

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

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The National Flood Insurance Program (NFIP)

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](#)). [P.L. 115-96](#) reauthorized it until January 19, 2018. 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, which is equivalent to having a 1% or greater risk of flooding every year) and is in a community that participates in the NFIP. Historically, this has generally meant that such property owners were required to purchase a [Standard Flood Insurance Policy](#) (SFIP) from the NFIP. In BW-12, Congress explicitly allowed federal agencies to accept 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." 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](#) 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 cited as "[at odds with](#)" greater private participation in the flood insurance marketplace.

Legislation in the 115th Congress

The Flood Insurance Market Parity and Modernization Act of 2017 ([H.R. 1422/S. 563](#)) was introduced on March 8, 2017. It was [reported](#) by the House Committee on Financial Services and then included in Section 201 of [H.R. 2874](#) as it came to the House floor under H.Res. 616. [H.R. 2874](#) passed the House on a vote of 237 to 189 on November 14, 2017.

[H.R. 2874](#) would revise the definition of *private flood insurance* previously [defined in BW-12](#). The definition proposed would require federal agencies to accept private flood insurance from both admitted and [non-admitted \(i.e., surplus lines\)](#) insurers as long as the private insurance coverage "complies with the laws and regulations of that State." In revising the definition, [H.R. 2874](#) would also strike existing statutory language describing how private flood insurance must provide coverage "as broad as the coverage" provided by the SFIP. In effect, this would allow individual states to determine most of the specifics of private flood insurance coverage accepted by federal agencies, federally regulated lending institutions, and GSEs. 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.

[H.R. 2874](#) would clarify that if a property owner purchases private flood insurance and decides then to return to the NFIP, they would be considered having 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. The bills attempt to address that concern.

Supporters of the legislation including, for example, the [National Association of Insurance Commissioners](#), have suggested that it will increase the availability of private flood insurance options for property owners. Some critics of the bill, including, for example, the [Center for Economic Justice](#), have suggested that [H.R. 2874](#) will allow the private market to "cherry-pick" (i.e., adversely select) the "profitable, lower-risk policies" of the NFIP policies that are "overpriced" due to explicit cross-subsidization or imprecise flood insurance rate structures, while the government would retain those policies that benefit from those subsidies and imprecisions.

Options for Privatizing Flood Insurance

Section 100232(a) of BW-12 required both FEMA and the 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](#), the GAO reviewed a wide range of alternative strategies to encourage private flood insurance. The strategies included eliminating subsidies of NFIP premium rates entirely, or providing the subsidies in an explicit form not hidden in the premium; shifting the federal role to reinsuring primary flood insurance instead of directly providing it; mandating flood coverage in homeowners insurance policies; and authorizing the NFIP to issue catastrophe bonds to transfer some of the insured risk.

The required [FEMA study on privatization](#) 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 SFIP premiums;
- 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.