



New Mexico FAIR Plan Update, Mitigation & Predominant Cause Insurance Coverage

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THE FAIR PLAN UPDATE

Legislative History of the FAIR Plan Act (Fair Access to Insurance Requirements)

- **1969:** FAIR Plan Act Originally enacted in New Mexico in 1969 because of Title XI of the Housing and Urban Development Act of 1968 to cover the urban riots.
- **1978-1984:** The FAIR Plan Act was amended or extended in 1978, 1979, 1981, 1982, 1984 with the effect of becoming a broader residual market.
 - A residual market is a “market of last resort” established to provide access to insurance to people unable to obtain insurance in the voluntary market.
- **1985:** The current version of the FAIR Plan Act enacted in 1985.

New Mexico Property Insurance Program (“NMPIP”)

- Authorized by the FAIR Plan Act
- NMPIP is an industry underwriting association authorized to issue limited residential or commercial property insurance
- Every licensed property insurer in New Mexico is required to be a member of NMPIP and contribute to assessments when necessary
- Funded by premium, and industry assessments
- Property insurer of last resort
- NMPIP is not a state agency and receives no state funds
- 33 states have some form of FAIR Plan, varies by state
- Residual market policy counts doubled from 2019-2024

Primary Carriers accelerated non-renewals in 2023 in wildfire

County	2021	2022	2023	% Change 2023	Q1 and Q2 2024	Total
Bernalillo County	681	527	1,492	183%	763	3,463
Santa Fe County	151	206	377	83%	147	881
Sandoval County	199	154	362	135%	156	871
Dona Ana County	173	131	288	120%	137	729
Lincoln County	54	59	326	453%	34	473
San Juan County	94	83	172	107%	132	481
Valencia County	75	67	172	157%	118	432
Otero County	82	91	131	44%	80	384
Chaves County	85	36	122	239%	73	316
Lea County	55	43	118	174%	40	256
Subtotal	1,649	1,397	3,560	155%	1,680	8,286
All Other Counties	576	510	798	56%	399	2,283
Statewide	2,225	1,907	4,358	129%	2,079	10,569

- Top Three Counties for Non-Renewals
 - Lincoln, 453%
 - Chaves, 239%
 - Bernalillo, 183%
- OSI expects updated numbers, including the first two quarters of 2024, by year end.

New Mexico FAIR Plan Developments

2022 Acting Superintendent Catechis requested increased coverage limits & consumer advocate

- Increase coverage amounts from \$250,000 to \$350,000
- Requested to add a Consumer Advocate and Representative of OSI

Plan re-evaluates premium rates

- Actuarial report Indicated 20% premium increase and Governing Committee only takes 9.7% increase

2023/2024 Insurance Industry Assessments

- Industry assessed- \$2.5 million to meet hail claim needs
- Estimated \$5 million Ruidoso wildfire losses
- \$8 million industry assessment

Governing Committee Meeting on July 7, 2025

- **Policy limits:** increased residential property coverage limits to \$750,000.
- **Actuarially justified rates:** premium rates shall not be “excessive, inadequate, or unfairly discriminatory.”
- **Governance:**
 - Added one member appointed by the Superintendent with expertise in catastrophic risk, finance statutory accounting, or actuarial science experience.
 - Superintendent has appointed Julie Rochman, a climate expert and former President and CEO of IBHS
 - Reduced the number of industry members from 7 to 5
- **Residual Market Requirements:**
 - Eligibility: Applicant must have been denied insurance in the traditional market;
 - Requires the application to be submitted by a licensed producer
- **Premium discounts:** Allows applicants for NMPIP to be eligible for premium discounts for mitigation completed in accordance with the standards of the Insurance Institute for Business & Home Safety (“IBHS”).
- **Still Under Consideration:** The Governing Committee agreed to consider and increase commercial property coverage limits from \$1 million to \$2 million at its September meeting.

GRANT PROGRAM FOR WILDFIRE MITIGATION

HB 2-\$10 Million To the New Mexico Fair Plan Grant Program for Mitigation

- OSI is working with the Wildfire Task Force to best implement mitigation standards and a grant program for FAIR Plan policy holders
- OSI is utilizing IBHS standards for wildfire mitigation both at the community and individual property level
- OSI is consulting with the NAIC and Brian Powell, creator of the very successful “Strengthen Alabama” grant program

\$2 Million Allocation: Study of the Fire Insurance Market

Mapping to identify areas best suited for mitigation on the State, Community and Individual home levels

Data Call to provide updated current industry information including non-renewals and premium costs

Market research poll to understand information about uninsured properties in New Mexico

WILDFIRES AS THE PREDOMINANT CAUSE OF FLOODING

FEMA FACT SHEET

- Wildfires leave the ground charred, barren, and unable to absorb water, creating conditions ripe for flash flooding and mudslides.
- Flood risk remains significantly higher until vegetation is restored – up to 5 years after a wildfire.
- Flash floods particularly common after wildfires can occur within minutes after the onset of a rainstorm.
- Flooding and flood damage after fire is often more severe, as debris and ash left from the fire can form mudflows.

Howell v. State Farm (CA): The property owner presented expert testimony that the landslide occurred due to a fire, which was covered under the policy and which destroyed vegetation on the slope the summer before the landslide.

Landslide, Flooding, Mudflow & Debris Flow

- ***New Mexicans have experienced significant flooding following the Hermit's Peak/Calf Canyon, Salt and South Fork Fires.***
 - Under current law
 - Typically homeowner policies exclude landslide, flooding, mudflow, & debris flow.
 - California and North Dakota have enacted specific efficient proximate cause statutes.
- **Efficient Proximate Cause:** means when a loss is caused by a predominant covered peril such as a wildfire, the excluded peril such as flood will be covered.

Wildfire is Predominant Cause of the Flood

California



- General statute passed in 1935
- Case law from the 1980s-2010s define on the general statute
- 2017 Thomas Fire and Montecito Mudslides
- 2018 Statute: codifies that, if the covered peril, i.e., wildfire is the cause of the landslide, mudslide, mudflow, or debris flow, the loss is covered.

North Dakota



- Passed in 1985
- Case law in the 2000s explaining coverage

Legislative Actions on SB 215

Sponsor: SB 215 was sponsored by Senator Leo Jaramillo.

Legislative Actions:

- SB 215 was heard in the **Senate Taxation, Business & Transportation Committee** on February 20, 2025.
 - It passed the committee unanimously (3 members were excused).
- The session adjourned and action on SB 215 was postponed indefinitely (“API”).