A Flood of Attention:

The Rise and Fall of the Biggert-Waters Flood Insurance Reform Act

D. J. RASMUSSEN

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1 Introduction

In Douglas Arnold's *The Logic of Congressional Action* (Arnold, 1992), he describes a group of citizens as "inattentive publics", those who are generally apathetic in terms of policy issue preference. While seemingly an unimportant cohort given their indifference, Arnold emphasizes that when writing legislation and submitting votes, legislators must consider the likelihood that the inattentive publics will be alerted to Congress's actions and develop a policy preference. Such policy preferences could be counter to the legislators' and thus threaten their re-election. Arnold further states that it is easiest to "activate" the inattentive publics when the policy outcome costs are both large and directly placed. Flood insurance reform is an interesting legislative case in which to examine Arnold's concept of the inattentive publics being alerted to congressional action, as flood insurance reform may not necessarily appear salient, yet the costs of reform could be both large and direct to a small set of individuals residing in areas at high risk for costly flood damage.

In response to mounting pressure to address the National Flood Insurance Program's (NFIP) debt crisis, Congress passed the Biggert-Waters Flood Insurance Reform Act (BW-12) in July of 2012 with substantial bipartisan support. Among the changes the bill brought was an increase in government flood insurance premiums placed on those who held NFIP policies. Why would the majority of Congress approve of such a bill that had an early upfront significant cost to a select group with no corresponding benefits?

During bill construction, most, but not all, of Congress gave little thought to the consequences of the bill in terms of higher premiums placed on their constituents. Evidence supports that this was likely due to the immediate need to reauthorize the NFIP and the lack of knowledge about inaccuracies in FEMA's flood maps that were used to price insurance premiums (Subcomittee on Housing and Insurance, 2013). Much of the onus to determine affordability was placed on FEMA, a division of the Department of Homeland Security that has been historically mismanaged and overburdened (Yen, 2006).

When the new rates went into effect, Congress was met with an uproar from a small, but very vocal population who saw their rates increase ten-fold or more, and Congress's subsequent reaction to these inattentive-turned-attentive publics was to almost unanimously strike down the BW-12 resolutions that increased the insurance premiums for these groups in fear of harming their chances for re-election. Furthermore, in an effort to save face with the public, Congress attempted to pass the blame of the costs onto FEMA.

This analysis suggests that the theories from Arnold (1992) highlight the importance of legislators to consider the inattentive publics when making reforms to technical policies that attract very little public opinion. Ultimately, many of the BW-12 reforms were stuck down because they led to feedbacks that imposed tremendous direct economic costs on individuals and the policy was not able to reinforce itself and arrive at a lasting stable equilibrium.

The remainder of Section 1 discusses the goals of National Flood Insurance Program, the problems that lead to its outstanding debts, and then summarizes the reforms of the Biggert-Waters Flood Insurance Reform Act. In Section 2 of this paper, the political environment for flood insurance reform is presented; in Section 3, the legislative actions taken to draft and pass the Biggert-Waters Flood Insurance reform act are described; in Section 4, the congressional and public response to the new law is discussed, and Section 5 summarizes the analysis.

1.1 The National Flood Insurance Program

The National Flood Insurance Program (NFIP) provides government subsidized flood insurance polices to homeowners and businesses residing in areas at risk for both inland and coastal flooding. The program began after Congress passed the National Flood Insurance Act of 1968 at the request of President Lyndon B. Johnson (Johnson, 1966). Before the NFIP, *ad hoc* government aid was often given out to cover flood damage, but property owners were not guaranteed financial assistance. Very few private flood insurers existed because of the risk that they would not be able to pay for the claims after a widespread, significant disaster. The NFIP was focused on addressing these issues. In addition to subsidizing policies for those in flood-prone areas, the NFIP removed some of the risk associated with selling private flood insurance thereby encouraging greater insurance participation in the market. The Federal Emergency Management Agency (FEMA) oversees the NFIP and currently sells flood insurance for about 40–45 percent of the actuarial[1] rate that private flood insurers generally offer (King, 2014).

The number of NFIP policies has grown tremendously over time, largely due to the growing number of Americans living in coastal regions. Between 1970 and 2010, the number of Americans living in coastal regions rose by almost 40 percent. At the end of 2012, approximately 5.5 million properties were enrolled in the NFIP, approximately 4 percent of all U.S. households, and about 21,000 communities had opted into the program. Total coverage was more than $1.2 trillion. Nearly 40 percent of the policies are in Florida and Texas (Knowles and Kunreuther, 2014). It is expected that the number of NFIP policies will rise 80 percent by the end of the century due to both population growth and increased risks associated with climate change (AECOM, 2013).

[1] actuarial rates are set based on mathematical and statistical estimates of property risk

1.2 Escalating debt burden from the National Flood Insurance Program

Between the mid-1980's and 2005, the NFIP was self-supporting, either generating a net income or able to payoff its debts to the U.S. Treasury. However, starting in 2005 an unprecedented number of hurricanes made landfall in the U.S. and cost the program $17 billion, pushing it into a substantial debt that it has not recovered from since (Fig. 1). Between 2005 and 2015, the NFIP borrowing authority surged from $1.5 billion in 2005 to $20 billion after hurricane Katrina devastated New Orleans and portions of the Gulf Coast, and now sits at over $30 billion after needing to be raised once more to pay for claims associated with Superstorm Sandy.

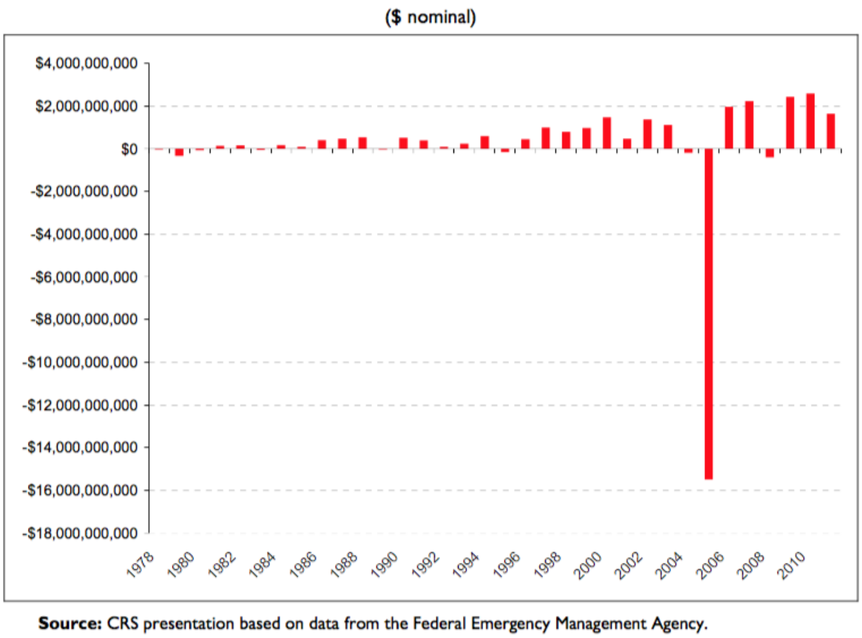

Figure 1: Difference between total premiums written and total payments made to policyholders under the national flood insurance program (1978–2011).

This massive debt burden has caused an increase in attention by coalitions and government watchdog groups. In 2009, the Government Accountability Office (GAO), a Congressional watchdog, wrote a letter to Barney Frank, the Chairman of the House Financial Services Committee, claiming that the NFIP would be unable to repay the Treasury without external assistance (GAO, 2009). Homeowner premium payments from the program generate about $2–3 billion per year, but disasters that exceed $10 billion in damages have been occurring too often to maintain a positive balance in the NFIP (Gessing, 2009; Brannon and Lowell, 2011). As of July 2013, the NFIP was is in $24 billion of debt to the Treasury (Kousky and Kunreuther, 2013). These large numbers have generated substantial pressure from coalitions and legislators for reforms to the NFIP. (GAO, 2009, 2013; Holladay and Schwartz, 2010; Scholtes, 2011).

1.3 The Biggert-Waters Flood Insurance Reform Act

In response to this mounting pressure, Congress both reauthorized and reformed the NFIP with the passage of the BW-12. The BW-12 was co-sponsored by Judy Biggert, Republican from Illinois, and Maxine Waters, Democrat from California. The sixty-two page law enacts several changes to the NFIP. In addition to a 5-year reauthorization of the NFIP, BW-12 enacted substantial reforms to the program. Federal subsidies for 438,000 policies were immediately phased out and flood insurance rates rose to better reflect estimates of flood risk. Low premiums that were enjoyed by older homes "grandfathered" into the system were no longer passed on to new homeowners after the sale of the property, thus decreasing the property's value. Most importantly, the BW-12 put the NFIP on track to repay its debts to the U.S. Treasury.

2 Support for Flood Insurance Reform

Legislative reform is often linked to the preferences of both citizens and coalitions (Arnold, 1992). In the case of coalitions, leaders generally adopt strategies for enacting policy based on the likely action of legislators and usually consider voter's future preferences. Nonetheless, the flood insurance reforms that were demanded seemed to well obscure their unwelcome consequences, as very few legislators and coalitions foresaw the eventual burdensome costs that would be placed on some individuals.

Legislative support for flood insurance reform came with ease. The NFIP has been on the GAO list for "high-risk" programs since March 2006 because of its rapid trajectory towards financial insolvency. Additionally, support from Congress came from both parties, uncommon for the 112th Session that was plagued with gridlock. Interestingly, party support appeared to be due to differing reasons. Republicans viewed the use of tax payer dollars to supplement primary, and sometimes secondary vacation homes, in areas of substantial risk for flooding as wasteful. Many Democrats traditionally in favor of environmental conservation were against subsidizing building infrastructure in coastal areas that were ecologically sensitive. In fact, several environmental groups went as far as to file lawsuits against FEMA alleging that the NFIP has harmed critical habitats (Holladay and

Schwartz, 2010).

2.1 Coalition support

Groups who relied on the NFIP to do business pressed for stability with the government's flood insurance program. The NFIP has historically been somewhat of a neglected government program. The NFIP lost its authorization in 2008, and between then and 2012, the program lapsed four times and Congress passed 17 short-term program extensions over three Congresses. Some of these lapses interrupted critical business transactions. In June 2010, Congress recessed without reauthorizing the NFIP, resulting in the delay or cancelation of almost 47,000 home sales (Scholtes, 2011). Groups who sell property, such as REALTORS® and the National Association of Realtors (NAR), as well as bankers who provide mortgages to homeowners, all lobbied for flood insurance reform that would bring long-term stability to the market. The NAR is notably the third largest political donor in the U.S., and has one million members spread across the country that could be mobilized to advocate for change (Beer, 2015).

Perhaps rivaling in the size the lobby by home sales groups for flood insurance reform was the group SmarterSafer, a large coalition comprised of mostly private insurance companies, but also some unlikely allies such as environmental groups, like the Sierra Club, and conservative think tanks and taxpayer watchdogs such as R Street Institute, a spin off of the Heartland Institute, the group famous for once comparing the Sierra Club to terrorists (Beer, 2015). The unusualness of the partnership between these groups emphasized the importance that action be taken to reform flood insurance policy.

2.2 Quiet citizens

The importance of public opinion is often debated in the context of policy change, and some authors believe that the impact of public opinion is overstated (e.g. Burstein, 2014). Public opinion may especially matter less in cases where the issue is not salient. In researching this analysis, almost no accounts of citizen preference for flood insurance reform were found *before* the BW-12 became law.

One possibility is that citizens who do not need flood insurance are unaware that the U.S. Government provides a subsidized flood insurance program and therefore do not have an opinion. Furthermore, those that subscribe to the NFIP are likely content receiving federal subsidized insurance and therefore are probably not likely to advocate for much change. Alternatively, citizens may be aware their federal taxes are subsidizing a flood insurance program for those living in high risk areas, but consider other issues to be more salient, or are not aware abuses of the program are occurring, such as the wealthy applying NFIP claims to pay for repeated damage to vacation homes sited in a flood plain.

Ultimately, public opinion was arguably the initiator for the reversal of the BW-12's reforms once its costs were revealed. In this case, public opinion mattered considerably and, in a matter of months, was able to get the attention of the gridlock-prone 113th Congress and convince them to overturn the rate hikes associated with the BW-12.

3 Drafting Flood Insurance Reform

The 112th Congress responded to the mounting pressure from coalitions and fellow legislators to pass flood insurance reform and began constructing a bill. Strong bipartisan majority support for the bill made it relatively easy to draft. The House was first to act by writing and passing HR-1309 (406-22) which would have reauthorized the NFIP through 2016 and made changes to improve the program's financial solvency. In June of 2012, the Senate Banking, Housing, and Urban Affairs Committee drafted its own piece of flood insurance reform, S 1940. The lack of controversy over the Senate's version of the bill attracted attention from Senator Rand Paul, Republican from Kentucky, who blocked the initial Senate vote on S 1940 by attempting to attach an unrelated, yet contentious "fetal personhood" amendment that made statements about when a fetus had legal rights in an attempt to bring about a discussion on the latter issue (Bassett, 2012).

The primary sponsors of the 2012 Flood Insurance Reform Act were Congresswomen Maxine Waters and Judy Biggert. It is unclear why these individuals emerged to chaperone the piece of legislation, especially Maxine Waters who did not represent a flood prone constituency (California's 43rd District; South Los Angeles). According to Arnold (1992), legislators will respond to the preferences of coalitions if they feel the actions will assist with their re-election and reflect citizens' preferences. Examining Congresswoman Waters' campaign financing gives some insight. From 1989–2012, the largest donor to Maxine Waters' Campaign Committee and Leadership Political Action Committee (PAC) was the NAR and its affiliates, donating over $92,240 (Beer, 2015). As previously mentioned, the NAR had pressed for long-term NFIP stability that would lead to improvement to their financial standing. Arnold's theory would support the actions taken by Congresswoman Waters to co-sponsor a flood insurance bill that would work in her benefactor's favor.

3.1 Early concerns about flood insurance affordability

Despite the overall lack of contention, some were strongly opposed to the flood insurance reform bill. For example, Senator Mary Landrieu, Democrat from Louisiana and a former real estate agent, vehemently fought to either repeal, amend or delay the law after foreseeing the increases in premiums her constituents would have to pay. Before bringing the bill to a vote, Landrieu wanted FEMA to conduct an assessment of the proposed flood insurance law's economic impact on consumers (Knowles and Kunreuther, 2014). After the BW-12 became law, both of these predictions would come to pass, premiums would go back to being subsidized and an affordability study would be conducted by FEMA. Using the policy preference model from Arnold (1992), the motivation for her outspokenness could have come from her knowledge of real estate and the threat of future re-election troubles as a result of her constituents having to pay higher premiums for flood insurance. Landrieu's term was to expire two years later in 2014, and she was facing a tough

Senate race. Landrieu was acutely aware that even if she did not vote for BW-12, it was a near certainty that a group of her constituents would have to pay more for flood insurance and would be worse off economically, potentially causing them to retaliate by voting out Landrieu.

An additional disagreement about costs to constituents arose in the Senate's version of the bill that was started by Senators Mark Pryor, Democrat from Arkansas, and Richard J. Durbin, Democrat from Illinois, whose states boarder the flood prone Mississippi River. The controversy focused on whether or not to require properties that are protected by tax-payer funded levees, dams and other flood control structures to additionally pay for flood insurance. The House version of the bill did not require property owners residing in such areas to buy flood insurance (Congressional Quarterly, 2013).

3.2 Flood insurance reform becomes law

In May 2012, Congress had passed a motion to temporarily reauthorize the NFIP through the end of July. As this authorization deadline loomed. Congress looked for a legislative vehicle to quickly get the BW-12 passed. Ultimately, the BW-12 was added to a surface transportation bill, called the Moving Ahead for Progress in the 21st century Act (MAP-21) and was subsequently made law on July 6th, 2012. BW-12 easily passed in a 406 to 22 (House) and a 74-19 (Senate) vote (Congressional Quarterly, 2013). Emphasizing the lack of controversy around the bill, Josh Saks, legislative director of the National Wildlife Foundation, humorously noted, "They normally don't get as many [yea] votes when naming a post office" (Beer, 2015). While Arnold (1992) notes that omnibus bills such as MAP-21 are occasionally used to obscure traceability when passing unpopular legislation by Congress (e.g. tax reforms), the lack of controversy initially surrounding the BW-12 and the desire to pass the bill before the end of July doesn't support this. Moreover, while bill support was lopsided, Patashnik (2008) notes that such does not guarantee the policy reform will be sustainable.

4 Buyer's Remorse

Flood insurances increases went into effect the following year on October 1st, 2013, and the economic implications of which were immediately made known. The GAO estimated that premiums increased for roughly 438,000 policy holders (GAO, 2013), and a small fraction of those increases were astronomical. Representative Michael Grim, Republican from New York, noted that one of his constituents had been paying $971 for his annual flood insurance premium before the BW-12. After the law went into effect, the new premium had soared to a staggering $38,000–over a 3000 percent increase (Subcomittee on Housing and Insurance, 2013). While such extreme increases were rare, the overall effects from the bill led to a flood of attention from the public. Congress received some 300,000 letters, 11,000 phone calls, and hundreds of meetings in Washington, D.C. were held in response to the bill's new rules and increased premiums (Beer, 2015). The effected did not just live in coastal regions, but also inland regions. The inattentive publics who had been quiet on flood insurance reform issues suddenly became very attentive.

Arnold (1992) notes that change in attentiveness of the public can be related to the "intensity" of the reform, defined as the magnitude of the difference between costs and benefits. While costs that were incurred to the publics from flood reforms were large, the reforms did not improve the short term benefits of the flood insurance policy holders, leading to a substantially lopsided outcome.

Issues of flood insurance affordability reverberated through out the country. Governor Rick Scott, Republican from Florida, sent a letter to President Obama indicating that many of Florida's residents were facing losing their homes due to skyrocketing insurance costs. Governor Scott ordered the President to "act now and undo the effects of this mistaken law..." (Vazquez, 2015). Some bureaucrats tried to use income inequality arguments to push for reforms to the BW-12. Michael Hecht, the president and CEO of Greater New Orleans Inc., noted that 55 percent of Americans live within 50 miles of the coastline and "...if the [Obama] Administration wants to address income inequality, it can begin by ensuring that millions of Americans do not lose their homes."

The real estate coalitions that had initially supported the BW-12 and flood insurance reform, the NAR and REALTORS®, now took a stance to overturn the reforms after concluding that they had a negative economic impact on demand for coastal property and home value. They were joined by JP Morgan Chase, the Mortgage Bankers Association, Home Depot, and the U.S. Chamber of Commerce, all because they were losing out on potential homebuyers and mortgagors (Beer, 2015). What was once an issue of environmental policy and fiscal prudence was now a discussion about affordability.

While the discussion of flood insurance continued, an abrupt campaign emerged for a seat in the U.S. House of Representatives in Florida after Representative C.W. "Bill" Young died while in office. The campaign highlighted the increased salience of flood insurance reform for those in close proximity to where the policy had a significant impact. Political advertisements appeared on a local TV network in a Gulf Coast district discussing the race's candidate's commitments to cap flood insurance premiums (Scholtes, 2014). In Arnold's "candidate position rule", citizens compare candidate's positions on issues and choose ones with the best positions, in this case, candidates who made it clear that they did not support BW-12. What was once an issue that garnered very little attention from citizens, was now prominently featured in some federal elections.

4.1 Congress passes the blame on to FEMA

Arnold (1992) suggests that legislators typically will adjust their policy positions to the extent that they satisfy the constituents in their district. Fearing voter retaliation, Congress scrambled for solutions to the unwelcome increased insurance premiums that the BW-12 brought. Stephen Ellis of the group Taxpayers for Common Sense appropriately called the reaction, "...buyer's remorse by the lawmakers" (Joyce, 2014). Furthermore, Congress searched for a group to blame other than themselves and found FEMA, the managing agency in charge of implementing the BW-12.

McCubbins et al. (1987) notes that political actors, or "principals", (in this case Congress) must control the decisions of administrators, or "agents", in terms of arriving at the desired policy outcome, otherwise the principal's performance could suffer and they could be removed from office. Assuming that bureaucrats, like FEMA, comply with the preferences of Congress is an example of the principal-agent problem. When there is a compliance failure, hearings occur to sort out the issues (monitoring). On November 19, 2013, a Congressional hearing was held before the Houses' Committee on Financial Services. The meeting largely enabled Congress to cross examine FEMA's implementation of the BW-12. Maxine Waters was in attendance and among those outraged by the effects of the bill she co-sponsored. At the hearing she claimed that her bill was "well-meaning" and "scolded" the FEMA administrator, W. Craig Fugate, for not letting Congress know sooner how high premiums would increase. Waters said, "Let me just say all of the harm that has been caused to thousands of people across the country [who] are calling us, [who] are going to lose their homes, [who] are placed in this position – it's just unconscionable.", and "Never in our wildest dreams did we think the premium increases would be what they appear to by today." Waters called for an "affordability study" to see how high rates could go and for FEMA to update its out of date flood maps that determine the insurance premiums (Subcomittee on Housing and Insurance, 2013).

Some were critical of Congress's flipflop on the BW-12. Ellis said that Congress's actions were basically saying, "'Why didn't you protect us from ourselves? Why didn't you tell us we were doing responsible reforms that were actually going to cost people money and have a bit of pain involved because that's what has to happen?"' (Joyce, 2014). But some political theorists may caution the placement of such criticism directly on Congress. Legislators are, among other activities, busy responding to multiple bill requests and cannot be expected to provide expertise on all technical issues. While Congressional staffers are used by legislators to gather some expertise, they still cannot be expected to have all necessary pieces of information when making a decision on a vote. McCubbins et al. (1987) notes that one of the functions of government agencies, like FEMA, is to offer their expertise to Congress. In this case, FEMA did not appear to speak up about the eventual issue of affordability arising during the initial flood insurance reform debates.

4.2 Reversal of the Biggert-Waters Flood Insurance Reform Act

As citizen and coalition complaints mounted and as legislators began to realize that their job security surprisingly depended much more on flood insurance, a bill was quickly drafted that would eventually become the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). The HFIAA did not completely undo the BW-12, but it struck out the insurance premium increases, the portion that would give the program a chance to financially recover. The bill was sponsored by Senators Robert Menendez, Democrat from New Jersey, and Johnny Isakson, Republican from Georgia. Many Republicans and Democrats, including the Obama Administration, were in opposition to HFIAA and wanted to avoid "gutting" the BW-12. The White House released a statement claiming that "gutting" the BW-12 would reduce the government's ability to pay out future flood claims (Davenport, 2014). Additionally, FEMA director Craig Fugate urged Congress not to undo the NFIP reforms. He told Congress's House Financial Services Committee that subsidizing insurance in flood zones is poor policy: "The moral hazard of subsidizing risk is, we're going to rebuild right where we were, just the way it was, and we're going to get wiped out" (Subcomittee on Housing and Insurance, 2013). Many who opposed HFIAA cited a Congressional Budget Office analysis that suggested delaying the BW-12 measures would cost the NFIP $2.1 billion in losses over ten years (King, 2014).

Nonetheless, well known conservative and liberal Senators supported HFIAA, such as Elizabeth Warren, Democrat from Massachusetts, and Marco Rubio, Republican from Florida. Rubio stated, "I'll vote for this bill and I'll support it because it's important to prevent these rate increases from going forward, but I'd like to find some long-term certainty to this." It's notable that both Senators are from states that have significant coastal property exposure and would want to appease their constituents.

The Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) became law on January 30, 2014, just four months after the increased rates associated with the BW-12 went into effect, and was passed by the 113th Congress, the same gridlock plagued body that was responsible for the government shutdown the year prior. Ultimately, HFIAA is not a solution to the NFIP's financial problems, but is merely a temporary fix. After the HFIAA passed, supporters of BW-12 had commented, "shortsighted politics had trumped sound policy" (Beer, 2015). Representative Earl Blumenauer, Democrat from Oregon, one of five Democrats who voted against HFIAA, exclaimed Congress was just "kicking the can down the road", or putting off a long term issue that will eventually need to be addressed (Beer, 2015). The HFIAA left the NFIP vulnerable to escalating debt and could take a substantial hit from storms and floods that could strike before 2017, the year when the FEMA affordability study is expected to be completed and when Congress must again consider reauthorizing the NFIP.

5 Conclusion

This analysis suggests that the theories from Arnold (1992) highlight the importance of legislators to consider the inattentive publics when making reforms to technical policies, especially when they attract very little public opinion. Ultimately, many of the BW-12 reforms were stuck down because they led to feedbacks that imposed tremendous direct economic costs on individuals and the policy was not able to reinforce itself and arrive at a lasting stable equilibrium. Currently, the NFIP's financial problems are unlikely to right themselves with out further congressional action, but homeowners have peace of mind that insurance rates will not rise substantially until 2017.

The BW-12 collapse was partly a failure by most legislators to notice that their constituents would have to pay substantially more for flood insurance and partly a failure due to FEMA's inability to regularly update its flood maps that are used to price risk accurately and to not communicate the affordability issue to Congress during initial flood reform discussions.

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