

NATIONAL FLOOD INSURANCE PROGRAM
ADMINISTRATIVE REFORM ACT OF 2017

JULY 18, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 2875]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2875) to make administrative reforms to the National Flood Insurance Program to increase fairness and accuracy and protect the taxpayer from program fraud and abuse, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Nydia Velazquez on June 12, 2017, H.R. 2875, the “National Flood Insurance Program Administrative Reform Act of 2017,” makes administrative reforms to the National Flood Insurance Program to increase fairness and accuracy and protect the taxpayer from program fraud and abuse.

BACKGROUND AND NEED FOR LEGISLATION

GENERAL OVERVIEW

Floods are among the most frequently occurring and costly natural disasters. Most declarations of federal disasters by the Federal Emergency Management Agency (FEMA) are related to flooding. Yet despite the frequency and severity of losses that result from flooding, the private insurance market generally did not provide insurance for flooding; when it did, insurance for flood-related damage can be expensive because the properties most at-risk tend to

be highly concentrated geographically and the potential risk of economic losses is extremely high.

To supplement the availability of flood insurance in the private market, Congress, in 1968, created the National Flood Insurance Program (NFIP), which is administered by FEMA and provides flood insurance to approximately 5.1 million policyholders across the country. In exchange for premiums paid by policyholders, NFIP makes federally backed flood insurance available to homeowners and other property owners (for example, businesses, churches, and farmers) in these communities.

Homeowners with mortgages held by federally regulated lenders on property in participating communities identified by FEMA to be in Special Flood Hazard Areas are required to purchase flood insurance (mandatory purchase requirement). NFIP coverage limits vary by program (regular or emergency) and property type (for example, residential or nonresidential). In NFIP's regular program, the maximum coverage limits for residential policyholders are \$250,000 for buildings and \$100,000 for contents. For commercial policyholders (that is, those with policies for nonresidential properties), the maximum coverage limit is \$500,000 per building and \$500,000 for contents owned by the building owner. There is additional coverage for contents owned by the tenants.

Residents and business owners in over 22,000 participating communities across the United States and its territories are able to buy NFIP flood insurance policies through insurance agents and companies that participate as third-party administrators in the "Write Your Own" (WYO) program. The WYO program allows private insurance carriers to issue and service government underwritten and taxpayer backed NFIP policies with no private financial liability from the insurer. Insurance companies that participate in the WYO program receive an expense allowance for policies they write and the claims they process. In addition, their agents earn a commission for the policies they sell. The federal government, however, retains responsibility for managing the risk and paying claims, as well as covering any litigation costs should a WYO insurer be sued in court.

Property owners can purchase flood insurance through the NFIP only if their communities participate in the NFIP. To participate in the NFIP, a community must agree to abide by certain statutory provisions intended to mitigate the risk of flooding, such as building codes that require new structures built in floodplains (high-risk areas) to be protected against flooding or to be elevated above the 100-year floodplain.

As of June 5, 2017, the NFIP has an outstanding debt of \$24.6 billion borrowed from taxpayers, with roughly \$1.1 billion available cash-on-hand and \$5.825 billion remaining of its total temporary \$30.425 billion Treasury borrowing authority. The NFIP's debt results primarily from its borrowing to pay claims relating to the Gulf Coast hurricanes in 2005 and Superstorm Sandy in October 2012. This borrowing stems from a structural imbalance in how the NFIP measures and prices for risk, resulting in only 46 percent of premium dollars collected in 2016 being available for the payments of claims. With such a low portion of premiums available to pay claims, the pressure on the NFIP to borrow from taxpayers increases. The NFIP's structural budget crisis has required periodic

legislation to increase its borrowing authority, the most recent example of which occurred in January 2013 when Congress increased the NFIP's borrowing authority by \$9.7 billion—from \$20.725 billion to its current \$30.425 billion level.

Superstorm Sandy, which made landfall in October 2012, resulted in \$65 billion in damage and destroyed or damaged 650,000 residential homes. Following the destruction, FEMA paid thousands of flood insurance claims to victims but, reports began to surface that many claims might have been severely underpaid due to the submission of false engineering reports. By 2015, there were both constituent and media reports that described “dozens of cases” where original drafts of engineering reports were either revised or deleted in order to understate the extent to which the policyholder suffered insured losses, thus lowering payments to flood insurance claimants. Policyholders alleged that these practices were widespread. As a result of these practices, insurance companies made lower payments than they otherwise should have, causing many homeowners to be unable to rebuild their homes.

Superstorm Sandy resulted in 144,000 claims received by FEMA, through the Write Your Own companies, paying approximately \$8.4 billion to policyholders. Because of the concerns regarding certain alleged fraudulent practices, FEMA established a task force in February 2015 to expeditiously resolve litigation from the claims involving Superstorm Sandy and offer all policyholders, who believe they may have been underpaid, the opportunity to have their claims reviewed. As of March 2017, FEMA paid out an additional \$350 million to policyholders on those claims resulting from the Superstorm Sandy claims event.

H.R. 2875 is a culmination of the lessons learned from FEMA, stakeholders, and policymakers during the claims paying process responding to Superstorm Sandy. According to the Department of Homeland Security's Inspector General,

FEMA does not provide adequate oversight of the WYO [Write Your Own] program under NFIP. Specifically, FEMA is not using the results from its Financial Control Plan reviews to make program improvements; is not performing adequate oversight of the SALAE [Special Allocated Loss Adjustment Expenses] reimbursement process; and does not have controls to provide proper oversight of the appeals process. These conditions exist because FEMA does not have adequate guidance, resources, or internal controls. As a result of this inadequate oversight, FEMA is unable to ensure that WYO companies are properly implementing NFIP and is unable to identify systemic problems in the program. Furthermore, without adequate internal controls in place, FEMA's NFIP funds may be at risk for fraud, waste, abuse or mismanagement.

H.R. 2875 addresses concerns which range from the inadequacy of mitigation programs, fraudulent statements and claims, lack of oversight of the taxpayer-funded litigation practices and costs, the need for a more transparent process for claims payments and appeals, and better disclosures.

HEARINGS

The Committee on Financial Services' Subcommittee on Housing & Insurance held two hearings examining matters relating to H.R. 2875 on March 9, 2017 and March 16, 2017. The Committee on Financial Services held a hearing examining matters relating to H.R. 2875 on June 7, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 21, 2017 to consider H.R. 2875. The Committee ordered H.R. 2875 to be reported favorably to the House, without amendment, by a recorded vote of 58 yeas to 0 nays (Recorded vote no. FC-64), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 53 yeas to 0 nays (Recorded vote no. FC-58), a quorum being present.

Present	Representative	Yeas	Nays
	Mr. HENSARLING, <i>Chairman</i>	✓	
	Mr. McHENRY	✓	
	Mr. KING	✓	
	Mr. ROYCE	✓	
	Mr. LUCAS	✓	
	Mr. PEARCE	✓	
	Mr. POSEY	✓	
	Mr. LUETKEMEYER	✓	
	Mr. HUIZENGA	✓	
	Mr. DUFFY	✓	
	Mr. STIVERS	✓	
	Mr. HULTGREN	✓	
	Mr. ROSS	✓	
	Mr. PITTENGER	✓	
	Mrs. WAGNER	✓	
	Mr. BARR	✓	
	Mr. ROTHFUS	✓	
	Mr. MESSER	✓	
	Mr. TIPTON	✓	
	Mr. WILLIAMS	✓	
	Mr. POLIQUIN	✓	
	Mrs. LOVE	✓	
	Mr. HILL	✓	
	Mr. EMMER	✓	
	Mr. ZELDIN	✓	
	Mr. TROTT	✓	
	Mr. LOUDERMILK	✓	
	Mr. MOONEY	✓	
	Mr. MACARTHUR	✓	
	Mr. DAVIDSON	✓	
	Mr. BUDD	✓	
	Mr. KUSTOFF	✓	
	Ms. TENNEY	✓	
	Mr. HOLLINGSWORTH	✓	
	Ms. WATERS, <i>Ranking Member</i>	✓	
	Mrs. MALONEY	✓	
	Ms. VELAZQUEZ	✓	
	Mr. SHERMAN	✓	
	Mr. MEEKS	✓	
	Mr. CAPUANO	✓	
	Mr. CLAY	✓	
	Mr. LYNCH	✓	
	Mr. SCOTT	✓	
	Mr. GREEN	✓	
	Mr. CLEAVER	✓	
	Ms. MOORE	✓	
	Mr. ELLISON	✓	
	Mr. PERLMUTTER	✓	
	Mr. HIMES	✓	
	Mr. FOSTER	✓	
	Mr. KILDEE	✓	
	Mr. DELANEY	✓	
	Ms. SINEMA	✓	
	Mrs. BEATTY	✓	
	Mr. HECK	✓	
	Mr. VARGAS	✓	
	Mr. GOTTHEIMER	✓	
	Mr. GONZALEZ	✓	
	Mr. CRIST	✓	
	Mr. KIHUEN	✓	

Committee on Financial Services

115th Congress

DATE: 6/21/17

Measure HR 2875

Amendment No. MTA

Offered by: _____

Agreed To	Yes	No	Wdm
	✓		

Voice Vote	Yeas	Nays	Prsnt
	58	0	

Record vote no.	FC-64
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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2875 will make administrative reforms to the National Flood Insurance Program to increase fairness and accuracy and protect the taxpayer from program fraud and abuse.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2875, the National Flood Insurance Program Administrative Reform Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 2875—National Flood Insurance Program Administrative Reform Act of 2017

Summary: Under current law, property owners can buy flood insurance through the National Flood Insurance Program (NFIP). Property owners who buy insurance through the NFIP pay annual premiums which are deposited into the National Flood Insurance Fund (NFIF) and are used to pay flood damage claims submitted by policyholders. Those premiums and payments are not subject to annual appropriation.

H.R. 2875 would give NFIP policyholders the option to buy a higher level of coverage under the Increased Cost of Compliance (ICC) program, which provides payments to property owners to undertake flood mitigation activities following a flood claim. The bill also would direct the Federal Emergency Management Agency (FEMA) to make several administrative changes to the NFIP related to claims payment determinations, program staffing, and related matters.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2875 would cost \$11 million over the 2018–2022 period, mostly for an advisory committee on flood insurance. Enacting the legislation would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, because any increase in NFIP collections and revenues would be offset by increased direct spending, CBO estimates that the net effect on the deficit would be negligible.

CBO estimates that enacting H.R. 2875 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2875 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2875 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION ^a							
Estimated Authorization Level	0	3	2	2	2	2	11
Estimated Outlays	0	3	2	2	2	2	11

^aH.R. 2875 would have an insignificant effect on direct spending and revenues in each year and over the 2017–2027 period.

Basis of estimate: For this estimate, CBO assumes that H.R. 2875 will be enacted near the end of fiscal year 2017 and that the necessary amounts will be appropriated each year.

Spending subject to appropriation

H.R. 2875 would establish a flood insurance advisory committee, which would include members from across the federal government and the private sector. The committee would be responsible for reviewing and making recommendations on several different aspects of the NFIP. Based on information from FEMA about the resources that would be needed for this committee, CBO estimates that im-

plementing this provision would cost \$10 million over the 2018–2022 period, mostly for salaries, expenses, and expert advice.

The bill also would direct the Government Accountability Office to complete two studies on the NFIP. The first would analyze the policies and practices for adjusting claims for losses under the NFIP. The second would analyze how the NFIP handles earth movements that stem from flooding, such as landslides, when adjusting claims for losses under the program. Based on the cost of similar studies, CBO estimates that completing those studies would cost \$1 million in 2018.

Direct spending and revenues

CBO estimates that enacting H.R. 2875 would have a negligible effect on the deficit over the 2018–2027 period.

ICC Coverage. H.R. 2875 would give NFIP policyholders the option of buying additional ICC coverage, which provides assistance to help cover the cost of mitigation activities that will reduce the risk of future flood damage to a building. Under current law, when a building covered by the NFIP suffers a flood loss and is declared to be substantially or repetitively damaged, an ICC insurance policy will provide up to \$30,000 to bring the building into compliance with state or community floodplain management laws or ordinances. Expected ICC program spending is covered by premium payments collected from NFIP policyholders.

Under the bill, policyholders would have the option to buy up to an additional \$30,000 in ICC coverage (making up to \$60,000 of coverage possible for a single property). Property owners that buy additional ICC coverage would pay a surcharge for that coverage in an amount determined by FEMA. CBO estimates that any additional spending by the NFIP for extra ICC coverage would be offset by the additional collections from property owners who buy such coverage; thus, the net effect on direct spending would be negligible.

Pre-Existing Conditions Pilot Program. The bill would authorize FEMA to create a pilot program through December 31, 2022, that would allow private insurance companies who partner with FEMA to sell and service NFIP policies (known in the program as Write Your Own, or WYO, insurance companies) to inspect properties with NFIP insurance for pre-existing structural conditions that could result in the denial of an NFIP claim. Following an inspection the WYO company would submit a report outlining the presence or absence of any pre-existing structural conditions to the property owner and FEMA.

Under the pilot program, FEMA could impose a surcharge on each policy that opts to have an inspection for pre-existing conditions to account for any administrative costs faced by the WYO companies to complete those inspections. Because H.R. 2875 gives FEMA discretion to set the surcharge at any rate, CBO estimates that any additional costs associated with completing those inspections would be offset by additional NFIP collections; thus, the net effect on direct spending would be negligible.

Civil Penalties. H.R. 2875 would bar anyone from making a false or misleading statement, production, or submission when adjusting a claim for NFIP coverage. The bill would create a civil penalty of up to \$10,000 per false statement. Civil penalties are recorded in

the budget as revenues. CBO estimates that such revenues would be insignificant in any year under the bill. Furthermore, any civil penalties collected under the bill would be deposited into the NFIF and could be spent without further appropriation; thus, the net effect on the deficit would be negligible.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting the bill would have an insignificant effect on direct spending and revenues over the 2018–2027 period.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2875 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2875 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Robert Reese; Impact on state, local, and tribal governments: Rachel Austin; Impact on the private sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

One advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created within this legislation. Pursuant to the Act, the Committee determines that the functions of the proposed advisory committee are not presently being performed by an agency or existing advisory committee. The Committee further determines that such functions cannot be performed by enlarging the mandate of an existing advisory committee. The advisory committee created by this legislation is as follows:

Sec. 14. Federal Flood Insurance Advisory Committee.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2875 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(c)(5) of rule XIII, the Committee states that no provision of H.R. 2875 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee states that H.R. 2875 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

This Act may be cited as the “National Flood Insurance Program Administrative Reform Act of 2017”.

Sec. 2. Increased Cost of Compliance coverage

Authorizes the FEMA Administrator to supplement its existing Increased Cost of Compliance (ICC) program (which is typically mandatory for many policyholders) coverage of up to \$30,000 with the option of allowing policyholders to purchase additional enhanced ICC coverage of up to \$60,000, as priced accordingly by NFIP. Like the existing ICC coverage, this enhanced ICC coverage would be used to comply with local and State floodplain management requirements by covering the cost of mitigating a building that has been substantially or repetitively damaged by floods. Additionally, the allowable uses of ICC coverage would be expanded to cover certain pre-disaster mitigation costs for certain at-risk properties identified by State or local governments.

Sec. 3. Pilot program for properties with pre-existing conditions

Authorizes the FEMA Administrator to create a pilot NFIP program to authorize Write Your Own (WYO) insurance companies to inspect pre-existing structural conditions of insured and pre-insured properties that could result in a denial of a flood insurance claim. A report covering any such conditions would be filed with the FEMA Administrator to create a pre-disaster baseline of the conditions that might affect the resolution of future NFIP claims. The NFIP is required to conduct a rigorous study and evaluation and report to Congress no later than December 31, 2021 prior to the pilot sunset on December 31, 2022.

Sec. 4. Penalties for fraud and false statements in the National Flood Insurance Program

Requires the FEMA Administrator to prohibit false or fraudulent statements connected to the preparation, production, or submission of claims adjustment or engineering reports. Authorizes the FEMA Administrator to develop penalties for such violations, including disbarment from participation in the NFIP.

Sec. 5. Enhanced policyholder appeals process

Codifies the due process protections for policyholders established after Superstorm Sandy by FEMA for individuals wishing to appeal a full or partial denial of their NFIP claim by their insurance company, and require FEMA to provide policyholders with a written appeal decision that upholds or overturns the decision of the insurer.

Sec. 6. Deadline for approval of claims

Requires the FEMA Administrator to make final determinations regarding the approval of a claim for payment or disapproval of the claim within 90 days of the claim being made. Authorizes the FEMA Administrator to extend the 90-day deadline by an additional 15 days when extraordinary circumstances warrant more time.

Sec. 7. Litigation process oversight and reform

Provides the FEMA Administrator with additional authorities and responsibilities for overseeing litigation conducted by WYO insurance companies acting on behalf of the NFIP. Requires the FEMA Administrator to ensure WYO litigation expenses are reasonable, appropriate, and cost-effective, with the authority to deny any expenses that are contrary to those terms. Gives the FEMA Administrator the authority to direct litigation strategy as necessary.

Sec. 8. Prohibition on hiring disbarred attorneys

Prohibits the FEMA Administrator from hiring any attorney in connection with the program who has been suspended or disbarred.

Sec. 9. Underpayment of claims by Write Your Own (WYO) companies

Requires the FEMA Administrator to align penalties for WYO insurance companies that knowingly underpay claims for losses covered to be commensurate with the NFIP's penalties applicable to overpayment of such claims.

Sec. 10. Use of technical assistance reports

Requires the FEMA Administrator to restrict the use of outside technical reports by WYO insurance companies and the NFIP direct servicing agents as part of specific NFIP claims investigations only to such reports that are final and are prepared in compliance with applicable state and federal laws regarding professional licensure and conduct. Defines "technical assistance report" to mean reports created for the purpose of furnishing technical assistance to an insurance claims adjuster assigned by NFIP, including those by engineers, surveyors, salvors, architects, and certified public accountants.

Sec. 11. Improved disclosure requirement for standard flood insurance policies

Requires the FEMA Administrator to create a coverage disclosure sheet for policyholders, which outlines the coverage afforded by the NFIP's standard flood insurance policy, including a description of the type of loss that would be covered, a summary of costs

associated with the policy, clear communications of the policy’s full flood risk determinations. Requires the disclosure to include an acknowledgement of the disclosure by the policyholder and the insurer selling the policy on behalf of the NFIP.

Sec. 12. Reserve Fund amounts

Authorizes FEMA to transfer money from the Reserve Fund into the NFIP for the purposes of paying future claims.

Sec. 13. Sufficient staffing for Office of Flood Insurance Advocate

Requires the FEMA Administrator to ensure the Office of the Flood Insurance Advocate has sufficient staffing within 180 days after enactment.

Sec. 14. Federal Flood Insurance Advisory Committee

Creates a new Technical Insurance Advisory Council consisting of federal, state, and local experts to review the NFIP’s insurance practices and propose new standards to FEMA.

Sec. 15. Interagency guidance on compliance

Twelve months after enactment and every two years thereafter, requires that federal banking agencies update the document entitled “Interagency Questions and Answers Regarding Flood Insurance,” which address many flood insurance compliance questions in order to understand any conflicts with FEMA requirements or other industry practices and limitations.

Sec. 16. GAO study of claims adjustment practices

Requires the Comptroller General of the United States to conduct a study assessing the policies and practices for adjustment of claims for losses under the NFIP to determine whether the current system impacts the quality of the claims and adversely impacts policyholders.

Sec. 17. GAO study of flood insurance coverage treatment of earth movement

Requires the Comptroller General of the United States to conduct a study assessing the treatment of “earth movement and subsidence caused by flooding” on the NFIP and policyholders.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

NATIONAL FLOOD INSURANCE ACT OF 1968

* * * * *

TITLE XIII—NATIONAL FLOOD INSURANCE

* * * * *

CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

BASIC AUTHORITY

SEC. 1304. (a) To carry out the purposes of this title, the Administrator of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) **ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.**—

(1) **AUTHORITY; ELIGIBLE PROPERTIES.**—The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 1361 for—

[(1)] (A) properties that are repetitive loss structures;

[(2)] (B) properties that are substantially damaged structures;

[(3)] (C) properties that have sustained flood damage on multiple occasions, if the Administrator determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures. Fund to require the implementation of such measures;

[(4)] (D) properties for which an offer of mitigation assistance is made under—

[(A)] (i) section 1366 (Flood Mitigation Assistance Program);

[(B)] (ii) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

[(C)] (iii) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

[(D)] (iv) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available[.];

(E) properties that have been identified by the Administrator, or by a community in accordance with such requirements as the Administrator shall establish, as at a high risk of future flood damage; and

(F) properties that are located within an area identified pursuant to section 1361(e)(1)(A) (42 U.S.C. 4102(e)(1)(A)) by a covered community (as such term is defined in paragraph (3) of such section 1361(e)).

[The Administrator shall impose a surcharge on each insured of not more than \$75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.]

(2) **COVERAGE AMOUNT.**—

(A) *PRIMARY COVERAGE.*—Each policy for flood insurance coverage made available under this title shall provide coverage under this subsection having an aggregate liability for any single property of \$30,000.

(B) *ENHANCED COVERAGE.*—The Administrator shall make additional coverage available under this subsection, in excess of the limit specified in subparagraph (A), having an aggregate liability for any single property of up to \$60,000.

(3) *SURCHARGE FOR COVERAGE.*—

(A) *PRIMARY COVERAGE.*—The Administrator shall impose a surcharge on each insured of such amount per policy as the Administrator determines is appropriate to provide cost of compliance coverage in accordance with paragraph (2)(A).

(B) *ENHANCED COVERAGE.*—For each flood policy for flood insurance coverage under this title under which additional cost of compliance coverage is provided pursuant to paragraph (2)(B), the Administrator shall impose a surcharge, in addition to the surcharge under subparagraph (A) of this paragraph, in such amount as the Administrator determines is appropriate for the amount of such coverage provided.

(4) *USE OF CERTAIN MATERIALS.*—The Administrator shall require that any measures implemented using amounts made available from coverage provided pursuant to this subsection be carried out using materials, identified by the Administrator, that minimize the impact of flooding on the usability of the covered property and reduce the duration that flooding renders the property unusable or uninhabitable.

(5) *CONTINUED FLOOD INSURANCE REQUIREMENT.*—The Administrator may require, as a condition of providing cost of compliance coverage under this subsection for a property, that the owner of the property enter into such binding agreements as the Administrator considers necessary to ensure that the owner of the property (and any subsequent owners) will maintain flood insurance coverage under this title for the property in such amount, and at all times during a period having such duration, as the Administrator considers appropriate to carry out the purposes of this subsection.

(c) In carrying out the flood insurance program the Administrator shall, to the maximum extent practicable, encourage and arrange for—

(1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and

(2) other appropriate participation on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, in accordance with the provisions of chapter II.

* * * * *

NATIONAL FLOOD INSURANCE FUND

SEC. 1310. (a) To carry out the flood insurance program authorized by this title, the Administrator shall establish in the Treasury

of the United States a National Flood Insurance Fund (hereinafter referred to as the “fund”) which shall be an account separate from any other accounts or funds available to the Administrator and shall be available as described in subsection (f), without fiscal year limitation (except as otherwise provided in this section)—

(1) for making such payments as may, from time to time, be required under section 1334;

(2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 1335;

(3) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 1309;

(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360);

(5) for the purposes specified in subsection (d) under the conditions provided therein;

(6) for carrying out the program under section 1315(b);

(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 1367(b)(1); and

(8) for carrying out section 1363(f).

(b) The fund shall be credited with—

(1) such funds borrowed in accordance with the authority provided in section 1309 as may from time to time be deposited in the fund;

(2) premiums, fees, or other charges which may be paid or collected in connection with the excess loss reinsurance coverage provided under section 1335;

(3) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

(4) interest which may be earned on investments of the fund pursuant to subsection (c);

(5) such sums as are required to be paid to the Administrator under section 1308(d); and

(6) receipts from any other operations under this title (including premiums under the conditions specified in subsection (d), and salvage proceeds, if any, resulting from reinsurance coverage).

(c) If, after—

(1) all outstanding obligations of the fund have been liquidated, and

(2) any outstanding amounts which may have been advanced to the fund from appropriations authorized under section 1376(a)(2)(B) have been credited to the appropriation from which advanced, with interest accrued at the rate, prescribed under section 15(e) of the Federal Flood Insurance Act of 1956, as in effect immediately prior to the enactment of this title,

the Administrator determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) In the event the Administrator makes a determination in accordance with the provisions of section 1340 that operation of the

flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including—

(1) cost incurred in the adjustment and payment of any claims for losses, and

(2) payment of applicable operating costs set forth in the schedules prescribed under section 1311,

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the Administrator to the credit of the fund.

(e) An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31, United States Code, for wholly-owned Government corporations.

(f) The Fund shall be available, with respect to any fiscal year beginning on or after October 1, 1981, only to the extent approved in appropriation Acts; except that the fund shall be available for the purpose described in subsection (d)(1) without such approval.

(g) *CREDITING OF RESERVE FUND AMOUNTS.—Funds collected pursuant to section 1310A may be credited to the Fund under this section to be available for the purpose described in subsection (d)(1).*

* * * * *

OPERATING COSTS AND ALLOWANCES

SEC. 1311. (a) The Administrator shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing—

(1) a current schedule of operating costs applicable both to risk-sharing insurance companies and other insurers and to insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations participating on other than a risk-sharing basis, and

(2) a current schedule of operating allowances applicable to risk-sharing insurance companies and other insurers, which may be payable in accordance with the provisions of chapter II, and such schedules shall from time to time be prescribed in regulations.

(b) For purposes of subsection (a)—

(1) the term “operating costs” shall (without limiting such term) include—

(A) expense reimbursements covering the direct, actual and necessary expenses incurred in connection with selling and servicing flood insurance coverage;

(B) reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers;

(C) loss adjustment expenses; and

(D) other direct, actual, and necessary expenses which the Administrator finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term “operating allowances” shall (without limiting such term) include amounts for profit and contingencies which the Administrator finds reasonable and necessary to carry out the purposes of this title.

(c) *PILOT PROGRAM FOR INVESTIGATION OF PREEXISTING STRUCTURAL CONDITIONS.*—

(1) *VOLUNTARY PROGRAM.*—*The Administrator shall carry out a pilot program under this subsection to provide for companies participating in the Write Your Own program (as such term is defined in section 1370(a) (42 U.S.C. 4121(a))) to investigate preexisting structural conditions of insured properties and potentially insured properties that could result in the denial of a claim under a policy for flood insurance coverage under this title in the event of a flood loss to such property. Participation in the pilot program shall be voluntary on the part of Write Your Own companies.*

(2) *INVESTIGATION OF PROPERTIES.*—*Under the pilot program under this subsection, a Write Your Own company participating in the program shall—*

(A) *provide in policies for flood insurance coverage under this title covered by the program that, upon the request of the policyholder, the company shall provide for—*

(i) *an investigation of the property covered by such policy, using common methods, to determine whether preexisting structural conditions are present that could result in the denial of a claim under such policy for flood losses; and*

(ii) *if such investigation is not determinative, an on-site inspection of the property to determine whether such preexisting structural conditions are present;*

(B) *upon completion of an investigation or inspection pursuant to subparagraph (A) that determines that such a preexisting structural condition is present or absent, submit a report to the policyholder and Administrator describing the condition; and*

(C) *impose a surcharge on each policy described in subparagraph (A) in such amount that the Administrator determines is appropriate to cover the costs of investigations and inspections performed pursuant to such policies and reimburse Write Your Own companies participating in the program under this subsection for such costs.*

(3) *INTERIM REPORT.*—*Not later than December 31, 2021, the Administrator shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the operation of the pilot program to that date.*

(4) *SUNSET.*—*The Administrator may not provide any policy for flood insurance described in paragraph (2)(A) after December 31, 2022.*

(5) *FINAL REPORT.*—*Not later than March 31, 2023, the Administrator shall submit a final report regarding the pilot program under this section to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include any findings and recommendations of the Administrator regarding the pilot program.*

PAYMENT OF CLAIMS

SEC. 1312. (a) IN GENERAL.—[The Administrator] *Subject to other provisions of this section, the Administrator* is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this title.

(b) MINIMUM ANNUAL DEDUCTIBLE.—

(1) PRE-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

(A) \$1,500, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than \$100,000; and

(B) \$2,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than \$100,000.

(2) POST-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred after December 31, 1974, or after the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

(A) \$1,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than \$100,000; and

(B) \$1,250, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than \$100,000.

(c) PAYMENT OF CLAIMS TO CONDOMINIUM OWNERS.—The Administrator may not deny payment for any damage to or loss of property which is covered by flood insurance to condominium owners who purchased such flood insurance separate and apart from the flood insurance purchased by the condominium association in which such owner is a member, based solely, or in any part, on the flood insurance coverage of the condominium association or others on the overall property owned by the condominium association.

(d) DEADLINE FOR APPROVAL OF CLAIMS.—

(1) IN GENERAL.—*The Administrator shall provide that, in the case of any claim for damage to or loss of property under flood insurance coverage made available under this title, a final determination regarding approval of a claim for payment or disapproval of the claim be made, and notification of such determination be provided to the insured making such claim, not later than the expiration of the 90-day period (as such period may be extended pursuant to paragraph (2)) beginning upon the day on which such claim was made. Payment of approved claims shall be made as soon as possible after such approval.*

(2) *EXTENSION OF DEADLINE.*—The Administrator shall provide that the period referred to in paragraph (1) may be extended by a single additional period of 15 days in cases where extraordinary circumstances are demonstrated. The Administrator shall, by regulation, establish criteria for demonstrating such extraordinary circumstances and for determining to which claims such extraordinary circumstances apply.

(e) *USE OF TECHNICAL ASSISTANCE REPORTS.*—When adjusting claims for any damage to or loss of property which is covered by flood insurance made available under this title, the Administrator may rely upon technical assistance reports, as such term is defined in section 1312A, only if such reports are final and are prepared in compliance with applicable State and Federal laws regarding professional licensure and conduct.

SEC. 1312A. DISCLOSURE OF TECHNICAL ASSISTANCE REPORTS.

(a) *IN GENERAL.*—Notwithstanding section 552a of title 5, United States Code, upon request by a policyholder, the Administrator shall provide a true, complete, and unredacted copy of any technical assistance report that the Administrator relied upon in adjusting and paying for any damage to or loss of property insured by the policyholder and covered by flood insurance made available under this title. Such disclosures shall be in addition to any other right of disclosure otherwise made available pursuant such section 552a or any other provision of law.

(b) *DIRECT DISCLOSURE BY WRITE YOUR OWN COMPANIES AND DIRECT SERVICING AGENTS.*—A Write Your Own company or direct servicing agent in possession of a technical assistance report subject to disclosure under subsection (a) may disclose such technical assistance report without further review or approval by the Administrator.

(c) *DEFINITIONS.*—For purposes of this section, the following definitions shall apply:

(1) *POLICYHOLDER.*—The term “policyholder” means a person or persons shown as an insured on the declarations page of a policy for flood insurance coverage sold pursuant to this title.

(2) *TECHNICAL ASSISTANCE REPORT.*—The term “technical assistance report” means a report created for the purpose of furnishing technical assistance to an insurance claims adjuster assigned by the National Flood Insurance Program, including by engineers, surveyors, salvors, architects, and certified public accountants.

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CHAPTER II—ORGANIZATION AND ADMINISTRATION OF THE FLOOD INSURANCE PROGRAM

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PART C—PROVISIONS OF GENERAL APPLICABILITY

SERVICES BY INSURANCE INDUSTRY

SEC. 1345. (a) In administering the flood insurance program under this chapter, the Administrator is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of uti-

lizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 1311.

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring competitive bidding and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) The Administrator of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this title harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The Administrator of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

(d) FEMA AUTHORITY ON TRANSFER OF POLICIES.—Notwithstanding any other provision of this title, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this title that are written and administered by any insurance company or other insurer, or any insurance agent or broker.

(e) RISK TRANSFER.—The Administrator may secure reinsurance of coverage provided by the flood insurance program from the private reinsurance and capital markets at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims.

(f) UNDERPAYMENT OF CLAIMS BY WYO COMPANIES.—*The Administrator shall establish penalties for companies participating in the Write Your Own program knowingly underpaying claims for losses covered by flood insurance made available under this title, which penalties shall be commensurate, with respect to the amount of the penalty, to the penalties applicable to overpayment of such claims by a similar amount by such companies.*

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SEC. 1349. PENALTIES FOR FRAUD AND FALSE STATEMENTS IN THE NATIONAL FLOOD INSURANCE PROGRAM.

(a) PROHIBITED ACTS.—*A person shall not knowingly make a false or misleading statement, production, or submission in connection with the proving or adjusting of a claim for flood insurance coverage made available under this Act. Such prohibited acts include—*

(1) knowingly forging an engineering report, claims adjustment report or technical assistance report used to support a claim determination;

(2) knowingly making any materially false, fictitious, or fraudulent statement or representation in an engineering report, claims adjustment report, or technical assistance report to support a claim determination;

(3) knowingly submitting a materially false, fictitious, or fraudulent claim.

(b) **CIVIL ENFORCEMENT.**—The Attorney General may bring a civil action for such relief as may be appropriate whenever it appears that any person has violated or is about to violate any provision of this section. Such action may be brought in an appropriate United States district court.

(c) **REFERRAL TO ATTORNEY GENERAL.**—The Administrator shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal or civil prosecution.

(d) **PENALTIES.**—

(1) **CIVIL MONETARY PENALTY.**—Any person who violates subsection (a) shall be subject to a civil penalty of not more than \$10,000 for each violation, which shall be deposited into the National Flood Insurance Fund established under section 1310 (42 U.S.C. 4017).

(2) **SUSPENSION AND DEBARMENT.**—Any person who violates subsection (a) shall not be eligible, for a period of not less than 2 years and not to exceed 5 years, to—

(A) receive flood insurance coverage pursuant to this title;

or

(B) provide services in connection with the selling, servicing, or handling of claims for flood insurance policies provided pursuant to this title.

(3) **OTHER PENALTIES.**—The penalties provided for in this subsection shall be in addition to any other civil or criminal penalty available under law.

SEC. 1350. APPROVAL 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 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.

SEC. 1351. OVERSIGHT OF LITIGATION.

(a) *OVERSIGHT.*—The Administrator shall monitor and oversee litigation conducted by Write Your Own companies arising under contracts for flood insurance sold pursuant to this title, to ensure that—

(1) litigation expenses are reasonable, appropriate, and cost-effective; and

(2) Write Your Own companies comply with guidance and procedures established by the Administrator regarding the conduct of litigation.

(b) *DENIAL OF REIMBURSEMENT FOR EXPENSES.*—The Administrator may deny reimbursement for litigation expenses that are determined to be unreasonable, excessive, contrary to guidance issued by the Administrator, or outside the scope of any arrangement entered into with a Write Your Own company.

(c) *LITIGATION STRATEGY.*—The Administrator may direct litigation strategy for claims arising under a contract for flood insurance sold by a Write Your Own company.

(d) *SUBSTITUTION.*—If at any time, the Administrator determines there is a conflict of interest between the Write Your Own company and the National Flood Insurance Program, or it is in the best interest of the United States, the Administrator may promptly take any necessary action to be substituted for the WYO company in any action arising out of any claim arising under a contract for flood insurance sold by a Write Your Own company.

SEC. 1352. PROHIBITION ON HIRING DISBARRED ATTORNEYS.

The Administrator may not at any time newly employ in connection with the flood insurance program under this title any attorney who has been suspended or disbarred by any court, bar, or Federal or State agency to which the individual was previously admitted to practice.

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CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 1370. (a) As used in this title—

(1) the term “flood” shall have such meaning as may be prescribed in regulations of the Administrator, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms “United States” (when used in a geographic sense) and “State” includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms “insurance company”, “other insurer” and “insurance agent or broker” include any organization or person that is authorized to engage in the business of insurance under

the laws of any State, subject to the reporting requirements of the Securities Exchange Act of 1934 pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a) and 78o(d)), or authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;

(4) the term “insurance adjustment organization” includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term “person” includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term “Administrator” means the Administrator of the Federal Emergency Management Agency;

(7) the term “repetitive loss structure” means a structure covered by a contract for flood insurance that—

(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

(8) the term “Federal agency lender” means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(9) the term “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(10) the term “improved real estate” means real estate upon which a building is located;

(11) the term “lender” means a regulated lending institution or Federal agency lender;

(12) the term “natural and beneficial floodplain functions” means—

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

(13) the term “regulated lending institution” means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

(14) the term “servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pur-

suant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan; [and]

(15) the term “substantially damaged structure” means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Administrator, or by a community ordinance, whichever is lower[.];

(16) the term “Write Your Own Program” means the program under which the Federal Emergency Management Agency enters into a standard arrangement with private property insurance companies to sell contracts for flood insurance coverage under this title under their own business lines of insurance, and to adjust and pay claims arising under such contracts; and

(17) the term “Write Your Own company” means a private property insurance company that participates in the Write Your Own Program.

(b) The term “flood” shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such mudslides) the purposes of this title and the objectives of the program.

(c) The term “flood” shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program.

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SECTION 205 OF THE BUNNING-BLUMENAUER-BEREUTER FLOOD INSURANCE REFORM ACT OF 2004

[SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE.

[Not later than 6 months after the date of enactment of this Act, 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—

- 【(1) any insurance agent or adjuster, or insurance company; or
- 【(2) any employee or contractor of the Federal Emergency Management Agency.】

BIGGERT-WATERS FLOOD INSURANCE REFORM ACT OF 2012

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DIVISION F—MISCELLANEOUS

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TITLE II—FLOOD INSURANCE

Subtitle A—Flood Insurance Reform and Modernization

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SEC. 100202. DEFINITIONS.

(a) IN GENERAL.—In this subtitle, the following definitions shall apply:

(1) 100-YEAR FLOODPLAIN.—The term “100-year floodplain” means that area which is subject to inundation from a flood having a 1-percent chance of being equaled or exceeded in any given year.

(2) 500-YEAR FLOODPLAIN.—The term “500-year floodplain” means that area which is subject to inundation from a flood having a 0.2-percent chance of being equaled or exceeded in any given year.

(3) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(4) NATIONAL FLOOD INSURANCE PROGRAM.—The term “National Flood Insurance Program” means the program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.).

【(5) WRITE YOUR OWN.—The term “Write Your Own” means the cooperative undertaking between the insurance industry and the Federal Insurance Administration which allows participating property and casualty insurance companies to write and service standard flood insurance policies.】

(5) WRITE YOUR OWN.—*The terms “Write Your Own Program” and “Write Your Own company” have the meanings given such terms in section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)).*

(b) COMMON TERMINOLOGY.—Except as otherwise provided in this subtitle, any terms used in this subtitle shall have the mean-

ing given to such terms under section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121).

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SEC. 100234. POLICY DISCLOSURES.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, in addition to any other disclosures that may be required, each policy under the National Flood Insurance Program shall state all conditions, exclusions, and other limitations pertaining to coverage under the subject policy, regardless of the underlying insurance product, in plain English, in boldface type, and in a font size that is twice the size of the text of the body of the policy.

(b) **VIOLATIONS.**—The Administrator may impose a civil penalty of not more than \$50,000 on any person that fails to comply with subsection (a).

(c) **DISCLOSURE OF COVERAGE.**—

(1) **DISCLOSURE SHEET.**—*Each policy under the National Flood Insurance Program shall include a disclosure sheet that sets forth, in plain language—*

(A) *the definition of the term “flood” for purposes of coverage under the policy;*

(B) *a description of what type of flood forces are necessary so that losses from an event are covered under the policy, including overflow of inland or tidal waves, unusual and rapid accumulation or runoff of a surface any source, and mudflow;*

(C) *a statement of the types and characteristics of losses that are not covered under the policy;*

(D) *a summary of total cost and amount of insurance coverage, and any other information relating to such coverage required to be disclosed under section 1308(l) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(l));*

(E) *a statement that the disclosure sheet provides general information about the policyholder’s standard flood insurance policy;*

(F) *a statement that the standard flood insurance policy, together with the application, endorsements, and declarations page, make up the official contract and are controlling in the event that there is any difference between the information on the disclosure sheet and the information in the policy; and*

(G) *a statement that if the policyholder has any questions regarding information in the disclosure sheet or policy he or she should contact the entity selling the policy on behalf of the Program, together with contact information sufficient to allow the policyholder to contact such entity.*

(2) **ACKNOWLEDGMENT SHEET.**—*Each policy under the National Flood Insurance Program shall include an acknowledgment sheet that sets forth, in plain language—*

(A) *a statement of whether or not there is a basement in the property to be covered by the policy;*

(B) *a statement of whether or not the policy provides coverage for the contents of the property covered by the policy;*

(C) *a statement that the standard flood insurance policy, together with the application, endorsements, and declara-*

tions page, make up the official contract and are controlling in the event that there is any difference between the information on the acknowledgment sheet and the information in the policy; and

(D) a statement that if the policyholder has any questions regarding information in the acknowledgment sheet or policy he or she should contact the entity selling the policy on behalf of the Program, together with contact information sufficient to allow the policyholder to contact such entity.

(3) **REQUIRED SIGNATURES.**—Notwithstanding section 1306(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)), a policy for flood insurance coverage under the National Flood Insurance Program may not take effect unless the disclosure sheet required under paragraph (1) and the acknowledgment sheet required under paragraph (2), with respect to the policy, are signed and dated by the policyholder and the seller of the policy who is acting on behalf of the Program.

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HOMEOWNER FLOOD INSURANCE AFFORDABILITY ACT OF 2014

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SEC. 24. DESIGNATION OF FLOOD INSURANCE ADVOCATE.

(a) **IN GENERAL.**—The Administrator shall designate a Flood Insurance Advocate to advocate for the fair treatment of policy holders under the National Flood Insurance Program and property owners in the mapping of flood hazards, the identification of risks from flood, and the implementation of measures to minimize the risk of flood.

(b) **DUTIES AND RESPONSIBILITIES.**—The duties and responsibilities of the Flood Insurance Advocate designated under subsection (a) shall be to—

(1) educate property owners and policyholders under the National Flood Insurance Program on—

- (A) individual flood risks;
- (B) flood mitigation;
- (C) measures to reduce flood insurance rates through effective mitigation;
- (D) the flood insurance rate map review and amendment process; and
- (E) any changes in the flood insurance program as a result of any newly enacted laws (including this Act);

(2) assist policy holders under the National Flood Insurance Program and property owners to understand the procedural requirements related to appealing preliminary flood insurance rate maps and implementing measures to mitigate evolving flood risks;

(3) assist in the development of regional capacity to respond to individual constituent concerns about flood insurance rate map amendments and revisions;

(4) coordinate outreach and education with local officials and community leaders in areas impacted by proposed flood insurance rate map amendments and revisions; and

(5) aid potential policy holders under the National Flood Insurance Program in obtaining and verifying accurate and reliable flood insurance rate information when purchasing or renewing a flood insurance policy.

(c) *STAFF.*—*The Administrator shall ensure that the Flood Insurance Advocate has sufficient staff to carry out all of the duties and responsibilities of the Advocate under this section.*

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