

Technical and Operational Enhancements

15. Clarify Period to File Suit – Requires that policyholders exhaust the administrative appeals process prior to initiating a lawsuit. Revises the statute of limitations to allow policyholders to sue FEMA not later than 90 days after the appeal decision date, rather than the current timeframe of one year after denial of a claim.

Legislative text:

Sec. ___. Enhanced Dispute RESOLUTION Process.

(a) Enhanced policyholder appeals process.—

(1) Part C of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4081 et seq.) is amended by adding at the end the following new section:

“Sec. 1349. Appeal of Decisions Relating to Flood insurance Coverage.

“(a) In general.—The Administrator shall establish an appeals process to enable holders of a flood insurance policy provided under this title to appeal the decisions of their insurer, with respect to the disallowance, in whole or in part, of any claims for proved and approved losses covered by flood insurance. Such appeals must be filed not later than 180 days after the disallowance, in whole or in part, of any claims for proved and approved losses covered by flood insurance and shall be limited to the claim or portion of the claim disallowed by the insurer.

“(b) Appeal decision.—Upon a decision in an appeal under subsection (a), the Administrator shall provide the policyholder with a written appeal decision. The appeal decision shall explain the Administrator’s determination to uphold or overturn the decision of the flood insurer. The Administrator may direct the flood insurer to take action necessary to resolve the appeal, to include re-inspection, re-adjustment, or payment, as appropriate.

“(c) Rules of construction.—This section shall not be construed as—

“(1) making the Federal Emergency Management Agency or the Administrator a party to the flood insurance contract; or

“(2) creating any action or remedy not otherwise provided by this title.”.

(2) Repeal.—Section 205 of the Bunning-Blumenauer-Bereuter Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) is hereby repealed.

(b) Judicial review reform.—Section 1341 of the National Flood Insurance Act of 1968 (42 U.S.C. 4072) is amended—

(1) by striking “In the event the program” and inserting:

“(a) In general.—In the event the program”;

(2) in subsection (a), by striking “and upon the disallowance by the Administrator of any such claim,” and inserting “and upon the disallowance by the Administrator or the Administrator’s fiscal agent of any such claim,”;

(3) in subsection (a), by striking “within one year after the date of mailing of notice of disallowance or partial disallowance by the Administrator” and inserting “not later than 90 days after exhausting available administrative remedies pursuant to subsection (b)”;

(4) in subsection (a), by striking “may institute an action against the Administrator on such claim” and inserting “may institute an action against the insurer on such claim”; and

(5) adding at the end the following:

“(b) Exhaustion of administrative remedies.—For the purposes of this section, administrative remedies are exhausted if a claimant—

“(1) submits an appeal and complies with all requirements of the appeal process established by section 1348 and other applicable requirements; and

“(2) either—

“(A) the Administrator issues a final decision on the appeal that partially or fully concurs with the insurer’s disallowance or partial disallowance of the claim; or

- “(B) the Administrator makes no finding regarding the appeal within 365 days from the date the Administrator acknowledges receipt and acceptance of the appeal.
- “(c) Limitations.—For the purposes of this section,
- “(1) actions under this section shall not be instituted for any issue of the claim not presented to the Administrator on appeal; and
- “(2) disposition of any appeal by the Administrator shall not be competent evidence of liability or amount of damages.
- “(d) Strict Construction.—The limitations and requirements of this section are to be strictly construed.”
- (c) Effective date.—The amendments made by subsections (a) and (b) shall apply to any claim related to a flood insurance policy made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) issued or renewed on or after January 1, 2022.

Analysis:

The current language in Section 1341 of the National Flood Insurance Act of 1968, as amended, establishing a statute of limitations for filing a lawsuit to dispute a flood insurance claim, is a heavily litigated issue in the National Flood Insurance Program (NFIP) because of confusion as to when the statute of limitations begins and ends. The draft statute provided below codifies and clarifies the existing NFIP appeal authorities and would require policyholders to exhaust the NFIP appeals process prior to filing a lawsuit in federal court challenging the disallowance or partial disallowance of a flood insurance claim. Policyholders would be required to submit an appeal in compliance with the NFIP appeals process. Policyholders would be able to file suit no later than 90 days after exhausting the NFIP appeals process. The NFIP appeals process is exhausted if either FEMA sends a final appeal determination or fails to issue a final appeal determination within 365 days of acknowledging receipt of and accepting the policyholders’ appeal.

This reform would enable FEMA to improve oversight of NFIP insurers, encourage efficient and consistent litigation, and provide policyholders with greater clarity on their course of action after receiving a denial letter and the amount of time they have to file an appeal of that denial letter or file suit after appeal. Driving claim disputes through the appeals process would allow FEMA to proactively collect and track trends and issues in the claims handling process, identify systemic issues, and intervene in the claim process when necessary. It would ensure a consistent interpretation and application of the Standard Flood Insurance Policy. If a claim continued to litigation, both sides would benefit from the prior appeals process because the factual and legal issues in dispute would already be developed and ready for resolution. Basing the statute of limitations on the exhaustion of administrative remedies would ensure uniformity and predictability of claims by identifying a clear date on which the statute of limitations begins and a clear date on which it has run, while ensuring the resolution of issues in a cost effective and efficient manner.

Comparative type:

~~SEC. 205. BUNNING-BLUMENAUER-BEREUTER FLOOD INSURANCE ACT OF 2004 (42 U.S.C. 4011 NOTE). APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE—~~

~~Not later than 6 months after the date of enactment of this Act [June 30, 2004], the Director shall, by regulation, establish an appeals process through which holders of a flood insurance policy may appeal the decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of—~~

National Flood Insurance Act of 1968

Sec. 1341. Adjustment and payment of claims; judicial review; limitations; jurisdiction. (42 U.S.C. 4072)

~~In the event the program~~ (a) In General.—~~In the event the program~~ is carried out as provided in section 1340 [42 U.S.C. § 4071], the Administrator shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, ~~and upon the disallowance by the Administrator of any such claim, and upon the disallowance by the Administrator or the Administrator's fiscal agent of any such claim,~~ or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, ~~within one year after the date of mailing of notice of disallowance or partial disallowance by the Administrator~~ not later than 90 days after exhausting available administrative remedies pursuant to subsection (b), ~~may institute an action against the Administrator on such claim~~ may institute an action against the insurer on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

(b) Exhaustion of administrative remedies.—For the purposes of this section, administrative remedies are exhausted if a claimant—

(1) submits an appeal and complies with all requirements of the appeal process established by section 1349 and other applicable requirements; and

(2) either—

(A) the Administrator issues a final decision on the appeal that partially or fully concurs with the insurer's disallowance or partial disallowance of the claim; or

(B) the Administrator makes no finding regarding the appeal within 365 days from the date the Administrator acknowledges receipt and acceptance of the appeal.

(c) Limitations.—For the purposes of this section,

(1) actions under this section shall not be instituted for any issue of the claim not presented to the Administrator on appeal; and

(2) disposition of any appeal by the Administrator shall not be competent evidence of liability or amount of damages.

(d) Strict Construction.—The limitations and requirements of this section are to be strictly construed.

Sec. 1349. Appeal of Decisions Relating to Flood insurance Coverage. (42 U.S.C. ____)

(a) In general.—The Administrator shall establish an appeals process to enable holders of a flood insurance policy provided under this title to appeal the decisions of their insurer, with respect to the disallowance, in whole or in part, of any claims for proved and approved losses covered by flood insurance. Such appeals must be filed not later than 180 days after the disallowance, in whole or in part, of any claims for proved and approved losses covered by flood insurance and shall be limited to the claim or portion of the claim disallowed by the insurer.

(b) Appeal decision.—Upon a decision in an appeal under subsection (a), the Administrator shall provide the policyholder with a written appeal decision. The appeal decision shall explain the Administrator's determination to uphold or overturn the decision of the flood insurer. The Administrator may direct the flood insurer to take action necessary to resolve the appeal, to include re-inspection, re-adjustment, or payment, as appropriate.

(c) Rules of construction.—This section shall not be construed as—

(1) making the Federal Emergency Management Agency or the Administrator a party to the flood insurance contract; or

(2) creating any action or remedy not otherwise provided by this title.

Bunning-Blumenauer-Bereuter Flood Insurance Act of 2004

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COVERAGE. (42 U.S.C. 4011 NOTE).~~**

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