

# Private Flood Insurance and the National Flood Insurance Program (NFIP)

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## The National Flood Insurance Program

The [NFIP](#) was first authorized by the National Flood Insurance Act of 1968 ([42 U.S.C. §4001 et seq.](#)) and was reauthorized until the end of FY2017 by the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12; Title II of [P.L. 112-141](#)). After 28 short-term reauthorizations, the NFIP is currently authorized until March 8, 2024 (P.L. 118-35). In statute, Congress has found that

- (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but
- (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated. ([42 U.S.C. §4001\(b\)](#)).

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 are required to purchase flood insurance if their property is identified as being in a [Special Flood Hazard Area](#) (SFHA, defined as having a *1% or greater* risk of flooding every year) and is in a community that participates in the NFIP. Historically, this generally has meant such property owners were required to purchase a [Standard Flood Insurance Policy](#) (SFIP) from the NFIP. In BW-12, Congress explicitly provided for private flood insurance to fulfill this mortgage requirement instead of the SFIP, *if* the private flood insurance met the conditions defined further in statute at [42 U.S.C. §4012a\(b\)\(7\)](#).

## Rulemaking on Accepting Private Flood Insurance

To fulfill the mortgage requirement, a private insurance policy must provide, among other conditions, “flood insurance coverage which is at least as broad as the coverage provided under a [SFIP] ... including when considering deductibles, exclusions, and conditions offered by the insurer.” Implementation of this requirement has proved challenging. The responsible federal regulators (the Federal Reserve, Farm Credit Administration, Federal Deposit Insurance Corporation, National Credit Union Administration, and Comptroller of the Currency) issued two separate Notices of Proposed Rulemaking (NPRM) addressing the issue in [October 2013](#) and [November 2016](#). The crux of the implementation issue can 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 as to whether

particular private policies would meet the standard has been seen as “[at odds with](#)” greater private participation in the flood insurance marketplace.

On February 12, 2019, the regulators [announced a final rule](#) implementing the BW-12 “requirement that regulated lending institutions accept private flood insurance policies.” Of particular note, the rule

- “allows institutions to rely on an insurer’s written assurances in a private flood insurance policy stating the criteria are met; [and]
- clarifies that institutions may, under certain conditions, accept private flood insurance policies that do not meet the Biggert-Waters Act criteria.”

The [rule took effect on July 1, 2019](#). [Press reports](#) described it as generally welcomed by the banking industry. It does not apply directly to other federal agencies or to GSEs, which would be subject to separate rulemaking.

## Issues for Congress

A number of bills have been introduced to ensure that if a property owner purchases private flood insurance and then decides to return to the NFIP, the owner would be considered to have maintained *continuous coverage*. Continuous coverage is required for property owners to retain any subsidies or cross-subsidies in 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. In the 118<sup>th</sup> Congress, H.R. 900 and S. 2110 would consider any period during which a property is covered by a flood insurance policy, either through the NFIP or through a private company, to be a period of continuous coverage. The availability of such continuous coverage may become more important with the introduction of [Risk Rating 2.0](#), as [77% of NFIP policyholders are predicted to see an increase in their premiums](#) and may consider private flood insurance as an alternative.

Section 100232(a) of BW-12 required FEMA and the Government Accountability Office (GAO) to produce separate studies that “assess a broad range of options, methods, and strategies for privatizing the [NFIP].” In the [GAO study on privatization](#), GAO reviewed a wide range of strategies to encourage private flood insurance. The strategies included (1) eliminating subsidies of NFIP premium rates entirely or providing the subsidies in an explicit form not hidden in the premium; (2) authorizing the NFIP to issue catastrophe bonds to transfer some of the insured risk; (3) shifting the federal role to reinsuring primary flood insurance instead of directly providing it; and (4) mandating flood coverage in homeowners insurance policies. The first two of these strategies have been addressed. FEMA has [issued catastrophe bonds since 2018](#) and is [phasing out subsidies under Risk Rating 2.0](#).

FEMA’s 2015 study on options for privatizing the NFIP discussed several key challenges that may be presented by privatizing a larger segment of NFIP policy base, including how to

- maintain the funding of federal flood mapping and flood mitigation programs largely paid for through flood insurance premiums, fees, and surcharges;
- reduce and pay off the billions of dollars of debt NFIP owes to the U.S. Treasury; and
- ensure the affordability and continued availability of flood insurance to property owners in flood zones.

These continue to be issues of concern, and FEMA has identified the need to increase flood insurance coverage across the nation as a major priority, with the recognition that neither the NFIP nor the private sector alone is likely to be able to write all of the policies needed to cover all of the flood risk in the United States.

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For further discussion of private insurance and the NFIP, see CRS Report R45242, *Private Flood Insurance and the National Flood Insurance Program*.

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