

The Sustainable, Affordable, Fair and Efficient National Flood Insurance Program Reauthorization Act (SAFE NFIP) 2017

Co-sponsored by Senators Bob Menendez, John Kennedy,
Chris Van Hollen, Marco Rubio, Elizabeth Warren,
Thad Cochran, Cory Booker and Bill Nelson

TITLE I – REAUTHORIZATION AND AFFORDABILITY

Section 101: Reauthorize National Flood Insurance Program for 6 Years

Section 102: Cap All Premium Rate Hikes at 10%

- Prohibits FEMA from increasing premium rates above 10% per year on any policy holder for 6 years. Currently, premiums can increase by as much as 25% per year, causing rates to become unaffordable and housing values to depreciate.
- Excludes catastrophic loss years in the average historical loss year calculation in accordance with accepted actuarial principles. This will have the effect of lowering policy premiums.

Section 103: Means Tested Mitigation and Affordability Assistance

- Requires FEMA to offer zero or low-interest loans to fund mitigation projects by homeowners, like elevation and flood-proofing that pay for themselves by reducing flood risk over the life of the mitigation project;
- Requires FEMA to provide financial assistance to offset any NFIP premiums and/or mitigation loan payments that cause housing costs to exceed 30 percent of the household's Adjusted Gross Income.

Section 104: Coverage Expansion

- Increases policy coverage limits to \$500,000 for residences and \$1,500,000 for multifamily and business structures to insure the fair market value of the building.

Section 105: Small Business Interruption Insurance

- Requires FEMA to conduct a study on offering business interruption coverage in the NFIP policy.

TITLE II – MITIGATION AND MAPPING

Section 201: Increased Cost of Compliance Expansion

Increased Cost of Compliance (ICC) is an insurance product coupled to the policy that offsets costs incurred to bring a structure up to the standards in community land use regulations and building codes. ICC is currently an important mechanism for post-disaster mitigation upon a substantial damage determination. Our bill both increases the amount available and expands the use of ICC for pre-disaster upgrades for the most vulnerable properties; specifically, our bill:

- Increases the maximum ICC payment from \$30,000 to \$100,000;
- Expands eligibility to any repetitive loss properties in and outside SFHA;
- Continues eligibility for a building that is substantially damaged;
- Emphasizes that ICC can be awarded to a multiple loss property, that does not meet the definition of repetitive loss, at the discretion of the Administrator;
- Makes ICC available if an offer of mitigation assistance is made through a FEMA or other grant program;
- Expands ICC eligibility for policies outside of the SFHA if the community's ordinance specifies standards outside of the SFHA;
- Requires ICC to be eligible to fund acquisition/demolition, elevation, and/or relocation projects under the NFIP and Stafford Act Hazard Mitigation Assistance including eligible project costs under NFIP and Stafford Act Hazard Mitigation Assistance including but not limited to asbestos remediation and demolition of driveways/sidewalks when a structure is acquired;
- Adds ICC coverage to all NFIP Policies, in and out of the SFHA;
- Exempts ICC payment amounts from the maximum payout of a NFIP policy;
- Emphasizes that the Administrator has multiple ways through existing statute to offer ICC payments for qualifying structures;
- Makes eligible costs for elevators, ramps, or other devices or alternations necessary for a homeowner or current occupant to safely access a home that has been elevated based on physical limitations or disabilities.

Section 202: Flood Mitigation Assistance

- Authorizes \$1 billion to be appropriated to fund the FMA and require FEMA to prioritize properties that have suffered repetitive losses and have unaffordable premiums. Additional priority for properties that have losses exceeded the replacement value of the property.

Section 203: Pre-Disaster Hazard Mitigation Grant Program Authorization

- The Pre-Disaster Mitigation (PDM) program is critical in retrofitting structures to reduce future vulnerability and to pay for updates to state and local Hazard Mitigation Plans. Our bill authorizes \$500 million per year for 6 years for PDM.

Section 204: LiDAR Mapping Authorization

- Mapping is a critical of the NFIP for rating, land use and construction purposes. As such, this bill authorizes \$800 million per year for 6 years for activities to fund LiDAR and mapping of the entire country. Our 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;
- Directs the Administrator to provide a \$500 credit to the policyholder to obtain an elevation certificate;
- Requires the Administrator, in consultation with implementing jurisdictions, to issue guidelines on incorporating the improved flood risk data;
- Provides annual reports to Congress on the implementation of these initiatives.

Section 205: Reallocate Surcharge for Mitigation and Affordability Assistance

- Designates funds collected from the \$25 surcharge for primary residence and \$250 surcharge for non-primary residence and businesses to affordability and mitigation efforts described in Section 103 Mitigation and Affordability Assistance.

Section 206: Multifamily Mitigation

- FEMA is conducting a study on ways that multifamily buildings can be retrofitted to minimize flood damage. When consistent with building codes, this bill allows premium credit for alternative or partial mitigation measures for multifamily buildings in urban areas where standard mitigation measures like elevation, is unfeasible.

Section 207: Community-Wide Mitigation

- Requires 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.

Section 208: New Zone for Levee-Impacted Areas

- Directs FEMA establish flood risk zones that recognize limited risk-reduction provided by non-certified levees.

TITLE III – COST SAVINGS

Section 301: Forbearance on NFIP Interest Payments

- Freezes interest accrual on the NFIP's debt to the Treasury for 6 years after enactment. This makes funding available to provide mitigation and affordability assistance in Section 103.

Section 302: Cap WYO Compensation

- Policyholders should not overpay WYO companies that sell policies and service claims but have no risk exposure. Our bill caps WYO compensation at 22.46% of written premiums, while maintaining agent commission at 15% of written premiums.

Section 303: Taxpayer Protection

- Requires FEMA to develop a fee schedule based on actual costs it incurs to develop and maintain its FIRMs and charge any private entity an appropriate fee for use of such map. Our bill is equitable in requiring the private market, when utilizing mapping products, to pay a fair share of the cost to produce those products.

Section 304: Vendor Costs

- 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;
- Requires all reimbursements to be made public, including a description of the product or service provided, making these services transparent.

TITLE IV – CLAIMS PROCESS REFORM

Section 401: Earth Movement and Pre-existing Conditions Clarification

- Originating from misidentified basement failures caused by Hurricane Sandy, mandates that earth movement resulting from flooding shall not be used as an exclusion to making a claim.

Section 402: Basement Clarification

- Removes the basement exemption for a limited subset policies for pre-FIRM Condominium Buildings with lowest floor not more than 4 feet below lowest adjacent grade. This is to address garden apartments that paid for insurance to satisfy the mandatory purchase requirement only to find out they had virtually non-existent coverage upon a claim;
- Requires FEMA to conduct a pilot study on the cost implications of street raising, to mitigate the effects of sea level rise, for formerly ground floor residential and business properties.

Section 403: Mold Damage Clarification

- Clarifies that damage from mold is generally covered if caused by flood. In the period following Hurricane Sandy, there was overuse by adjusters of the claim exemption for “failure to inspect and maintain the property after a flood recedes.” Our bill clarifies 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 the particular storm.

Section 404: Extend Deadline to File Appeal

- Requires the Administrator to establish an appeals process;
- Extends the deadline for a policyholder to appeal his or her claim determination to FEMA to 1 year after the determination was made.

Section 405: Enforce Deadline for FEMA to Respond to Appeal

- Requires FEMA to respond to a claims appeals within 90 days. Our bill will enforce the 90 day deadline for FEMA to adjudicate an appeal and award the appellant the full amount of his or her appeal if FEMA does not comply with the deadline.

Section 406: Optional Arbitration for Appeal

- Requires FEMA to establish a process to allow policyholder to request his or her appeal be heard through independent, binding arbitration rather than through FEMA.

Section 407: Accountability for Improper Underpayments by WYOs

- Requires FEMA to require WYOs to pay FEMA the amount the WYO underpaid a policyholder. Currently, WYOs are penalized by FEMA for overpaying NFIP claims uncovered during audits, but not for underpayment. This creates a perverse incentive to underpay. Our bill applies the same penalty to WYOs for underpaying as they do for overpaying, and makes them responsible for making up the difference to the policyholder.

Section 408: Policyholder Right to Know

- Gives policyholders the right to access to all documents used in processing a claim within 7 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 409: Increase Statute of Limitations for Lawsuits

- Increases the statute of limitations for policyholders to file a lawsuit challenging their flood insurance claim to 2 years after a determination is made.

Section 410: 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 411: DOJ Defense Against Policyholder Lawsuits

- Under the previous legislation, WYOs defended policyholder lawsuits by hiring outside counsel whose bills were paid for by FEMA. Rather than paying enormous legal bills for outside counsel, FEMA will refer policyholder lawsuits, including those against the WYO, to the Department of Justice. DOJ, working as necessary with FEMA counsel, will defend these cases. Under no circumstances shall DOJ seek to throw out lawsuits with potential meritorious claims because of good faith errors or omissions by the policyholder in the policyholder's proof of loss.

Section 412: Study on Participation Rates

- Requires FEMA within 1 year of bill enactment to submit a report to Congress indicating the percentage of properties with federally backed mortgages that have flood insurance within the Special Flood Hazard Area and 500-year floodplain.

Section 413: Authority to Terminate Contractors and Vendors

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

Section 414: Easing Proof of Loss Requirements

- Clarifies that any honest errors or omissions by the policyholder must simply be pointed out to the policyholder for revision and not used to deny the policyholder a claim, or the right to appeal or to litigate;
- Clarifies that the proof of loss must be non-burdensome on the policyholder and require only that information necessary for the insurer to make a decision. Our bill removes the red-tape paperwork burden that often got in the way of a policyholder successfully receiving his or her Hurricane Sandy claim;

- Eliminates the 60 day proof of loss deadline and makes the deadline for the notice of damage 1 full year after the flood event, with an additional year for supplemental claims, in the case of mold that are later discovered.

Section 415: Elevation Certificates

- Establishes that the Elevation Certificate and its surveyed elevation data will have no expiration date, provided there have been no alterations to the structure and no alteration to the topography surrounding the perimeter of the building. The OMB Expiration Date shall not indicate an expiration of a completed Elevation Certificate.

Section 416: Monthly Installments of Premiums

- Encourages FEMA to expedite the implementation of the monthly installment payment of premiums already allowed in current law.

Section 417: Pre-existing Structural 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, the ability to inspect and document preexisting structural conditions of insured properties and potentially insured properties, to memorialize the conditions of the structure prior to a claim to inform on the cause of the loss.

Section 418: Deadline for Claim Processing

- Requires FEMA to process all flood claims within 30 days of the policyholder filing with an extension of 15 days under extraordinary circumstances.

Section 419: Engineer Certification

- Requires engineers to be licensed in the state where services are performed on behalf of the NFIP;
- Requires an individual retained to perform engineering services in connection with assessing any claim of loss covered by a SFIP to also be certified by FEMA via initial training and annual renewal of certification through continuing education.

Section 420: Engineer Report Manipulation

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

Section 421: Improved Training of Agents, Adjusters and Local Floodplain Administrators

- Requires FEMA through the Arrangement to expand its introductory class to include all agents that write for the NFIP Direct Program and WYOs. This course is expanded to teach agents how to fill out an application for flood insurance. Annual continuing education will be required to keep current on changes in the

Flood Insurance Manual, Elevation Certificate, Increased Cost of Compliance, mapping and any other modifications to the NFIP that influence rating a policy. Introductory and continuing education course completion shall be verified. These requirements will increase accuracy in rating policies and provide consistency to consumers;

- Requires that all adjusters acting as agents of WYOs are to be certified or, as the FEMA Administrator deems necessary for timely post-disaster response, act under the responsible charge and direct supervision of a certified adjuster. All adjusters responding to a Major Disaster Declaration must take an online refresher course provide by FEMA to prepare him/her for the unique circumstances of the disaster, and participation in this training shall be recorded. This provision will improve the accuracy and consistency in adjusting claims;
- Directs FEMA regional offices to identify Local Floodplain Administrators and provide training on responsibilities and procedures on how to conduct substantial damage and substantial improvement determinations. FEMA regional offices shall work with State Coordinating Agencies in providing and verifying that this training has been accomplished. Substantial damage and substantial improvement determination are made by communities and are critical to the program in updating the building stock and to qualify for certain assistance.

Section 422: Agents Advisory Council

- Requires that FEMA establish an Agent Advisory Council, modeled after the Technical Mapping Advisory Council, to make recommendations to FEMA on improving the customer experience, including but not limited to the application and claim process, and provide input on agent training needs and delivery. Our bill recognizes that agents have direct contact with policyholders and these professionals can provide input to improve the program.

Section 423: Assistance Navigating the Community Rating System

- Creates 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 424: Improved Disclosure Requirements

- Requires landlords to disclose to tenants the flood zone classification of the property, whether the property is covered by flood insurance, and the availability of contents coverage from the NFIP. Our bill recognizes that tenants often do not have awareness of flood risk and the purchase of contents coverage is critical in post-disaster recovery.