



### Historic Structures and the Biggert-Waters Flood Insurance Reform Act of 2012

*In 2012, the U.S. Congress passed the Biggert Waters Flood Insurance Reform Act of 2012 (BW 12) which calls on the Federal Emergency Management Agency (FEMA) and other agencies to make a number of changes to the way the NFIP is run. Some of these changes have already been put in place, and others will be implemented in the coming months. Key provisions of the legislation will require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. The changes will mean premium rate increases for some – but not all -- policyholders over time.*

*Below are some of the Frequently Asked Questions (FAQs) associated with BW 12 and its impact on historic structures.*

#### **1. What does BW12 say about historic buildings?**

BW 12 makes no special provisions or exceptions for historic buildings. For rating purposes, historic buildings are to be treated the same as any other Pre-FIRM properties.

#### **2. How does BW12 impact the premiums for flood insurance policies for historic structures?**

Section 100205 requires the phase-in of full risk rates for the following types of property: non-primary residences, business properties, severe repetitive loss (SRL) properties, properties for which claims payments exceed the fair market value, and substantially damaged or improved properties. Additionally, Section 100205 requires the immediate application of full risk rates to new policies, lapsed policies, and policies for property that has been sold to a new owner since the enactment of BW 12.

Any currently subsidized policies for historic buildings meeting the criteria established in Section 100205 will see premium rate increases. Those structures will have rate increase at a rate of 25% per year until full actuarial rates are achieved.

#### **3. If a historic structure is a primary residence, what impact will this have on its flood policy premium?**

All primary residences – including those that are historic buildings – that were built before the initial Flood Insurance Rate Map (Pre-FIRM), and that are located in special flood hazard areas (flood zones A, AE, AH, AO, A1-A30, V, VE, V1-V30) and D zones will see a 16 to 17 percent increase effective on or after October 1, 2013, in order to reduce the amount of subsidy provided to these policyholders.

This percentage increase is based on actuarial analysis and includes the 5 percent Reserve Fund assessment for all policies, excluding Preferred Risk Policies. The Reserve Fund assessment is mandated under Section 100205.

#### **4. Is it possible to get an exemption for a historic building from the mandated rate increases?**

No. The wording of Section 100205 does not allow FEMA any discretion in implementing it. FEMA does not have the statutory authority to exempt historic buildings from the mandated rate increases of Section 100205.

#### **5. Did BW12 modify or address any specific aspect of the National Flood Insurance Program’s floodplain management provisions pertaining to historic structures?**

No. BW 12 did not modify or address any aspect of the NFIP floodplain management provisions pertaining to historic structures.

#### **6. What are the NFIP floodplain management provisions that pertain to historic structures?**

The NFIP contains two provisions that provide relief for “historic structures” in Special Flood Hazard Areas from the NFIP floodplain management regulations for new construction and substantial improvements/substantial damage. The two provisions include:

(1) The definition of “substantial improvement” at 44 CFR 59.1, states, “alteration to an ‘historic structure’ does not constitute a “substantial improvement”, provided that the alteration will not preclude the structure’s continued

designation as an “historic structure”. The same also applies to “historic structures” that have been “substantially damaged”.

(2) The other provision of the NFIP floodplain management regulations that provides relief for “historic structures” is 44 CFR 60.6(a). This provision states that “Variances may be granted for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.”

## 7. How does the NFIP define historic structures?

Under the Definition section of the NFIP [44 Code of Federal Regulations (CFR) Part 59], “historic structure” is defined as “any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved State program as determined by the Secretary of the Interior, or

(2) Directly by the Secretary of the Interior in States without approved programs.”

## 8. How can NFIP communities provide relief for historic structures?

Communities have the option of using either the substantial improvement definition or variance provision for addressing the unique needs of “historic structures”. Communities

should adopt only one of the options. In either case, “historic structures” can be excluded from the NFIP elevation and floodproofing requirements. However, if plans to substantially improve or repair a substantially damaged “historic structure” would result in loss of its designation as an “historic structure”, the structure would be required to meet the NFIP floodplain management regulations.

While historic structures can still be exempt for floodplain management purposes, under BW 12 there is no flood insurance exemption, and they will be rated accordingly.

FEMA has published the National Flood Insurance Program Floodplain Management Bulletin, Historic Structures, FEMA P-467-2, May 2008. This Bulletin addresses the NFIP floodplain management provisions related to historic structures, subsidized flood insurance, and mitigation measures that can be taken to minimize damages to designated historic structures. This Bulletin will be updated to reflect the changes in BW 12

### For more information:

For additional information on BW 12, and additional FAQs, please visit our BW 12 website.

<http://www.fema.gov/flood-insurance-reform-act-2012>