Historic Structures and the Biggert-Waters Flood Insurance Reform Act of 2012

In 2012, the U.S. Congress passed the Biggert Waters Flood Insurance Reform Act of 2012 (BW 12) which calls on the Federal Emergency Management Agency (FEMA) and other agencies to make a number of changes to the way the NFIP is run. Some of these changes have already been put in place, and others will be implemented in the coming months. Key provisions of the legislation will require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. The changes will mean premium rate increases for some – but not all -- policyholders over time.

Below are some of the Frequently Asked Questions (FAQs) associated with BW 12 and its impact on historic structures.

1. What does BW12 say about historic buildings?

BW 12 makes no special provisions or exceptions for historic buildings. For rating purposes, historic buildings are to be treated the same as any other Pre-FIRM properties.

2. How does BW12 impact the premiums for flood insurance policies for historic structures?

Section 100205 requires the phase-in of full risk rates for the following types of property: non-primary residences, business properties, severe repetitive loss (SRL) properties, properties for which claims payments exceed the fair market value, and substantially damaged or improved properties. Additionally, Section 100205 requires the immediate application of full risk rates to new policies, lapsed policies, and policies for property that has been sold to a new owner since the enactment of BW 12.

Any currently subsidized policies for historic buildings meeting the criteria established in Section 100205 will see premium rate increases. Those structures will have rate increase at a rate of 25% per year until full actuarial rates are achieved.

3. If a historic structure is a primary residence, what impact will this have on its flood policy premium?

All primary residences — including those that are historic buildings — that were built before the initial Flood Insurance Rate Map (Pre-FIRM), and that are located in special flood hazard areas (flood zones A, AE, AH, AO, A1-A30, V, VE, V1-V30) and D zones will see a 16 to 17 percent increase effective on or after October 1, 2013, in order to reduce the amount of subsidy provided to these policyholders.

This percentage increase is based on actuarial analysis and includes the 5 percent Reserve Fund assessment for all policies, excluding Preferred Risk Policies. The Reserve Fund assessment is mandated under Section 100205.

4. Is it possible to get an exemption for a historic building from the mandated rate increases?

No. The wording of Section 100205 does not allow FEMA any discretion in implementing it. FEMA does not have the statutory authority to exempt historic buildings from the mandated rate increases of Section 100205.

5. Did BW12 modify or address any specific aspect of the National Flood Insurance Program’s floodplain management provisions pertaining to historic structures?

No. BW 12 did not modify or address any aspect of the NFIP floodplain management provisions pertaining to historic structures.

6. What are the NFIP floodplain management provisions that pertain to historic structures?

The NFIP contains two provisions that provide relief for “historic structures” in Special Flood Hazard Areas from the NFIP floodplain management regulations for new construction and substantial improvements/substantial damage. The two provisions include:

(1) The definition of “substantial improvement” at 44 CFR 59.1, states, “alteration to an “historic structure” does not constitute a “substantial improvement”, provided that the alteration will not preclude the structure’s continued
designation as an “historic structure”. The same also applies to “historic structures” that have been “substantially damaged”.

(2) The other provision of the NFIP floodplain management regulations that provides relief for “historic structures” is 44 CFR 60.6(a). This provision states that “Variances may be granted for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.”

7. How does the NFIP define historic structures?

Under the Definition section of the NFIP [44 Code of Federal Regulations (CFR) Part 59], “historic structure” is defined as “any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved State program as determined by the Secretary of the Interior, or

(2) Directly by the Secretary of the Interior in States without approved programs.”

8. How can NFIP communities provide relief for historic structures?

Communities have the option of using either the substantial improvement definition or variance provision for addressing the unique needs of “historic structures”. Communities should adopt only one of the options. In either case, “historic structures” can be excluded from the NFIP elevation and floodproofing requirements. However, if plans to substantially improve or repair a substantially damaged “historic structure” would result in loss of its designation as an “historic structure”, the structure would be required to meet the NFIP floodplain management regulations.

While historic structures can still be exempt for floodplain management purposes, under BW 12 there is no flood insurance exemption, and they will be rated accordingly.

FEMA has published the National Flood Insurance Program Floodplain Management Bulletin, Historic Structures, FEMA P-467-2, May 2008. This Bulletin addresses the NFIP floodplain management provisions related to historic structures, subsidized flood insurance, and mitigation measures that can be taken to minimize damages to designated historic structures. This Bulletin will be updated to reflect the changes in BW 12

For more information:

For additional information on BW 12, and additional FAQs, please visit our BW 12 website.


"FEMA’s mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."
Questions about the Biggert-Waters Flood Insurance Reform Act of 2012

1. What is the Biggert-Waters Flood Insurance Reform Act of 2012?

Answer: The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) is a law passed by Congress and signed by the President in 2012 that extends the National Flood Insurance Program (NFIP) for five years, while requiring significant program reform. The law requires changes to all major components of the program, including flood insurance, flood hazard mapping, grants, and the management of floodplains. Many of the changes are designed to make the NFIP more financially stable, and ensure that flood insurance rates more accurately reflect the real risk of flooding. The changes will be phased in over time, beginning this year.

2. Why was the Biggert-Waters Reform Act of 2012 passed?

Answer: Flooding has been, and continues to be, a serious risk in the United States—so serious that most insurance companies have specifically excluded flood damage from homeowners insurance. To address the need, in 1968 the U.S. Congress established the NFIP as a Federal program. It enabled property owners in participating communities to purchase flood insurance if the community adopted floodplain management ordinances and minimum standards for new construction. However, owners of existing homes and businesses did not have to rebuild to the higher standards, and many received subsidized rates that did not reflect their true risk.

Over the years, the costs and consequences of flooding have continued to increase. For the NFIP to remain sustainable, its premium structure must reflect the true risks and costs of flooding. This is a primary driver for many of the changes required under the law.

Insurance Cost/Rate Questions

3. What changes to insurance operations are anticipated?

Answer: Many of the proposed changes are designed to increase the fiscal soundness of the NFIP. For example, beginning this year there will be changes addressing rate subsidies and a new Reserve Fund charge will start being assessed. There are also provisions to adjust premium rates to more accurately reflect flood risk.

Other provisions of the law address coverage modifications and claims handling. Studies will be conducted to address issues of affordability, privatization, and reinsurance, among other topics.

4. Will all policyholders see changes in insurance rates as a result of BW-12?

More than 80 percent of policyholders (representing approximately 4.48 million of the 5.6 million policies in force) do not pay subsidized rates.

About 20 percent of all NFIP policies pay subsidized rates. Only a portion of those policies that are currently paying subsidized premiums will see larger premium increases of 25% annually starting this year, until their premiums are full-risk premiums. Five percent of policyholders — those with subsidized policies for non-primary residences, businesses, and severe repetitive
loss properties - will see the 25% annual increases immediately. Subsidies will no longer be offered for policies covering newly purchased properties, lapsed policies, or new policies covering properties for the first time.

The 80% of all NFIP policies that already pay full-risk premiums will not see these large premium increases. Most policyholders will see a new charge on their premiums to cover the Reserve Fund assessment that is mandated by BW-12. Initially, there will be a 5% assessment to all policies except Preferred Risk Policies (PRPs). The Reserve Fund will increase over time and will also be assessed on PRPs at some undetermined future date.

Additional changes to premium rates will occur upon remapping, the provision calling for these premium rate changes will not be implemented until the latter half of 2014.

5. In general, which properties will be most affected by changes in rates?

Answer: Rate changes will have the greatest effect on properties located within a Special Flood Hazard Area (SFHA) that were constructed before a community adopted its first Flood Insurance Rate Map (FIRM) and have not been elevated. For many communities the initial FIRM would have been adopted in the 1970's and 1980's. Your local insurance agent will be able to provide you the initial FIRM date for your community.

Many of these pre-FIRM properties have been receiving subsidized rates. Subsidies are already being phased out for non-primary residences. Starting this fall, subsidies will be phased out for businesses; properties of one to four residences that have experienced severe repetitive loss; and properties that have incurred flood-related damages where claims payments exceed the fair market value of the property. Premiums for these properties will increase by 25% per year until they reach the full risk rate.

Subsidies are not being phased out for existing policies covering primary residences. However, the subsidy provided to primary residences could still be lost under conditions that apply to all subsidized policies. Subsidies will be immediately phased out for all new and lapsed policies and upon sale of the property. There may also be premium changes for policyholders after their community is remapped. But that provision of the Act is still under review and will be implemented in the future.

6. What happens if a policy with subsidized rates is allowed to lapse or the property is sold?

Answer: Starting this fall, for all currently subsidized policies, there will be an immediate increase to the full risk rates for all new and lapsed policies and upon the sale/purchase of a property. Full risk rates will be charged to the next owner of the policy.

7. What does “full risk rate” actually mean?

Answer: Simply put, it means that the premium reflects both the risk assumed by the program (that is, the expected average claims payment) and all administrative expenses. In the case of
flood insurance, this means the premium takes into account the full range of possible flood losses, including the rare but catastrophic floods as well.

8. How can someone find out what a property's full risk rate will be?

Answer: Of the many factors that determine the full risk rate of a structure, the single most important is the elevation of the structure in relation to the Base Flood Elevation (BFE). A community’s Flood Insurance Rate Map (FIRM) indicates the area of the community that has a 1% or greater annual chance of flooding. That area is called the Special Flood Hazard Area, or high-risk zone. Put another way, the BFE is the elevation where there is a 1% or greater annual chance of flooding. For a property in the high-risk zone, you need to know the elevation of the structure in relation to the BFE. Generally, the higher the elevation above the BFE, the lower the flood risk. The information is shown on an Elevation Certificate, which is a form completed and signed by a licensed engineer or surveyor. So to determine the premium for a property in a high-risk zone, you first need an elevation certificate. Then, an insurance agent can calculate the premium based on the amount of coverage desired.

9. What percentage of policies nationwide, and in high risk zones, actually receives these subsidized rates?

Answer: More than 80 percent of policyholders (representing approximately 4.48 million of the 5.6 million policies in force) do not pay subsidized rates. About 20 percent of all NFIP policies pay subsidized rates. However, only 5 percent of policyholders – those subsidized policies covering non-primary residences, businesses, and severe repetitive loss properties - will see immediate increases to their premiums.

10. When will NFIP Grandfathering be eliminated?

Answer: Currently, the NFIP Grandfather procedure provides eligible property owners the option of using risk data from previous Flood Insurance Rate Maps (FIRMs) if a policyholder maintained continuous coverage through a period of a FIRM revision or if a building was constructed “in compliance” with the requirements for the zone and BFE reflected on a previous FIRM. A provision of BW-12, however, requires FEMA to use revised flood risk data (zone and BFE) after a map revision. The legislation provides a 5-year mechanism to phase-in the new rates. This provision impacts the NFIP Grandfather procedure and will be implemented in the latter half of 2014. Many of the precise details of this implementation are still under development.

11. Is there any option for people who are now in a flood zone, did not have substantial damage, but now the BFE is 10 feet higher than previously and face dramatic rate increases?

Answer: FEMA’s Hazard Mitigation Assistance (HMA) HMA programs provide funds for projects that reduce the risk to individuals and property from natural hazards. These programs enable mitigation measures to be implemented before, during, and after disaster recovery. Local jurisdictions develop projects that reduce property damage from future disasters and submit
grant applications to the State. The States submit applications to FEMA based on State criteria and available funding. The HMA programs include:

- **Hazard Mitigation Grant Program (HMGP)** - The Hazard Mitigation Grant Program provides grants to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during recovery from a disaster.

- **Flood Mitigation Assistance (FMA)** - The Flood Mitigation Assistance program provides funds on an annual basis so that measures can be taken to reduce or eliminate risk of flood damage to buildings insured under the NFIP.

- **Pre-Disaster Mitigation Program (PDM)** - The Pre-Disaster Mitigation Program provides nationally competitive grants for hazard mitigation plans and projects before a disaster event. States can receive PDM funds regardless of whether or not there has been a disaster declared in that state.

FEMA encourages property and business owners interested in implementing mitigation activities to contact their local community planning, emergency management, or State Hazard Mitigation Officer for more information. Individuals and businesses may not apply directly to the State or FEMA, but eligible local governments may apply on behalf of a private entity. Your community will be working with the State to develop applications for HMA funding and implement the approved mitigation projects. Information about the HMA programs can be found at [http://www.fema.gov/hazard-mitigation-assistance](http://www.fema.gov/hazard-mitigation-assistance).