

National Flood Insurance Program Reauthorization and Reform (NFIP-Re) Act of 2019

Title I: Reauthorization and Affordability

Section 101: Reauthorization

- Reauthorizes the National Flood Insurance Program (NFIP) for 5 years, extending the program until September 30, 2024. The bill also provides for continuous operation in the event of a government shutdown, thus ensuring stability for homeowners, small business owners and the real estate market.

Section 102: Annual Limitation on Premium Increase

- Ends runaway premium hikes by capping annual rate increases to 9 percent. Currently, premiums can increase by up to 25 percent a year—in perpetuity, which depresses property values, creates affordability challenges, and discourages participation in the program. This will put guardrails on FEMA's new, unproven rating methodology, known as Risk Rating 2.0, and prevent a rate shock that would undermine and weaken the flood insurance program and put taxpayers on the hook for even more disaster assistance grants.
- Excludes catastrophic loss years in the average historical loss year calculation in accordance with accepted actuarial principles. This will clarify the original of the intent of the NFIP, lower premiums, and increase participation in the program.

Section 103: Means Tested Affordability

- Provides a comprehensive, means-tested affordability program to ensure flood insurance is affordable for low and middle income families.

Section 104: Optional Monthly Installment Payment of Premiums

- Consistent with current law, implements optional monthly installment plans to pay annual flood insurance premiums, making it easier for policyholders to manage their premium costs.

Section 105: Small Business Interruption Coverage

- Requires FEMA to perform a study on its ability to offer business interruption coverage in NFIP policies.

Section 106: Cooperative Coverage

- Requires FEMA to offer flood insurance coverage to cooperative buildings on the same terms as a condominium owner in order to increase the number of properties that are insured.

Section 107: Coverage Limits Modernization

- Increases maximum NFIP coverage limits for structural damage in accordance with federal standards.

Section 108: Study on Participation Rates

- Identifies the level and causes of the flood insurance gap by directing FEMA to conduct a study on the percentage of properties covered by the NFIP with federally backed mortgages that are located in a 100-year and in a 500-year floodplain.

Title II: Mitigation and Mapping Reforms

Section 201: Mitigation for High-Risk Properties

- Makes robust investments in proactive mitigation, which yield at least six dollars in reduced flood losses for every dollar invested. Sets aside 10% of disaster assistance allocated to FEMA's Disaster Relief Fund (DRF) for buyouts, elevation and other mitigation for the highest risk properties covered under the NFIP. These mitigation activities will specifically target severe repetitive loss and properties that see the biggest increase in risk and premium as a result of Risk Rating 2.0.

Section 202: Increased Cost of Compliance

- Modernizes the Increased Cost of Compliance (ICC) Coverage from \$30,000 to \$60,000 to better reflect the costs of mitigation projects and allows for proactive mitigation before natural disasters strike program. Also excludes any ICC payments from NFIP coverage limits.

Section 203: Flood Mitigation Assistance Grants

- Reinvests funds freed up from forbearance on NFIP interest payments to fund the Flood Mitigation Assistance (FMA) grant and requires FEMA to prioritize properties that have suffered repetitive losses and have unaffordable premiums. This section also authorizes an additional \$1 billion per year in mitigation grants. Prioritizes mitigation for properties that have suffered repetitive losses, currently have or will soon have unaffordable premiums, and have suffered losses that exceed the replacement value of the property.

Section 204: Urban Mitigation Opportunities

- Requires the NFIP to develop strategies to help urban communities mitigate flood risk in places where elevation is not feasible, and offer premium credits for taking advantage of these strategies.

Section 205: Community Rating System Regional Coordinator

- Creates and authorizes funds for a regional coordinator to provide technical assistance for small communities to effectively participate and benefit from the Community Rating System (CRS). Entry to the CRS verifies NFIP compliance, enhances public and building safety and rewards policyholders within the community with commensurate premium discounts.

Section 206: Mitigation Loan Program

- Authorizes FEMA to create a low-interest mitigation loan where the upfront cost of the mitigation investment is less than the overall reduction in the risk of the property over 50 years. The low-interest loan will be paid with a portion of the premium savings achieved with the

mitigation activity. Upon sale of the property, any outstanding loan will either be repaid with the proceeds of the sale or carried over to the new owner (with full disclosure before sale). This program would be eligible to all types of properties.

Section 207: Mitigation Revolving Loan Fund Bill

- Establishes a revolving loan fund for the purpose of mitigation with a priority given to high-flood risk states. A Revolving Loan Fund is a partnership between FEMA and states who choose to create a fund. The initial funds are supplied by both FEMA and the state, and then loaned out at low interest rates to help communities, schools, families and businesses mitigate flood risk. The payments on the loans are then returned to the State Fund and immediately become available for use in a new loan, ultimately having projects pay for themselves.

Section 208: Mapping Modernization

- Authorizes nearly \$400 million per year for the National Flood Mapping Program. FEMA does not know the real risks and costs associated with each NFIP policy because they do not have accurate, up-to-date study data and topography information for their policyholders. Currently, flood risk maps only exist for about 1/3 of the nation – only 1.2 million of 3.5 million miles of streams, rivers and coastlines have been mapped. Many areas have never been mapped, so there is no identification of areas at risk.
- Ends FEMA reliance on antiquated flood maps and authorizes for Light Detection and Ranging (LiDAR) technology for more accurate mapping of flood risk across the entire country. The bill also authorizes the partnerships with other agencies or private entities to facilitate mapping.
- Establishes a dynamic, database-derived digital display environment for building specific flood risk information and estimates on the cost effectiveness of mitigation and reductions in flood insurance premiums—as has been accomplished in the state of North Carolina.
- Provides annual reports to Congress on the implementation of these initiatives.
- Enables communities to appeal flood maps.

Section 209: Flood Mapping of Levee-Protected Areas

- Requires FEMA to establish flood risk zones that recognize limited risk-reduction provided by non-certified levees. Current regulations require a certain level of federal participation to qualify for existing flood risk zone designations, which prevents FEMA from giving communities fair credit for improvements made to existing flood control systems. Proactive communities that invest in mitigation should not be penalized for self-financing flood protection projects.

Section 210: Community-Wide Mitigation

- Pushes FEMA to give priority to flood mitigation activities that— (1) provide benefits on a floodplain-wide or community-wide basis to have impact on a community or specific part of a community (2) consider all available and practicable approaches and (3) are determined be technically feasible, have the highest net benefits, and consistent with mitigation plans that are approved by the Administrator.

Title III: Solvency and Savings

Section 301: Forbearance on NFIP Interest Payments

- Temporarily freezes interest payments on the NFIP debt to restore the program to solvency and reduce future borrowing. Providing forbearance on these interest payments will free up approximately \$400 million per year to invest in more cost-effective mitigation efforts, thus addressing the main drivers of the NFIP's insolvency and reducing the taxpayer's exposure.

Section 302: Implement GAO Recommendations Related to Caps on Write Your Own Company Compensation

- Caps Write Your Own (WYO) compensation at 22.46% of written premiums, while maintaining agent commission at 15% of written premiums to ensure policyholders do not overpay WYO companies that sell policies and service claims but have no risk exposure. Savings achieved would be used to offset the cost of the means-tested, affordability program. This rate is comparable to what FEMA pays to service the NFIP Direct policies it directly underwrites. The cap remains in effect until FEMA determines the actual cost of providing these services, as required under the Biggert Waters Act.

Section 303: Taxpayer Protection

- Requires FEMA to develop a fee schedule based on actual costs it incurs to develop and maintain its Flood Insurance Rate Maps (FIRMs) and to charge any private entity an appropriate fee for use of such map.

Section 304: Vendor Costs; Transparency

- Requires FEMA to develop a schedule to establish fees of WYO vendors, including but not limited to claims adjusters and engineering companies, and to reimburse for actual costs of each service or product. In addition, requires all reimbursements to be made public, including a description of the product or service provided, making these services transparent and ensuring policyholders are not overcharged.

Section 305: Availability of NFIP Claims Data

- Requires FEMA to perform a study on the feasibility of selling or licensing the use of NFIP claims data to the private sector.

Section 306: Refusal of Mitigation Assistance

- Increases premiums by 25% per year for properties that refuse a "bona fide" offer of mitigation. A "bona fide" offer of mitigation is defined as an offer that covers the cost of the mitigation and gives the homeowner the option to elevate and remain in their home. This will ensure that high-risk properties are mitigated quickly and effectively to decrease future flood losses, increase the programs' solvency, and save taxpayer dollars.

Title IV: Enhancing Transparency and Accountability

Section 401: Earth Movement Fix

- Closes the infamous earth movement loophole where policyholders who paid premiums for years or even decades, had their claim denied due to a confusing and arbitrary exclusion.

Originating from excluded foundation failures in previous disasters, this section clarifies that earth movement resulting from flooding is covered by an NFIP policy. Specifically, this mandates a rebuttable presumption that physical damage to the foundation of a structure was not caused by earth movement if flood caused damage to the structure.

Section 402: Basement Clarification

- Removes the basement exclusion for a limited subset of policies for pre-FIRM Condominium Buildings which are required to purchase coverage. This ensures that policyholders required to purchase flood insurance receive the coverage they pay for. In addition, this section requires FEMA to conduct a study on the cost implications of street raising, to mitigate the effects of severe flooding, for formerly ground floor residential and business properties.

Section 403: Mold Damage Clarification

- Eliminates the “failure to inspect” loophole by clarifying that mold damage is generally covered if caused by a flood. Specifically, states that “failure to inspect and maintain the property after a flood recedes” must be interpreted with what can reasonably be expected from a survivor in the aftermath of a disaster. This clarification would ensure homeowners aren’t prevented from filing legitimate claims.

Section 404: Appeal of Decisions Relating to Flood Insurance Coverage

- Increases the time for claimants to file appeal to 1 year after the date of denial. Establishes a 90-day deadline for the FEMA to respond to appeal and accrues interest on the appeal if the FEMA fails to comply with the deadline. Also allows policyholders to seek a third-party, non-binding neutral review instead of going through FEMA for their appeal.

Section 405: Accountability for Underpayments by Write Your Own Companies

- Equalizes the penalties for over- and under-payments in order to eliminate the perverse incentive insurance companies currently have to underpay policyholders.

Section 406: Policyholders’ Right to Know

- Gives policyholders the right to access to all documents used in processing a claim within seven days of the request, free of charge. Requires notice to policyholders within 30 days of making a claim that claim-related documents are available upon request.

Section 407: Increasing Statute of Limitations for Lawsuits

- Doubles the statute of limitations for policyholders to have their day in court challenging their flood insurance claim from one year to two years and “freezes the clock” for any time the claim was under appeal.

Section 408: Authority to Terminate Contractors and Vendors

- Provides FEMA with fast-track authority to terminate contractors and vendors that have exhibited detrimental conduct.

Section 409: Easing Proof of Loss Requirements

- Clarifies that any honest errors or omissions by the policyholder cannot be used to deny the policyholder a claim, or the right to appeal or to litigate.
- States that the proof of loss must be non-burdensome on the policyholder and requires only information necessary for the insurer to make a decision.

Section 410: Deadline for Claim Determination

- Requires FEMA to process all flood claims within 60 days of the policyholder filing with an extension of 30 days under extraordinary circumstances.
- Awards interest to policyholder if FEMA fails to meet the claim processing deadline.

Section 411: No Manipulation of Engineer Reports

- Prohibits an engineering report from being modified or manipulated by anyone who has not sealed the report.

Section 412: Improved Training of Agents and Adjusters

- Requires FEMA to expand its introductory class to include all agents who write for the NFIP Direct Program and WYOs. Annual continuing education will be required to keep current on changes in the Flood Insurance Manual, Elevation Certificate, ICC, mapping, and any other modifications to the NFIP that influence rating a policy. These requirements will increase accuracy in rating policies and provide consistency to consumers.

Section 413: Attorney Fee Shifting

- Institutes fee-shifting, whereby a policyholder, when prevailing in an administrative appeal process or in litigation, is entitled to receive attorney's fees and expert fees.

Section 414: DOJ Defense Against Policyholder Lawsuits

- Requires FEMA to refer policyholder lawsuits to the U.S. Department of Justice to defend such cases. This will prevent unscrupulous private law firms from overbilling taxpayers and engaging in frivolous legal activities.

Section 415: Pre-Existing Conditions Pilot Program

- Authorizes FEMA to create a pilot program that allows WYO companies, at the request of policyholders prior to insurance coverage or renewal, to inspect and document preexisting structural conditions of insured properties and potentially insured properties.

Section 416: Agent Advisory Council

- Establishes an Agent Advisory Council consisting of federal, state, and local experts to make recommendations to FEMA on improving the customer service, including but not limited to the application and claim process, and agent training needs and delivery.

Section 417: Disclosure of Flood Risk

- Requires the disclosure of flood risk and prior flood damage to lessors and homebuyers prior to transfer.