

# **UNIT 2:** **THE NATIONAL FLOOD** **INSURANCE PROGRAM**

## **In this unit**

Unit 2 introduces the National Flood Insurance Program:

- ◆ How it evolved,
- ◆ How it works,
- ◆ The roles of the state and local partners participating in the NFIP
- ◆ The community's obligations to the program.

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## A. HISTORY

Historically, people at risk from flooding could only hope for help from their neighbors and charitable organizations in the event of a flood.

Government assistance varied from community to community, and flood insurance was scarce. During the 1920s, the insurance industry concluded that flood insurance could not be a profitable venture because the only people who would want flood coverage would be those who lived in floodplains.

Since they were sure to be flooded, the rates would be too high to attract customers.

During the 1960s, Congress became concerned with problems related to the traditional methods of dealing with floods and flood damage—construction of structural projects and federal disaster assistance. Both were proving to be quite expensive, with no end in sight.

Congress concluded that:

- ◆ Although Federal flood programs were funded by all taxpayers, they primarily helped only residents of floodplains.
- ◆ Flood protection structures were expensive and could not protect everyone.
- ◆ People continued to build and live in floodplains, thus still risking disaster.
- ◆ Disaster relief was both inadequate and expensive.
- ◆ The private insurance industry could not sell affordable flood insurance because only those at high risk would buy it.

In 1968, Congress passed the National Flood Insurance Act to correct some of the shortcomings of the traditional flood control and flood relief programs. The act created the National Flood Insurance Program (NFIP) to:

- ◆ Transfer the costs of private property flood losses from the taxpayers to floodplain property owners through flood insurance premiums.
- ◆ Provide floodplain residents and property owners with financial aid after floods, especially smaller floods that do not warrant federal disaster aid.
- ◆ Guide development away from flood hazard areas.
- ◆ Require that new and substantially improved buildings be constructed in ways that would minimize or prevent damage during a flood.

Congress charged the Federal Insurance Administration (which at that time was in the Department of Housing and Urban Development) with responsibility for the program. The program is currently administered by the Federal Emer-

gency Management Agency (FEMA) within the Department of Homeland Security.

Participation in the NFIP grew slowly. In 1972, Hurricane Agnes devastated a wide area of the eastern United States. Disaster assistance costs were the highest ever, leading Congress to examine why the NFIP was so little used. Investigators found that few communities had joined the NFIP—there were fewer than 100,000 flood insurance policies in force nationwide. The availability of flood insurance alone had not been enough to motivate communities to join the NFIP or individuals to purchase flood insurance.

To remedy this, the Flood Disaster Protection Act was passed in 1973. The Act prohibited most types of Federal assistance for acquisition or construction of buildings in the floodplains of non-participating communities. It also required that buildings located in identified flood hazard areas have flood insurance coverage as a condition of receiving Federal financial assistance or loans from federally insured or regulated lenders, and as a condition for receiving federal disaster assistance. These “sanctions” for non-participation, which are detailed later in this unit, make it hard for any community that wants federal assistance for properties in floodplains to avoid joining the NFIP.

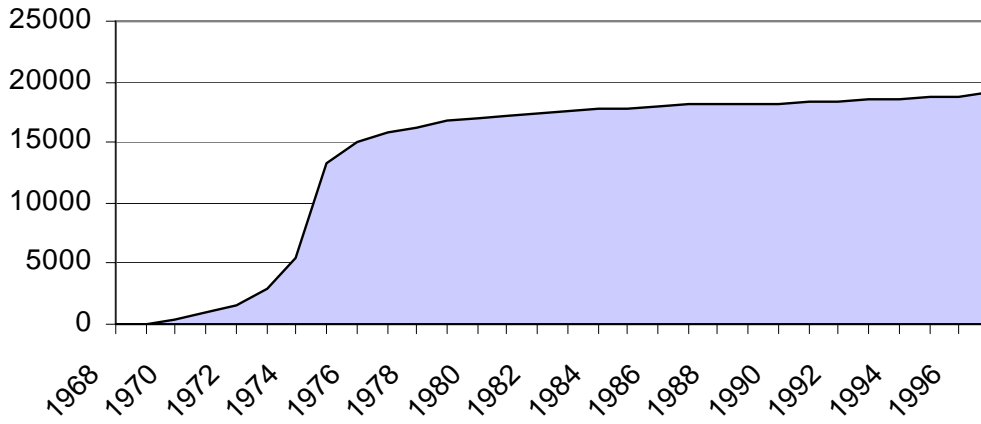
The 1973 Act spurred participation in the program dramatically. By the end of the decade, more than 15,000 communities had signed on and about two million flood insurance policies were in effect.

In 1979, the Federal Insurance Administration (FIA) and the NFIP were transferred to the newly created Federal Emergency Management Agency (FEMA). During the early 1980’s, FIA worked to reduce the program’s dependence on its authority to borrow from the Federal Treasury. Through a series of rate increases and other adjustments, the program has been self-supporting since 1986. The NFIP is funded primarily through premium income, which pays nearly all administrative and mapping costs as well as claims. In recent years the NFIP has received supplemental funding from Congress to accelerate its Map Modernization program.

Since 1973, the program has been amended several times. The most important changes came under the National Flood Insurance Reform Act of 1994 which fine tuned various aspects of the program, such as authorizing the Community Rating System, increasing the maximum amount of flood insurance coverage, strengthening the mandatory purchase requirement, and establishing a grant program for mitigation plans and projects.

The Reform Act and the initiation of a flood insurance advertising campaigns boosted sales of flood insurance policies again. By the August of 2003, there were nearly 4.4 million flood insurance policies in force.

By January of 2004, there also were 19,937 participating communities. As shown in Figure 2-1, the greatest growth in numbers of communities occurred in the late 1970's, after the provisions of the 1973 amendments took effect.



**Figure 2-1. NFIP community participation**

## B. HOW THE NFIP WORKS

The NFIP is based on a mutual agreement between the Federal Government and the community. Federally backed flood insurance is made available in those communities that agree to regulate development in their mapped floodplains. If the communities do their part in making sure future floodplain development meets certain criteria, FEMA will provide flood insurance for properties in the community.

Because most communities with a known flood problem are in the NFIP, this reference guide does not cover how a community applies to join. However, it does explain the three basic parts to the NFIP—mapping, insurance, and regulations. As discussed below, these three parts are interconnected and mutually supportive.

### MAPPING

FEMA has prepared a floodplain map and developed flood hazard data for most communities in the country. The maps and data are used for several purposes:

- ◆ Communities, states and Federal agencies use them as the basis for the regulating new floodprone construction,
- ◆ Insurance agents use them when rating flood insurance policies, and
- ◆ Lenders and Federal agencies used them to determine when flood insurance must be purchased as a condition of a loan or financial assistance.

FEMA has issued two kinds of maps:

- ◆ The first map received for most communities was called a Flood Hazard Boundary Map (FHBM). This just showed the boundaries of the floodplain using approximate methods.
- ◆ Most communities have had their FHBMs replaced by a Flood Insurance Rate Map, or FIRM. A FIRM usually is based on a Flood Insurance Study and includes flood elevations and other hazard information needed to better protect new construction from flood damage.

Buildings that pre-date the FIRM are treated differently than buildings built after the flood hazard was made public on the FIRM. These existing structures are called “pre-FIRM” buildings, while new construction is called “post-FIRM.”

The flood insurance rates for post-FIRM buildings are based on how protected they are from the mapped hazard. Therefore, both the NFIP’s regulations and insurance coverage depend on the accuracy and utility of the maps.

The NFIP’s maps and flood studies are covered in depth in Units 3 and 4.

## INSURANCE

Every building located in a participating community may be covered by a flood insurance policy—even buildings not located in a mapped floodplain. Coverage is for damage by a “flood.”

A flood is defined by NFIP regulations as

A “general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) “The overflow of inland or tidal waters or
- (2) “The unusual and rapid accumulation or runoff of surface waters from any source.”

The official definition also includes mudflows and erosion.

Flood insurance premiums for post-FIRM buildings are based on the degree of flood protection they are provided. Therefore, it is very important for communities to ensure that new buildings in the floodplain are constructed properly.

The flood insurance premium rates for pre-FIRM buildings are subsidized by the NFIP. Owners of these policies do not pay “actuarial” rates, i.e., rates based on the true risk the building is exposed to.

No matter whether a building is pre-FIRM or post-FIRM, with flood insurance, owners of floodprone properties pay more of their share toward flood relief. And, they get claims paid when needed.

The NFIP has paid out over \$12 billion in flood insurance claim payments for big and small floods (see Figure 2-2). Insurance provides relief for all floods, including those not large enough or severe enough to warrant federal disaster aid.

TROPICAL STORM ALLISON	6/01	\$1,084 MILLION
LOUISIANA STORM	5/95	\$584 MILLION
HURRICANE FLOYD	9/99	\$437 MILLION
HURRICANE OPAL	10/95	\$399 MILLION
HURRICANE HUGO	9/89	\$376 MILLION
NOR'EASTER	10/92	\$342 MILLION
MIDWEST FLOOD	6/93	\$271 MILLION
HURRICANE FRAN	9/96	\$214 MILLION
MARCH STORM	3/93	\$211 MILLION
HOUSTON FLOODS	10/94	\$217 MILLION
HURRICANE ANDREW	8/92	\$168 MILLION

**Figure 2-2. Largest claim events paid by the NFIP**

Flood insurance and its relation to construction regulations are discussed in more detail in Unit 9.

## REGULATIONS

The NFIP underwrites flood insurance coverage only in those communities that adopt and enforce floodplain regulations that meet or exceed NFIP criteria. Buildings built in accordance with these regulations have a lower risk of flooding and can be insured at lower rates.

The community's floodplain regulations are designed to ensure that new buildings will be protected from the flood levels shown on the FIRM and that development will not make the flood hazard worse. Over time, exposure to flood damage should be reduced as the older pre-FIRM buildings are replaced by post-FIRM buildings that comply with the regulations. Eventually a community should have only post-FIRM building's subject to little or no flood damage.

The NFIP construction regulations focus on protecting insurable buildings, but they also provide a degree of protection to other types of development. These criteria are detailed in Unit 5.

Floodplain regulations initially were controversial and difficult to enforce. Many people wanted the freedom to build what they want without government controls. In some areas, they still may not be aware they need a local permit to build. However, as time has passed the regulations have become increasingly accepted as necessary to reduce flood damages and protect citizens from loss.

As a result of public opposition, a community may be inclined to not fully enforce all of the provisions of its ordinance, which puts its participation in the NFIP in peril. If the community does not fulfill its NFIP obligations to the federal government and allows construction in violation of its regulations, three things can happen:

- ◆ New buildings will be built subject to flood damage
- ◆ Insurance on an improperly constructed building may be very expensive.
- ◆ FEMA can impose sanctions on the community, to encourage it to correct its floodplain management program. The sanctions are discussed in Section D.

## C. ROLES AND RESPONSIBILITIES

The National Flood Insurance Program is founded on a mutual agreement between the federal government and each participating community. Local, state and federal governments, and private insurance companies must share roles and responsibilities to meet the goals and objectives of the NFIP.

The community's role is of paramount importance. Residents and property owners can get flood insurance only if the community carries out its responsibilities.

### THE COMMUNITY ROLE

A community is a governmental body with the statutory authority to enact and enforce development regulations. These governmental bodies vary from state to state, but can include cities, towns, villages, townships, counties, parishes, special districts, states and Indian nations.

The community enacts and implements the floodplain regulations required for participation in the NFIP. The community's measures must meet regulations set by its state, as well as NFIP criteria. The NFIP requirements are covered in Unit 5.

A participating community commits itself to:

- ◆ Issuing or denying floodplain development/building permits.
- ◆ Inspecting all development to assure compliance with the local ordinance.
- ◆ Maintaining records of floodplain development.
- ◆ Assisting in the preparation and revision of floodplain maps.
- ◆ Helping residents obtain information on flood hazards, floodplain map data, flood insurance and proper construction measures.

### THE STATE ROLE

Each governor has selected a state coordinating agency for the NFIP. While the role of this agency varies from state to state, it usually includes:

- ◆ Ensuring that communities have the legal authorities necessary to adopt and enforce floodplain management regulations.
- ◆ Establishing minimum state regulatory requirements consistent with the NFIP.
- ◆ Providing technical and specialized assistance to local governments.

- ◆ Coordinating the activities of various state agencies that affect the NFIP.

Most states participate in the Community Assistance Program (CAP). Under CAP, NFIP funds are available on a 75 percent / 25 percent cost share to help the state coordinating agency provide technical assistance to communities and to monitor and evaluate their work. The telephone numbers of the state coordinating agencies are listed in Appendix B. Communities can contact their state coordinating agency for technical assistance in meeting NFIP requirements.

States also participate in the NFIP by establishing and enforcing floodplain management regulations for state-owned properties. This can be done through legislation, but more often has been done through a governor's executive order. A number of states have their own floodplain management statutes and regulations and operate floodplain management programs of their own in addition to supporting implementation of the NFIP.

## THE FEDERAL ROLE

The Federal Emergency Management Agency (FEMA) within the Department of Homeland Security (DHS) administers the NFIP through its Regional Offices and its Mitigation Division.

The ten FEMA *Regional Offices* each have a Mitigation Division that coordinates the NFIP with states and communities. Each FEMA regional office covers four to eight states and territories. Together they work with the nearly 20,000 participating communities. A list of the regional offices, their addresses and the states they cover appears in Appendix A.

The Regional Offices are responsible for:

- ◆ Assisting the state NFIP coordinating agencies.
- ◆ Assessing community compliance with the minimum NFIP criteria.
- ◆ Advising local officials responsible for administering the ordinance.
- ◆ Answering questions from design professionals and the public.
- ◆ Helping review and adopt new maps and data.
- ◆ Approving community floodplain management regulations.
- ◆ Providing information and training on the flood insurance purchase requirements.

The *FEMA Mitigation Division* in Washington, D.C., sets national policy for floodplain regulations, researches floodplain construction practices and administers the flood hazard mapping program. The Division has mapped more than 100 million acres of flood hazard areas nationwide and designated some six million acres of floodways along 40,000 stream and river miles.

*The Mitigation Division* also administers the insurance portion of the program. It sets flood insurance rates, establishes coverage, monitors applications and claims, and markets flood insurance.

The NFIP is operated as a self-supporting program. All NFIP expenses, including claims payments, floodplain management, and administration and, until recently, flood hazard mapping, are paid through insurance premiums, fees on insurance policies, and fees from map revision requests. Congress has recently provided supplemental funding to accelerate the NFIP's Map Modernization program.

Private insurance companies write and service most NFIP flood insurance policies through an arrangement with FEMA called the Write-Your-Own Program. The NFIP also contracts for agent training and other assistance through regional insurance offices. They can be reached through the FEMA Regional Offices.

## D. COMMUNITY PARTICIPATION

The NFIP is based on a cooperative agreement between the community and FEMA. FEMA can only make flood insurance available in those communities that agree to regulate future development in the floodplain.

### JOINING THE NFIP

Participation in the NFIP is voluntary. There is no Federal law that requires a community to join, although some states have requirements. However, as discussed later in this section, a nonparticipating community faces sanctions, such as loss of Federal aid for insurable buildings in the floodplain. These make participation a very important decision for many communities.

To join, a community must adopt a resolution of intent to participate and cooperate with FEMA. The community agrees to “maintain in force...adequate land use and control measures consistent with the [NFIP] criteria” and to:

- (i) Assist the Administrator in the delineation of the floodplain,
- (ii) Provide information concerning present uses and occupancy of the flood plain,
- (iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards, elevation and floodproofing records on new construction,
- (iv) Cooperate with agencies and firms which undertake to study, survey, map, and identify flood plain areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain areas in order to prevent aggravation of existing hazards;
- (v) Notify the Administrator whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area.

The community must also adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria. These criteria are explained in Unit 5 of this course.

As shown in Figure 2-1, most communities joined in the 1970's. At that time they were provided with a Flood Hazard Boundary Map which showed only the approximate boundaries of the floodplain. Generally, they entered the “Emergency Phase” whereby their regulatory responsibilities were limited because of the limited flood hazard data provided on the map.

Participating communities receive a Flood Insurance Rate Map (FIRM) and most get a Flood Insurance Study with more detailed flood hazard data. After a period to review and appeal the draft map and study, the community is given six months to adopt the new data in a more comprehensive ordinance.

The FIRM takes effect at the end of the six month period. If the ordinance has been adopted in time, the community is converted to the “Regular Phase” on that date. That is also the date that differentiates “pre-FIRM” buildings from “post-FIRM buildings.”

If the ordinance is not adopted in time, the community is suspended from the NFIP. The FIRM still goes into effect on the same date and is used by lenders and Federal agencies for determining where loans can be issued and federal assistance can be provided.

As of the end of August 2003, 97% of the NFIP communities were in the Regular Phase.

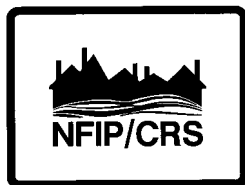
## **COMPLIANCE**

The community’s floodplain management program and permit records are reviewed periodically by the FEMA Regional Office or state NFIP coordinating agency. Either agency may inspect records as part of a community assistance visit (CAV) or community assistance contact (CAC).

If a community doesn’t uphold its part of the agreement and fails to adequately enforce its floodplain management regulations, FEMA has recourse through three approaches:

- ◆ Reclassification under the Community Rating System
- ◆ Probation
- ◆ Suspension from the program

### **Reclassification under the Community Rating System**



The Community Rating System (CRS) provides a discount in the flood insurance premiums for properties in communities that participate in the CRS and implement floodplain management programs that exceed minimum NFIP requirements. The CRS is explained in Unit 9, Section C. As of May 1, 2004, 1,002 communities participate in CRS. This represents 66% of policies in force.

CRS Communities that are deemed to no longer be in full compliance with the NFIP requirements can be reclassified to Class 10. Should that happen, residents would lose their CRS flood insurance premium discounts.

## **Probation**

Probation represents formal notification to the community that FEMA regards the community's floodplain management program as non-compliant with the NFIP criteria.

Prior to imposing probation, FEMA provides the community a 90-day written notice and lists specific deficiencies in its program and violations. FEMA also notifies all policy holders of the impending probation, telling them that an additional \$50 premium will be charged on policies sold or renewed during the probation period. The objective of this surcharge is to bring the policy holders' attention to the fact that their community is not compliant and failure to correct the problems may lead to suspension.

The community has 90 days to avoid this sanction by correcting the program deficiencies and remedying the identified violations. Probation may be continued for up to one year after the community corrects all program deficiencies. This ensures that the community has truly changed its ways and become compliant and that all policies holders are advised of the situation when their policies are renewed.

## **Suspension**

If, after a period of probation, a community fails to remedy its violations and program deficiencies, it will be suspended from the NFIP for failure to enforce its floodplain management regulations. Suspension means the community is no longer in the NFIP. It is subject to the sanctions for non-participation that are explained in the next section.

FEMA grants a community 30 days to show why it should not be suspended and then sends it a 30-day suspension letter. FEMA may also conduct a written or oral hearing before suspension takes effect.

A community suspended under the NFIP may apply to the FEMA Regional Office for reinstatement by submitting the following:

- ◆ A local legislative or executive measure reaffirming the community's intent to comply with the NFIP criteria.
- ◆ Evidence that all program deficiencies have been corrected.
- ◆ Evidence that any violations have been remedied to the maximum extent possible.

FEMA may reinstate the community to full program status, bring it to a probationary status, or withhold reinstatement for up to one year after a satisfactory submission from the community.

A community will also be suspended if, following due notice, it fails to adopt revisions to its floodplain ordinance in response to flood map revisions or amended minimum NFIP criteria. Communities have a 6 month period after a new or revised map is issued to update their floodplain management regulations to incorporate the new data and make any other necessary changes. If at the end of the 6 months the community has not adopted a compliant ordinance, it is automatically be suspended.

It is not uncommon for communities to be suspended for failure to adopt compliant ordinances. Sometimes communities get a late start revising their ordinance and cannot complete the ordinance adoption process in the allotted 6 months. These communities are reinstated into the NFIP upon adoption of the ordinance provided no non-compliant development has taken place during the suspension.

## **SANCTIONS FOR NON-PARTICIPATION**

A community that does not join the NFIP, has withdrawn from the program, or is suspended from it faces the following sanctions:

- ◆ Flood insurance will not be available. No resident will be able to purchase a flood insurance policy.
- ◆ If the community withdraws or is suspended, existing flood insurance policies will not be renewed.
- ◆ No Federal grants or loans for the acquisition or construction of buildings may be made in identified flood hazard areas under programs administered by Federal agencies such as HUD, EPA, and SBA.
- ◆ No Federal disaster assistance may be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
- ◆ No Federal mortgage insurance or loan guarantees may be provided in identified flood hazard areas. This includes policies written by FHA, VA, and others.
- ◆ Federally insured or regulated lending institutions, such as banks and credit unions, must notify applicants seeking loans for insurable buildings in flood hazard areas that:
  - There is a flood hazard and
  - The property is not eligible for Federal disaster relief.

These sanctions can be severe on any community with a substantial number of buildings in the floodplain. Most communities with a flood problem have joined the NFIP and are in full compliance with their regulatory obligations.