Congressional Research Service
Informing the legislative debate since 1914

21st Century Flood Reform Act (H.R. 2874): Reforming the National Flood Insurance Program

Updated January 23, 2018

Congressional Research Service
https://crsreports.congress.gov
R45019

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The National Flood Insurance Program (NFIP) was established by the National Flood Insurance Act of 1968 (NFIA, 42 U.S.C. §4001 et seq.), and was reauthorized until February 8, 2018 (H.R. 195). Unless reauthorized or amended by Congress, the following will occur after February 8, 2018: (1) the authority to provide new flood insurance contracts will expire; and (2) the authority for the NFIP to borrow funds from the Treasury will be reduced from $30.425 billion to $1 billion.

The House passed H.R. 2874, the 21st Century Flood Reform Act, on November 14, 2017, with a vote of 237-189. H.R. 2874 would authorize the NFIP until September 30, 2022. This report summarizes selected provisions of the bill, concentrating on changes related to premiums and surcharges, affordability, increasing participation, the role of private insurance, treatment of multiple loss properties, and some provisions related to floodplain mapping and mitigation.

H.R. 2874 would phase out the subsidy provided for primary residences built before the first Flood Insurance Rate Map (FIRM) was published in their community, at a rate of 6.5%-15% compared to the present rate of 5%-18%. The minimum would be phased in over a four-year period. The phaseout of the pre-FIRM subsidy for other categories of properties would remain at 25%. The Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) surcharge would be increased from $25 to $40 for primary residences and from $250 to $275 for nonresidential properties and most nonprimary residences. The reserve fund assessment would be increased by at least one percentage point per year until the statutory reserve ratio is achieved. The bill would cap the premiums for 1-4 unit residential properties at $10,000 per year. The Federal Emergency Management Agency (FEMA) would be required over time to include additional considerations in the setting of premium rates, including the use of replacement cost value of a property, the difference in flood risk between coastal and inland locations, and the use of risk assessment tools other than FIRMs. H.R. 2874 would authorize a state or a consortium of states to create a voluntary flood insurance affordability program for low-income owner-occupants of 1-4 unit residences, to be funded by a surcharge on other NFIP policyholders in the state(s). The bill would increase the civil penalties from $2,000 to $5,000 on federally regulated lenders for failure to comply with enforcing the mandatory purchase requirement.

H.R. 2874 would strike existing statutory language describing how private flood insurance must provide coverage "as broad as the coverage" provided by the NFIP, and would instead require that policies comply with the laws and regulations of the state where the property is located. Federal regulators would be required to develop and implement regulations relating to the financial strength of private insurers, and lenders would have to accept a private insurance policy from a company with adequate financial strength. The mandatory purchase requirement would be eliminated for commercial property from January 1, 2019. The noncompete clause that currently restricts private companies from selling both NFIP and private flood insurance policies would be eliminated.

H.R. 2874 would define a new "multiple-loss property" category, which would include a revised definition of repetitive loss properties, severe repetitive loss properties, and a new category of extreme repetitive loss properties. Any multiple-loss property with at least two claims after enactment would have rates increased by 10% per year until the rates reflect current risks. Those with at least three future claims would have their rates increased by 15% per year.

Contents

Introduction 1
Expiration of Certain NFIP Authorities 2
Legislation in the 115th Congress 3
NFIP Premiums and Surcharges 3
Pre-FIRM Subsidy 4
Newly Mapped Subsidy 5
Grandfathering 5
Proposed Changes to Premiums and Surcharges in H.R. 2874 6
Affordability 8
Provisions Related to Affordability in H.R. 2874 8
Increasing Participation in the NFIP 9
Provisions Related to Increasing Participation in H.R. 2874 10
The Role of Private Insurance in the NFIP 10
Barriers to Private Sector Involvement 12
Reinsurance 13
Provisions Related to Private Insurance in H.R. 2874 13
Properties with Multiple Losses 15
Provisions Related to Multiple Loss Properties in H.R. 2874 16
Noninsurance Functions of the NFIP 17
Flood Mitigation 18
Selected Provisions Related to Flood Mitigation in H.R. 2874 19
Floodplain Mapping 20
Selected Provisions Related to Floodplain Mapping in H.R. 2874 20

Contacts

Author Information 21

Introduction

The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968,[1] and was reauthorized until September 30, 2017, by the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12).[2] Congress amended elements of BW-12, but did not extend the NFIP's authorization further in the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA).[3] The NFIP received a short-term reauthorization through December 8, 2017,[4] a second short-reauthorization through December 22, 2017,[5] and a third short-term reauthorization through January 19, 2018.[6] The NFIP lapsed between January 20 and January 22, 2018, and received another short-term reauthorization until February 8, 2017.[7] The NFIP is managed by the Federal Emergency Management Agency (FEMA), through its subcomponent Federal Insurance and Mitigation Administration (FIMA). The NFIP has two main policy goals: (1) to provide access to primary flood insurance, thereby allowing for the transfer of some of the financial risk of property owners to the federal government; and (2) to mitigate and reduce the nation's comprehensive flood risk through the development and implementation of floodplain management standards.[8] A longer-term objective of the NFIP is to reduce federal expenditure on disaster assistance after floods. As of October 2017, the NFIP had 5 million flood insurance policies providing nearly $1.27 trillion in coverage, with over 22,000 communities in 50 states and 6 other jurisdictions participating in the NFIP.[9]

As a public insurance program, the goals of the NFIP were originally designed differently from the goals of private-sector companies. As currently authorized, the NFIP also encompasses social goals to provide flood insurance in flood-prone areas to property owners who otherwise would not be able to obtain it, and to reduce government's cost after floods.[10] From the inception of the NFIP, the program has been expected to achieve multiple objectives, some of which may conflict with one another:

- To ensure reasonable insurance premiums for all.

[1] Title XIII of P.L. 90-448, as amended, 42 U.S.C. §§4001 et seq.

[2] Title II of P.L. 112-141.

[3] P.L. 113-89.

[4] P.L. 115-56, Division D, §130.

[5] P.L. 115-90.

[6] P.L. 115-96.

[7] H.R. 195. (This bill has not yet been assigned a P.L. number.)

[8] In the context of this report, *comprehensive* flood risk means that the risk includes both financial risk (i.e., physical damage to property), but also the risk to human life.

[9] 44 C.F.R. 59.1 defines community as any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction. Based on FEMA's map inventory, 98.8% of the U.S. population is mapped with an existing flood map. Over 88% of the population lives in a community that has received a modernized product (email correspondence from FEMA Congressional Affairs staff, April 20, 2017). Detailed information about which communities participate, and where, is available from the Community Status Book, found on FEMA's website at https://www.fema.gov/national-flood-insurance-program-community-status-book. For full statistics, including breakdown by states, see FEMA's website at https://bsa.nfipstat.fema.gov/reports/1011.htm.

[10] See 82 Stat. 573 for text in original statute (§1302(c) of P.L. 90-448). This language remains in statute (see 42 U.S.C. §4001(c)).

- To have risk-based premiums that would make people aware of and bear the cost of their floodplain location choices.
- To secure widespread community participation in the NFIP and substantial numbers of insurance policy purchases by property owners.
- To earn premium and fee income that, over time, covers claims paid and program expenses.[11]

Congress has authorized FEMA to borrow no more than $30.425 billion from the U.S. Treasury in order to operate the NFIP.[12] At the beginning of the 2017 hurricane season, the NFIP owed $24.6 billion to the Treasury. On September 22, 2017, the NFIP borrowed the remaining $5.825 billion from the Treasury to cover claims from Hurricane Harvey, Hurricane Irma, and Hurricane Maria, reaching the NFIP's authorized borrowing limit of $30.425 billion.[13] On October 26, 2017, Congress cancelled $16 billion of NFIP debt, making it possible for the program to pay claims for Hurricanes Harvey, Irma, and Maria.[14] This represents the first time that NFIP debt has been cancelled, although Congress appropriated funds between 1980 and 1985 to repay NFIP debt.[15] FEMA borrowed another $6.1 billion on November 9, 2017, to fund estimated 2017 losses, including those incurred by Hurricanes Harvey, Irma, and Maria and anticipated programmatic activities, bringing the debt up to $20.525 billion. The NFIP currently has $9.9 billion of remaining borrowing authority.[16]

Expiration of Certain NFIP Authorities

The statute for the NFIP does not contain a comprehensive expiration, termination, or sunset provision for the whole of the program. Rather, the NFIP has multiple different legal provisions that generally tie to the expiration of key components of the program. Unless reauthorized or amended by Congress, the following will occur after February 8, 2018:

- The authority to provide *new* flood insurance contracts will expire.[17] Flood insurance contracts entered into before the expiration would continue until the end of their policy term of one year.
- The authority for NFIP to borrow funds from the Treasury will be reduced from $30.425 billion to $1 billion.[18]

Other activities of the program would technically remain authorized following February 8, 2018, such as the issuance of Flood Mitigation Assistance (FMA) grants.[19] However, the expiration of

[11] National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 1*, 2015, p. 3, at http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1.

[12] P.L. 113-1§1(a), 127 Stat. 3.

[13] Email correspondence from FEMA Congressional Affairs staff, September 22, 2017.

[14] P.L. 115-72, Title III, §308.

[15] Funds for "repayment under notes" were appropriated in P.L. 96-526, 94 Stat. 3053; P.L. 97-101, 95 Stat. 1425; P.L. 97-272, 96 Stat. 1169; P.L. 98-45, 97 Stat. 228; P.L. 98-371, 98 Stat. 1224; and P.L. 99-160, 99 Stat. 918.

[16] Update on the National Flood Insurance Program's Borrowing Authority, email correspondence from FEMA Congressional Affairs Staff, November 20, 2017.

[17] 42 U.S.C. §4026.

[18] 42 U.S.C. §4016(a).

[19] See 42 U.S.C. §4104c and 42 U.S.C. §4104d.

the key authorities described above would have varied and generally serious effects on these remaining NFIP activities.[20]

Legislation in the 115th Congress

The House Financial Services Committee completed markup on June 21, 2017, of seven bills to reform and reauthorize the NFIP. The 21st Century Flood Reform Act (H.R. 2874) came to the House floor under H.Res. 616,[21] and included provisions from the six other bills.[22] H.R. 2874 passed the House on a vote of 237-189 on November 14, 2017.

Three bills have been introduced in the Senate to reauthorize the NFIP: S. 1313 (Flood Insurance Affordability and Sustainability Act of 2017), S. 1368 (Sustainable, Affordable, Fair and Efficient [SAFE] National Flood Insurance Program Reauthorization Act of 2017),[23] and S. 1571 (National Flood Insurance Program Reauthorization Act of 2017). None of these bills have yet been considered by the Senate Committee on Banking, Housing, and Urban Affairs, the committee assigned all three Senate bills.

The remainder of this report will summarize relevant background information and proposed changes to selected areas of the NFIP in H.R. 2874, which would reauthorize the NFIP until September 30, 2022, among other things. The report does not examine every provision in detail, but focuses on selected provisions which would introduce significant changes to the NFIP or where the effect of the provision may not be clear.

NFIP Premiums and Surcharges

As of October 2017, the written premium on approximately 5 million policies in force was $3.6 billion.[24] Included within NFIP premiums are several fees and surcharges mandated by law on flood insurance policies. First, the Federal Policy Fee was authorized by Congress in 1990 and helps pay for the administrative expenses of the program, including floodplain mapping and some of the insurance operations.[25] The amount of the Federal Policy Fee is set by FEMA and can increase or decrease year to year. As of October 2017, the fee is $50 for Standard Flood Insurance Policies (SFIPs), $25 for Preferred Risk Policies (PRPs),[26] and $25 for contents-only policies.[27]

Second, a reserve fund assessment was authorized by Congress in BW-12 to establish and maintain a Reserve Fund to cover future claim and debt expenses, especially those from

[20] The NFIP is discussed in more detail in CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Jared T. Brown.

[21] See https://www.congress.gov/bill/115th-congress/house-resolution/616?r=1.

[22] H.R. 1422, H.R. 1558, H.R. 2246, H.R. 2565, H.R. 2868, and H.R. 2475.

[23] A similar bill was introduced in the House, H.R. 3285.

[24] For full statistics, including breakdown by states, see FEMA's website at https://bsa.nfipstat.fema.gov/reports/1011.htm.

[25] 42 U.S.C. §4014(a)(1)(B)(iii).

[26] A Preferred Risk Policy is a Standard Flood Insurance Policy that offers low-cost coverage to owners and tenants of eligible buildings located in moderate and low-risk flood zones in NFIP communities. See FEMA, *Flood Insurance Manual, Preferred Risk Policy Section*, Revised October 2017, p. PRP 1, at https://www.fema.gov/media-library/assets/documents/133846.

[27] See FEMA, *Flood Insurance Manual, Rating Section*, Revised October 2017, p. RATE 16, at https://www.fema.gov/media-library-data/1503239106510-30b35cc754f462fe2c15d857519a71ec/05_rating_508_oct2017.pdf.

catastrophic disasters.[28] By law, FEMA is required to maintain a reserve ratio of 1% of the total loss exposure through the reserve fund assessment.[29] However, FEMA is allowed to phase in the reserve fund assessment to obtain the ratio over time, with an intended target of not less than 7.5% of the 1% reserve fund ratio in each fiscal year. From April 2016, using its discretion, FEMA began charging every NFIP policy a reserve fund assessment equal to 15% of the premium charged for both SFIPs and PRPs.[30] The reserve fund assessment has increased from its original status, in October 2013, of 5% on all SFIPs, and 0% on PRPs.[31]

In addition to the reserve fund assessment, all NFIP policies are also assessed a surcharge following the passage of HFIAA.[32] The amount of the surcharge is dependent on the type of property being insured. For primary residences, the charge is $25; for all other properties, the charge is $250.[33] Revenues from the surcharge are deposited into the Reserve Fund.

Except for certain subsidies, flood insurance rates in the NFIP are directed to be "based on consideration of the risk involved and accepted actuarial principles,"[34] meaning that the rate is reflective of the true flood risk to the property. However, Congress has directed FEMA *not* to charge actuarial rates for certain categories of properties and to offer discounts to other classes of properties in order to achieve the program's objective that owners of existing properties in flood zones could afford flood insurance. There are three main categories of properties which pay less than full risk-based rates: pre-FIRM[35] properties, newly mapped properties, and grandfathered properties.

Pre-FIRM Subsidy

Structures built or substantially improved before December 31, 1974, or before FEMA published the first FIRM for their community, whichever was later,[36] are referred to as pre-FIRM structures. Policies on such structures are allowed to have lower premiums than what would be expected to cover predicted claims. The availability of this pre-FIRM subsidy was intended to allow preexisting floodplain properties to contribute in some measure to prefunding their recovery from a flood disaster instead of relying solely on federal disaster assistance. In essence, the flood insurance could distribute some the financial burden among those protected by flood insurance and the public. As of March 2017, approximately 16.1% of all NFIP policies received a pre-FIRM

[28] Section 100212 of P.L. 112-141, 126 Stat. 992, as codified at 42 U.S.C. §4017a.

[29] 42 U.S.C. §4017a(b).

[30] See Federal Emergency Management Agency, *Flood Insurance Manual, Rating Section*, Revised October 2017, p. RATE 16, at https://www.fema.gov/media-library-data/1503239106510-30b35cc754f462fe2c15d857519a71ec/05_rating_508_oct2017.pdf.

[31] For additional information on the Reserve Fund, see FEMA, *Quarterly NFIP Reserve Fund Report*, June 15, 2016.

[32] Section 8(a) of P.L. 113-89, 128 Stat. 1023.

[33] For a description of the how the fee is applied to different policy types, see FEMA, *The HFIAA Surcharge Fact Sheet*, April 2015, at https://www.fema.gov/media-library/assets/documents/105569.

[34] 42 U.S.C. §4014(a)(1).

[35] A Flood Insurance Rate Map (FIRM) is the official map of a community on which FEMA has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs), and the risk premium zones applicable to the community. A Special Flood Hazard Area (SFHA) is defined by FEMA as an area with a risk of 1% or greater risk of flooding every year. The Base Flood Elevation is the elevation of surface water resulting from a flood that has a 1% chance of being equaled or exceeded in any given year. See FEMA, *Flood Insurance Manual, Definitions Section*, Revised October 2017, pp. DEF1, DEF4, and DEF9, at https://www.fema.gov/media-library-data/1503240583997-30b35cc754f462fe2c15d857519a71ec/23_definitions_508_oct2017.pdf.

[36] 42 U.S.C. §4015(c).

subsidy.[37] Historically, the total number of pre-FIRM policies is relatively stable, but the percentage of those policies by comparison to the total policy base has decreased.[38] The pricing subsidy for pre-FIRM policies is progressively being phased out of the NFIP at a rate between 5% and 18% for primary residences and 25% for all other categories, as was initially required under Section 100205 of BW-12, and revised by Sections 3 and 5 of HFIAA.[39]

Newly Mapped Subsidy

Congress introduced a new form of subsidy in HFIAA for owners of properties newly mapped into a Special Flood Hazard Area (SFHA).[40] The newly mapped procedure applies to properties previously in zones of moderate or minimal flood hazards which are newly mapped into a SFHA on or after April 1, 2015, if the applicant obtains coverage that is effective within 12 months of the map revision date. The newly mapped procedure does not apply to properties mapped into a SFHA by the initial FIRM for a community entering the NFIP, and certain properties may be excluded based on their loss history.[41] The rate for eligible newly mapped properties is equal to the PRP rate, but with a higher Federal Policy Fee (FPF),[42] for the first 12 months following the map revision. After the first year, the newly mapped rate is to begin its transition to a full-risk rate, with annual increases to newly mapped policy premiums calculated using a multiplier that varies by the year of the map change.[43] As of March 2017, about 3.9% of NFIP policies receive a newly mapped subsidy.[44]

Grandfathering

Using the authority to set rate classes for the NFIP and to offer lower than actuarial premiums,[45] FEMA allows owners of properties that were built in compliance with the FIRM in effect at the time of construction to maintain their old flood insurance rate class if their property is remapped into a new flood rate class. This practice is colloquially referred to as "grandfathering," "administrative grandfathering," or the "grandfather rule" and is separate and distinct from the pre-FIRM subsidy.[46] FEMA does not consider the practice of grandfathering to be a subsidy for the NFIP, per se, because the discount provided to an individual policyholder is cross-subsidized by other policyholders in the NFIP. Thus, while grandfathering does intentionally allow

[37] Email correspondence from FEMA Congressional Affairs staff, March 3, 2017.

[38] For an historical prospective on the percentages of subsidized policies in the NFIP, see Figure 1 of GAO, *Flood Insurance: More Information Needed on Subsidized Properties*, GAO-13-607, July 2013, p. 7, at http://www.gao.gov/assets/660/655734.pdf.

[39] P.L. 112-141, 126 Stat. 917; and P.L. 113-89, 128 Stat. 1021-1022; respectively.

[40] Section 6 of P.L. 113-89, 128 Stat.1028, as codified at 42 U.S.C. §4015(i).

[41] For properties which are excluded from, or ineligible for, the newly mapped subsidy, see FEMA, *Flood Insurance Manual, Newly Mapped Section*, Revised October 2017, pp. NM 1 and NM 2, at https://www.fema.gov/media-library-data/1503239489878-30b35cc754f462fe2c15d857519a71ec/10_newly_mapped_508_oct2017.pdf.

[42] The FPF for a newly mapped property is $50, whereas the FPF for PRPs is $25. See FEMA, *Flood Insurance Manual, Rating Section*, Revised October 2017, p. RATE 16, at https://www.fema.gov/media-library-data/1503239106510-30b35cc754f462fe2c15d857519a71ec/05_rating_508_oct2017.pdf.

[43] FEMA, Attachment A: Summary of the NFIP Program Changes Effective April 1, 2016, at https://www.stpete.org/emergency/flooding/docs/April_1_2016_Program_Effects.pdf.

[44] Email correspondence from FEMA Congressional Affairs staff, March 3, 2017.

[45] 42 U.S.C. §4013(a).

[46] For a full description, see FEMA, *NFIP Grandfathering Rules for Agents*, March 2015, at http://www.fema.gov/media-library-data/1428677451158-82ba453a84ad628c406d69957b3d8622/Grandfathering_for_Agents_03_2015.pdf.

policyholders to pay premiums that are less than their known actuarial rate, the discount is offset by others in the same rate class as the grandfathered policyholder.

Congress eliminated the practice of offering grandfathering to policyholders after new maps were issued in BW-12, but then subsequently reinstated the practice in HFIAA.[47] FEMA does not have a definitive estimate on the number of properties that have a grandfathered rate in the NFIP, though data are being collected to fulfill a separate mandate of HFIAA.[48] Unofficial estimates suggest that at least 10%-20% of properties are grandfathered, and these figures may increase with time as newer maps are introduced in high-population areas.[49]

Proposed Changes to Premiums and Surcharges in H.R. 2874

- Section 102 would phase out the pre-FIRM subsidy for primary residences at a rate of 6.5%-15% (compared to the current rate of 5-18%), except that in the first year after enactment, the minimum rate would be 5%; in the second year after enactment, the rate would be 5.5%; and in the third year of enactment, the rate would be 6%. The phaseout of the pre-FIRM subsidy for other categories of properties (nonprimary residences, nonresidential properties, severe repetitive loss properties, properties with substantial cumulative damage, and properties with substantial damage or improvement after July 6, 2012) would remain at 25%. This section would make it possible for FEMA to raise premiums more rapidly than under current legislation by increasing the minimum rate at which the pre-FIRM subsidy could be removed for primary residences.
- Section 105 would require FEMA, not later than two years after enactment, to calculate premium rates based on a consideration of the differences in flood risk resulting from coastal flood hazards and riverine, or inland flood hazards. Six months prior to the effective date of risk premium rates, the FEMA Administrator would be required to publish in the Federal Register an explanation of the bases for, and methodology used to determine, the chargeable premium rates to be effective for flood insurance coverage under this title. Certain aspects of coastal flood risk are already incorporated into NFIP rates, notably risk from wave action (known as the "V" zone); how this may change with this possible new requirement is not yet known.
- Section 109 would require that no new flood insurance coverage may be provided after September 30, 2022, unless an appropriate body (e.g., the local or state government) has imposed, by statute or regulation, a duty on any seller or lessor of improved real estate to provide a property flood hazard disclosure which discloses any actual knowledge of the seller of prior physical damage caused by flood to any building on the property, prior insurance claims for flood losses

[47] Section 100207 of P.L. 112-141 amended the law to require that when a property has a revised or updated flood rate class with a new flood map, the "risk premium rate charged for flood insurance on such property adjusted to accurately reflect the current risk of flood to such property" (126 Stat. 919), thus eliminating the ability to grandfather. This provision was struck by Section 4 of P.L. 113-89, 128 Stat. 1022.

[48] Section 28 of HFIAA (P.L. 113-89, 128 Stat. 1033) requires that the Administrator "clearly communicate full flood risk determinations to individual property owners regardless of whether their premium rates are full actuarial rates." To fulfill this mandate, FEMA must identify all properties that are grandfathered or pre-FIRM and notify those policyholders what their property's true flood risk is versus the risk they are currently paying for with a subsidy/cross-subsidy.

[49] Telephone correspondence with FEMA staff, January 20, 2016. See also National Academies of Sciences, *Affordability of National Flood Insurance Program Premiums: Part 1*, 2015, p. 74, http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1.

(NFIP or private flood insurance), any previous notification regarding the designation of the property as a multiple loss property, and any federal legal obligation to obtain and maintain flood insurance running with the property. This disclosure may affect properties that have flood history during real estate transactions by reducing the likelihood of them selling and/or reducing the value of the sale.

- Section 111 would require FEMA to conduct a study to evaluate insurance industry best practice and develop a feasible implementation plan and projected time line for including replacement cost value in setting NFIP premium rates. The Administrator would be required to begin gradually phasing in the use of replacement cost value in setting NFIP premium rates 12 months after enactment, with replacement cost value to be used in setting all NFIP premium rates by December 31, 2020. If this provision were enacted, it is anticipated that those properties with higher replacement costs than current local or national averages would begin paying more for their NFIP coverage than those properties that are below the average, which would pay less. How much more, or how much less, is uncertain.
- Section 112 would cap the premiums for 1-4 unit residential properties with elevation data meeting standards of the Administrator at $10,000 per year, adjusted for inflation every five years. There is currently no statutory cap on premiums. This cap could affect 800 properties, or 0.02% of NIFP policies,[50] though that figure is subject to considerable change (likely increasing) as premium rates change going forward.
- Section 301 would require the Administrator, not later than three years from enactment, to calculate premium rates based on both the risk identified by the applicable FIRMs and by other risk assessment data and tools, including risk assessment models and scores from appropriate sources. This provision would expand on the existing method of determining rates (the FIRM) and allow alternatives, such as a risk score methodology (for example, a scale of 1 to 10 or 1 to 100, where the premiums would increase with the numerical score).
- Section 502 would increase the HFIAA surcharge from $25 to $40 for primary residences and from $250 to $275 for nonresidential properties and most nonprimary residences. However, the HFIAA surcharge for nonprimary residences which are eligible for a Preferred Risk Policy would drop from $250 to $125. This provision would increase the amount that most policyholders pay for flood insurance; however, FEMA does not include the HFIAA surcharge in their calculation of premium rate increases,[51] so this increase would not affect the cap set out in Section 102.
- Section 503 would require the Administrator, beginning in fiscal year 2018, to place in the reserve fund an amount equal to not less than 7.5% of the required reserve ratio. If in any given year the Administrator does not do so, for the following fiscal year the Administrator would be required to increase the reserve fund assessment by at least one percentage point over the rate of the annual assessment, and to continue such increases until the fiscal year in which the

[50] Congressional Budget Office, Cost estimate for H.R. 2868, National Flood Insurance Program Policyholder Protection Act of 2017, at https://www.cbo.gov/publication/52881.

[51] FEMA, Summary of the NFIP April 2018 and January 2019 Program Changes, September 27, 2017, at https://nfip-iservice.com/Stakeholder/pdf/bulletin/w-17061.html.

statutory reserve ratio is achieved. This provision would likely increase premiums for all NFIP policyholders.

Affordability

Some in Congress have expressed concern related to the perceived affordability of flood insurance premiums and the balance between actuarial soundness and other goals of the NFIP. Particularly following the increase in premiums associated with BW-12 and HFIAA, concerns were raised that risk-based premiums could be unaffordable for some households. Section 100236 of BW-12 called for an affordability study by FEMA and also a study by the National Academy of Sciences (NAS) regarding participation in the NFIP and the affordability of premiums. The NAS completed the Affordability Study report in two parts.[52] In HFIAA Section 9, Congress also required FEMA to develop a Draft Affordability Framework "that proposes to address, via programmatic and regulatory changes, the issues of affordability of flood insurance sold under the National Flood Insurance Program, including issues identified in the affordability study…."[53] The framework was due 18 months following the submission of the Affordability Study which, based on FEMA's stated date of submittal of the Affordability Study, was September 10, 2017.[54] According to FEMA, this report is still in the review stage.[55]

Provisions Related to Affordability in H.R. 2874

- Section 103 would authorize a state or a consortium of states to create a voluntary flood insurance affordability program for owner-occupants of 1-4 unit residences in communities participating in the NFIP, and for which a Base Flood Elevation (BFE)[56] is identified on a FIRM that is in effect and for which such other information is available as the Administrator considers necessary to determine the flood risk associated with such property. Eligibility would be determined by the state, but the affordability program would not be available to a household with income that exceeds the greater of (i) the amount equal to 150% of the poverty level for each state, or (ii) the amount equal to 60% of the median income of households residing in the state. Assistance could be in the form of either establishing a limit on the amount of chargeable risk premium paid or limiting the rate of increase in the amount of chargeable premiums. The state affordability program would be funded through a state affordability surcharge on each policy within that state for a property that is (A) not a residential property having four or fewer residences, or (B) such a residential property but is owned

[52] See National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 1*, 2015, at http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1; and National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 2*, 2016, at http://www.nap.edu/catalog/21848/affordability-of-national-flood-insurance-program-premiums-report-2.

[53] Section 9(a) of P.L. 113-89, 128 Stat. 1024.

[54] Section 9(c) of P.L. 113-89, 128 Stat. 1024. FEMA has stated it officially submitted the Affordability Study on March 10, 2016 (email correspondence with FEMA Congressional Affairs staff, March 10, 2016). However, Part 2 of the Affordability Study was available from the NAS website on December 11, 2015.

[55] Email correspondence from FEMA Congressional Affairs staff, December 30, 2017.

[56] The Base Flood Elevation is the elevation of surface water resulting from a flood that has a 1% chance of being equaled or exceeded in any given year. See FEMA, *Flood Insurance Manual, Definitions Section*, Revised October 2017, pp. DEF1 and DEF4, at https://www.fema.gov/media-library-data/1503240583997-30b35cc754f462fe2c15d857519a71ec/23_definitions_508_oct2017.pdf.

by a household that is not an eligible household for purposes of such fiscal year. Because this approach to affordability would not be funded by either federal or state taxes, but rather by other NFIP policyholders, it would create a new cross-subsidy within the NFIP for any states that develop an affordability program.

Increasing Participation in the NFIP

A long-standing objective of the NFIP has been to increase purchases of flood insurance policies, and this objective of widespread NFIP purchase was one motivation for keeping NFIP premiums reasonable[57] and for later introducing the requirement to purchase flood insurance as a condition of receiving a federally backed mortgage for properties in a SFHA, commonly referred to as the mandatory purchase requirement. Early in the program, the federal government found that making insurance available, even at subsidized rates, did not provide sufficient incentive for communities to join the NFIP or for individuals to purchase flood insurance. In response, Congress passed the Flood Disaster Protection Act of 1973,[58] which required the purchase of flood insurance and placed the responsibility for ensuring compliance on lending institutions. This mandatory purchase requirement was later strengthened by the National Flood Insurance Reform Act of 1994.[59]

In a community that participates or has participated in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage. By law and regulation, federal agencies, federally regulated lending institutions, and government-sponsored enterprises (GSE)[60] must require these property owners to purchase flood insurance as a condition of any mortgage that these entities make, guarantee, or purchase.[61] However, there are no official statistics available from the federal mortgage regulators responsible for implementation of the mandate, and no up-to-date data on national compliance rates with the mandatory purchase requirement. A 2006 study commissioned by FEMA found that compliance with this mandatory purchase requirement may be as low as 43% in some areas of the country (the Midwest), and as high as 88% in others (the West).[62] A more recent study of flood insurance in New York City found that compliance with the mandatory purchase requirement by properties in the SFHA with mortgages increased from 61% in 2012 to 73% in 2016.[63] The escrowing of insurance premiums, which began in January 2016, may increase compliance with the mandatory purchase requirement more widely.

---

[57] See 82 Stat. 577 for text in the original statute (Section 1308(b)(2) of P.L. 90-448). This language remains in statute (see 42 U.S.C. §4015(b)(2)).

[58] P.L. 93-234, 87 Stat. 985.

[59] P.L. 103-325, 108 Stat. 2257.

[60] Government-Sponsored Enterprises (GSEs) are private companies with congressional charters. Examples of GSEs providing mortgages which would be affected by the mandatory purchase requirement include the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae).

[61] 42 U.S.C. §4012a.

[62] Lloyd Dixon, Noreen Clancy, and Seth A. Seabury, et al., *The National Flood Insurance Program's Market Penetration Rate: Estimates and Policy Implications*, RAND Corporation, Prepared as part of the Evaluation of the National Flood Insurance Program, February 2006, p. 23, https://www.fema.gov/media-library-data/20130726-1602-20490-2804/nfip_eval_market_penetration_rate.pdf.

[63] Lloyd Dixon, Noreen Clancy, and Benjamin M. Miller, et al., The Cost and Affordability of Flood Insurance in New York City: Economic Impacts of Rising Premiums and Policy Options for One- to Four- Family Homes, Rand Corporation, RAND RR1776, Santa Monica, CA, April 2017, pp. 15-18, https://www.rand.org/pubs/research_reports/RR1776.html.

NFIP policies are not distributed evenly around the country; about 37% of the policies are in Florida, with 11% in Texas and 9% in Louisiana, followed by California with 5% and New Jersey with 4%. These five states account for 66% of all of the policies in the NFIP.[64] NFIP participation rates are higher in coastal locations than in inland locations, and are highest in the most risky areas due to mandatory purchase requirements. The NFIP could potentially be financially improved with a more geographically diverse policy base and, in particular, through finding ways to increase coverage in areas perceived to be at lower risk of flooding than those in the SFHA.

The flooding caused by the 2017 hurricanes highlighted the issue of low penetration rates of flood insurance. In the counties in Texas with a FEMA Individual Assistance declaration[65] for Hurricane Harvey, the average penetration rate for all 41 counties was only 10%, with a 21% penetration rate for structures within the SFHA in those counties. The counties with the highest penetration rate were on the coast: Aransas County (72% penetration in SFHA, 43% penetration county-wide), Nueces County (70% in SFHA, 21% county-wide), and Galveston County (64% in SHFA, 47% county-wide). In the counties in Florida with a FEMA Individual Assistance declaration[66] for Hurricane Irma, the average penetration rate for all 48 counties was only 12%, with a 31% penetration rate for structures within the SFHA in those counties. The counties with the highest penetration rate were St. Johns (73% in SFHA, 35% county-wide), Flagler (72% in SFHA, 18% county-wide), Nassau County (62% in SFHA, 25% county-wide), and Palm Beach County (62% in SFHA, 22% county-wide). NFIP Penetration rates were extremely low in Puerto Rico, with only 4436 residential policies at the time Hurricane Maria hit, for an average penetration rate of 0.23%, and in the Virgin Islands, with only 1412 policies, for an average penetration rate of 2.5%.[67]

Provisions Related to Increasing Participation in H.R. 2874

- Section 508 would increase the civil monetary penalties from $2000 to $5000 on federally regulated lenders for failure to comply with enforcing the mandatory purchase requirement. In addition, the federal entities for lending regulations, in consultation with FEMA, would be required jointly to update and reissue the guidelines on compliance with mandatory purchase.
- Section 514 would require a report by the Government Accountability Office (GAO) within 18 months of enactment on the implementation and efficacy of the mandatory purchase requirement.

The Role of Private Insurance in the NFIP

One of the reasons that the NFIP was originally created was because private flood insurance was widely unavailable in the United States. Generally, private companies could not profitably provide flood coverage at a price that consumers could afford, primarily because of the

[64] National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 1*, 2015, pp. 86-87, http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1.

[65] Texas Hurricane Harvey DR-4332, https://www.fema.gov/disaster/4332.

[66] Florida Hurricane Irma DR-4337, https://www.fema.gov/disaster/4337.

[67] All of the information in this paragraph is CRS analysis of data provided by FEMA Congressional Affairs staff, November 3, 2017. Figures were not provided for the Virgin Islands. However, with only 1412 total policies in force (residential and commercial) as of August 31, 2017, the penetration rate was calculated using census data for the number of housing units as being approximately 2.5%.

catastrophic nature of flooding and the difficulty of determining accurate rates.[68] Until recently the role of the private market in primary, residential flood insurance has been relatively limited. The main role of private insurance companies at the moment is in the operational aspect of the NFIP. FEMA provides the overarching management and oversight of the NFIP, and retains the actual financial risk of paying claims for the policy (i.e., underwrites the policy). However, the bulk of the day-to-day operation of the NFIP, including the marketing, sale, writing, and claims management of policies, is handled by private companies. The arrangement between the NFIP and private industry is authorized by statute and guided by regulation.[69]

There are two different arrangements that FEMA has established with private industry. The first is the Direct Servicing Agent (DSA), which operates as a private contractor on behalf of FEMA for individuals seeking to purchase flood insurance policies directly from the NFIP.[70] The DSA handles the policies of severe repetitive loss properties. The second arrangement is called the Write-Your-Own (WYO) Program, where private insurance companies are paid to directly write and service the policies themselves. Roughly 86% of NFIP policies are sold by the 68 companies participating in the WYO Program.[71] Companies participating in the WYO program are compensated through a variety of methods.[72] Some have argued that the levels of WYO compensation are too generous, while others have argued that reimbursement levels are insufficient to cover all expenses associated with servicing flood policies under the procedures set by FEMA.[73] A GAO study found that FEMA does not systematically consider actual flood expenses and profits when establishing WYO compensation, and has yet to compare WYO companies' actual expenses and compensation. Therefore, FEMA lacks the data to determine how much profit WYO companies make and whether its compensation payments are appropriate.[74]

In addition to the WYO program, there is a small private flood insurance market which most commonly provides commercial coverage, coverage above the NFIP maximums,[75] or coverage in the lender-placed market.[76] In general, the private flood market tends to focus on high-value properties, which command higher premiums and therefore the extra expense of flood underwriting can be more readily justified.[77] At the moment very few private insurers compete

[68] GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, GAO-47-127, January 2014, p. 6, https://www.gao.gov/products/GAO-14-127.

[69] See primarily 42 U.S.C. §4081 and §4018, and 44 C.F.R. Part 62.

[70] The current Direct Servicing Agent is a company called National Flood Services, https://www.nfipservices.com/.

[71] Email correspondence from FEMA Congressional Affairs staff, July 18, 2016. A list of companies participating in the WYO Program is available at https://www.fema.gov/wyo_company.

[72] See CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by Diane P. Horn and Jared T. Brown.

[73] Stuart Mathewson, Patrick Causgrove, and Sara Frankowiak, et al., *The National Flood Insurance Program: Past, Present ... and Future?*, American Academy of Actuaries, Flood Insurance Subcommittee, July 2011, p. 13, https://www.actuary.org/pdf/casualty/AcademyFloodInsurance_Monograph_110715.pdf.

[74] GAO, Flood Insurance: FEMA Needs to Address Data Quality and Consider Company Characteristics When Revising Its Compensation Methodology, GAO-17-36, December 2016, p. 60, https://www.gao.gov/products/GAO-17-36.

[75] The maximum coverage limits for a 1-4 family residential property is $250,000 for the building and $100,000 for the contents. For other residential properties and nonresidential properties the maximum coverage is $500,000 for the building and $100,000 for the contents.

[76] The lender placed or forced place market is where lenders can force-place flood insurance on properties that are out of compliance with the mandatory purchase requirement.

[77] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 32, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

with the NFIP in the primary voluntary flood insurance market, partly because the noncompete clause—the contractual restriction[78] placed on WYO carriers against offering standalone private flood products that compete with the NFIP—curtails the potential involvement of the WYO companies.

Barriers to Private Sector Involvement

Private insurer interest in providing flood coverage has increased in recent years. Advances in the analytics and data used to quantify flood risk mean that a number of private insurance companies and insurance industry organizations have expressed interest in private insurers offering primary flood insurance in competition with the NFIP. Private insurance is seen by many as a way of transferring flood risk from the federal government to the private sector.

A reformed NFIP rate structure could have the effect of encouraging more private insurers to enter the primary flood market; FEMA's subsidized rates are often seen as the primary barrier to private sector involvement in flood insurance.[79] Even without the subsidies mandated by law, the NFIP's definition of full-risk rates differs from that of private insurers. Whereas the NFIP's full-risk rates must simply incorporate expected losses and operating costs, a private insurer's full-risk rates must also incorporate a return on capital. As a result, even those NFIP policies which are considered to be actuarially sound from the perspective of the NFIP may still be underpriced from the perspective of private insurers.[80]

The rules on the acceptance of private insurance for the mandatory purchase requirement have had a significant impact on the market potential for private insurers. In BW-12, Congress explicitly allowed federal agencies to accept private flood insurance to fulfill the mandatory purchase mortgage requirement as long as the private flood insurance "provides flood insurance coverage which is at least as broad as the coverage" of the NFIP, among other conditions.[81] The implementation of this requirement has proved challenging, with the responsible federal agencies issuing two separate Notices of Proposed Rulemaking (NPRM) addressing the issue in October 2013[82] and November 2016.[83] The crux of the implementation issue may be seen as answering the question of who would judge whether specific policies met the "at least as broad as" standard and what criteria would be used in making this judgment. The uncertainty about whether or not private policies would meet this standard has been viewed as a barrier to private sector participation in the flood insurance market, along with FEMA's policy on continuous coverage. Continuous coverage is required for property owners to retain any subsidies or cross-subsidies in

[78] Details of the WYO company arrangements are available at https://www.fema.gov/media-library-data/1504278934379-6bdf86cd243d53170e7ff8a2afc6770d/FY2018_Financial_Assistance_Subsidy_Arrangement_Oct_2017.pdf.

[79] GAO, *Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resilience*, GAO-17-425, April 2017, p. 34, https://www.gao.gov/products/GAO-17-425.

[80] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 58, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[81] 42 U.S.C §4012a(b).

[82] Department of the Treasury, Federal Reserve System, Federal Deposit Insurance System, Farm Credit Administration, National Credit Union Administration, "Loans in Areas Having Special Flood Hazards, Proposed Rule," Vol.78, No. 201 *Federal Register* 65108-65144, October 30, 2013.

[83] Department of the Treasury, Federal Reserve System, Federal Deposit Insurance System, Farm Credit Administration, National Credit Union Administration, "Loans in Areas Having Special Flood Hazards - Private Flood Insurance," Vol. 81, No. 215 *Federal Register* 78063-78080, November 7, 2016.

their NFIP premium rates. A borrower may be reluctant to purchase private insurance if doing so means they would lose their subsidy should they later decide to return to NFIP coverage.

Many insurers also view the lack of access to NFIP data on flood losses and claims as a barrier to more private companies offering flood insurance. It is argued that increasing access to past NFIP claims data would allow private insurance companies to better estimate future losses and price flood insurance premiums, and ultimately to determine which properties they might be willing to insure.[84] However, FEMA's view is that the agency would need to address privacy concerns in order to provide property level information to insurers, because the Privacy Act of 1974[85] prohibits FEMA from releasing policy and claims data which contains personally identifiable information.

Reinsurance

In HFIAA, Congress revised the authority of FEMA to secure reinsurance for the NFIP from the private reinsurance and capital markets.[86] In January 2017, FEMA purchased $1.042 billion of insurance, to cover the period from January 1, 2017, to January 1, 2018, for a reinsurance premium of $150 million. Under this agreement, the reinsurers will cover 26% of losses between $4 billion and $8 billion arising from a single flooding event.[87] Although it is too early to estimate the total costs associated with Hurricane Harvey or Hurricane Irma, FEMA has already paid over $7.3 billion in claims for Hurricane Harvey, triggering the 2017 reinsurance.[88] In mid-November 2017, FEMA began the procurement process for the January 2018 reinsurance renewal.

Provisions Related to Private Insurance in H.R. 2874

- Section 201 would revise the definition of private flood insurance previously defined in BW-12. For example, in revising the definition, the bill would strike existing statutory language describing how private flood insurance must provide coverage "as broad as the coverage" provided by the NFIP. Instead, the definition would rely on whether the insurance policy and insurance company were in compliance in the individual state (as defined to include certain territories and the District of Columbia). Further, "private flood insurance" would be specifically defined as including surplus lines insurance.[89] Though the majority of regulation of private flood insurance would then rest with individual states, federal regulators[90] would be required to develop and implement requirements relating to the financial strength of private insurance companies from which such entities and agencies will accept private insurance, provided that such requirements shall not affect or conflict with any state law, regulation, or procedure concerning the

[84] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 60, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

[85] P.L. 93-579, 5 U.S.C. §552a as amended.

[86] See §10 of P.L. 113-89, 128 Stat. 1025, as codified at 42 U.S.C. §4081(e).

[87] See FEMA, *National Flood Insurance Program's Reinsurance Program for 2017*, at https://www.fema.gov/nfip-reinsurance-program.

[88] Email correspondence from FEMA Congressional Affairs Staff, December 22, 2017.

[89] Surplus lines (or nonadmitted insurance) provide coverage for unusual risks typically unavailable in the traditional insurance marketplace. For a further discussion of surplus lines insurance, see http://www.naic.org/cipr_topics/archive_topic_nonadmitted_insurance_reinsurance.htm.

[90] Specifically "the Director of the Federal Housing Finance Agency, in consultation with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Secretary of Housing and Urban Development, the Government National Mortgage Association, and the Secretary of Agriculture."

regulation of the business of insurance. The dollar amount of coverage would still have to meet federal statutory requirements and the GSEs may implement requirements relating to the financial strength of such companies offering flood insurance. The bill would also specify that if a property owner purchases private flood insurance and decides then to return to the NFIP, they would be considered to have maintained continuous coverage. This provision would allow private insurers to offer policies that offer coverage that might differ significantly from NFIP coverage, either by offering greater coverage or potentially offering reduced coverage that could leave policyholders exposed after a flood.

- Section 202 would apply the mandatory purchase requirement only to residential improved real estate, thereby eliminating the requirement for other types of properties (e.g., all commercial properties) from January 1, 2019. This is likely to affect the policy base of the NFIP by reducing the number of commercial properties covered. However, it is uncertain how many will elect to forgo insurance coverage (public or private) entirely. To the extent that commercial properties no longer choose to carry insurance (or are allowed to do so by the conditions of their mortgages), there may be increased uninsured damages to these properties from floods.
- Section 203 would eliminate the noncompete requirement in the WYO arrangement with FEMA that currently restricts WYO companies from selling both NFIP and private flood insurance policies. This would allow these WYO companies to offer their own insurance policies while also receiving reimbursement for their participation in the WYO Program to administer the NFIP policies. It is unknown what criteria WYO companies will use to establish their own policies, and how they will choose to offer those policies rather than NFIP policies to potential customers.
- Section 204 would require the FEMA Administrator to make publicly available all data, models, assessments, analytical tools, and other information that is used to assess flood risk or identify and establish flood elevations and premiums. This section would also require FEMA to develop an open-source data system by which all information required to be made publicly available may be accessed by the public on an immediate basis by electronic means. Within 12 months after enactment, FEMA would be required to establish and maintain a publicly searchable database that provides information about each community participating in the NFIP. Personally identifiable information shall not be made available; the information provided shall be based on data that identify properties at the zip code or census block level. Ultimately, these data could be used to better inform the participation of private insurers in offering private flood insurance, as well as informing future flood mitigation efforts. However, the availability of NFIP data could make it easier for private insurers to identify the "profitable, lower-risk policies" of the NFIP policies that are "overpriced" due to explicit cross-subsidization or imprecise flood insurance rate structures, and adversely select these properties, while the government would likely retain those policies that benefit from those subsidies and imprecisions, potentially increasing the deficit of the NFIP.[91]

[91] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 4, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

- Section 507 would establish that the allowance paid to WYO companies shall not be greater than 27.9% of the chargeable premium for such coverage.
- Section 512 would require annual transfer of a portion of the risk of the NFIP to the private reinsurance or capital markets to cover a FEMA-determined probable maximum loss target that is expected to occur in the fiscal year, no later than 18 months after enactment.

Properties with Multiple Losses

An area of controversy involves NFIP coverage of properties that have suffered multiple flood losses, which are at greater risk than the average property insured by the NFIP. One concern is the cost to the program; another is whether the NFIP should continue to insure properties that are likely to have further losses. The NFIP currently uses more than one definition of repetitive loss. The statutory definition of a repetitive loss structure[92] is used for applications for FMA grants. A slightly different definition is used for Increased Cost of Compliance Coverage,[93] and a third definition is used for internal tracking of insurance data and also for the Community Rating System.[94] The statutory definition of a severe repetitive loss property is a property which has incurred four or more claim payments exceeding $5,000 each, with a cumulative amount of such payments over $20,000; or at least two claims with a cumulative total exceeding the value of the property.[95] The definition of severe repetitive loss property is consistent across program elements in the NFIP.

According to FEMA, repetitive loss (RL) and severe repetitive loss properties (SRL) account for approximately $17 billion in claims, or approximately 30% of total claims over the history of the program. As of January 31, 2017, there were 90,000 currently insured repetitive loss properties and 11,000 currently insured severe repetitive loss properties. The currently insured repetitive loss and severe repetitive loss properties (which represent about 2% of the overall policies in the NFIP) have accounted for approximately $9 billion in claims, or approximately 16% of total claims over the history of the program.[96] A study of all of the residential NFIP claims filed between January 1978 and December 2012 showed that the magnitude of claims for repetitive

[92] The statutory definition of a repetitive loss structure is a structure covered by a contract for flood insurance that (A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25% of the value of the structure at the time of each such flood event; and (B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage. 42 U.S.C. §4121(a)(7).

[93] The definition of a repetitive loss structure used for Increased Cost of Compliance Coverage is a building covered by a contract for flood insurance that has incurred flood-related damages on 2 occasions during a 10-year period ending on the date of the even for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the building at the time of such flood event. Federal Emergency Management Agency, *NFIP Increased Cost of Compliance Coverage Guidance for State and Local Officials*, FEMA 301, September 2003, pp. 1-6, https://www.fema.gov/pdf/plan/floodplain/fema301.pdf.

[94] The internal insurance data definition used by FEMA is 2 or more losses of $1000 or more over a rolling 10-year period. Email correspondence from FEMA Congressional Affairs staff, April 7, 2017.

[95] See 42 U.S.C. §4014(h) and 44 C.F.R. §79.2(h).

[96] Email correspondence from FEMA Congressional Affairs staff, April 7, 2017. Almost every SRL property also fits the insurance data definition of RL property (over 99%), so the 90,000 referenced as RL above includes the 11,000 referenced as SRL. In addition, some of the properties counted in the figures since the beginning of the NFIP have been mitigated and others are not currently insured by the program.

loss structures as a percentage of building value was higher than nonrepetitive loss properties by 5%-20%.[97]

Provisions Related to Multiple Loss Properties in H.R. 2874

- Section 402 would require certain NFIP communities with a history of flood loss to identify where repeatedly flooded properties are located and assess the continuing risks to such areas and develop a community-specific plan for mitigating flood risks in these areas or face possible sanctions from FEMA. Covered communities include those which participate in the NFIP within which such properties are located: (i) 50 or more repetitive loss structures[98] for each of which, during any 10-year period, two or more claims for payment under flood insurance coverage have been made with a cumulative amount exceeding $1000; (ii) five or more severe repetitive loss structures for which mitigation activities have not been conducted; or (iii) a public facility or a private nonprofit facility that has received assistance for repair, restoration, reconstruction, or replacement under Section 406 of the Stafford Act (P.L. 93-288)[99] in connection with more than one flooding event in the most recent 10-year period. To assist communities in the preparation of plans, FEMA would be required to provide covered communities with appropriate data regarding property addresses and dates of claims associated with insured properties within the community. Before sanctioning a community for not fulfilling the requirements of this section, FEMA would be required to issue notice of noncompliance before sanctions and recommendations for actions to bring the community into compliance. FEMA would also be required to consider the resources available to the community affected, including federal funding, the portion of the community that lies within the SFHA, and other factors that make it difficult for the community to conduct mitigation activities for existing flood-prone structures. FEMA would be required to develop sanctions in future regulations. In making determinations regarding financial assistance for mitigation, the Administrator may consider the extent to which a community has complied with this subsection. Although a community may incorporate plans required under this section into flood mitigation plans[100] or hazard mitigation plans[101] which they may already be required to complete, covered communities may feel that this section imposes significant additional requirements.
- Section 504 would define a new "multiple-loss property" category, which would include three types of properties: (1) a revised definition of repetitive loss property; (2) a severe repetitive loss property, with the same definition as the existing statutory definition; and (3) a new category of extreme repetitive loss property. The new definition of a repetitive loss property would be a structure that has incurred flood damage for which two or more separate claims of any

[97] Caroline Kousky and Erwann Michel-Kerjan, "Examining Flood Insurance Claims in the United States: Six Key Findings," *Journal of Risk and Insurance*, vol. 82 (2015), p. 18, http://opim.wharton.upenn.edu/risk/library/J2015JORI_Flood-Insurance-Claims_CK-EMK.pdf.

[98] Section 402 uses the statutory definition of repetitive loss structure.

[99] 42 U.S.C. §5172.

[100] 42 U.S.C. §4104c.

[101] Section 322 of the Stafford Act. 42 U.S.C. §5165.

amount have been made.[102] The new definition of an extreme repetitive loss property would be a structure which has incurred flood damage for which at least two separate claims have been made with the cumulative amount of such claims payments exceeding 150% of the maximum coverage available for the structure. This section also defines the term "qualified loss payment" as a claims payment of any amount made in connection with a flood event that occurred after the date of enactment, but not including any claim that occurred before a structure was made compliant with state and local floodplain management requirements. Any multiple loss properties which are not paying full risk-based rates, and for which two qualified claims payment have been made, would have rates increased at 10% per year until the full risk-based rate is reached. Any multiple loss properties which are not paying full risk-based rates, and for which three qualified claims payment have been made, would have rates increased at 15% per year until the full risk-based rate is reached. Severe repetitive loss properties and extreme repetitive loss properties would be subject to a minimum annual deductible of $5000. Flood insurance would not be available to an extreme repetitive-loss property for which a claim payment for flood loss was made after the date of enactment if the property owner refused an offer of mitigation. The newly mapped subsidy would not be available to multiple loss properties. This section would eliminate grandfathering for multiple loss properties after two future claims.

- Section 505 would eliminate any new or renewed NFIP coverage for multiple-loss properties with excessive lifetime claims. The section defines such properties as those where aggregate amounts in claims payments that have been made after18 months from enactment exceed three times the amount of the replacement value of the structure. This provision would represent the first time that the NFIP would refuse to cover a property in an SFHA.

Noninsurance Functions of the NFIP

In the debate about the future of the NFIP, the fact that flood insurance is only one of the functions of the NFIP's key responsibilities is sometimes overlooked. The NFIP is more than just an insurance program. The NFIP also engages in many "noninsurance" activities that may be in the public interest: it disseminates flood-risk information through the creation of flood maps, requires communities to adopt land use and building code standards in order to participate in the program, potentially reduces the need for other post-flood disaster aid, may contribute to community resilience by providing a mechanism to fund rebuilding after a flood, and may help protect lending institutions against mortgage defaults due to uninsured losses. The benefits of such tasks are not directly measured in the NFIP's financial results from underwriting flood insurance.[103] According to FEMA, the program saves the nation an estimated $1.87 billion annually in flood losses avoided because of the NFIP's building and floodplain management regulations.[104]

[102] Note that this definition is considerably broader than any of the definitions currently in use by the NFIP.

[103] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 79, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

[104] Email correspondence from FEMA Congressional Affairs staff, June 16, 2017.

Flood Mitigation

Flood insurance can sometimes be seen as if it is the solution to flooding, but, of course, insurance does not prevent flooding, it merely makes it possible to recover financially more rapidly after a flood. Flood mitigation[105] creates safer communities and can save money for individuals and taxpayers. The importance of FEMA's mitigation programs (which include, but are not limited to, FMA programs) is illustrated by research findings that for every dollar invested by FEMA in flood mitigation between 1993 and 2003, society as a whole saved $5 due to reduced future flood losses.[106] The NFIP encourages communities to adopt and enforce floodplain management regulations such as zoning codes, subdivision ordinances, building codes, and rebuilding restrictions. Internal FEMA studies have found that structures built to FEMA standards experience 73% less damage than structures not built to those standards.[107]

Mitigation activities, however, form only part of the NFIP activities and are funded entirely by premiums and fees paid by NFIP policyholders. The NFIP manages three programs that help communities reduce flood risk: the Community Rating System,[108] the FMA grant program,[109] and Increased Cost of Compliance coverage (ICC). The NFIP requires most policyholders[110] to purchase ICC coverage, which is in effect a separate insurance policy to offset the expense of complying with more rigorous building code standards when local ordinances require them to do so. This ICC is authorized in law, with rates for the coverage as well as how much can be paid out for claims, set by FEMA.[111] Congress has capped the amount that can be paid for ICC coverage at $75.[112] The ICC policy has a separate rate premium structure: currently ICC premiums vary between $4 and $70. ICC coverage provides an amount up to $30,000 in payments for certain eligible expenses.[113] For example, ICC claims payments may be used toward the costs of

[105] FEMA defines mitigation as the effort to reduce loss of life and property by lessening the impact of disasters. For more information, see https://www.fema.gov/what-mitigation.

[106] National Institute of Building Sciences, *Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities*, Volume 2: Study Documentation, Washington, DC, 2005, p. 137, https://c.ymcdn.com/sites/www.nibs.org/resource/resmgr/MMC/hms_vol2_ch1-7.pdf. Note that the widely quoted figure of $4 saved for every dollar invested is an average for three hazards (earthquake, wind, and flood). $5 is the benefit-cost ratio for flood alone – see Table 6.5.

[107] U.S. Congress, House Committee on Financial Services, *Flood Insurance Reform: FEMA's Perspective*, Statement of Roy E. Wright, Deputy Associate Administrator, FEMA, 115th Cong., 1st sess., March 8, 2017, H.Hrg.115-BA04-WrightR-20170309 (Washington: GPO, 2017), p. 1.

[108] 42 U.S.C. §4022(b)(1). The Community Rating System is a program offered by FEMA to incentivize the reduction of flood and erosion risk, as well as the adoption of more effective measures to protect natural and beneficial floodplain functions. FEMA awards points that increase a community's "class" rating in the CRS for a range of activities that go beyond the minimum flood management standards required for participation in the NFIP. Policyholders in a Community Rating System community receive a 5-45% discount on their NFIP premiums, depending on their community's rating.

[109] 42 U.S.C. §4104c. The FMA program awards grants for a number of purposes, including state and local mitigation planning; the elevation, relocation, demolition, or flood proofing of structures; the acquisition of properties; and other activities. For additional information on the FMA Program, see 44 C.F.R. Part 78, FEMA's website at https://www.fema.gov/flood-mitigation-assistance-grant-program, and FEMA, *FY2016 Flood Mitigation Assistance (FMA) Grant Program Fact Sheet*, February 15, 2016, http://www.fema.gov/media-library-data/1455710459301-048a67862580037b30cd640a802a9053/FY16_FMA_Fact_Sheet.pdf.

[110] For example, ICC coverage is not required on condominium units and content-only policies.

[111] 42 U.S.C. §4011(b).

[112] 42 U.S.C. §4011(b).

[113] For example ICC premiums, see FEMA, *Flood Insurance Manual, Rating Section*, Revised April 2017, p. RATE 19, https://www.fema.gov/media-library-data/1491846079273-28adf8361db1633c5445e716c15b0f58/05_rating_508_apr2017_v2.pdf.

elevating, demolishing, relocating, or flood-proofing nonresidential buildings, or any combination of these actions. ICC coverage is in addition to the building coverage provided by the standard flood policy. However, the payment on the building claim plus the ICC claim cannot exceed the statutory maximum payment of $250,000 for residential structures or $500,000 for nonresidential structures.

According to ICC data, elevation is the most common form of mitigation. Approximately 61% of all ICC claims closed with payment are single-family residential claims involving compensation for elevation of a structure to or above the BFE.[114] Although the cost of elevating a structure depends on the type of building and elevation requirement, the average cost of elevating an existing property has been estimated at $33,239 to $91,732,[115] and suggestions have been made for years that the amount of ICC coverage should be raised.[116]

Selected Provisions Related to Flood Mitigation in H.R. 2874

- Section 113 requires the Administrator to offer policyholders a reduction of the risk premium rate for the use of approved actions that mitigate the flood risk of their property, including innovative mitigation techniques that could be deployed on a block or neighborhood scale in dense urban environments and the elevation of mechanical systems such as heating, ventilation, and air conditioning. This would expand on existing authority provided in the law, by specifically requiring the Administrator to provide the premium reduction for approved mitigation methods.
- Section 403 would authorize the Administrator to supplement the existing ICC coverage with the option of allowing policyholders to purchase additional ICC coverage up to $60,000, for a surcharge priced accordingly by FEMA. This section would also expand the availability of ICC coverage to include properties that FEMA or a community identifies as being at high risk for future flood damages, and properties located in a covered community (as defined in Section 402). This would allow policyholders to claim ICC coverage in certain circumstances to mitigate their property before a flood, rather than waiting until after they had been flooded.
- Section 504 would give priority under the FMA program to property owners for direct grants for carrying out mitigation activities that reduce flood damage to extreme repetitive-loss properties, with up to 100% cost share subject to availability of funds. This section would also authorize $225 million for each fiscal year for the FMA program, subject to offsetting appropriations. This is a higher amount than currently authorized.[117] Funding for the FMA program could also be provided by penalties collected for violations of the mandatory purchase

[114] FEMA, *NFIP: Use of Increased Cost of Compliance Coverage*, Fiscal Year 2009 Report to Congress, October 2009, p. 6.

[115] Aerts, J.C.J.H., Botzen, W.J.W., and Moel, H. de, et al., "Cost Estimates for Flood Resilience and Protection Strategies in New York City," *Annals of the New York Academy of Sciences*, vol. 1294, no. 1 (August 2013), pp. 22-26.

[116] See, for example, Association of State Floodplain Managers, Suggestions for Improving Increased Cost of Compliance Coverage under the National Flood Insurance Program, 2007, http://www.floods.org/PDF/ASFPM_ICC_Positions_Recommendations_0807.pdf; FEMA, *NFIP: Use of Increased Cost of Compliance Coverage*, Fiscal Year 2009 Report to Congress, October 2009, p. 32; and Lingle, B. and Kousky, C., Mitigation Post-Flood: FEMA's Increased Cost of Compliance (ICC) Coverage, at http://www.rff.org/blog/2017/mitigation-post-flood-fema-s-increased-cost-compliance-icc-coverage.

[117] P.L. 115-31 authorized FEMA to spend $175.1 million from the National Flood Insurance Fund on the FMA program.

requirement and grant funds recouped by FEMA from recipients who did not carry out funded mitigation activities.

Floodplain Mapping

FEMA develops, in coordination with participating communities, flood maps called FIRMs that depict the community's floodplain and flood risk zones. FIRMs provide the basis for setting insurance rates and identifying properties whose owners are required to purchase flood insurance. The FIRMs also provide the basis for establishing floodplain management standards that communities must adopt and enforce as part of their participation in the NFIP. Flood maps adopted across the country vary considerably in age and in quality, and there is no consistent, definitive timetable for when a particular community will have its maps revised and updated. By law, once every five years, FEMA is required to assess the need to revise and update all floodplain areas and flood-risk zones defined, delineated, or established by the mapping program, based on an analysis of all natural hazards affecting flood risks.[118] This requirement does not dictate, however, that the FIRMs actually be updated once every five years.

Generally, flood maps may require updating when there have been significant new building developments in or near the flood zone, changes to flood protection systems (e.g., levees and sand dunes), and environmental changes in the community. FEMA maps have been criticized for being out of date, using poor quality data or methods, or not taking account of changed conditions. In addition, the procedure to update maps is time consuming, in large part due to the lengthy statutory consultation and appeals process.[119]

In BW-12, Congress reestablished and reauthorized a body called the Technical Mapping Advisory Council (TMAC).[120] The TMAC is a federal advisory committee established to review and make recommendations to FEMA on matters related to the national flood mapping program. The TMAC is broadly authorized to review and recommend improvements to how FEMA produces and disseminates flood hazard, flood risk, and flood map information.[121]

Selected Provisions Related to Floodplain Mapping in H.R. 2874

- Section 302 would create a new appeal process if FEMA denies a request to update a flood map based on new information regarding BFE or other flood mitigation factors. The initial appeal would be through a FEMA administrative

[118] 42 U.S.C. §4101(e).

[119] There are statutory guidelines for how FEMA is allowed to develop new FIRMs for a community. These guidelines require, for example, FEMA to conduct extensive communication and outreach efforts with the community during the mapping process and include various minimum waiting periods after intermediary steps are taken in the process. Communities are asked to submit pertinent data concerning their flood hazards, flooding experience, mitigation plans to avoid potential flood hazards, and estimates of historical and prospective economic impacts flooding has had on the community. There are also legal requirements allowing communities and individuals to appeal during the process of updating FIRMs. See 42 U.S.C. §4101b(d)(1), 42 U.S.C. §4104, 44 C.F.R. §66.1, 42 U.S.C. §4104(c)-(g), and 42 U.S.C. §4104-1,

[120] Section 100215, Title II of P.L. 112-141, 126 Stat. 924, as codified at 42 U.S.C. §4101a. Congress originally authorized the creation of the TMAC in 1994 (see Section 576 of P.L. 103-325, 108 Stat. 2280). However, in that originating statute, the TMAC was required to terminate "5 years after the date on which all members of the Council have been appointed." BW-12 describes the conditions for membership, pay, and other matters relating to the operations and structure of the TMAC. BW-12 did not include a termination date for TMAC, thus making it permanent.

[121] For a list of duties, see 42 U.S.C. §4101a(c).

process, with the possibility of a further appeal to the Scientific Resolution Panel.[122]

- Section 306 would require the TMAC within 12 months after enactment to develop a procedure to use in mapping flood hazards located in communities and states that choose to develop alternative maps to the FIRMs developed by FEMA. The recommended standards and requirements shall include procedures for providing notification and appeal rights to individuals within the communities of the proposed flood elevation determinations. FEMA would be required to approve or disapprove such proposed maps for use in the NFIP within six months of receiving the proposed alternative maps. This provision would therefore allow states and local governments to finance and develop their own FIRMs independent of the existing process and in accordance with the TMAC procedures, subject to final approval by FEMA.

Author Information

Diane P. Horn
Analyst in Flood Insurance and Emergency Management

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

[122] For further information on the Scientific Resolution Panel, see https://www.floodsrp.org/index.php.