Biggert-Waters Flood Insurance Reform Act of 2012 Summary

February 2013. Reprinted with permission from Bill Jones, NE DNR.

On July 6, 2012, Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012. The primary purpose of the Act was to extend the authority of the National Flood Insurance Program (NFIP) for five years, until September 30, 2017. The financial security of the NFIP along with an effort to implement actuarially-based flood insurance rates for all at-risk structures was also a prominent purpose for the legislation. The NFIP, as originally conceived, was to be a self-sustaining program that paid for claims with policy premiums. It included a provision to "borrow" from the U.S. Treasury if losses exceeded available funds. The borrowed funds were to be repaid with interest from policy premiums. Due to several large flooding disasters that have occurred in recent years, the NFIP has been forced to borrow treasury funds multiple times in order to continue to pay claims. The Act requires that FEMA address these catastrophic losses from Hurricane Katrina and other major disasters that had forced the NFIP to borrow around $18 billion (not including super-storm Sandy in 2012), and to devise a plan for repayment within ten years. Due to this, lawmakers desired to modify certain aspects of the NFIP and the flood insurance premium structure in order to improve the sustainability of the NFIP in the future.

A goal of the NFIP is to reduce future flood losses by requiring communities that participate in the program to adopt regulations and enforce building requirements within the 1-percent-annual-chance floodplain. These requirements are intended to ensure that new development will not be damaged by flooding at the 1-percent- annual-chance, or base flood, level. The original program was developed to provide a special allowance for older buildings, such as those constructed before floodplains were mapped and regulations for development were in place. These types of buildings are typically referred to as Pre-Flood Insurance Rate Map (Pre-FIRM) structures, as long as they have not been substantially damaged or improved since their original construction. Insurance policies on Pre-FIRM structures have historically received subsidized premiums of approximately 45% of their actuarial liability, which means policy holders paid less in premiums than they would have if the premiums were based on actual risk of flooding. Claims history has shown that a significant portion of NFIP claims payments have gone to properties covered by these types of subsidized policies.

The Act will revise the way that the NFIP has done business in the past. The Act authorizes premium adjustments of up to 20% per year vs. the previous cap of 10%. It also addresses, more aggressively, subsidized premiums for Pre-FIRM structures. Most Pre-FIRM rates will be increased 25% per year until they are no longer subsidized. Additionally, Pre-FIRM residential structures that are not primary residences lost all subsidies effective January 1, 2013. In order to be defined as a primary dwelling, the <u>owner</u> must reside at the property 80% of the policy year. Other Pre-FIRM policy categories that will experience increased premiums during late 2013 include policies for commercial buildings and new residential policies issued on a property for any reason including a change in ownership or a lapse in coverage. Pre-FIRM rates are not available if a structure is substantially damaged or improved.

In addition to subsidized premiums for Pre-FIRM structures, the NFIP has traditionally allowed a process called 'grandfathering.' This process may have applied to certain Post-FIRM buildings that were built in compliance according to the FIRM in effect at the time of construction. Some of these structures may now be in the floodplain or have a higher effective Base Flood Elevation (BFE) due to updates to the information shown on the FIRM. For these types of structures, under grandfathering the insurance rating could be based on the flood zone or flood elevation in effect at the time the building was constructed. As a result of the reform legislation, grandfathering will be phased out and eventually will no longer be possible. Structures in these situations will have flood insurance rates that are based on the actual risk of flooding, which will be based on the effective flood zones and BFEs at the time the policy is rated.

In summary, due to the Act most Pre-FIRM subsidized rates and grandfathered rates will end for all NFIP policies over the course of the next five years and premiums on flood insurance policies will likely increase at an accelerated rate.

Owners of Pre-FIRM buildings impacted by these changes will have two flood insurance rating options. These include the new Pre-FIRM premium rating structure, or Post-FIRM rating, which is available, if it benefits the policy holder. Post-FIRM rating compares the lowest floor elevation to the BFE and premiums are based on the difference between the lowest floor and the BFE. Post-FIRM rating will require an elevation certificate. When Pre-FIRM subsidies end for a property, Post-FIRM elevation rated premiums for buildings with their lowest floor below BFE may be significantly less than a Pre-FIRM rating which is based on unknown risk. For current policy holders, your insurance agent should have additional information at policy renewal.

The Association of State Floodplain Managers (ASFPM) also has information about the NFIP Reform Act of 2012. The link below takes you to a summary, implementation timeline, and other supplemental resources.

http://www.floods.org/index.asp?menuID=651

The Natural Hazard Mitigation Association's article on the Biggert-Waters Act is at:

http://nhma.info/nhma-biggert-article/

Background information from FEMA is located at:

http://www.fema.gov/national-flood-insurance-program

http://www.fema.gov/flood-insurance-manual