



The Cassidy-Gillibrand
Flood Insurance Affordability & Sustainability Act of 2017
Section Summary

Title I - Enhancing National Flood Insurance Program Solvency and Sustainability

- **Sec. 4. Reauthorizes the National Flood Insurance Program (NFIP) over a 10-year term (2017-2027).** A long-term reauthorization of the NFIP is needed to avoid short-term extensions and program lapses that create uncertainty in both the insurance and housing markets.
- **Sec. 101. Clarifies FEMA's authority to cede NFIP risk in the capital markets through Insurance-Linked Securities (ILS).** Stipulates that the FEMA Administrator shall annually cede a portion of the flood insurance program's risk to the private reinsurance and/or capital markets at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims and limit the program's exposure to potential catastrophic losses from extreme events.
- **Sec. 102. Expands Flood Insurance Participation Analysis.** FEMA, in coordination with the National Association of Insurance Commissioners, shall propose options to increase, through programmatic and regulatory changes, participation in flood insurance coverage, including but not limited to: (1) options to expand participation beyond the special flood hazard area, (2) options to automatically enroll consumers in flood insurance coverage, (3) options to create bundled flood insurance coverage that diversifies risk across multiple-perils forms of hazards.

Title II - Enhancing Flood Insurance Affordability and Accessibility

- **Sec. 201. Provides Greater Investment in Flood Mitigation & Resiliency.** FEMA will be required to reallocate the existing surcharges established under P.L. 113-89 to better finance the Flood Mitigation Assistance Program. Such an adjustment to existing fees would yield approximately \$400 million annually for flood mitigation activities.
- **Sec. 202. Strengthens the Affordability Standard Disclosure.** To ensure continued purchase of flood insurance policies in higher risk areas, federal administrators of the NFIP must identify policyholders with premiums in excess of the one percent of coverage limitation at the county/parish and state levels.
- **Sec. 203. Flood Risk Disclosure.** Allows for timely disclosure of property-specific flood related information by sellers and lessors during real estate transactions. Such disclosure is limited to information on past flood losses, status as a repetitive loss or severe repetitive loss property classification, elevation certificates, and obligations for the property to carry flood insurance associated with past use of federal disaster assistance.
- **Sec. 204. Modernizes Increased Cost of Compliance (ICC) Coverage.** Currently, ICC claims payments must be used to fund up to \$30,000 in compliance costs associated with State or local floodplain management laws or ordinances, which typically require structure elevation. The limit of \$30,000 is inadequate to elevate most structures. FEMA shall increase ICC coverage to \$75,000 with 100% of ICC payments allowed to occur outside traditional policy limits. FEMA shall also expand eligibility items to be paid under ICC to be substantially similar to eligible items under other FEMA mitigation grant programs.
- **Sec. 205. Provides Premium Credits to Offset the Cost of Obtaining an Elevation Certificate.** Offers policyholders without an elevation certificate, a one-time rate credit of up to \$500 for the cost of obtaining elevation data. Knowledge of flood risk and accuracy of a structure's base flood elevation information will be enhanced by removing or reducing the financial barrier associated with the acquisition of elevation certificates.
- **Sec. 206. Facilitates Mitigation Credits that Reduce Premium Rates.** FEMA will develop meaningful cost reductions, in excess of 10% of the current risk premium rate for a property, for flood mitigation activities undertaken on properties in all zones, including moderate risk zones. Flood mitigation activities shall be defined by the Administrator and include elevation of mechanical systems and recommendations identified in FEMA Mitigation Assessment Team reports.
- **Sec. 207. Aligns the NFIP with private sector practices by using replacement value of the structure, on a property-by-property basis, when calculating premiums.** This section requires FEMA to study best practices in the insurance industry for risk rating and classification, including the application of replacement cost value when estimating premiums. The section also authorizes the implementation for replacement cost value of an insured structure upon completion of such study. By using true structure replacement values to set rates, many homeowners with lower valued homes (\$60k or less structure value) are estimated to see at least a 2.78x reduction in premiums. Homeowners with moderate value homes (\$230k or less) will see at least a 2x reduction in premiums. Under this paradigm, high value homes in the flood zone could see an increase in premiums.

- **Sec. 208. Provides Affordability Vouchers to Offset the Cost of Flood Insurance.** For certain policyholders, owner-occupied households for which flood insurance premiums and fees would result in housing costs exceeding 40 percent of household income, affordability vouchers shall be available to offset premium costs exceeding the 40% housing cost threshold. For policyholders with household incomes below 80% of area medium income, affordability vouchers are available for portions of the flood insurance premium that exceed 1% of the policy coverage limit.
- **Sec. 209. Modernizes coverage limits to align with actual replacement costs of residential and non-residential structures.** Increases coverage limits from \$250,000 to approximately \$500,000 for residential structures and \$500,000 to approximately \$1,000,000 for multifamily and businesses structures to mitigate financial loss and enhance coverage for the replacement value of structures in competitive property markets. Instead of making a one-time increase, the coverage limits would track the Federal National Mortgage Association (Fannie Mae) confirmation loan limits for single-family dwellings. The legislation establishes a “baseline amount” that tracks the Fannie Mae conforming loan limit. As the Fannie Mae limit increases, so would coverage limits; thus providing a long term solution for housing market changes.
- **Sec. 210. Monthly Installment Payment of Premiums.** Instructs FEMA to expedite its implementation of the monthly payment option for policyholders participating in the NFIP.

Title III - Reducing Premium Costs Through an Agreed Value Pilot Program.

- **Secs. 301-306. Creates an Agreed Value Insurance Pilot option for insureds in addition to the traditional stochastic model used to quantify flood loss in monetary terms.** FEMA will establish a pilot program that adopts a financial model for flood risk exposures. Insurance contract prices based on exceedance probabilities of dollar loss levels with a parametric trigger (e.g., indexed to flood/water gauges) used as an alternative to direct loss measurement and site-by-site examination of actual loss could dramatically decrease the cost of flood insurance without jeopardizing the solvency of the National Flood Insurance Program. The Agreed Value Insurance Policy uses FEMA’s existing water depth probability that waters will reach or exceed a given depth of a structure relative to Base Flood Elevation. Savings to the policyholder is achieved by pre-determining the amount paid out in claims (avoiding costly overhead expenditures) according to the depth of water damage to a structure.

Title IV - Providing Private Market Access, Accountability and Competition

- **Secs 401. Removes Barriers to Privatization.** Additional entrance of private insurers into the flood insurance market can offer homeowners more choices, competitive products and administrative efficiencies yielding lower premiums. Such market entrance by private insurers should preserve the availability and affordability of flood insurance coverage for all consumers while continuing the investment in floodplain mapping and management.
- **Sec. 401(a)(2). Preserves “Grandfathering” through Continuous Coverage.** Allows NFIP policyholders to purchase a private flood insurance policy and switch back to NFIP coverage without losing continuous coverage or grandfathering status.
- **Sec. 401(b). Studies Impact of Expanded Private Insurance Coverage.** Within two years after Act enactment, FEMA shall measure the level of risk underwritten by private insurers in comparison to the risk underwritten by the NFIP.
- **Sec. 402. Private Market Participation by Write Your Own Companies.** Gradually phases-in private coverage by initially expanding eligibility, over a two year period, to certain risk classifications (i.e. business properties, second homes, and severe repetitive loss properties). The Biggert-Waters Act (P.L. 112-141) has set an aggressive rate adjustment trajectory for these risk categories where full actuarial rates will be realized in a compressed timeline. In addition, the Homeowner Flood Insurance Affordability Act (P.L. 113-89) assessed a \$250 surcharge on nonresidential and secondary home properties; creating space for a WYO private insurer to offer a competitive flood insurance product. After two years and upon completion of a study measuring the risk classification underwritten by participating WYO companies, the FEMA Administrator is authorized to limit or expand the participation of WYO companies in the broader flood insurance marketplace.
- **Sec. 403. Provides Access to NFIP Claims Data.** The NFIP maintains decades of claims data for millions of structures in lower to higher flood risk zones. FEMA shall study the feasibility of selling or licensing the use of anonymized historical claims data to non-governmental entities. Upon completion of a feasibility study 12 months after the passage of this Act, the FEMA administrator is authorized to sell or license historical claims data and promulgate rules necessary to implement such transactions. Proceeds from sale or license transactions shall be deposited into the National Flood Insurance Fund.
- **Sec. 404. Preserves Funding of NFIP Flood Mapping and Mitigation Activities.** In an effort to sustain funding for flood mapping, mitigation and flood management activities; the NFIP federal policy fee will carry over to private flood insurance policies where such fees finance a public activity that holistically benefits the flood insurance market.
- **Sec. 405. Creates a Pilot Risk-Sharing Program with Write Your Own Companies.** Instructs the FEMA Administrator to engage in NFIP risk-sharing pilot programs where WYO companies or other qualified insurers assume a first-loss position of

claims at or below \$50,000 and the NFIP operating in a secondary loss position for all structures encompassed in such pilot programs at the determination of the Administrator.

Title V - Modernizing Flood Mapping and Flood Risk Accuracy

- **Sec. 501. Reauthorizes the National Flood Mapping Program.** With nearly 3 million miles of unidentified flood hazard areas; along with the need to update and accurately assess risk of existing flood zones; the National Flood Mapping Program shall be reauthorized at a funding level of \$500 million annually.
- **Sec. 502. Provides Mapping Standards, Guidelines, and Acceptance for Local Community Flood Maps.** Allows localities to elect to develop their own alternatives to NFIP flood maps. FEMA and the Technical Mapping Advisory Council (TMAC) shall provide map standards for flood maps developed by communities, subject to approval by FEMA, thereby giving communities additional avenues to streamline the FEMA mapping process and develop maps that use updated community data & technology.
- **Sec. 503. Encourages the Use of High-Resolution Mapping Technology.** Instructs FEMA to facilitate, partner, and leverage current high resolution topographic data (e.g., Light Detection and Ranging [LiDAR] data, or other new and emerging technologies) in the development of flood insurance rate maps.
- **Sec. 504. Improves the Flood Mapping of Levee-Protected Areas.** FEMA shall replace its “Zone D” designation (defined as an area of undetermined/undefined risk) in levee-protected areas with risk zones that are more appropriate for the level of protection that the flood mitigation features affords. Often, premiums in Zone D are higher than in low/moderate risk zones. Low/moderate risk shall be assigned to the new zone until actuarial rates are promulgated.
- **Sec. 505 Coastal Flood Models.** Instructs FEMA to use coastal flood models that ensure technically and scientifically accurate modeling to represent and communicate flood risk for coastal areas.

Title VI - Enhancing National Flood Insurance Program Transparency and Accountability

- **Sec. 601. Institutes Deadlines for NFIP Claims Determinations.** Requires NFIP administrators to make determinations on flood claims within 30 days of the initial filing, followed by any payment owed under the claim. Prevents claims denial based on Proof of Loss requirements. Establishes notice of a claim deadline within 60 days and moves the proof of loss deadline to 180 days.
- **Sec 602(a). Final Engineering Report.** Requires final engineering reports for any claim for losses covered by the NFIP to be provided to the insured and prohibits any alterations by anyone, or at the request of anyone, other than the person responsible for certifying the engineering report.
- **Sec. 602(b). Judicial Review.** Reforms the Statute of Limitations for instituting an action on a claim to not later than 2 years after the date the loss occurred, or 90 days after the claim is denied, whichever is later. This section also ensures that a policyholder is not barred from pursuing a private right of action against a private entity for fraud arising from the handling of an NFIP claim.
- **Sec. 602(c). Increases Accountability of NFIP Contractors.** Requires FEMA to conduct yearly reviews of all private entities that are participating in the National Flood Insurance Program that provide services related to policies or claims, including adjusting, engineering and legal services. The purpose of the reviews is to ensure that contractors are complying with all policies and procedures to protect policyholders and prevent fraud.
- **Sec. 602(d). Publication of Claims Data.** Directs FEMA to create and maintain a publically searchable database with aggregate data, broken down by state, on the number of NFIP claims filed, the number of claims paid in part or in full, the number of claims denied and the reason for each denial, along with the number of claims appealed; in order to provide additional transparency to the claims and appeals process.
- **Sec. 602(e). Enhances Accountability of Engineering and Litigation Costs.** Authorizes FEMA to provide greater oversight of litigation and engineering costs billed to the federal government by Write Your Own insurance companies to ensure that taxpayer funds are being appropriately expended. Authorizes the denial of reimbursement of legal expenses determined to be unreasonable, excessive, contrary to FEMA guidelines or outside the scope of the WYO contract.
- **Sec. 602(f). Earth Movement.** Ensures that claims will not be denied using the “earth movement” exclusion when the “earth movement” is caused by a flooding event.
- **Sec. 602(g). Simplifies the NFIP Claims Appeals Process.** Require the claim appeals process to have clear rules, forms, and deadlines to that are communicated to claimants at the time a claim is initially denied in full or in part.
- **Sec. 603. Reports to Congress.** FEMA shall report to Congress as part of its Transformation Task Force, ways to further minimize fraud within the National Flood Insurance Program.