

# What Happens If the National Flood Insurance Program (NFIP) Lapses?

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This Insight provides a short overview of what would happen if the NFIP were not to be reauthorized by December 8, 2017, and allowed to lapse. See CRS Report R45019, *21st Century Flood Reform Act (H.R. 2874): Reforming the National Flood Insurance Program*, by (name redacted) for more information on the current status of NFIP reauthorization legislation.

## Expiration of Certain NFIP Authorities

The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1986 (Title XIII of P.L. 90-448, as amended, 42 U.S.C. §§4001 et seq.). The NFIP does not contain a single 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.

Authorization of the NFIP was extended from September 30, 2017, until December 8, 2017 (Section 130 of P.L. 115-56). The recent cancellation of \$16 billion of NFIP debt (P.L. 115-72) has essentially no effect on the impact of a lapse of NFIP authorization. The 21<sup>st</sup> Century Flood Reform Act (H.R. 2874), recently passed by the House, would reauthorize the NFIP until September 30, 2022. Three bills have been introduced in the Senate to extend the NFIP authorization (S. 1313, S. 1368, and S. 1571), but the Senate Committee on Banking, Housing, and Urban Affairs has yet to take any formal action.

Unless reauthorized or amended by Congress, the following will occur on December 8, 2017:

- The authority to provide *new* flood insurance contracts will expire. Flood insurance contracts entered into before the expiration would continue until the end of their policy

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term of one year.

- The authority for NFIP to borrow funds from the Treasury will be reduced from \$30.425 billion to \$1 billion.

Other activities of the program would technically remain authorized following December 8, 2017, such as the issuance of Flood Mitigation Assistance Grants. However, the expiration of the key authorities listed above would have potentially significant impacts on the remaining NFIP activities.

The NFIP is the primary source of flood insurance coverage for residential properties in the United States. As of September 2017, the NFIP had 4.94 million flood insurance policies providing nearly \$1.24 trillion in coverage, with approximately 23,000 communities in 56 states and jurisdictions participating in the NFIP. The program collects about \$3.5 billion in annual premium revenue.

If there were to be a lapse in authorization on or after December 8, 2017, and the borrowing authority is reduced to \$1 billion, FEMA would continue to adjust and pay claims as premium dollars come into the National Flood Insurance Fund (NFIF) and reserve fund. If the funds available to pay claims were to be depleted, claims would have to wait until sufficient premium dollars were received to pay them unless Congress were to appropriate supplemental funds to the NFIP to pay claims or increase the borrowing limit. In the event that Congress were not to provide funding to cover unpaid claims, policyholders might be able to avail themselves of judicial remedies to recover these funds from the U.S. Treasury.

## The Mandatory Purchase Requirement

The expiration of the NFIP's authority to provide new flood insurance contracts has potentially significant implications due to the mandatory purchase requirement. By law or regulation, federal agencies, federally regulated lending institutions, and government-sponsored enterprises (GSEs) must require certain property owners to purchase flood insurance as a condition of any mortgage that these entities make, guarantee, or purchase. Property owners, both residential and commercial, are required to purchase flood insurance if their property is identified as being in a Special Flood Hazard Area (SFHA, which is equivalent to having an estimated 1% or greater risk of flooding every year) and is in a community that participates in the NFIP. Without available flood insurance, real estate transactions in an SFHA would be potentially significantly hampered.

In the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12, Title II of P.L. 112-141), Congress explicitly allowed federal agencies to accept private flood insurance to fulfill this mortgage requirement instead of the NFIP standard flood insurance policy, if the private flood insurance met the conditions defined in statute. The private flood insurance market, however, has been slow to develop following BW-12 and the mandatory purchase requirement is still generally met through NFIP coverage.

## Past Lapses of the NFIP

The NFIP was extended 17 times between 2008 and 2012, and lapsed four times: from March 1 to March 2, 2010; from March 29 to April 15, 2010; from June 1 to July 2, 2010; and from October 1 to October 5, 2011. In most cases when the NFIP lapsed, Congress reauthorized the NFIP retroactively. During these NFIP lapses, the FDIC issued guidance to lending institutions, and the Federal Reserve also issued informal guidance to lenders. FEMA provided guidance for the Write-Your-Own (WYO) Program, where private insurance companies are paid to write and service NFIP policies.

When the NFIP lapsed in the past, borrowers were not able to obtain flood insurance to close, renew, or increase loans secured by property in a SFHA until the NFIP was reauthorized. During the lapse in June 2010, estimates suggest that over 1,400 home sale closings were cancelled or delayed each day, representing over 40,000 sales per month. These figures applied to residential properties, but commercial

properties were also affected by the NFIP lapse. In addition, the largest WYO insurer left the NFIP in 2011 reportedly because of the administrative burden associated with very short-term reauthorizations and lapses in authorization. Although no detailed analysis of the NFIP lapses in 2010 and 2011 has been undertaken, the economic impact could have potentially been broader than the reported effects on the domestic real estate market.

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