

From BW-12 to GW-14 and Beyond.....

-Terri L Turner, AICP, CFM

Before many of us could fully comprehend the entire spectrum of the Biggert-Waters Flood Insurance Reform Act of 2012 (also known by some as Biggert-Waters-12, but which is most often referred to as “BW-12”) and its attempts to bring actuarial rates to the flood insurance world and put the debt-riddled NFIP on a more solidly based financial footing, along came Grimm-Waters-14. GW-14 (now referred to as the Homeowner Flood Insurance Affordability Act of 2014 or what those in the industry simply refer to as HFIAA) modifies some, but surely not all, of the flood insurance changes made under BW-12.

One of the sticking points with BW-12 from the very beginning was the affordability issue. While BW-12 called for an affordability study, that’s about as far as it went – *calling* for an affordability study, not actually *doing* an affordability study - and homeowners and businesses alike were being faced with staggering flood insurance rates, resulting, for some, from 100 percent to 1000 percent increases!

The other hard pill to swallow from BW-12 was the trigger of full actuarial rates when a pre-firm (subsidized rated) structure was sold (and/or when a new flood insurance policy was purchased for these structures). Again, these non-subsidized rates ranged from the “absurd” to “ridiculous” according to many affected property owners.

Local real estate markets, especially in coastal communities where many properties were previously “grand-fathered” because they were pre-Flood Insurance Rate Map (pre-FIRM) and in a high flood risk area, were now seeing the impact of a sales market that had almost ground to a screeching halt – you couldn’t sell your property, or, worse yet, your property was beginning to devalue because of the staggering flood insurance premium associated with it, and you couldn’t afford to buy a high-risk-for-flood property, either, for the same reason. This impact was just as great, or even greater, in many riverine communities, where there suddenly was little demand for older pre-FIRM properties, especially older slab-on-grade properties, which were located in a Special Flood Hazard Area (SFHA). Panic and pandemonium were watch words in the offices of the planning staff in these coastal and riverine communities. Even in my local inland riverine community, I went through several boxes of Kleenex as disillusioned property owners sought assistance on how to offset, in some cases, flood insurance premiums that resembled or exceeded their mortgage payments.

Pre- Flood Insurance Rate Map (pre-FIRM) buildings are those built before the effective date of the first Flood Insurance Rate Map (FIRM) for a community. This means they were built before detailed flood hazard data and flood elevations were provided to the community and usually before the community enacted / adopted comprehensive regulations on floodplain regulation (a Flood Ordinance).

This legislation wasn't totally bad or "off the wall", though. Not at all! Strong messages were being sent, via the flood insurance premiums, to those that lived in the high-risk Special Flood Hazard Areas (SFHAs), that their properties were "at-risk-for-flood". Based on how much the premium rose from pre-BW-12 rates, property owners were given an eye-opening jolt of just how "at-risk" their properties were. Suddenly, an unprecedented number of home and business owners were becoming interested in mitigation options and just in time, too, since thousands of property owners, post-Sandy, were in need of something that got them out of the build-flood-rebuild-flood cycle.

Mitigation is the effort of making choices and taking actions now (such as analyzing risk, reducing risk and insuring against risk) to lessen the impacts of disasters and to, consequently, reduce loss of life and property, and disruptions to the economy, and break the cycle of disaster damage / reconstruction / repeated damage.

All-the-while 80% of NFIP policyholders had little or no effect from BW-12 (and will only have little, if any) impact under the new HFIAA (outside of the new "surcharge"), since they were already paying a full-risk flood insurance rate prior to either of these two flood insurance reform Acts.

Months of wailing and gnashing of teeth from financially stricken property owners and the real estate industry, debate and rhetoric by the experts in the flood insurance industry, and debate/ concession/ revision/ modification / and more debate on both the floor of the House and Senate, and out of the ashes and embers the Homeowners Flood Insurance Affordability Act rose like a phoenix to "reform the reforms" made by BW-12. The President signed the HFIAA on Friday, March 21, 2014, a week after Congress gave their seal of approval to the Act. Twenty-two (22) of the thirty-one (31) sections of the Act focused on flood insurance changes (while six (6) focused on mapping and three (3) on other provision of the Act).

BW-12 didn't exactly die a cruel death on the vine, like many had hoped it would, however. Provisions of BW-12 are still there intermingled within the new legislation, and HFIAA was not a wholesale repeal of BW-12, like many were lead to believe it would be.

What HFIAA does do is this:

- Imposes a surcharge on ALL flood insurance policies; \$25 for all primary residences and \$250 for all other flood insurance policies. The surcharge will be included on all flood insurance policies, including current full-risk rated policies and the surcharge will continue until all pre-FIRM subsidies are eliminated. The imposition of a surcharge on ALL flood insurance policyholders is imposed to pay the cost of the continuing subsidy for the 20% of policyholders who will continue to see slowly phased-out subsidies. This surcharge is also hoped to build up the reserve fund faster than the substantial rate increases imposed on 20% of the flood insurance policy holders under BW-12. It is important to remember that this reserve fund is to pay for future catastrophic losses (such as a future named hurricane)

and is not intended to pay down the \$25 billion dollar hole the National Flood Insurance Program (NFIP) currently finds itself in “or to ensure that the 5.6 million flood insurance policyholders could collect on their policies if they were ever to suffer a flood loss – something that cannot be guaranteed by a flood insurance program that is currently \$25 billion in debt”, according to Alabama Senator Richard Shelby addressing the US Senate. “The program is bankrupt and only operating by the grace of the American taxpayer.”

- Establishes gradual flood insurance rate increases (a slower glide-path) to property owners now receiving “artificially low” / subsidized rates. This is instead of the immediate increases to full-risk rates found in BW-12 for certain classes of structures
- Repeals full-risk rate triggers for pre-FIRM properties in high-risk flood zones to include buildings not insured when BW-12 was enacted, buildings purchased after enactment of BW-12, and lapsed policies during the same time frame
- Provides for a refund of premiums for properties sold between enactment of BW-12 on July 6, 2012 and enactment of the new legislation on March 21, 2014 (the no-longer-grandfathered structures under BW-12) and restoration of pre-FIRM flood insurance rates for these structures
- Caps, with limited exceptions, flood insurance premiums increases at not more than 15% annually (with individual properties up to 18%)
 - One major exception relates to what was put in place from BW-12 and is still in place under the new HFIAA. Pre-FIRM business properties, non-primary residences, Severe Repetitive Loss (SRL) 1-4 family residential properties, or properties where the losses exceed the market value, will continue to see an annual 25% increase until they reach full-risk rate.
- According to the Federal Emergency Management Agency (FEMA) Fact Sheet, allows assumption of a previous owner’s flood insurance premium rates until the new Guidance is finalized.
- Again, according to the FEMA Fact Sheet, allows lapsed pre-FIRM policyholders to be reinstated at pre-FIRM rates, again until the Guidance is finalized
- Establishes preferred risk policy rates for those newly mapped into a SFHA. If you will remember the old law required that the premium for properties effected by new or updated Flood Insurance Rate Maps (FIRMs) be increased over a five year period by 20 percent per year until the property reached actuarial (full-risk) rates
- Allows FEMA to account for property-specific flood mitigation measures, not part of the insured structure in determining full-risk rates
- Increases maximum residential deductibles from \$5,000 to \$10,000
- Encourages FEMA to “minimize the number of policies where premiums exceed 1 percent of the coverage amount” and, furthermore, requires FEMA to report these policies to Congress

Of great importance, too, is that the law requires FEMA to “prepare a draft affordability framework, which is due to Congress 18 months after completion of the affordability study” – that affordability study, as you may remember, was required by BW-12. The affordability study is currently being undertaken by the National Academies of Sciences (NAS). Sadly, the new legislation doesn’t authorize

even one single pilot program on affordability and the opportunity to address affordability through mitigation was entirely missed!

The HFIAA also requires the Technical Mapping Advisory Council (TMAC) to review the new national flood mapping program and assure that it is utilizing “technically credible” data and mapping approaches and report to Congress with its findings.

Finally, FEMA is required to designate a Flood Insurance Advocate to educate and assist property owners and policyholders on flood insurance issues, mapping issues (including the map amendment process) and most importantly, mitigation techniques to reduce flood risk and thus reduce their flood insurance premiums.

With or without the new legislation, the NFIP is still \$25 billion in debt. Even with a very low current interest rate of only 0.5% annually, that overall debt increases each year when the \$110 million interest fee is tacked on to the debt. Should the interest rate move up to a more typical long term average of 3%, then, the interest payment alone on the NFIP’s debt would be over \$700 million per year. Based on the 2012 NFIP collection rate of \$3.35 billion dollars, \$110 – \$700 million means a 3.28 % to a 20.9% reduction (pretty significant impact) out of a fund that is barely treading water (pun intended) now!

To quote the Association of State Floodplain Managers (ASFPM) in the “Analysis of the Homeowners Flood Insurance Affordability Act (and also quoted elsewhere in this article), “the legislation creates new sets of winners and losers”. The winners would have to be the 15-20% of policyholders who caught a huge financial break with this new legislation and potentially, the NFIP itself, as it quickly builds the reserve fund with all of those new policyholder surcharges. The losers..... the other 80-85% of flood insurance policyholders now having to pay a surcharge on top of paying full at-risk / actuarial flood insurance rates, the proponents of mitigation to offset flood risk, and the debt service on the NFIP, for which the taxpayer is still on the hook for.

All we can do is hope that we don’t face another catastrophic flood event any time in the near future, or at least until FEMA and the NFIP fully implement the HFIAA guidance, pay all of the refunds that are due, complete the affordability study, make recommendations to Congress, review the National Flood Mapping Program, make more recommendations to Congress, identify the number of flood insurance policies where premiums exceed 1 percent of the coverage amount, report THAT to Congress, and, somewhere in the interim, figure out how to alleviate a \$24 billion dollar debt and the associated mounting interest.....a challenge few think the NFIP can ever do!

Headlines such as “Kudos for HFIAA Passage (*Tri-Parrish Times*, Mar 26, 2014) were seen in local newspapers after passage of the HFIAA, while others, such as the Americans for Prosperity were dead-set against the legislation and actively campaigned against its passage up until the vote was taken. William L Waugh, Jr asked recently in an article he wrote for *PA Times*, “What is the answer? Who should pay? Should the NFIP continue to underwrite development in hazardous areas, thus putting people and property at risk?”

As more is understood about the new HFIAA legislation, those having to work with it, those having to implement it, and those affected by it, are lining up on either side of the aisle of “acceptance”. The debate on flood insurance reform is expected to continue on and you can be certain that we have not yet heard the last on this issue, folks, not by a long shot!

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