

113TH CONGRESS  
1ST SESSION

# S. 1610

To delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2013

Mr. MENENDEZ (for himself, Mr. ISAKSON, Ms. LANDRIEU, Mr. COCHRAN, Mr. MERKLEY, Mr. VITTER, Mr. HOEVEN, Ms. HEITKAMP, Mr. SCHUMER, Mrs. GILLIBRAND, Mr. MARKEY, Mr. NELSON, Mr. BEGICH, Ms. WARREN, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Homeowner Flood In-

5 surance Affordability Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions shall

8 apply:

1           (1) ADJUSTED BASE FLOOD ELEVATION.—For  
2 purposes of rating a floodproofed covered structure,  
3 the term “adjusted base flood elevation” means the  
4 base flood elevation for a covered structure on the  
5 applicable effective flood insurance rate map, plus 1  
6 foot.

7           (2) ADMINISTRATOR.—The term “Adminis-  
8 trator” means the Administrator of the Federal  
9 Emergency Management Agency.

10          (3) AFFORDABILITY AUTHORITY BILL.—The  
11 term “affordability authority bill” means a non-  
12 amendable bill that if enacted would only grant the  
13 Administrator the authority necessary to promulgate  
14 regulations in accordance with the criteria set forth  
15 in section 3(d)(2).

16          (4) AFFORDABILITY STUDY.—The term “af-  
17 fordability study” means the study required under  
18 section 100236 of the Biggert-Waters Flood Insur-  
19 ance Reform Act of 2012 (Public Law 112–141; 126  
20 Stat. 957).

21          (5) APPLICABLE FLOOD PLAIN MANAGEMENT  
22 MEASURES.—The term “applicable flood plain man-  
23 agement measures” means flood plain management  
24 measures adopted by a community under section  
25 60.3(c) of title 44, Code of Federal Regulations.

1           (6) COVERED STRUCTURE.—The term “covered  
2 structure” means a residential structure—

3           (A) that is located in a community that  
4 has adopted flood plain management measures  
5 that are approved by the Federal Emergency  
6 Management Agency and that satisfy the re-  
7 quirements for an exception for floodproofed  
8 residential basements under section 60.6(c) of  
9 title 44, Code of Federal Regulations; and

10          (B) that was built in compliance with the  
11 applicable flood plain management measures.

12          (7) DRAFT AFFORDABILITY FRAMEWORK.—The  
13 term “draft affordability framework” means the  
14 draft programmatic and regulatory framework re-  
15 quired to be prepared by the Administrator and sub-  
16 mitted to Congress under section 3(d) addressing  
17 the issues of affordability of flood insurance sold  
18 under the National Flood Insurance Program, in-  
19 cluding issues identified in the affordability study.

20          (8) FLOODPROOFED ELEVATION.—The term  
21 “floodproofed elevation” means the height of  
22 floodproofing on a covered structure, as identified on  
23 the Residential Basement Floodproofing Certificate  
24 for the covered structure.

1           (9) NATIONAL FLOOD INSURANCE PROGRAM.—  
 2           The term “National Flood Insurance Program”  
 3           means the program established under the National  
 4           Flood Insurance Act of 1968 (42 U.S.C. 4001 et  
 5           seq.).

6 **SEC. 3. DELAYED IMPLEMENTATION OF FLOOD INSURANCE**  
 7                           **RATE INCREASES; DRAFT AFFORDABILITY**  
 8                           **FRAMEWORK.**

9           (a) DELAYED IMPLEMENTATION OF FLOOD INSUR-  
 10 ANCE RATE INCREASES.—

11           (1) GRANDFATHERED PROPERTIES.—Beginning  
 12           on the date of enactment of this Act, the Adminis-  
 13           trator may not increase risk premium rates for flood  
 14           insurance for any property located in an area subject  
 15           to the premium adjustment required under section  
 16           1308(h) of the National Flood Insurance Act of  
 17           1968 (42 U.S.C. 4015(h)).

18           (2) PRE-FIRM PROPERTIES.—Beginning on the  
 19           date of enactment of this Act, the Administrator  
 20           may not reduce the risk premium rate subsidies for  
 21           flood insurance for any property—

22                           (A) described under section 1307(g)(1) of  
 23                           the National Flood Insurance Act of 1968 (42  
 24                           U.S.C. 4014(g)(1)); or

1 (B) described under 1307(g)(3) of the Na-  
2 tional Flood Insurance Act of 1968 (42 U.S.C.  
3 4014(g)(3)), provided that the decision of the  
4 policy holder to permit a lapse in flood insur-  
5 ance coverage was as a result of the property  
6 no longer being required to retain such cov-  
7 erage.

8 (3) EXPIRATION.—The prohibitions set forth  
9 under paragraphs (1) and (2) shall expire 6 months  
10 after the later of—

11 (A) the date on which the Administrator  
12 proposes the draft affordability framework;

13 (B) the date on which any regulations pro-  
14 posed pursuant to the authority that the Ad-  
15 ministrator is granted in the affordability au-  
16 thority bill, if such bill is enacted, become final;  
17 or

18 (C) the date on which the Administrator  
19 certifies in writing to Congress that the Federal  
20 Emergency Management Agency has imple-  
21 mented a flood mapping approach that utilizes  
22 sound scientific and engineering methodologies  
23 to determine varying levels of flood risk in all  
24 areas participating in the National Flood Insur-  
25 ance Program.

1 (b) PROPERTY SALE TRIGGER.—Section 1307(g)(2)  
2 of the National Flood Insurance Act of 1968 (42 U.S.C.  
3 4014(g)(2)) is amended to read as follows:

4 “(2) any property purchased after the expira-  
5 tion of the 6-month period set forth under section  
6 3(a)(3) of the Homeowner Flood Insurance Afford-  
7 ability Act of 2013;”.

8 (c) TREATMENT OF PRE-FIRM PROPERTIES.—Be-  
9 ginning on the date of enactment of this Act and ending  
10 upon the expiration of the 6-month period set forth under  
11 subsection (a)(3), the Administrator shall restore the risk  
12 premium rate subsidies for flood insurance estimated  
13 under section 1307(a)(2) of the National Flood Insurance  
14 Act of 1968 (42 U.S.C. 4014(a)(2)) for any property de-  
15 scribed in subparagraphs (A) and (B) of subsection (a)(2)  
16 of this Act and in section 1307(g)(2) of the National  
17 Flood Insurance Act of 1968 (42 U.S.C. 4014(g)(2)).

18 (d) DRAFT AFFORDABILITY FRAMEWORK.—

19 (1) IN GENERAL.—The Administrator shall pre-  
20 pare a draft affordability framework that proposes  
21 to address, via programmatic and regulatory  
22 changes, the issues of affordability of flood insur-  
23 ance sold under the National Flood Insurance Pro-  
24 gram, including issues identified in the affordability  
25 study.

1           (2) CRITERIA.—In carrying out the require-  
2           ments under paragraph (1), the Administrator shall  
3           consider the following criteria:

4                   (A) Accurate communication to consumers  
5                   of the flood risk associated with their property.

6                   (B) Targeted assistance to flood insurance  
7                   policy holders based on their financial ability to  
8                   continue to participate in the National Flood  
9                   Insurance Program.

10                  (C) Individual or community actions to  
11                  mitigate the risk of flood or lower the cost of  
12                  flood insurance.

13                  (D) The impact of increases in risk pre-  
14                  mium rates on participation in the National  
15                  Flood Insurance Program.

16                  (E) The impact flood insurance rate map  
17                  updates have on the affordability of flood insur-  
18                  ance.

19           (3) DEADLINE FOR SUBMISSION.—Not later  
20           than 18 months after the date on which the Admin-  
21           istrator submits the affordability study, the Admin-  
22           istrator shall submit to the full Committee on Bank-  
23           ing, Housing, and Urban Affairs and the full Com-  
24           mittee on Appropriations of the Senate and the full  
25           Committee on Financial Services and the full Com-

1       committee on Appropriations of the House of Represent-  
2       atives the draft affordability framework.

3       (e) CONGRESSIONAL CONSIDERATION OF FEMA AF-  
4       FORDABILITY AUTHORITIES.—

5           (1) NO REFERRAL.—Upon introduction in ei-  
6       ther House of Congress, an affordability authority  
7       bill shall not be referred to a committee and shall  
8       immediately be placed on the calendar.

9           (2) CONSIDERATION IN THE HOUSE OF REP-  
10       RESENTATIVES.—

11           (A) PROCEEDING TO CONSIDERATION.—It  
12       shall be in order to move to proceed to consider  
13       the affordability authority bill in the House. All  
14       points of order against the motion are waived.  
15       Such a motion shall not be in order after the  
16       House has disposed of a motion to proceed with  
17       respect to the affordability authority bill. The  
18       previous question shall be considered as ordered  
19       on the motion to its adoption without inter-  
20       vening motion. The motion shall not be debat-  
21       able. A motion to reconsider the vote by which  
22       the motion is disposed of shall not be in order.

23           (B) CONSIDERATION.—The affordability  
24       authority bill shall be considered as read. All  
25       points of order against the affordability author-

1           ity bill and against its consideration are waived.  
2           The previous question shall be considered as or-  
3           dered on the affordability authority bill to its  
4           passage without intervening motion except 10  
5           hours of debate equally divided and controlled  
6           by the proponent and an opponent. A motion to  
7           reconsider the vote on passage of the afford-  
8           ability authority bill shall not be in order.

9           (3) CONSIDERATION IN THE SENATE.—

10           (A) PLACEMENT ON THE CALENDAR.—  
11           Upon introduction in the Senate, an afford-  
12           ability authority bill shall be immediately placed  
13           on the calendar.

14           (B) FLOOR CONSIDERATION.—Notwith-  
15           standing Rule XXII of the Standing Rules of  
16           the Senate, it is in order, at any time beginning  
17           on the day after the 6th day after the date of  
18           introduction of an affordability authority bill  
19           (even if a previous motion to the same effect  
20           has been disagreed to) to move to proceed to  
21           the consideration of the affordability authority  
22           bill and all points of order against consideration  
23           of the affordability authority bill are waived.  
24           The motion to proceed is not debatable. The  
25           motion is not subject to a motion to postpone.

1 A motion to reconsider the vote by which the  
2 motion is agreed to or disagreed to shall not be  
3 in order. If a motion to proceed to the consider-  
4 ation of the affordability authority bill is agreed  
5 to, the affordability authority bill shall remain  
6 the unfinished business until disposed of.

7 (C) CONSIDERATION.—All points of order  
8 against the affordability authority bill are  
9 waived. Consideration of the affordability au-  
10 thority bill and of all debatable motions and ap-  
11 peals in connection therewith shall be limited to  
12 not more than 10 hours which shall be divided  
13 equally between the majority and minority lead-  
14 ers or their designees. A motion further to limit  
15 debate on the affordability authority bill is in  
16 order, and is not debatable.

17 (D) NO AMENDMENTS.—An amendment to  
18 the affordability authority bill, or a motion to  
19 postpone, or a motion to proceed to the consid-  
20 eration of other business, or a motion to com-  
21 mit or recommit the affordability authority bill,  
22 is not in order.

23 (E) VOTE ON PASSAGE.—If the Senate has  
24 voted to proceed to the affordability authority  
25 bill, the vote on passage of the affordability au-

1           thority bill shall occur immediately following the  
2           conclusion of consideration of the affordability  
3           authority bill, and a single quorum call at the  
4           conclusion of the debate if requested in accord-  
5           ance with the rules of the Senate.

6           (4) AMENDMENT.—The affordability authority  
7           bill shall not be subject to amendment in either the  
8           House of Representatives or the Senate.

9           (5) CONSIDERATION BY THE OTHER HOUSE.—

10           (A) IN GENERAL.—If, before passing the  
11           affordability authority bill, one House receives  
12           from the other an affordability authority bill—

13           (i) the affordability authority bill of  
14           the other House shall not be referred to a  
15           committee; and

16           (ii) the procedure in the receiving  
17           House shall be the same as if no afford-  
18           ability authority bill had been received  
19           from the other House except that the vote  
20           on passage shall be on the affordability au-  
21           thority bill of the other House.

22           (B) REVENUE MEASURE.—This subsection  
23           shall not apply to the House of Representatives  
24           if the affordability authority bill received from  
25           the Senate is a revenue measure.

1           (6) COORDINATION WITH ACTION BY OTHER  
2 HOUSE.—

3           (A) TREATMENT OF AFFORDABILITY AU-  
4 THORITY BILL OF OTHER HOUSE.—If the Sen-  
5 ate fails to introduce or consider a affordability  
6 authority bill under this section, the afford-  
7 ability authority bill of the House shall be enti-  
8 tled to expedited floor procedures under this  
9 section.

10          (B) TREATMENT OF COMPANION MEAS-  
11 URES IN THE SENATE.—If following passage of  
12 the affordability authority bill in the Senate,  
13 the Senate then receives the affordability au-  
14 thority bill from the House of Representatives,  
15 the House-passed affordability authority bill  
16 shall not be debatable.

17          (C) VETOES.—If the President vetoes the  
18 affordability authority bill, debate on a veto  
19 message in the Senate under this section shall  
20 be 1 hour equally divided between the majority  
21 and minority leaders or their designees.

22          (7) RULES OF THE HOUSE OF REPRESENTA-  
23 TIVES AND SENATE.—This subsection is enacted by  
24 Congress—

1 (A) as an exercise of the rulemaking power  
2 of the Senate and the House of Representa-  
3 tives, respectively, and as such it is deemed a  
4 part of the rules of each House, respectively,  
5 but applicable only with respect to the proce-  
6 dure to be followed in that House in the case  
7 of an affordability authority bill, and it super-  
8 sedes other rules only to the extent that it is in-  
9 consistent with such rules; and

10 (B) with full recognition of the constitu-  
11 tional right of either House to change its rules  
12 at any time, in the same manner, and to the  
13 same extent as in the case of any other rule of  
14 that House.

15 (f) INTERAGENCY AGREEMENTS.—The Adminis-  
16 trator may enter into an agreement with another Federal  
17 agency to—

18 (1) complete the affordability study; or

19 (2) prepare the draft affordability framework.

20 (g) CLEAR COMMUNICATIONS.—The Administrator  
21 shall clearly communicate full flood risk determinations to  
22 individual property owners regardless of whether their pre-  
23 mium rates are full actuarial rates.

24 (h) RULE OF CONSTRUCTION.—Nothing in this sec-  
25 tion shall be construed to provide the Administrator with

1 the authority to provide assistance to homeowners based  
2 on affordability that was not available prior to the enact-  
3 ment of the Biggert-Waters Flood Insurance Reform Act  
4 of 2012 (Public Law 112–141; 126 Stat. 916).

5 **SEC. 4. AFFORDABILITY STUDY AND REPORT.**

6 Notwithstanding the deadline under section  
7 100236(c) of the Biggert-Waters Flood Insurance Reform  
8 Act of 2012 (Public Law 112–141; 126 Stat. 957), not  
9 later than 2 years after the date of enactment of this Act,  
10 the Administrator shall submit to the full Committee on  
11 Banking, Housing, and Urban Affairs and the full Com-  
12 mittee on Appropriations of the Senate and the full Com-  
13 mittee on Financial Services and the full Committee on  
14 Appropriations of the House of Representatives the af-  
15 fordability study and report required under such section.

16 **SEC. 5. AFFORDABILITY STUDY FUNDING.**

17 Section 100236(d) of the Biggert-Waters Flood In-  
18 surance Reform Act of 2012 (Public Law 112–141; 126  
19 Stat. 957) is amended by striking “not more than  
20 \$750,000” and inserting “such amounts as may be nec-  
21 essary”.

22 **SEC. 6. FUNDS TO REIMBURSE HOMEOWNERS FOR SUC-**  
23 **CESSFUL MAP APPEALS.**

24 (a) IN GENERAL.—Section 1363(f) of the National  
25 Flood Insurance Act of 1968 (42 U.S.C. 4104(f)) is

1 amended by striking the second sentence and inserting the  
2 following: “The Administrator may use such amounts  
3 from the National Flood Insurance Fund established  
4 under section 1310 as may be necessary to carry out this  
5 subsection.”.

6 (b) CONFORMING AMENDMENT.—Section 1310(a) of  
7 the National Flood Insurance Act of 1968 (42 U.S.C.  
8 4017(a)) is amended—

9 (1) in paragraph (6), by striking “and” at the  
10 end;

11 (2) in paragraph (7), by striking the period at  
12 the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(8) for carrying out section 1363(f).”.

15 **SEC. 7. FLOOD PROTECTION SYSTEMS.**

16 (a) ADEQUATE PROGRESS ON CONSTRUCTION OF  
17 FLOOD PROTECTION SYSTEMS.—Section 1307(e) of the  
18 National Flood Insurance Act of 1968 (42 U.S.C.  
19 4014(e)) is amended—

20 (1) in the first sentence, by inserting “or recon-  
21 struction” after “construction”;

22 (2) by amending the second sentence to read as  
23 follows: “The Administrator shall find that adequate  
24 progress on the construction or reconstruction of a  
25 flood protection system, based on the present value

1 of the completed flood protection system, has been  
2 made only if (1) 100 percent of the cost of the sys-  
3 tem has been authorized, (2) at least 60 percent of  
4 the cost of the system has been appropriated, (3) at  
5 least 50 percent of the cost of the system has been  
6 expended, and (4) the system is at least 50 percent  
7 completed.”; and

8 (3) by adding at the end the following: “Not-  
9 withstanding any other provision of law, in deter-  
10 mining whether a community has made adequate  
11 progress on the construction, reconstruction, or im-  
12 provement of a flood protection system, the Adminis-  
13 trator shall consider all sources of funding, including  
14 Federal, State, and local funds.”.

15 (b) COMMUNITIES RESTORING DISACCREDITED  
16 FLOOD PROTECTION SYSTEMS.—Section 1307(f) of the  
17 National Flood Insurance Act of 1968 (42 U.S.C.  
18 4014(f)) is amended by amending the first sentence to  
19 read as follows: “Notwithstanding any other provision of  
20 law, this subsection shall apply to riverine and coastal lev-  
21 ees that are located in a community which has been deter-  
22 mined by the Administrator of the Federal Emergency  
23 Management Agency to be in the process of restoring flood  
24 protection afforded by a flood protection system that had  
25 been previously accredited on a Flood Insurance Rate Map

1 as providing 100-year frequency flood protection but no  
2 longer does so, and shall apply without regard to the level  
3 of Federal funding of or participation in the construction,  
4 reconstruction, or improvement of the flood protection sys-  
5 tem.”.

6 **SEC. 8. TREATMENT OF FLOODPROOFED RESIDENTIAL**  
7 **BASEMENTS.**

8 Notwithstanding the Biggert-Waters Flood Insurance  
9 Reform Act of 2012 (Public Law 112–141; 126 Stat.  
10 916), the amendments made by that Act, or any other pro-  
11 vision of law, the Administrator shall rate a covered struc-  
12 ture using the elevation difference between the  
13 floodproofed elevation of the covered structure and the ad-  
14 justed base flood elevation of the covered structure.

15 **SEC. 9. DESIGNATION OF FLOOD INSURANCE ADVOCATE.**

16 (a) **IN GENERAL.**—The Administrator shall designate  
17 a Flood Insurance Advocate to advocate for the fair treat-  
18 ment of policy holders under the National Flood Insurance  
19 Program and property owners in the mapping of flood  
20 hazards, the identification of risks from flood, and the im-  
21 plementation of measures to minimize the risk of flood.

22 (b) **DUTIES AND RESPONSIBILITIES.**—The duties  
23 and responsibilities of the Flood Insurance Advocate des-  
24 ignated under subsection (a) shall be to—

- 1           (1) educate property owners and policyholders  
2 under the National Flood Insurance Program on—  
3           (A) individual flood risks;  
4           (B) flood mitigation; and  
5           (C) measures to reduce flood insurance  
6 rates through effective mitigation; and  
7           (D) the flood insurance rate map review  
8 and amendment process;
- 9           (2) assist policy holders under the National  
10 Flood Insurance Program and property owners to  
11 understand the procedural requirements related to  
12 appealing preliminary flood insurance rate maps and  
13 implementing measures to mitigate evolving flood  
14 risks;
- 15           (3) assist in the development of regional capac-  
16 ity to respond to individual constituent concerns  
17 about flood insurance rate map amendments and re-  
18 visions;
- 19           (4) coordinate outreach and education with  
20 local officials and community leaders in areas im-  
21 pacted by proposed flood insurance rate map amend-  
22 ments and revisions; and
- 23           (5) aid potential policy holders under the Na-  
24 tional Flood Insurance Program in obtaining and  
25 verifying accurate and reliable flood insurance rate

1 information when purchasing or renewing a flood in-  
2 surance policy.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated for each fiscal year such  
5 sums as may be necessary to carry out the duties and re-  
6 sponsibilities of the Flood Insurance Advocate.

○