if they do not meet current elevated building standards. For the classes of structures listed below, the 2012 Flood Insurance Reform Act removes subsidized rates (pre-FIRM rates) and allows rates to increase by 25 percent per year until actuarial rates are achieved:

- Any residential property that is not the primary residence of an individual
- Any property that has incurred flood-related damages that cumulatively exceed the fair market value of the property
- Any business property

- Any property that has incurred substantial damage after the effective date of the Flood Insurance Act or has experienced "substantial improvement exceeding 30 percent of the fair market value of the property"
- Any property with severe repetitive loss[1]

Flood insurance rates will immediately go up to actuarial rates for:

- Any newly purchased property
- Any property with a new policy or lapsed policy
- Any property with a policy for which the owner has refused a FEMA mitigation offer under the Hazard Mitigation Grant Program, or for a repetitive-loss property or severe repetitive-loss property
- Any substantially damaged or substantially improved structure[2]

Other insurance-related changes:

- The limit of annual rate increases will be raised from 10 percent to 20 percent for any risk classification of structures.
- Premiums can be paid either annually or in more frequent installations.
- Limits will be placed on a bank's practice of forcing flood insurance through its own insurance carrier. Forced flood insurance would be cancelled and the premiums refunded upon proof of a borrower's existing flood-insurance coverage.[3]
- 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.
- Lender penalties for non-compliance with mandatory flood insurance purchase requirements are increased from $350 to $2,000 per violation, and the limit of fines for any lending institution over a calendar year is removed. (The limit had been $100,000.)

Increases in flood insurance premiums are required, with the goal of paying down the program debt and establishing a reserve fund. Rates must be set to cover the historical average-loss year, including catastrophic-loss years, in accordance with generally accepted actuarial principles. In the past, potentially catastrophic-loss years were not calculated. This change will raise rates because the increase in recent flood damages nationwide has meant that current rates do not cover the historical average-loss year.

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[1] Severe repetitive loss means two or more claims of over $1,000 during any ten-year period.

[2] Substantial damage and substantial improvement is damage to the structure or improvement of the structure that equals or exceeds 50 percent of the market value of the structure prior to the damage or improvement.

[3] Federal law requires flood insurance as a condition of a loan from any federally regulated lending institution if the loan is for a structure in a FEMA-mapped high-hazard flood zone.

FEMA is required to develop a ten-year repayment plan for the current insurance fund debt and to establish a reserve fund of at least one percent of the total potential loss exposure. This fund would be built by 7.5 percent of the reserve ratio required each year. If this goal cannot be met, FEMA is allowed to report to Congress about why it was not met.

The 2012 Flood Insurance Act allows private flood insurance policies to satisfy flood insurance coverage requirements. It also establishes a process to allocate tropical storm and hurricane damages between wind and water damage in an insurance claim.

Mapping

The 2012 Flood Insurance Reform Act establishes a Technical Mapping Advisory Council (Council) with membership coming from a wide range of professions, including state and local mapping experts. The Council will advise FEMA on flood-mapping guidelines. It will also develop recommendations for future-conditions mapping, including impacts of sea-level rise and future development. FEMA is *required* to incorporate future risk assessment in accordance with recommendations of the Council, which must make recommendations on mapping future conditions within one year.

Requirements for future mapping:

- New flood maps must 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.
- Maps must show the level of protection provided by flood-control structures.
- New flood maps must use the most accurate topography and elevation data available.
- New ground elevation data must be obtained when necessary.
- Flood data must be developed on a watershed basis.

Other policy changes in the Flood Insurance Reform Act related to mapping:

- FEMA will be required to notify property owners when their properties are included in, or are removed from, an area covered by mandatory insurance purchase requirements.
- The Flood Insurance Reform Act 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.
- A study is required on federal interagency coordination of flood mapping, including collection and utilization of data among all governmental users.

- There is an authorization of $400 million for flood mapping per year for fiscal years 2013 through 2017. Allocations are still made on an annual basis, but this is the first time that floodplain mapping has been specifically included as a Congressional authorization.

Mitigation Programs

Three existing mitigation programs—Repetitive Insurance Claims, Severe Repetitive Loss Properties and Flood Mitigation Assistance—funded by the National Flood Insurance Program (NFIP), will be consolidated into a single program. The combined National Flood Mitigation Fund is to be financed at $90 million per year. While the old Flood Mitigation Assistance Program and the Severe Repetitive Loss Program had each been funded for up to $40 million per year, the latter program has never been fully utilized due, in part, to its complexity. The new program simplifies and combines the three previous programs and does 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 rebuilding as allowed mitigation activities
- Restructures the federal share requirement:
    - Up to 100% for severe repetitive-loss structures[4]
    - Up to 90% for repetitive-loss structures
    - Up to 75% for other approved mitigation activities

Levees

The Flood Insurance Reform Act requires that a Flood Protection Structure Accreditation Task Force (Task Force) be established 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: 1) Allows data collected for either purpose to be used interchangeably; and 2) Allows data collected by the Corps of Engineers under the Completed Works Program to be used to satisfy the FEMA accreditation requirements.

The Task Force's process cannot reduce the level of public safety and flood control provided by accredited levees. However, the Task Force is charged with considering changes to the

[4] Repetitive loss means two or more claims of over $1,000 during any ten-year period.
Severe repetitive loss means at least four claims of over $5,000 or at least two claims that cumulatively exceed the market value of the building.

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.

The Flood Insurance Reform Bill also addresses flood insurance premiums in communities with levees. It allows 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.

Studies

A number of studies/reports are required by the Flood Insurance Reform bill including:

- Analysis of impacts from increasing the maximum coverage limits and the availability in the private marketplace of flood insurance in amounts that exceed current NFIP coverage limits[5]
- A Government Accounting Office 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 Government Accounting Office 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 Government Accounting Office study addressing the reinsurance and privatization of the NFIP
- A Government Accounting Office study on insurance coverage for business interruption and additional living expenses
- A FEMA study to look at amending the legislation to use nationally recognized building codes as part of the floodplain management criteria
- A joint FEMA and National Academy of Sciences study of the practice 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

[5] Flood insurance is currently limited to $250,000 for structural damage and $100,000 for contents losses for residential structures.

Building Code Enforcement

The Flood Insurance Reform Act allows use of Community Development Block Grant funds for increasing staffing and training for local building code enforcement and providing flood hazard and flood insurance information to residents.

Additional Information

To learn more about floodplain management, including guidance for rebuilding substantially damaged structures after a flood; ways to reduce flood insurance rates; and how to join the National Flood Insurance Program, visit DEC's webpage at: www.dec.ny.gov/lands/24267.html. This page also includes links to websites for the National Flood Insurance Program and the Federal Emergency Agency.